

MULTILATERAL TRADE  
NEGOTIATIONS  
THE URUGUAY ROUND

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Group of Negotiations on Goods (GATT)  
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PROPOSED ELEMENTS FOR A FRAMEWORK FOR NEGOTIATIONS  
PRINCIPLES AND OBJECTIVES FOR ANTI-DUMPING RULES

Communication from the Delegation of Singapore

(I) Introduction

The purpose of this paper is to suggest a negotiating Framework of principles and objectives on anti-dumping rules. This submission outlines the basic principles and objectives, including the issues to be addressed to ensure that anti-dumping rules are not used for protectionist purposes or as disguised safeguard measures and that they do not operate in a manner that is not in the public interest. We believe that the Negotiating Group should, as a first step, strive to reach agreement on the basic principles and objectives to be covered in any improved anti-dumping rules. Proposals in the form of specific drafting changes to the Anti-Dumping Code, aimed at improving the problem areas currently encountered in anti-dumping rules and procedures, could be examined in due course.

(II) Principles and Objectives of Anti-Dumping

2 The basic principles and objectives should include the following:

(A) Scope of Anti-Dumping Actions

- a) Anti-dumping practices should be subject to appropriate discipline and restraint in order to prevent abuse.

- b) Anti-dumping practices should not hamper the operation of comparative advantage.
- c) Anti-dumping action may only be taken against dumped imports which are causing or threatening material injury to an established domestic industry of the importing country or materially retarding the establishment of an industry in accordance with Article VI of the General Agreement.
- d) Anti-dumping action should not be taken when injury to a domestic industry is caused by factors other than dumping.

COMMENT

3 These are the fundamental aspects of the anti-dumping principles. The intention of Article VI of the General Agreement is to provide for action against dumping only in strictly limited circumstances. Article VI of the General Agreement and the Anti-Dumping Code must be interpreted in a very narrow way, because they permit action of a non-MFN nature otherwise prohibited by Article I, and they may only be invoked as an exception to Article II concerning bound tariffs and Article III concerning national treatment. Article VI and the Code clearly does not provide for indiscriminate anti-dumping action and the use of anti-dumping duties as a means of increasing the legitimate level of protection afforded by tariffs.

(B) Public Interest Clause

- a) Procedures should be established for anti-dumping investigations to take into consideration the wider public interests in addition to the interests of the parties directly concerned.

COMMENT

4 There is a need to establish a "Public Interest" Clause in the strengthened anti-dumping rules because:

- a) Present Anti-Dumping laws protect the interests of import-competing domestic producers at the expense of consumers.
- b) Present anti-dumping practices have adverse effects on the national economy and impose a number of costs on the domestic economy, such as adverse consequences for the importing country's price structure and difficulty for industries to obtain the supplies they need.

5 The objective of a public-interest clause is to ensure that investigating authorities consider anti-dumping complaints in a wider context, taking into account not only the interests of the affected domestic industry, but also the interests of user industries, and the costs of the anti-dumping intervention to the national economy.

6 The public interest clause is not a completely new concept because it exists in some National Anti-Dumping Legislations. In discussing this principle, various elements such as the definition of "public interest" and the translation of the concept of "public interest" into concrete anti-dumping rules would need to be addressed and discussed by the Negotiating Group. Procedures could be established, for example, to provide for greater user industries or consumer participation in anti-dumping proceedings and to provide that investigating authorities take into account the views of these said groups before reaching a decision to initiate an anti-dumping investigation. The investigating authorities could also examine the competitive behaviour of the domestic producers who are petitioning for the anti-dumping measures and determine whether these producers were engaged in restrictive business practices and enjoying undue market domination and setting price cartels. If they were, anti-dumping petitions from such "anti-competitive" industries should be rejected as the anti-dumping measure would only reinforce the companies' market dominance in the importing country in an undesirable manner, through raising prices and limiting competition from imports. Investigating authorities should also consider whether the imposition of an anti-dumping duty would be in the public interest.

(C) Distinction between Predatory Price Discrimination and Normal Business Pricing Practices

- a) There should be rules to establish a distinction between truly unfair dumping (defined as predatory and injurious pricing practice) and normal competitive business pricing practices.

COMMENT

7 Dumping practices are deemed to exist only in cases of "unfair" pricing practices (ie aggressive and injurious pricing). However price differentials resulting from normal business pricing practices or resulting from adjustments to price levels prevailing in the importing country should not constitute unfair trade practices and should not be penalized. Anti-dumping practices which stifle normal competitive business practices undermine a country's advantages in the global market place.

8 Improvements in the Anti-Dumping rules should reinforce the concept that anti-dumping systems should not operate to limit import competition, nor to give protection to domestic producers against normal price competition.

9 In examining this principle/concept, a number of issues would have to be addressed by the Negotiating Group. These would include inter alia the following:

- a) Definition of dumping;
- b) A number of issues relating to the calculation of "normal value". This would include, for example:
- i) What are the standards that should be established for defining and measuring price discrimination in domestic commerce and in international trade? Should different pricing rules/standards be allowed for the domestic commerce and for sales across

borders?

- ii) How should "sales below cost of production" be taken into consideration in determining Normal Value? What standards should be applied in measuring cost-of-production?

10 Article 2.4 of the Code has been interpreted by certain signatories as providing a legal basis to disregard under certain circumstances domestic sales prices which are less than (fully allocated) costs of production in the determination of normal value. However, the economic rationale for automatically considering sales made at prices below (fully allocated) costs of production as not being "in the ordinary cause of trade" is not always justifiable. It should be noted in this respect that this treatment of sales at prices less than fully allocated costs of production differs substantially from the treatment of such sales under domestic competition laws. In addition to the question of the economic rationale of this treatment of sales at prices less than costs of production, consideration should be also be given to the manner in which costs of production are being calculated. An important example of an issue which needs to be addressed in this context is the recent tendency to shorten the period of time to be considered for the purpose of determining whether prices allow for recovery of costs.

(D) Initiation and Conduct of Anti-Dumping Investigation

- a) An anti-dumping investigation should be initiated by the authorities only if the anti-dumping complaint is affirmatively supported by a majority of the industry (eg at least 50% by value of the total domestic production of like products).
- b) Anti-dumping investigation procedures should be equitable, consistent and transparent to ensure greater predictability and certainty in the examination of dumping cases.

COMMENT

11 In examining the various procedural provisions regarding the initiation and conduct of anti-dumping investigations, the Negotiating Group would need to examine in detail the following:

- i) Conditions for determining the "standing" of petitioners, to ensure that frivolous complaints are disregarded by the investigating authorities.
- ii) Appropriate investigation procedures that would be equitable, consistent and transparent.

12 On the question of "standing" of petitioners, the complainant must show proof that he actually represents the domestic industry. The investigating authorities should be required to verify the standing of petitioners ie that they satisfy the major proportion requirement, before initiating investigations. The authorities should also check whether the activities carried out by the domestic producers constitute production and whether the production is carried out in or outside the country of import.

13 Regarding investigation procedures, there should be greater transparency with respect to the petitioner's complaint, the detailed calculation issues as well as improved procedures for providing access to confidential information under protective order. In the absence of a system of disclosure of confidential information there is no opportunity for external checks on the investigators.

(E) Determination of Normal Value and Comparison Between Normal Value and Export Price

- a) There should be no asymmetrical adjustment. Comparisons between the export price and the normal value should be conducted on a fair and symmetrical basis in determining the dumping margin.
- b) Normal value should reflect the normal costs in the country of origin or exportation, plus profits which are commercially acceptable.

- c) If Normal Value is to be constructed, the investigating authorities should reflect as closely as possible the real conditions in the country of export. In particular, they should reflect the actual production costs and the commercially accepted profit margin in that exporting country. Cost allocation rules should follow the generally-accepted accounting practices in the country of export. Furthermore, the cost-of-production provisions should recognize the need to amortize "start-up" costs and extraordinary costs, such as R&D development costs.
- d) In calculating dumping margins, "negative" dumping should be taken into account ie if certain transactions are sold for more than the normal value in the foreign market, that excess should be balanced off against sales of merchandise at less than normal value.
- e) Consideration should be given to the establishment of rules to ensure that dumping margins do not result from foreign exchange variations.

#### COMMENT

14 The calculation of anti-dumping margins through complex systems of asymmetrical adjustments to sales prices in the home market of the exporting enterprise and the enterprise's prices in the foreign market is an issue of concern. Some National Anti-Dumping Legislations have elaborated rules to limit many of these adjustments, which often result in a determination of higher dumping margins. In addition, adjustments are not made automatically, but have to be proven by the foreign producers, thus placing a heavy burden on those producers and providing the investigating authorities with a greater degree of discretion. In recent years, administrative practice of granting adjustments have become increasingly restrictive. There is therefore a need to examine the problems of asymmetrical adjustments and to find a solution to them. A fair comparison would require deduction of similar expenses from both the export price and normal value. A simplified and reasonable anti-dumping calculation would be to adjust all costs of sales and distribution back to ex-factory, with reasonable allocation of general costs.

15 In the determination of Normal Value, it is important that the investigating authorities do not arbitrarily determine that the exporting company should have a certain profit margin, but should take account of the normal commercial situation of that particular exporting country. There should be no bureaucratically established rule for the margin of profit. Any profit margin should reflect the normal commercial behaviour and economic realities of the exporting country. Furthermore, the normal value should reflect the normal costs in the country of origin, and not the cost structure of the importing country.

16 Therefore in discussing this question of symmetry of calculations and adjustments, various issues related to the determination of Normal Value, and Export Price; fair comparison between the Export Price and Normal Value, sales below cost-of-production and the use of weighted average in the calculation of export prices and Normal Values would need to be addressed by the Negotiating Group.

(F) Material Injury Determination

- a) Imposition of an anti-dumping duty requires a determination of "dumping" of the imports plus a determination of resultant material injury to a domestic industry producing the like product.
- b) "Domestic industry" should refer to the domestic producers as a whole of the like products or should constitute at least 50% by value of the total domestic production of like products. "Related" parties should be considered as part of the "domestic industry". However, producers of input products, parts or components should not be considered as part of the "domestic industry" of the end-products under investigation.
- c) Injury standards should require importing countries to determine that dumped imports from a particular source contribute significantly to the material injury suffered by the domestic industry.
- d) A greater burden should be placed on the domestic industry to demonstrate the requisite injury. The domestic industry should be required for example to



show that it has suffered or is threatened with material injury.

- e) Injury standards should not discriminate against new entrants into markets.
- f) A minimum threshold of market penetration (country and company specific) and a minimum margin of dumping or injury should be established, below which there can be no presumption of injury.

COMMENT

17 The Negotiating Group should carefully examine the criteria upon which injury determinations are made in current anti-dumping procedures with a view to tightening the rules on the standards that constitute material injury. In discussing this issue, the questions of how to define "domestic industry", "like products", cumulative injury assessment, de-minimis market share, margin of dumping and margin of injury would have to be addressed.

(G) Imposition and Collection of Anti-Dumping Duties

- a) The anti-dumping duty should be less than the full margin of dumping, if such lesser duty would be adequate to remove the injury to the domestic industry. The lesser duty rule should be mandatory.
- b) Anti-dumping duties should be assessed only on transactions which are actually dumped.

COMMENT

18 The lesser duty rule is a logical consequence of the GATT provisions that anti-dumping duties should only be imposed if dumping has caused material injury. Thus, if the injury caused can be offset by a duty that is less than the margin of dumping, any relief should be limited to this level of duty.

(H) Duration, Review and Termination of Anti-Dumping Measures

- a) A Sunset Clause should be established. Anti-dumping remedies should not be permanent or near-permanent. Anti-dumping duties should expire automatically after they have been in effect for a specific period of time. The length of the sunset clause is subject to negotiations.

COMMENT

19 Anti-dumping duties should remain in force only as long as necessary to counter the injurious dumping. It is difficult to justify the permanent imposition of anti-dumping duties when circumstances of injury caused or threatened by dumped imports change over time. Anti-dumping duties are subject to a sunset clause under some National Anti-Dumping Legislations.

(I) Dispute Settlement

- a) Dispute settlement procedures under the GATT and the Anti-Dumping Code should be improved to ensure compliance by all countries with the basic principles in the GATT Anti-Dumping Regulation.
- b) Procedures should be established which would allow the exporting country to challenge the initiation of an anti-dumping proceeding, if the initiation was frivolous and not consistent with the Code requirements.
- c) Dispute settlement procedures should provide for expeditious proceedings so that relief could be granted without delay to the exporting country.

COMMENT

20 Present dispute settlement procedures provide for the exporting country to seek conciliation only after the

imposition of provisional duties. However, trade damage would have already been caused and code obligations violated at the stage of initiation of the anti-dumping investigation. Therefore dispute settlement procedures should be available at all stages of the anti-dumping proceedings.

21 There is also no reason to impose a three-month delay between conciliation and the establishment of a panel, as provided for under the present Code. In parallel with dispute settlement procedures in other GATT bodies, the complaining party should have speedy recourse to initiation of complaint, conciliation and the panel process within a shorter period of time.