

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

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DETERMINATION OF NORMAL VALUE

(In the Situations Referred to in the Second Supplementary
Provision to Article VI:1 of Annex I to the General Agreement)

Communication from the Delegation of Romania

This issue is included in the "checklist of issues raised in the Negotiating Group on MTN agreements and arrangements" (MTN.GNG/NG8/W/26/Rev.2) following the proposal made by Finland on behalf of the Nordic countries (document MTN.GNG/NG8/W/15). The Romanian delegation likewise considers that this issue deserves further study by the Negotiating Group and could be the subject of negotiations.

1. The fundamental objective of the Anti-dumping Code is to interpret the provisions of Article VI of the General Agreement and to elaborate rules for their application in order to provide greater uniformity and certainty in their implementation.

In bilateral relations and also in the course of the discussions in the Committee on Anti-Dumping Practices, the existence has been noted of varying methods of application of the second supplementary provision to Article VI, paragraph 1, contained in Annex I to the General Agreement. The Anti-Dumping Code refers to that provision (Article 2, paragraph 7), without providing a unanimous interpretation thereof, as regards its implementation.

2. This supplementary provision allows importing contracting parties to consider in certain cases whether it is necessary to take into account the possibility that a strict comparison with domestic prices in the exporting country concerned may not always be appropriate, although this optional possibility does not exclude the use as a general rule of the criteria laid down in Article VI:1 of the General Agreement.

Obviously, such a situation should be weighed up according to the specific situation in each country concerned and the merits of each case, on an individual basis, so that recourse to this supplementary provision does not become automatic and so replace the general criteria provided for in Article VI:1 of the General Agreement.

In trading practice, it may be found that the domestic legislation of certain contracting parties stipulates exclusively special methods (thus replacing the general rules) for determining normal value in anti-dumping investigations concerning products of countries that do not have market

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economies. Any stipulation of this kind is incompatible with the General Agreement and the Anti-Dumping Code, since it represents a wrong application of the second supplementary provision to Article VI that is not consistent with the legal content thereof.

3. As one of its main objectives the Anti-Dumping Code recognizes the need "to provide for equitable and open procedures as the basis for a full examination of dumping cases".

Several years of trading practice have shown that the almost automatic utilization of prices in a market economy country in determining normal value during anti-dumping investigations concerning products of non-market economy countries does not provide a suitable basis for price comparison and does not meet the requirements of equitable and open procedures. The following considerations may be mentioned here:

- This practice is not justified economically; it prevents an exporter of a non-market-economy country from benefiting from any comparative advantage in the manufacture of a product because the product can never be sold in the importing country at a price below that prevailing in a market-economy country. Producers of non-market-economy countries therefore cannot genuinely compete with market-economy-country producers.
- Exporters of a non-market-economy country are always faced with objective and often insurmountable difficulties stemming from their limited possibilities of knowing and checking the price at which a like product is really sold on the domestic market of a market-economy third country and of proving the differences that exist in the economic and commercial conditions of the importing country and those of the third country (rate of inflation, exchange rate, fiscal policy, use of different trade discounts, etc.).
- Transparency is all the more defective in the case of constructed value on the basis of production costs of a third country producer since in general information concerning basic data and calculation methods used is quite inadequate.
- The third-country producer co-operates only with the importing country and refuses to do so with the exporter; furthermore, in his position as an actual or potential exporter the third-country producer has an interest in eliminating competition from the exporter presumed to be dumping on the market of the importing country.
- The use for normal value of the domestic price of a market-economy country does not allow an exporter of a non-market-economy country to prove that his behaviour is fair on objective economic grounds. Such a comparison rules out any possible of avoiding penalisation of non-market-economy country exporters for the greater efficiency of their industry, since their more competitive export prices are compared with the domestic prices of less competitive industries of market-economy third countries.

- The unsuitability and unreasonableness of the method of comparison used also results from the fact that the exporter has no way of envisaging measures to forestall charges of dumping, once it is considered inappropriate to make a comparison with his own profitability indicators or any other reasonable criteria of comparison on the import market.
- Exporters are not guaranteed any chance of making proposals or counter-proposals concerning the choice of an appropriate price for comparison purposes.

4. In our view, the normal value could be determined more suitably in the case of an import from a non-market-economy country by the use, as a supplement to the generally applicable criteria (provided for in Article VI:1), of the price at which a like product of a market-economy third country is actually sold to other countries, including the importing country.

We consider that such a comparison would provide greater transparency and a comparable basis as regards market conditions - from the standpoint of a number of economic factors. It would also enable the exporters concerned to avoid dumping charges or to defend themselves, if necessary, by having the possibility of comparing their export prices with those currently applied on the same market by exporters from market-economy third countries.

ANNEX

Main Provisions of an Agreement on Interpretation of the
Implementation of the Second Supplementary Provision to
Paragraph 1 of Article VI in Annex I of the General Agreement

In order to ensure more reliable and equitable implementation of the second Supplementary Provision to paragraph 1 of Article VI in Annex I of the General Agreement, and the greatest possible uniformity among practices of governments signatories to the Anti-Dumping Code in this area, it is agreed to adopt the following procedures:

1. In order to determine the normal value of imports from countries referred to in the second Supplementary Provision to Article VI, paragraph 1, of the General Agreement, the provisions of domestic law in this regard shall not replace but at most shall supplement the generally applicable criteria provided for in Article VI, paragraph 1, of the General Agreement. The possibility of applying the general criteria shall not be excluded a priori, but shall be weighed up by the competent authorities of the importing country on the basis of the merits of each case, as determined in an objective and impartial manner.

2. If an importing contracting party finds it necessary to take into account the possibility that in a specific case a strict comparison with domestic prices in the exporting country is not appropriate, the exporter should have the possibility of indicating within a period of days (to be agreed) the method of comparison he considers most appropriate (for example, he might propose that use should be made of other general criteria provided for in Article VI:1 of the General Agreement other than domestic prices, or criteria that are not set out in any relevant provision of the General Agreement or Anti-Dumping Code, or else the use of supplementary criteria, such as the price at which a like product from a market-economy third country, not involved in the anti-dumping procedure in question, is actually sold to other countries, including the importing country that has opened the anti-dumping procedure).

3. Where the exporter has not proposed his choice within the established time-limit or where that choice has not been acceptable to the importing country - on the basis of objective justifications - the importing country shall propose the method of determining the normal value in an appropriate and not unreasonable manner which complies with the objective of the Anti-Dumping Code concerning the need "to provide for equitable and open procedures as the basis for a full examination of dumping cases".