

GENERAL AGREEMENT ON

RESTRICTED

ADP/W/139/Rev.1
14 September 1987

TARIFFS AND TRADE

Special Distribution

Committee on Anti-Dumping Practices

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

REVISION OF UNDERTAKINGS

Working Paper by the Secretariat

Revision

This revision is based on the discussion of Working Paper ADP/W/139 by the Ad-Hoc Group at its meeting of 4 June 1987.

-
1. An undertaking can be accepted to eliminate the injurious effects of the dumping on the domestic industry of the importing country. Any price increase under an undertaking shall not be higher than necessary to eliminate the margin of dumping. It is desirable that the price increase be less than the margin of dumping if such lesser increase would be adequate to remove the injury to the domestic industry.
 2. A revision of an undertaking may be appropriate where relevant changes in the normal value of the exporter concerned or in the market situation in the importing country have occurred since its acceptance. Any revision should [only] [normally] be made as a result of a formal review* except where an adaptation is provided for in the undertaking itself or the exporter and the authorities of the importing country agree to an adaptation. [Any upward revision of prices must be based on positive evidence substantiating the need for such a revision.] [A copy of the letter to the exporter from the authorities of the importing country suggesting [an adaptation] [a major adaptation] should be sent to the authorities of the exporting country] [if so requested by the exporter concerned] [unless the exporter objects].
 3. [Such a review] [A formal review of an undertaking as provided for in paragraph 2] should be carried out, where and insofar as warranted, either on the initiative of the authorities of the importing country or at the request of the exporters or importers concerned or the domestic industry.

* See Annex

Such request for [a review] [a formal review] shall be granted if the requesting party submits [appropriate] [verifiable] [detailed] information to justify the need for such [review] [formal review]. In deciding on the necessity for a [review] [formal review], the authorities of the importing country can also take into account the period of time that has elapsed since the acceptance of the undertaking although this factor would not necessarily be determining. If the investigating authorities decide not to undertake a [review] [formal review], they should provide the applicant with an explanation of the reasons for that decision.

4. A [review] [formal review in the sense of paragraphs 2 and 3] shall be initiated and carried out to the extent necessary to take into account the information substantiating the need for such review. In carrying out the review, the same procedural rules and guarantees should be respected, insofar as applicable and appropriate, as during the original investigation. In particular, all interested parties should be given the opportunity to make their views known and to provide evidence.

5. When [the developed countries] [Parties] consider revising an undertaking they shall take particular account of the special situation of the developing countries [by the application of more favourable measures in that respect] [whenever possible].

[As one example - and not to the exclusion of others - such measures could relate to the possibility of not reviewing an undertaking except at the request of the exporter if the volume of imports from the developing country concerned has not increased during the previous six months in relation to the base period.] [As one example - and not to the exclusion of others - such measures could relate to the possibility of not reviewing an undertaking except at the request of the exporter. If the volume of imports from the developing country concerned has increased in relation to the internal consumption of the importing country during the previous six months in relation to the base period, the importing country could proceed to such a review.]

ANNEX

At the meeting of the Ad Hoc Group on 4 June 1987 the Group requested the secretariat to include in a revised version of Working Paper ADP/W/139 suggestions for a clarification of the meaning of the terms "review", "revision" and "adaptation" as used in this draft recommendation. The secretariat has prepared a text, reproduced below, which might resolve certain problems which have arisen in connection with the use of these terms. In preparing this proposal the secretariat has attempted to take into account two elements. Firstly, it is necessary to make it clear that the review process referred to in paragraphs 2, 3 and 4 of the draft recommendation does not include "informal" reviews which may lead to changes in undertakings of a merely technical nature. Secondly, there is a need to define the term "formal review" in a manner broad enough to cover the different types of administrative review procedures provided for in the domestic laws and regulations of the Parties.

The expression "formal review" as used in this draft recommendation refers to the process in which the authorities of the importing Party consider, in accordance with the relevant provisions of the domestic law and/or regulations of that Party, whether, in view of the factors mentioned in the first sentence of paragraph 2, a need exists to revise (i.e. amend or adapt) the terms of a price undertaking. In case the domestic legislation of a Party provides that anti-dumping measures may be reviewed with or without a re-opening of the investigation, "formal review" shall mean a review carried out after the re-opening of the investigation.