

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

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COMMUNICATION FROM THE EUROPEAN COMMUNITIES TO THE GATT
URUGUAY ROUND - ANTI-DUMPING CODE

I. INTRODUCTION

1. The European Communities have submitted to the GATT two Communications with regard to the Anti-Dumping Code:

- 1' Communication of 21 March 1988 (MTN.GNG/NG8/W/28);
- 2' Communication of 20 December 1989 (MTN.GNG/NG8/W/63).

Both Communications contain proposals designed to improve and clarify the provisions of the Agreement on Implementation of Article VI of the GATT. In particular they aimed at the reinforcement of existing disciplines and the adaptation of the Code to new realities.

2. As requested by the Chairman of the Negotiating Group on MTN Agreements and Arrangements, and as agreed within this group, the Communities hereby submit draft amendments to the Code based on the above communications.

II. DRAFT AMENDMENTS TO THE GATT ANTI-DUMPING CODE

A. Determination of dumping

1. Like product

Article 2:2 should be amended to read as follows:

"Throughout this Code the term "like product" ("produit similaire") shall be interpreted to mean a product which is identical, i.e. alike in all respects to the product under consideration, or in the absence of such a product, another product which, although not alike in all respects, has both physical, technical and/or chemical characteristics and applications or uses closely resembling those of the product under consideration. Minor variations among these products and quality differences shall not affect the "like product" determination."

2. (a) Representativity test for the domestic market

The following footnote should be added to the first sentence of Article 2:4:

"Sales on the domestic market shall be understood not to permit a proper comparison when the quantity of domestic sales constitutes less than X% of the quantity of the product under consideration sold for export to the country of importation."

(b) Corporations operating in more than one country

The following footnote should be added to the first sentence of Article 2:4:

"In cases where there are no or insufficient sales of the product under consideration on the domestic market of the exporting country and where the producer is a subsidiary of a corporation operating in more than one country, the prices of the parent corporation selling the same product on its home market can be used to calculate normal value, taking account of all relevant differences in costs."

B. Determination of injury

1. Causality

Article 3:4 should be amended to read as follows:

"It must be demonstrated that the dumped imports are, through the effects of dumping, causing injury within the meaning of this Code. The demonstration of such causal link between the dumped imports and the injury should be based on positive evidence and not on mere assumption. In this respect, the elements to be taken into consideration should include, inter alia, the development of the relationship between the volume of the dumped imports and the sales and the market share of the domestic industry, and the relationship between the prices of the dumped imports and those of the domestic industry. However, there may be other factors which at the same time are injuring the industry, and the injuries caused by other factors must not be attributed to the dumped imports."

2. Threat of injury

- Article 3:6 should be amended by the adoption in the Code of the full text of Recommendation ADP/25 of 21 October 1985 of the Committee on Anti-Dumping Practices concerning determination of threat of material injury. In addition, the list of factors mentioned under paragraph 9 of this Recommendation should be completed by the following:

- "concrete plans to increase capacity already in excess of domestic demand, or its utilization, indicating the likelihood of substantially increased dumped exports;
- development of sales on third markets, e.g. risk of diversion of exports;

- build up of related selling organizations of the exporter in the importing country;
- market proximity of the exporting country;
- role as traditional supplier".
- Footnote 6 to Article 3:6 should be deleted.

C. Definition of industry

Article 4:1(ii) should be amended to read as follows:

"In exceptional circumstances the territory of a Party may, for the production in question, be divided into two or more competitive regions and the producers within each region may be regarded as a separate industry if:

- (a) the imports are concentrated in a particular region;
- (b) these imports have caused not only material, but serious injury, to the domestic industry in that region; and
- (c) the industry located in the region concerned represents a significant proportion of the total production of the product concerned in the importing country.

In such circumstances injury may be found to exist even where a major proportion of the total domestic market is not injured."

D. Initiation and subsequent investigation

Article 5:1 should be amended to read as follows:

"An investigation to determine the existence, degree and effect of any alleged dumping shall normally be initiated upon a written request by or on behalf of the industry⁹ affected. The request shall include sufficient evidence of (a) dumping; (b) injury within the meaning of Article VI of the General Agreement as interpreted by this Code and (c) a causal link between the dumped imports and the alleged injury.

In particular, such request shall contain information and supporting evidence with regard to the following:

- Standing of the complainants: identification of the complainants and of the industry on behalf of which they are acting.

⁹ As defined in Article 4.

- Normal value and export prices:

Prices in the exporting country or, if appropriate, the prices of third country sales or constructed value in the country of origin, and either the actual export prices or the prices at which the exported goods are resold in the importing country.

- Injury:

Volume and prices of the allegedly dumped imports and their effect on the industry affected, as demonstrated by developments in production, capacity utilization, stocks, consumption, market shares, prices, profits or losses, and employment.

- Causality:

Justification that the material injury is due to dumping and not to other factors.

If, in special circumstances, the authorities concerned decide to initiate an investigation without having received such a request, they shall proceed only if they have sufficient evidence on all points under (a) to (c) above, including in particular that referred to in the second, third and fourth indents of this paragraph."

E. Evidence

1. Sampling

The following paragraph should be inserted between Article 6:1 and 6:2:

"When, an exceptional number of interested parties or types of products are involved in an anti-dumping investigation, the authorities may, by the use of sampling techniques, limit the investigations to a manageable number of parties or products, provided that these are representative. In such cases samples will be established preferably with the consent of the parties concerned. Where this does not prove possible, the rights of companies to receive individual treatment after the imposition of anti-dumping duties shall be safeguarded."

2. Transparency

Article 6:7 should be completed by the following text:

"Authorities shall, before drawing final conclusions from the results of an investigation, inform all interested parties of the essential facts and considerations on the basis of which it is intended to impose definitive measures. Such disclosure should be made in sufficient time for the parties to defend their interests."

F. Price undertakings

Article 7:2 should be completed with the following sub-paragraph:

"The acceptance of undertakings should not be subject to unnecessarily restrictive conditions; in particular there should be no requirement that undertakings must be offered prior to a preliminary determination of dumping and injury."

G. Imposition and collection of anti-dumping duties

The last sentence of Article 8:1 should be amended to read as follows:

"The imposition should be permissive in all countries or customs territories Parties to this Agreement and the anti-dumping duty should be less than the dumping margin, if such lesser duty would be adequate to remove the injury to the domestic industry."

H. Duration of anti-dumping duties [and undertakings]

Article 9 should be completed by the following paragraph 3:

"Anti-dumping duties and undertakings shall lapse after five years from the date on which they entered into force or were last modified or confirmed."

The investigating authorities shall, within the six months prior to the end of the five year period, publish a notice of the impending expiry of the measure in question and inform the domestic industry known to be concerned. This notice shall state the period within which interested parties may make known their views in writing and may apply to be heard orally by the investigating authorities.

Where an interested party shows that the expiry of the measure would lead again to injury or threat of injury, the investigating authorities shall publish a notice of their intention to carry out a review of the measure. Such notice shall be published prior to the end of the relevant five year period. The measure shall remain in force pending the outcome of the review.

Where anti-dumping duties and undertakings lapse the investigating authorities shall publish a notice to that effect. Such notice shall state the date of the expiry of the measure."

I. Provisional measures

1. Article 10:1 should be amended to read as follows:

"Provisional measures may be taken only after a preliminary affirmative finding has been made that there is dumping and that there is sufficient evidence of injury, as provided for in (a) to (c) of

paragraph 1 of Article 5. Provisional measures shall not be applied unless:

- a proceeding has been formally initiated and a notice published to that effect;
- the parties concerned have been given an adequate opportunity to comment within this proceeding;
- there has been at least a preliminary investigation of the facts, resulting in a preliminary affirmative finding of dumping and injury; and
- the authorities concerned judge that they are necessary to prevent injury being caused during the period of investigation."

2. Article 10:3 should be amended to read as follows:

"The application of provisional measures shall be limited to as short a period as possible, not exceeding six months or, in complicated cases, nine months."

J. Retroactivity

Article 11:1(ii) should be amended to read as follows:

"Where for the dumped product in question the authorities determine:

- (a) that there are massive imports over a short period; and
- (b) that there is a history of dumping in the same business sector or, that dumping margins are particularly high;

the duty may be levied on products which were entered for consumption not more than X days prior to the date of application of provisional measures, provided the importers concerned have been given an opportunity to comment."

K. Developing countries

Article 13 should be amended to read as follows:

"It is recognized that special regard must be given by developed countries to the special situation of developing countries when considering the application of anti-dumping measures under this Code. Possibilities of constructive remedies provided for by this Code shall be explored before applying anti-dumping duties where they would affect the essential interests of developing countries. No anti-dumping measures will be taken if the dumping margin found is smaller than X% for developing countries and Y% in the case of imports originating in the least developed countries."

L. Anti-circumvention

The following new article is added to the Code:

"1. Definitive anti-dumping duties may be imposed on products that are introduced into the commerce of an importing country after having been assembled or produced in the importing country provided that:

- assembly or production is carried out by a party which is related or associated to any of the manufacturers whose exports of the like product are subject to anti-dumping measures,
- the assembly or production operation was started or substantially increased after the opening of the anti-dumping investigation,
- the value of parts or materials used in the assembly or production operation and originating in the country of exportation of the product subject to the anti-dumping duty exceeds the value of all other parts or materials used by at least 50%.

In applying this provision, account shall be taken of the circumstances of each case, and, inter alia, of the variable costs incurred in the assembly or production operation and of the research and development carried out and the technology applied with the importing country.

2. The rate of the anti-dumping duty shall be that applicable to the manufacturer in the country of origin of the like product subject to an anti-dumping measure to which the party in the importing country carrying out the assembly or production is related or associated. The amount of duty collected shall be proportional to that resulting from the application of the rate of the anti-dumping duty applicable to the exporter of the complete product on the CIF value of the parts or materials imported; it shall not exceed that required to prevent circumvention of the anti-dumping duty.

3. The provisions of this Code concerning investigation, procedure, and undertakings apply to all questions arising under this article."

M. Final provision

The following sentence should be added to Article 16:6(a):

"Each government accepting or acceding to this Agreement shall ensure that all parties directly concerned by anti-dumping measures shall be given an opportunity to seek judicial review of measures definitively taken."