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Committee on Anti-Dumping Practices

Ad-Hoc Group on the Implementation
of the Anti-Dumping Code

THE USE OF PRICE UNDERTAKINGS IN
ANTI-DUMPING INVESTIGATIONS INVOLVING
IMPORTS FROM DEVELOPING COUNTRIES

Working Paper by the Secretariat

Revision

This revision is based on the discussion in the Ad-Hoc Group at its meeting of 30 May 1988.

The Anti-Dumping Code states that special regard must be given by developed countries to the special situation of developing countries when considering the application of anti-dumping measures. In this connection it provides that possibilities of constructive remedies shall be explored before applying anti-dumping duties.

Experience has shown that price undertakings may be a constructive, expedient and mutually advantageous remedy, in particular for developing-country exporters, for suspending or terminating an anti-dumping procedure.

The Committee considers that the adoption of more favourable measures in this field will help to avoid the application of anti-dumping duties that would affect the essential interests of developing countries. At the same time, a significant contribution could be made to the improvement of the export earnings of developing countries, enabling exporters of these countries to correct their trade practices by raising their export prices.

Considering that this may be a field in which special and differentiated treatment is both practical and appropriate, the Committee recommends that the following measures be observed in the use of price undertakings in connection with exporters from developing countries:

1. All national legislations of Parties to the Anti-Dumping Code should enable the relevant investigating authorities to consider price undertakings offered by exporters with a view to allowing suspension or termination of investigations. Special efforts shall be made to accept offers of price undertakings by exporters from developing

countries as a possible constructive remedy within the meaning of Article 13. It is recognised that, as provided in Article 7, undertakings offered need not be accepted if the relevant authorities consider their acceptance impractical, for example, if the number of actual or potential exporters is too great, or for other reasons. [Should the case arise, they shall provide the reasons that might lead them to consider acceptance of an undertaking as inappropriate, and shall, to the extent possible, give the exporter an opportunity to make comments thereon.] [Where practicable, should the case arise, they shall provide the reasons that might lead them to consider acceptance of an undertaking as inappropriate and give the exporter an opportunity to make comments thereon.]

2. [The possibility of accepting price undertakings should not be limited to the preliminary stage of the investigation in order to permit convincing findings of dumping and its injurious effects and to provide the exporter with sufficient grounds for offering an undertaking.]

[The possibility of accepting a price undertaking shall not be considered unless an investigation has been initiated in accordance with Article 5 of the Code. It shall only be considered when the investigating authority is satisfied in the course of its investigation, that there is sufficient evidence of dumping and injury caused by such dumping. Where the exporter has indicated a serious interest in offering an undertaking, he should be provided sufficient grounds and time to consider whether to offer such an undertaking.]

3. For ascertaining the margin of dumping, it is necessary in determining normal value to take duly into account the methods mentioned in the Decision by the Committee on Anti-Dumping Practices taken on 5 May 1980 (ADP/2)
4. In situations where price undertakings are considered to be appropriate the relevant investigating authorities shall endeavour to settle anti-dumping cases by ensuring prices sufficient to remove the injury, even if the margin of dumping is not entirely compensated. [The terms of a price undertaking shall, to the extent possible, take due account of the particular circumstances of each case.] [The terms of a price undertaking shall, to the extent possible, take due account in each case depending on its particular circumstances, of differences in physical characteristics of products from developing countries in comparison with competing products, of marketing conditions and of other differences affecting price comparability.]