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NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

MTN.GNG/NG8/W/7
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Negotiating Group on MTN Agreements
and Arrangements

AGREEMENT ON IMPLEMENTATION OF ARTICLE VI
OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE
(ANTI-DUMPING CODE): ASPECTS OF THE CODE
PROPOSED BY KOREA FOR NEGOTIATION

Note by the Secretariat

1. At the second meeting of the Negotiating Group on MTN Agreements and Arrangements, held on 27 May 1987, the Secretariat was requested to prepare factual background notes on those aspects of the MTN Agreements and Arrangements which had been raised in the discussions. The delegation of Korea had circulated, at this meeting, a document (MTN.GNG/NG8/W/3) which identified a number of issues for negotiation under the Anti-Dumping Code. The present note provides certain background information on these issues.

2. For each of the issues identified the note provides information on past discussion in the Committee on Anti-Dumping Practices and the Ad Hoc Group on the Implementation of the Anti-Dumping Code. This information should not be regarded as exhaustive and nor is it intentionally selective. Rather, the intention is to provide sufficient information on earlier discussions of the issues raised in MTN.GNG/NG8/W/3 to provide the context in which these issues have been raised and also an indication of any relevant action or decisions taken.

A. Introduced into the commerce of another country (in the context of the concept of sale)

Relevant provisions: Article 2:1

Issue raised in MTN.GNG/NG8/W/3

3. Since there is no definition of the concept of "introduced into the commerce of another country", the concept lends itself to such a broad interpretation by Signatories as to allow circumstances where injury can be found in the absence of actual imports.

Earlier Discussions

4. The question of how to define the phrase "introduced into the commerce of another country" in Article 2:1 of the Code, and the related issue of concept of sale, has been the subject of fairly extensive discussion in the Committee on Anti-Dumping Practices and in the Ad Hoc Group on the Implementation of the Anti-Dumping Code.

5. The earliest discussions took place in October 1980 in the Committee, in the context of Canada's draft anti-dumping legislation (ADP/M/3, paragraphs 39-40). The matter was also discussed at the same meeting in relation to Canada's semi-annual report on anti-dumping actions (ADP/M/3, paragraph 74). The essential question was whether it was legitimate to open an anti-dumping investigation with respect to goods which had not actually been imported into the country conducting the investigation. In other words, the issue was whether goods could be said to have been "introduced into the commerce of another country" at the point when some kind of contractual obligation was entered into, such as an irrevocable tender, but before any merchandise crossed international frontiers as a consequence of such a contractual commitment. A further discussion of this question took place at the October 1981 meeting of the Committee during its examination of national legislation and implementing regulations (ADP/M/6, paragraphs 10-11).

6. At its tenth and eleventh meetings, in April and November 1983, the Committee discussed an anti-dumping investigation by Canada against certain electric generators exported by Italy (ADP/M/10, paragraphs 51-53 and ADP/M/11, paragraphs 53-59). The discussion at the eleventh meeting followed a request by the EEC for conciliation in terms of Article 15:3 (ADP/16). This case arose as a result of bids by an Italian firm to supply hydro-electric generators to certain development projects in Canada. The basic point of difference in this case was whether an irrevocable tender, irrespective of whether or not it was accepted, should be considered to mean that the product in question had been "introduced into commerce" and therefore was subject to anti-dumping action. Aspects of this issue were further discussed by the Committee in May 1984 and April 1985 (ADP/M/12, paragraphs 49-51 and ADP/M/15, paragraphs 15-16, 34 and 35).

7. There were a number of working papers submitted to the Ad Hoc Group on the Implementation of the Anti-Dumping Code on the question of the definition of sale and on related matters. In Working Papers Nos. 6, 13 and 13/Rev.1, the United States expressed the view that the definition of sale should be based on a consideration of the nature of a transaction and not on a narrow concept of "sale". In this view, an irrevocable offer to supply goods at a fixed unit price constitutes a sale. These working papers also make reference to certain questions concerning the determination of normal value.

8. In Working Papers Nos. 22 and 22/Rev.1, Canada examined the meaning of the "ordinary course of trade" in Article 2:1, as related to the notion of "entering into the commerce" of another country. It is suggested in these papers that in certain circumstances the application of the appropriate "ordinary course of trade" concept would lead to the conclusion that goods have been introduced into the commerce of an importing country at the time when these goods are offered for sale by means of a binding tender. Such circumstances might include, for example, a situation where high-cost, custom designed, and infrequently ordered equipment is offered by tender and where there is a significant time lag between the sale of such equipment and its delivery.

9. Finally, in Working Paper No. 23 the EEC expressed the view that the Code did not pronounce clearly on the stage at which goods could be determined to have been "introduced into commerce". The paper argues basically for a definition of "introduction into commerce" which involves actual importation, but acknowledges that in very exceptional circumstances an argument might be made that a threat of injury justifies the initiation of anti-dumping action on the basis of a sales contract. However, it is also emphasized in the paper that such practices run the risk of causing harassment to foreign bidders. It is further suggested that the initiation of anti-dumping proceedings prior to the physical transfer of goods might involve a problem with respect to the disclosure of confidential information and might also dilute the conditions set out in the Code for a finding of a threat of injury.

B. Like product

Relevant provisions: Article 2:2

Issue raised in MTN.GNG/NG8/W/3

10. Despite the definition of "like product" given in Article 2:2, there is concern that the term might be so arbitrarily interpreted as to allow the inclusion of input products (components and parts) in the same investigation as the product itself.

Earlier discussions

11. There were brief references during the Committee's third meeting in October 1980 (ADP/M/3, paragraphs 37-40), in the context of the proposed legislation of Canada, to the question of including components and parts in the same anti-dumping investigation as a final product. This matter received renewed attention at the Committee's meeting in June 1987 as a result of proposed legislative amendments in the EEC and the United States (ADP/M/19, paragraphs 24-25, 27-28, 30-32 and 60 (vi)).

12. In the case of the EEC, a proposed amendment to Regulation 2176/84 provoked several parties to express concern that the amendment went further than necessary to deal with the problem of the circumvention of anti-dumping duties on a product through the importation of components of that product. Similarly, it was suggested that anti-circumvention provisions contemplated in draft legislation in the United States did not take full account of the requirements set out in the Anti-Dumping Code for the initiation of an anti-dumping action. The Committee is expected to revert to these issues in due course.

C. Export price to a third country

Relevant provisions: Article 2:4

Issue raised in MTN.GNG/NG8/W/3

13. Certain signatories almost never use "export price to a third country" which is in general more predictable than constructed value as a basis for determining normal value. This practice may detrimentally affect the interests of exporting countries where the costs and profit margin used by the investigating authorities in computing constructed value are in excess of those involved in equivalent export transactions to other third countries.

Earlier discussions

14. There has been no discussion in the Committee or the Ad-Hoc Group on practices of signatories with respect to the choice between using the export price to a third country or constructed value in order to establish normal value in the absence of a domestic selling price which can be compared with the export price subject to investigation.

D. Constructed value

Relevant provisions: Article 2:4

Issue raised in MTN.GNG/NG8/W/3

(a) Administrative, selling and other costs

15. In determining constructed value, certain signatories often add an amount for administrative, selling and other costs of a type which are not included in the export price, and the proportion of the amount added to cover general expenses is often remote from the activities of the particular company under investigation. (For example, even if the exporter does not incur any expenses relating to advertising for its export sales because such expenses are paid by the importer, the importing country may add all of the expenses associated with advertising in the domestic market.) In this way, constructed value may be determined at an artificially high level which inflates dumping margins.

(b) Profit

16. When constructed value is used, there is a danger that dumping margins could be artificially inflated by using a profit margin which is too high. This danger becomes a reality in the case of the practice of a certain signatory which imposes a statutory minimum profit margin which it is considered would not be termed realistic by all signatories, or in the case of the practice of certain signatories where the method of determining profit may involve the use of information supplied by other companies.

Earlier discussions

(a) Administrative, selling and other costs

17. Reference was made at the Committee's meeting in April 1983, in the context of a discussion of Australian anti-dumping legislation, to the requirement in Article 2:4 that the amount attributed for administrative, selling and other costs and for profit in the calculation of normal value must be reasonable (ADP/M/10, paragraph 5).

18. In addition, the EEC presented Working Paper No. 10 and Rev.1, Rev.2 and Rev.3 to the Ad Hoc Group. This paper addresses the question of how production costs, including administrative and selling costs, and also profits, are to be assessed in the calculation of constructed value. (See paragraph 20 below in regard to the "10 per cent minimum rule".) The successive versions of the paper take account of discussions in the Group. The paper notes that the Code does not specifically define production costs and suggests that these should be established "on the basis of all costs, in the ordinary course of trade, both fixed and variable, of materials and manufacture. To this should be added reasonable amounts for administrative, selling and other costs and for profits in order to arrive at a true surrogate for a normal value based on domestic prices." (Paragraph 2 of Working Paper No. 10/Rev. 3)

19. Paragraphs 3 and 4 of the third revision of the paper address certain aspects of the question of how items are to be valued in the calculation of normal value:

"3. All costs taken into consideration should be those actually incurred by the producer concerned and verified from his accounting records as long as the investigating authorities are satisfied that such costs are reasonable. Where costs cannot be verified and directly allocated to the product concerned, they shall normally be allocated in proportion to the turnover for each product and market under consideration. In cases where the investigating authorities have reason to believe that this method is inappropriate, the costs shall be allocated on a reasonable basis.

4. Where a producer obtains materials or production facilities from a related company at transfer prices which are lower than the prices for sales to unrelated parties or the prevailing market price in the ordinary course of trade or where these are supplied under a compensatory arrangement, it is considered that these transactions may be treated as not having been made in the normal course of trade. In this case these costs may be valued as the constructed value of the inputs, or the costs to provide the production facilities, or their prevailing market price in the ordinary course of trade."

20. In Working Paper No.10/Add.1 the United States made a number of points about the first version of the EEC paper. In particular, the United States defended the use of a "10 per cent minimum rule" for general, selling and administrative expenses. The paper notes that legislative authority for the use of this kind of pricing rule derives from 1921 legislation and agrees that the Code is silent on this matter, calling only for the addition of a "reasonable amount" to cover these expenses. It is also noted in the paper that the 10 per cent minimum has been applied very rarely, as these expenses have generally been found to exceed 10 per cent of the product price.

(b) Profit

21. In addition to the brief reference to the estimation of profit in the calculation of constructed value mentioned in (a) above (ADP/M/10, paragraph 5), there were a number of other discussions of this issue in the Committee.

22. Most of these discussions related to the use of an 8 per cent profit rule by the United States in the calculation of constructed value. At the Committee's third meeting, in October 1980, it was argued that the provisions of the Code made it necessary to adopt a case by case approach in the calculation of profit because a fixed margin rule would not necessarily correspond to the actual level of profit (ADP/M/3, paragraph 28). At the same meeting (paragraph 89) the Committee:

"noted that Article 2:4 of the Agreement provided that 'As a general rule the addition of profit shall not exceed the profit normally realized on sales of products of the same general category in the domestic market of the country of origin.' The Committee urged the United States to examine the 8 per cent rule contained in its legislation in the light of the above quoted Article and agreed to discuss the matter at a subsequent meeting."

23. The question of using a fixed margin to calculate profit was raised again at the Committee's meetings in April 1981 and April 1982 (ADP/M/5, paragraph 11 and ADP/M/7, paragraph 12). On the latter occasion there was a discussion between the EEC and the United States on the consistency of the 8 per cent rule with Article VI of the General Agreement and Article 2:4 of the Code. The United States expressed the view that use of the 8 per cent rule was consistent with its international obligations.

24. There was a reference at the October 1982 meeting of the Committee (ADP/M/9, paragraphs 51-52) to the use by Australia of an 8 per cent profit rate with respect to an anti-dumping investigation on transformers from Japan. Japan argued that the application of this rate was not consistent with the requirement of Article 2:4 of the Code regarding the use of a profit rate which did not normally exceed the rate realized on domestic sales of products of the same general category in the country of origin. Australia considered that the rate applied corresponded to the average profit that had been obtained in the electrical goods industry in Japan, and as such was in conformity with Article 2:4.

25. The EEC submitted a paper on the 8 per cent rule to the Ad-Hoc Group on the Implementation of Anti-Dumping Practices (Working Paper No. 11). It is argued in this paper that "the profit margin to be applied should be the rate which is actually made by the producer in the country of origin, as verified from his accounting records, since this enables account to be taken of the particular situation of the producer in question" (paragraph 3). Although it is recognised that in exceptional circumstances it may be necessary to apply alternative methods of calculation (paragraph 4), the paper concludes in its final paragraph that "the application of a statutory minimum profit margin is inconsistent with the provisions of the Code."

26. In Working Paper No.11/Add.1 the United States contests the EEC view in this matter:

"To rebut the EEC allegation, the US Delegation points out that, like the 10 per cent rule for general sales and administrative expenses, this mandatory provision dates back to 1921 legislation. It is fully consistent with US international obligations. Further, the 8 per cent figure is a before-tax amount. With corporate income taxes typically averaging 50 per cent, the resulting net profit of 4 per cent can hardly be called unreasonable. The Code allows the practice, calling on the Signatories to add a "reasonable amount" for profit. The EEC admits that there are circumstances (such as substantial sales at a loss by a firm) in which a surrogate for actual firm profits should be used. They thus recognize the problem of artificially low or non-existent profits. The methods they propose for choosing a surrogate profit level are imperfect, as is our own method, but the United States feels that both practices are 'reasonable'."

E. Comparison of normal value and export price

Relevant provision: Article 2:6

Issue raised in MTN.GNG/NG8/W/3

27. When normal value and export price are not on a comparable basis, the Code provides that due allowance shall be made to effect price comparability. In practice, however, certain signatories have invoked their technical rules to deny allowances even where the result of denying allowances is to put normal value and export price on different bases.

Earlier discussions

28. The question of comparisons between normal value and export price has been discussed on a number of occasions in the Committee in the context of the examination of national anti-dumping legislation or consideration of semi-annual reports by parties of anti-dumping actions. Provisions relating to price adjustments in United States and Canadian legislation were the subject of comment at the Committee's October 1980 and October 1981 meetings respectively (ADP/M/3, paragraph 28 and ADP/M/6, paragraphs 10-11). Certain Australian anti-dumping actions were referred to at the Committee's

October 1982 meeting in regard to adjustments for such differences as those in conditions and terms of sale and taxation (ADP/M/9, paragraph 48). Related issues were raised in regard to United States anti-dumping action at the October 1983 meeting of the Committee (ADP/M/11, paragraphs 41-42) and to EEC action at the October 1985 meeting (ADP/M/16, paragraphs 65-67). No papers have been submitted to the Ad Hoc Group on this matter.

F. Determination of injury

Relevant provisions: Article 3

Issues raised in MTN.GNG/NG8/W/3

(a) Threat of material injury

29. The concept of "threat of material injury" requires clarification.

(b) "Cumulation"

30. There is a need to consider resort to the practice of "cumulation" of imports in making injury determinations.

Earlier discussions

(a) Threat of material injury

31. The Committee decided at its October 1985 meeting (ADP/M/16, paragraph 73) to adopt a recommendation drafted by the Ad-Hoc Group on the determination of threat of material injury. The Recommendation (ADP/25) is annexed to this note (Annex I).

32. Following the adoption of the recommendation, Romania, Brazil and Hong Kong expressed views on certain aspects of the recommendation. These views are recorded in paragraphs 74-76 of ADP/M/16. Romania called for a continuation of efforts within the Committee to establish more objective criteria to determine threat of material injury. Brazil observed that the list of elements enumerated in the recommendation as relevant to a determination of threat of injury was not exhaustive. Brazil also expressed the view that it was not always possible for exporting countries to evaluate, in precise terms, the extent of its freely disposable capacity or to foresee a potential increase in demand for imports in specific markets. Finally, Hong Kong stated that since the various factors enumerated in the recommendation as bearing on a determination of threat of injury depended largely on circumstantial evidence, the benefit of any doubt in an investigation should go to the exporter.

(b) "Cumulation"

33. There have been several discussions of the problem of "cumulation" in both the Committee and the Ad-Hoc Group. In the Committee the discussions have generally taken place in the context of semi-annual reports by signatories of anti-dumping actions or in the context of the examination of national anti-dumping legislation. A basic question has been whether the practice of cumulating dumped imports for the purposes of determining injury is consistent with the Anti-Dumping Code. Whilst it is recognised that the Code makes no explicit reference to the question, views vary as to whether this silence should be interpreted as condoning or condemning the practice. Several signatories consider cumulation a legitimate practice, at least in certain circumstances, while small suppliers generally consider that cumulation has the effect of weakening the benefits of the injury test. Some references to the Committee's discussion of this question are indicated below:

ADP/M/9, paragraphs 35-36	Semi-annual report of the EEC
ADP/M/10, paragraphs 38,42	Semi-annual report of the EEC
ADP/M/15, paragraphs 15-16,23,26,27	Legislation of Canada
paragraphs 34-36,40,44,46,48	Legislation of the United States
ADP/M/16, paragraph 22	Legislation of the United States
paragraph 54	Semi-annual report of Australia
paragraphs 68-69	Report on anti-dumping action by the EEC
ADP/M/17 paragraphs 45,47	Semi-annual report of Sweden
ADP/M/18 paragraphs 52,54	Legislation of the United States
paragraph 61	Semi-annual report of Sweden
ADP/M/19 paragraph 58,60(iv),61	Draft legislation of the United States
paragraph 99	Other business - investigation by the United States

34. In the Ad-Hoc Group the Nordic countries have submitted a working paper on cumulative injury assessment (Working Paper No. 25). The paper examines provisions of Article VI of the General Agreement and the Anti-Dumping Code which might be considered relevant to an examination of the legitimacy of the practice of cumulation. The examination is inconclusive. The paper then goes on to distinguish a number of different situations in which individual exporters may or may not find themselves included in a calculation of cumulation. The question whether it is legitimate to make a cumulative injury assessment "across the Codes", or in other words with respect to both dumped and subsidized imports, is also addressed, and the paper argues for separate assessment. Finally, the paper refers to the question whether cumulative injury assessments are made with respect to total dumped sales by an exporting country or whether the exporters of that country are assessed individually with respect to injury. It is suggested that this issue might be considered further by the Group. Following a discussion of this matter in the Group on the basis of Working Paper No. 25, the Nordic countries circulated an addendum to the paper. The addendum lists relevant questions concerning cumulative injury assessment for the Chairman of the Group to use as a basis for his continuing consultations on the subject.

G. Price undercutting

Relevant provisions: Article 3:2 and Article 3:4 - see F above

Issues raised in MTN.GNG/NG8/W/3

(a) Meeting competition

35. In certain signatory countries, the investigating authorities do not give any weight to evidence that domestic producers have driven prices down themselves and that the imports are merely following these price declines.

(b) Comparison between dumping margins and undercutting margins

36. A causal link between the price of the dumped imports and the injury to domestic producers would not seem to be present where the margin of price undercutting is substantially larger than the dumping margin.

Earlier discussions

(a) Meeting competition

37. The question of how far investigating authorities consider the effects of reductions in domestic prices on import prices has not been given attention in the Committee or in the Ad Hoc Group.

(b) Comparison between dumping margins and undercutting margins

38. The relation between a dumping margin and an undercutting (or underselling) margin was discussed in the Committee at its October 1984 meeting (ADP/M/13, paragraphs 34-36) in the context of the semi-annual report of anti-dumping actions taken by the United States in the first six months of 1984. The EEC referred to a case involving pads for instrument keys from Italy where the Italian product was between 20 per cent and 39 per cent cheaper than the domestic product, but where the margin of dumping was found to be only 1.09 per cent. The EEC expressed doubts about the legitimacy of an injury finding in this situation, while the United States indicated that the investigating authority regarded the relevant causal link to be between the imports in question and the material injury, and not between the dumping margin and material injury.

H. Domestic industry

Relevant provisions: Article 4:1

Issue raised in MTN.GNG/NG8/W/3

39. Since there is no definition of "a major proportion" of the total domestic production of the like products, there are substantial differences in the interpretation of this concept from country to country.

Earlier discussions

40. The question of the definition of domestic industry, as set out in Article 4.1 of the Code, has been discussed on a number of occasions in the Committee. These discussions have generally taken place in the context of the examination of the consistency of national anti-dumping legislation with the provisions of the Code. References to the issue, in relation to the determination of injury and/or the initiation of an investigation, were made in connection with Australian legislation (ADP/M/11, paragraphs 5 and 9), United States legislation (ADP/M/13, paragraphs 50-51, ADP/M/15, paragraphs 31 and 33), Austria (ADP/M/16, paragraph 6), India (ADP/M/17, paragraph 13, ADP/M/18, paragraphs 26-27), Korea (ADP/M/18, paragraph 8), and Japan (ADP/M/19, paragraph 18). No working papers have been put before the Ad Hoc Group on this issue.

I. Initiation of investigation

Relevant provisions: Article 5:1

Issue raised in MTN.GNG/NG8/W/3

41. Under the practice of a certain signatory, the investigating authorities appear to assume that a case is brought on behalf of the domestic industry unless a majority of the industry actively opposes the case.

Earlier discussions

42. Various aspects of the rules and procedures associated with the initiation of an anti-dumping investigation have been considered in the Committee. Deliberations in the Ad Hoc Group led to the drafting of a recommendation on transparency of anti-dumping proceedings, which refers to some aspects of the question of the initiation of an investigation. This recommendation was adopted by the Committee in November 1983, and appears in ADP/17. The particular problem raised in document MTN.GNG/NG8/W/3, which relates to the practice whereby a petition is presumed to be filed on behalf of a domestic industry unless the domestic industry actively opposes the petition, has been discussed in the Subsidies Committee (SCM/M/30, paragraphs 21-27).

J. Facts available

Relevant provisions: Article 6:8

Issue raised in MTN.GNG/NG8/W/3

43. The provision permitting the use of "facts available" in the absence of necessary information has sometimes been used when exporters' replies are late or incomplete even in limited ways.

Earlier discussions

44. Discussions in the Committee and the Ad Hoc Group of the circumstances in which investigating authorities are entitled to make findings on the basis of the "facts available" have addressed both the question of time limits within which interested parties should provide information to investigating authorities and the nature of the information provided.

45. In the Ad Hoc Group Japan introduced a paper on the time limits of anti-dumping questionnaires (Working Paper No. 5). India and Czechoslovakia each circulated papers on the scope of anti-dumping questionnaires (Working Paper No. 3 and Working Paper No. 4 respectively). Finally, the EEC submitted Working Paper No. 9 on the question of "best information available". An Addendum to Working Paper No. 9 contains comments on the EEC submission by the United States and Egypt. The deliberations in the Ad Hoc Group led to the adoption by the Committee in May 1984 of a Recommendation Concerning Best Information Available in Terms of Article 6:8 (ADP/21). The Recommendation is attached as Annex II to this document. At the adoption of the Recommendation by the Committee it was noted that the Chairman of the Ad Hoc Group had made the following statement (ADP/M/12, paragraph 52):

"The adoption of this recommendation is without prejudice to the position of any party with respect to the structure or form of information submitted to the investigating authority. These issues would be considered by the Ad Hoc Group in the context of its work on recommendations concerning the scope of the anti-dumping questionnaire."

K. Price undertaking

Relevant provisions: Article 7

Issues raised in MTN.GNG/NG8/W/3

46. The acceptance of undertakings to raise prices provides protection to the local industry while not unduly penalizing exporters. The acceptance of an undertaking should be a right granted to exporters and should not be rejected on political grounds. The current language of the Code provides too much discretion to investigating authorities.

Earlier discussions

47. Discussions have taken place on a number of occasions on the issue of price undertakings in the Anti-Dumping Committee and the Ad Hoc Group. These discussions have focussed on the questions of the conditions of offer and acceptance of price undertakings, their duration, the terms under which they are revised, and their termination and substitution by anti-dumping duties.

48. In the Committee the discussions have generally been in the context of the national legislation of parties or the examination of periodic reports of anti-dumping action taken. Some references to these discussions in the Committee are indicated below:

ADP/M/3	paragraph 30-31	Legislation of the United States
	paragraph 59	Legislation of Canada
ADP/M/6	paragraphs 18-19	Semi-annual report of the EEC
ADP/M/7	paragraphs 24-27	Report on anti-dumping action by the EEC
ADP/M/9	paragraphs 55-56	Report on anti-dumping action by the EEC
ADP/M/15	paragraphs 15-16	Legislation of Canada
	and 21, 26-28	
	paragraphs 40-42	Legislation of the United States
ADP/M/16	paragraphs 9	Legislation of Austria
ADP/M/17	paragraphs 27-30	Legislation of Austria

49. At the October 1982 meeting of the Committee, a request was made for the Secretariat to prepare a factual note on how the question of price undertakings had been reflected in the national legislation of signatories (ADP/M/9, paragraph 18). This note was issued in December 1982 as ADP/W/47.

50. In the Ad-Hoc Group there was a discussion on the revision and renunciation of price undertakings in the context of Working Paper No. 12, which was circulated by the EEC. On the basis of the Group's discussions and written comments by the United States, Japan and Canada, three different revisions of the paper were also circulated. The paper seeks to identify the circumstances in which price undertakings may be changed or eliminated, and the appropriate procedures involved. The necessity for revisions of price undertakings is argued in terms of the possibility of changes in normal value or the market situation. The paper acknowledges the need for a formal review before revision of an undertaking takes place, 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. In order for the review to be carried out, sufficient supporting evidence for its necessity must be available. The paper also addresses procedural questions relating to the way in which a review of an undertaking should take place. The Group also discussed the question of termination provisions, including a "sunset" provision, in the context of price undertakings. This is reflected in Working Paper No. 12 and certain of its revisions, as well as in a later paper by the EEC (Working Paper No. 26) which addresses exclusively the question of the termination of price undertakings. The paper argues that both an exporter and the importing authorities are free to renounce an undertaking, and that if the importing authorities do so, they are also free to impose an anti-dumping duty instead, provided that such imposition is consistent with the provisions of the Code and that affirmative findings have been made of dumping and injury. The paper also suggests that provision should be made for the termination of an undertaking when it is no longer necessary, but that "where an interested party shows that there is a need to continue the undertaking the authorities of the importing country should carry out a review during which the undertaking shall remain in force." (Paragraph 3)

51. The Ad Hoc Group also discussed a draft recommendation submitted by Romania on the use of price undertakings in anti-dumping procedures against imports from developing countries (Working Paper No. 24). The paper recalls the special and differential treatment provisions of the Anti-Dumping Code, including the provision that possibilities of constructive remedies be explored before anti-dumping duties are applied. It is argued that the acceptance of price undertakings constitutes such a remedy. The paper then goes on to specify a number of conditions and procedures aimed at ensuring that price undertakings are accepted from developing countries, and that the nature and duration of the undertakings take full account of the needs and interests of developing country exporters.

L.)
M.) Duration of anti-dumping duties and reviews

Relevant provisions: Article 9

Issue raised in MTN.GNG/NG8/W/3

Duration of anti-dumping duties

52. There is no fixed time limit for duration of anti-dumping duties.

Reviews

53. In certain signatory countries, it takes a very long time (often one year or more) for the investigating authorities to start a review upon request, and dumping determinations are usually based on an investigation period which has terminated a year or more before the imposition of measures. Therefore, dumping determinations may continue to be based on out-of-date information for a considerable period of time.

Earlier discussions

54. The questions of the duration of anti-dumping actions and of procedures for the review of these actions have been discussed in the Committee on a number of occasions, generally in the context of the national legislation of signatories or specific anti-dumping actions. At the Committee's meeting in October 1985, it was agreed that the Secretariat would prepare an inventory of review and "sunset" clause provisions in the legislation and administrative regulation of signatories (ADP/M/16, paragraph 40). At the same meeting it was agreed that a presentational change would be made to signatories' semi-annual reports of anti-dumping actions in order to indicate the dates of coming into force of outstanding anti-dumping actions. The inventory of review and sunset provisions in national legislation prepared by the Secretariat appears in ADP/W/106 and Corr. 1 and 2.

55. The Ad Hoc Group has not received any working papers on the review or duration of anti-dumping duties, but there has been a discussion of these questions in relation to price undertakings in the Group. References to this discussion and the relevant working papers appear under item K above.