

**MULTILATERAL TRADE  
NEGOTIATIONS  
THE URUGUAY ROUND**

**RESTRICTED**

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**AMENDMENTS TO THE ANTI-DUMPING CODE**

**Communication from the Delegation of Hong Kong**

**Addendum**

**Introduction**

In December 1989, the delegation of Hong Kong submitted a paper (MTN.GNG/NG8/W/51/Add.1) setting out proposals for revision of the Anti-Dumping Code. The paper indicated that details of specific amendments to the Code would be made in due course. The proposed textual changes to the Code are now set out in paragraph 4 below.

2. In addition to the earlier proposal on indemnity to exporters (item H of paper W/51 refers), the delegation of Hong Kong now submits a further proposal to improve the Code's dispute settlement procedure. Details of the proposal are set out in paragraph 5 below.

3. The delegation of Hong Kong reserves the right to submit further comments and proposals as the negotiations proceed.

**Proposed amendments\***

4. With reference to the proposals set out in the paper W/51/Add.1, the proposed textual changes are set out below.

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\* Language drawn from the existing Code is underlined. Brackets [ ] indicate language to be deleted.

(a) To amend Article 2.4 as follows with new footnotes:

When there are no or insufficient<sup>1</sup> sales of the like product in the ordinary course of trade in the domestic market of the exporting country [or when, because of the particular market situation, such sales do not permit a proper comparison], the margin of dumping shall be determined by comparison with a comparable price of the like product when exported by the producer under investigation to any third country which [may be the highest such export price but] should<sup>2</sup> be a representative price<sup>3</sup> [,or]; when there are no or insufficient<sup>3</sup> sales of the like product in the ordinary course of trade to any third country, the margin of dumping shall be determined by comparison with the cost of production of the exported product of the producer under investigation in the country of origin plus a reasonable amount for administrative, selling and any other costs and for profits. [As a general rule,] The addition for profit shall not exceed the profit [normally] realized by the producer under investigation on sales of products of the same general category in the domestic market of the country of origin. If the producer under investigation has no sales of products of the same general category in the country of origin, the addition for profit shall not exceed the overall profit realized by the company.

Footnotes to Article 2.4

1. Sales of the like products in the domestic market of the exporting country shall be deemed insufficient where they constitute less than (x) per cent - on a quantity basis - of export sales of the like product of the producer under investigation to the market of the importing country.

2. The third country concerned shall be the country to which the largest volume of exports has been made by the producer under investigation.

3. Sales of the like products to a third country shall be deemed insufficient where they constitute less than (x) per cent - on a quantity basis - of export sales of the like product of the producer under investigation to the market of the importing country.

(Explanatory note - To improve the existing provisions in order to provide more predictability and objectivity in the determination of normal value. Please refer to paragraphs 6 to 13 of paper W/51/Add.1.)

(b) To amend Article 2.6 as follows:

In order to effect a fair comparison between the export price and the domestic price in the exporting country (or the country of origin) or, if applicable, the price established pursuant to the provisions of Article VI:1(b) of the General Agreement, the two prices shall be compared at the same level of trade, normally at the ex-factory level, and in respect of sales made at as nearly as possible the same time. The investigating authorities shall give due allowance [shall be made] in each case [,on its merits,] for the differences in conditions and terms of sale, for the differences in taxation, and for [the] all other differences affecting price comparability in order to put normal value and export price on a comparable basis and effect a fair comparison. In the cases referred to in paragraph 5 of Article 2 allowance for costs, including duties and taxes, incurred between importation and resale, and for profits accruing, should also be made. Normal value and export price shall be established on a weighted average basis of all sales on the relevant markets for purposes of determining the dumping margin.

(Explanatory note - To ensure that comparison between the normal value and export price be made on an equal basis. Please refer to paragraphs 14 and 15 of paper W/51/Add.1.)

(c) To insert a new article with footnotes after Article 2.6:

Whenever it can be shown by the administering authorities in the importing country that the price at which the product under investigation is sold for consumption in the country of origin is less than the cost of production, sales at such prices may be considered as not having been made in the ordinary course of trade, provided that they have been made:

- (1) over an extended period of time<sup>1</sup>; and
- (2) in substantial quantities<sup>2</sup>; and
- (3) at prices which do not permit recovery of variable costs<sup>3</sup> within a reasonable period of time.<sup>4</sup>

Footnotes to the proposed article

1. The "extended period of time" may coincide with the investigation period, but should never be shorter than one year.

2. Where the producer under investigation made an overall profit on the like product sold for consumption in the country of origin, it will be assumed that sales below cost of production were not made in substantial quantities and normal value will be based on all domestic sales of the like product, including sales below cost of production.

3. Variable costs shall be defined in accordance with generally accepted accounting principles in the country of exportation.

4. The "reasonable period of time" may coincide with the investigation period, but should never be shorter than one year. It must be a representative period. In this respect, the Signatories recognize that sales made during a start-up or expansion phase period or during an end-of-model-year period are not made in a representative period and should not normally form the basis for a finding of sales below cost of production.

(Explanatory note - To lay down criteria for treatment of sales below cost. Please refer to paragraphs 16 and 17 of paper W/51/Add.1.)

(d) To add new footnotes to Article 3.1

A determination of injury for purposes of Article VI of the General Agreement shall be based on positive evidence and involve an objective examination<sup>1</sup> of both (a) the volume of the dumped imports and their effect on prices in the domestic market for like products, and (b) the consequent impact of these imports on domestic producers of such products.

Footnote to Article 3.1

1. The authorities concerned shall verify the accuracy of the information provided by the domestic industry in the complaint as well as in the course of the investigation.

(Explanatory note - To require that the data provided by the complainant on the alleged injury be carefully scrutinized. Please refer to paragraphs 18 and 19 of paper W/51/Add.1.)

(e) To amend Article 3.2 as follows:

With regard to volume of the dumped imports the investigating authorities shall consider whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in the importing country. With regard to the effect of the dumped imports on prices, the investigating authorities shall consider whether there has been a significant price undercutting by the dumped imports as compared with the price of a like product of the importing country, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a

significant degree. [No one or several of these factors can necessarily give decisive guidance.] Where it can be shown that price decreases or prevention of price increases were caused by factors other than the allegedly dumped imports and that the prices of the allegedly dumped imports were set to meet the decreased prices, protective measures should not be taken.

(Explanatory note - To require that anti-dumping measures not be used to deal with price competition. Please refer to paragraphs 20 and 21 of paper W/51/Add.1.)

(f) To amend Article 3.4 as follows:

It must be demonstrated that the dumped imports are, through the effects<sup>4</sup> of dumping, causing injury within the meaning of this Code. In this respect, the Signatories recognize that, where the increase in the prices of the imported products which would be adequate to remove the injury to the domestic industry is substantially higher than the margin of dumping, any injury cannot have been caused through the effects of dumping and, therefore, protective measures shall not be taken. There may be other factors<sup>5</sup> which at the same time are injuring the industry, and the injuries caused by other factors must not be attributed to the dumped imports.

#### Footnotes to Article 3.4

4. As set forth in paragraphs 2 and 3 of this Article.

5. Such factors include, inter alia, the volume and prices of imports not sold at dumping prices, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry.

(Explanatory note - To require that the difference between the margin of price undercutting or price depression and the dumping margin be taken into account in determining causal link. Please refer to paragraphs 22 and 23 of paper W/51/Add.1.)

(g) To add a new article after Article 3.5:

It must be determined whether the dumped imports from each source are causing material injury. That, taken together, dumped imports from a number of sources may cause material injury shall have no bearing on the assessment of the effect of dumped imports from an individual source.

(Explanatory note - To require that injury caused by the dumped imports from each individual source be assessed separately. Please refer to paragraphs 24 and 25 of paper W/51/Add.1.)

- (h) To add a new article after Article 5.3:

No anti-dumping proceeding shall be initiated with respect to a product which is already subject to a quantitative restriction under GATT Article XIX or the Arrangement Regarding International Trade in Textiles or any future arrangement for the integration of the textiles and clothing sector into the GATT.

(Explanatory note - To require that no anti-dumping proceeding be initiated on products already subject to quantitative restraint. Please refer to paragraphs 26 to 28 of paper W/51/Add.1.)

- (i) To add a new article after Article 5.3:

No anti-dumping proceeding shall be initiated in respect of any country through which the product named in a request for investigation is merely trans-shipped.

(Explanatory note - To require that no anti-dumping proceeding be initiated in respect of a country or territory through which the products in question are merely trans-shipped. Please refer to paragraphs 29 and 30 of paper W/51/Add.1.)

- (j) To add a new article after Article 5.1:

As soon as the authorities concerned receive a request for initiation of an investigation they shall publish a notice of receipt of such a request indicating the product and the producers concerned, a summary of the allegations in the request and a period for comments. Upon request of any interested party, they shall without delay make available the complete non-confidential version of the complaint. The period for comments shall in no case be less than (a) days or more than (b) days.

(Explanatory note - To provide an opportunity for interested parties to comment on a complaint before it is accepted for investigation. Please refer to paragraphs 31 and 32 of paper W/51/Add.1.)

- (k) To amend Article 6.1 as follows:

The foreign suppliers and all other interested parties shall be given ample opportunity to present in writing all evidence that they consider useful in respect of [to] the anti-dumping investigation in question. They shall also have the right, on justification, to

present evidence orally. Any request for information by the authorities concerned shall be restricted to information essential to the investigation. When drawing up such request and when analysing the evidence received in response to such a request, the authorities concerned shall take special account of the difficulties which may be experienced by small producers in providing the evidence requested.

(Explanatory note - To require that special allowance be made for small companies with regard to the volume and detail of information required from them. Please refer to paragraphs 33 and 34 of paper W/51/Add.1.)

- (1) To amend Article 8.2 as follows:

When an anti-dumping duty is imposed in respect of any product, such anti-dumping duty shall be collected in the appropriate amounts in each case, on a non-discriminatory basis on imports of such product from all sources found to be dumped and causing injury, except as to imports from those sources, from which price undertakings under the terms of this Code have been accepted. The authorities shall name the supplier or suppliers of the product concerned. If, however, several suppliers from the same country are involved, and it is impracticable to name all these suppliers, the authorities may name the supplying country concerned. If several suppliers from more than one country are involved, the authorities may name either all the suppliers involved, or, if this is impracticable, all the supplying countries involved. It is recognized that anti-dumping investigations are company specific and that anti-dumping duties are a levy on dumped products and not on products emanating from the same supplying country. Further, companies which did not export during an investigation period cannot have been dumping. No anti-dumping duties shall be imposed on such companies unless these are subsequently investigated and dumping is found.

The investigating authorities shall take into account the special situation of small companies which are unable to participate fully in the investigation due to lack of resources. Such companies shall provide, to the best possible extent, any available information required by the investigating authorities.

(Explanatory note - To require that no anti-dumping measures be taken against companies which did not export during the reference period of an investigation and that special consideration be given to small companies which have genuine difficulties in participating in the investigation. Please refer to paragraphs 35 to 37 of paper W/51/Add.1.)

- (m) To amend Article 8.3 and Article 9.2 as follows:

Article 8.3

The amount of the anti-dumping duty must not exceed the margin of dumping as established under Article 2. Therefore, if subsequent to the application of the anti-dumping duty it is found that the duty so collected exceeds the actual dumping margin, the amount in excess of the margin shall be reimbursed as quickly as possible and within (c) months from the date of application for a refund.

Article 9.2

The investigating authorities shall review the need for the continued imposition of the duty [,where warranted,] on their own initiative or if any interested party so requests and submits positive information substantiating the need for review. The review shall be completed as quickly as possible and within (d) months from the date of application for a review.

(Explanatory note - To require that review and refund procedures be conducted as quickly as possible and within specific time-frames. Please refer to paragraphs 38 and 39 of paper W/51/Add.1.)

5. With reference to paragraph 2 above, the delegation of Hong Kong proposes to add the following new article after Article 15.2:

When a Party considers that there is no sufficient evidence of either dumping or of injury to justify proceeding with the case, the Party may refer such matter to the Committee for conciliation or, in derogation of paragraphs 4 and 6 of Article 15, may request for immediate establishment of a panel to examine the matter.

and to re-number Articles 15.3 to 15.7 to Articles 15.4 to 15.8 accordingly.

(Explanatory Note:

To improve the Code's dispute settlement procedure to allow exporting countries to challenge investigations which have not been initiated in conformity with the provisions of Article 5.1 and to provide a fast track procedure to establish a panel to examine the matter.)