

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

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DRAFTING PROPOSALS OF THE NORDIC COUNTRIES REGARDING
AMENDMENTS OF THE ANTI-DUMPING CODE

(Proposed Amendments underlined)

Preamble

Amend the first indent as follows:

Recognizing that anti-dumping practices should not constitute an unjustifiable impediment to international trade and that anti-dumping duties may be applied against dumping only if a causal relationship can be clearly established between such dumping and material injury or threat of material injury to an established industry or the material retardation of the establishment of an industry;

Add the following new indent:

Recognizing that price competition is legitimate in international trade and that a precondition for dumping is the existence of market isolation or similar market conditions in the exporting country,

Hereby agree as follows:

Principles

Amend Article 1 to read as follows: The imposition of an anti-dumping duty is a measure to be taken only under the circumstances provided for in Article VI of the General Agreement and pursuant to investigations initiated (1) and conducted in accordance with the provisions of this Code. Anti-dumping measures ought not be taken unless the investigation indicates that there exist considerable impediments to the importation of like products in the exporting country. The following provisions govern the application of Article VI of the General Agreement in so far as action is taken under anti-dumping legislation or regulations.

Ordinary course of trade

After the words "ordinary course of trade" in Article 2:1, add the following footnote: (x) A price shall be deemed to be set in the ordinary course of trade if that price reflects normal business activities and the commercial strategy of the investigated firm, or of producers in the

exporting country of the same general category of goods. Sales at a loss even over extended periods of time shall be deemed to be in the ordinary course of trade if such sales result from market assessment and business strategies. A price shall not be deemed to be established in the ordinary course of trade in the following cases: (list to be established).

Interpretation of the term "like product"

Add to Article 2:2 the following text or footnote: In the course of an investigation the interpretation of the investigating authority of the term "like product" shall be uniform and consistent.

Preference for third country data over constructed value and calculation of constructed value.

Amend Article 2:4 by dividing it into Articles 2:4 and 2:5, whereby the present paragraphs 5-7 become 6-9. (Numbering affected by new Article 2:8 on exchange rates below.)

Article 2:4: When there are no 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 to any third country, which may be the highest such export price, but should be a representative price, or with the average price of the like product in all export sales to third countries of the investigated firm.

Article 2:5: When there are no sales of the like product in the ordinary course of trade to third countries, or when because of the particular market situation such sales do not permit a proper comparison, the margin of dumping shall be determined by a comparison with the actual cost of production of the investigated firm, plus an amount for administrative, selling and any other costs and for profits. That amount shall not exceed the actual costs and profit incurred or realized by the investigated firm for like products over the estimated lifetime or over the full business cycle of the product. If the administrative, selling and other costs or profits cannot be determined for like products, those costs and profits may be determined for the same general category of products, incurred or realized by the producer over the lifetime or the business cycle of that product category.

Due allowances and fair comparison

Amend present Article 2:6 (i.e. new Article 2:7) to read as follows and add a footnote: In order to effect a fair comparison between the normal value, as determined in accordance with paragraphs 4 or 5 above and

the export price, both prices shall be calculated in a uniform and consistent manner.* The two prices shall be compared at the same level of trade, normally at ex-factory level, and in respect of sales made at as nearly as possible the same time. Due allowance shall be made for the differences in conditions, terms and quantities of sales, for differences in exchange rates and taxation and for other differences affecting price comparability. In the cases referred to in paragraph 6 of Article 2 allowance for costs, including duties and taxes, incurred between importation and resale, and for profits accruing, should also be made.

Exchange rates

Add a new Article 2:8 as follows: Normal value and export price, when not expressed in the same currency, shall be calculated according to the official exchange rate in the exporting country prevailing when the sales contract for exports to the importing country was concluded or when a binding offer was made. When the investigated firm has secured the value of its claim through operations on the forward currency market or through currency options, the exchange rate it has obtained in such operations shall be used for comparing normal value and export price. Exporters should be given a reasonable period of time to adapt their prices to changes of exchange rates.

Determination of injury and of causality

Amend the title of Article 3 to read as the heading above. Amend Article 3:1 to read as follows: A determination of injury and of causality for purposes of Article VI of the General Agreement shall be based on positive evidence and involve an objective examination of (a) the volume of the dumped imports and their effect on prices in the domestic market of the importing country for like products; (b) the injury suffered by domestic producers in the importing country of like products; and (c) the causal relationship between the dumping and the injury.

From Article 3:2 delete the last sentence reading "No one or several of these factors can necessarily give decisive guidance."

* A uniform and consistent manner of calculation implies that when normal value is determined, e.g. by calculating weighted or arithmetical averages, the export price shall also be determined by similar weighted or arithmetical average calculations. Established rebate and pricing policies of the investigating firm, even if not made public, shall be taken into account when the firm presents evidence that it applies the same policies for sales on the domestic market and for exports.

Cumulative injury assessment

Amend Article 3:4 to read as follows: It must be demonstrated that the dumped imports are, through the effects (4) of dumping, causing injury within the meaning of this Code. Also when the margin of dumping or the volume of dumped imports, actual or potential, in relation to total demand for like products in the importing country is more than negligible, as defined in footnote to Article 5:3, the investigating authority should endeavour to examine individually the injurious effect of dumped imports from each source, in relation to dumped imports from other sources. There may be other factors (5) which at the same time are injuring the industry, and the injuries caused by other factors must not be attributed to the dumped imports.

Definition of industry

The Nordic countries support the drafting suggested for Article 4:1 and for a footnote to that Article by Hong Kong under items C.(i) and C.(ii) on page 3 of document MTN.GNG/NG8/W/51.

Prima facie evidence, standing of petitioner and verification

The Nordic countries support the drafting suggested for Article 5:1 and for a footnote to that Article by Hong Kong under items D.(i) and D.(ii) on pages 3 and 4 of document MTN.GNG/NG8/W/51.

Introduced into the commerce of another country

Introduce in Article 5 a new paragraph 2 reading as follows: Paragraphs 2-5 become 3-6. An anti-dumping investigation should not be initiated before the actual importation of the allegedly dumped product. However, in exceptional circumstances, e.g. in the purchase of large capital equipment, which occurs at infrequent intervals an anti-dumping investigation may be initiated when the sales contract has been concluded.

De minimis dumping margins and market shares

The Nordic countries largely support the drafting suggested for a footnote to the present Article 5:3 by Hong Kong under item D.(iii) on page 4 of document MTN.GNG/NG8/W/51. However, the Nordic countries would suggest the following amendment to the Hong Kong text: The criterion of "negligible" is fulfilled if either the margin of dumping or the margin of injury is not more than ...

Obligation of the investigating authority to assist the parties in an investigation

Add the following sentence to Article 6:1: The investigating authority should, within its competence and power under national law, assist the parties by indicating what information and evidence the authority considers relevant for the investigation, i.e. the authority should on its own initiative enquire about information and evidence required to make a fair comparison under (new) Article 2:7.

Lesser duty rule

Amend Article 8:1 to read as follows: The decision whether or not to impose an anti-dumping duty in cases where all requirements for the imposition have been fulfilled is to be made by the authorities of the importing country or customs territory. The imposition should be permissive in all countries or customs territories Parties to this Agreement. The anti-dumping duty shall be less than the dumping margin, if such lesser duty is adequate to remove the injury to the domestic industry.

Public interest clause

Add to Article 8 a new paragraph 2, whereby the present paragraphs 2-5 would be renumbered 3-6 and a footnote as follows: In deciding on the initiation of an anti-dumping investigation, on whether or not to apply provisional or definitive anti-dumping measures and on the extent and level of such measures the investigating authority should consider whether an investigation or anti-dumping measures would be in the public interest.*

Sunset clause and review

Add to Article 9:1 the following sentence: The duty shall lapse after three years from the date on which it entered into force or was last modified or confirmed. (The Nordic countries think that also price undertakings should be subject to a sunset clause. If the above proposal was adopted a sunset clause for price undertakings would automatically follow from Article 7:6.)

Amend Article 9:2 to read as follows: The investigating authorities shall annually review the margin of dumping and the material injury, or otherwise 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.

Dispute settlement

Delete from Article 15:3 the words "and final action has been taken by the administering authorities of the importing country to levy definitive duties or to accept price undertakings".

Delete from Article 15:5 the words "within three months".

The Nordic countries reserve the right to present further proposals as appropriate.

* Consideration of the public interest should cover such questions as the competitive situation, the interests of consumers and industrial users of the product subject to the complaint and other relevant economic circumstances.