

WORLD TRADE ORGANIZATION

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Negotiating Group on Rules

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PROHIBITION OF ZEROING

Statement of Brazil; Chile; China; Colombia; Costa Rica; Hong Kong, China; India; Indonesia; Israel; Japan; Korea, Rep. of; Mexico; Norway; Pakistan; Singapore; South Africa; Switzerland; Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu; Thailand; and Viet Nam

The Delegations of Brazil; Chile; China; Colombia; Costa Rica; Hong Kong, China; India; Indonesia; Israel; Japan; Korea, Rep. of; Mexico; Norway; Pakistan; Singapore; South Africa; Switzerland; Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu; Thailand; and Viet Nam present this Working Document concerning the issue of zeroing under the Anti-Dumping Agreement (ADA). This is without prejudice to the views the Delegations may have on other parts of the text. While we are committed to the objectives of this document, we may reserve the right to further refine or co-sponsor it with other Members at a later stage.

I. Introduction

We listened carefully to the discussion in the Negotiating Group in December 2007. The vast majority of the Members supported the "Statement on 'Zeroing' in the Anti-dumping Negotiations (TN/RL/W/214/Rev.3)". They found that the Chair's text (TN/RL/W/213) lacked balance. In this regard, the Chair invited the Membership to express their views regarding the balance.

The Chair's text, as it now stands, permits the practice of zeroing. Zeroing is a biased and partial method for calculating the margin of dumping and inflates anti-dumping duties. If the use of such practice prevails in the future, it could nullify the results of trade liberalization efforts. The Chair's text must serve the spirit of the Doha Development Agenda, which we understand to be to increase trade flows, enhance predictability, and provide more transparency. In Marrakech, Ministers expressed their determination to resist protectionist pressure of all kinds. They believed that trade liberalization and strengthened rules achieved in the Uruguay Round would lead to a progressively more open world trading environment. We call upon all Members to ensure that the Multilateral Trading System is not undermined through zeroing.

Our negotiating objective is to clarify that zeroing is prohibited at all stages of procedures. The vast majority of Members were concerned about the statement referring to alleged discrepancies between the Appellate Body and panels. We do not respond to the systemic issue here – *i.e.* a Member's criticism of the Appellate Body. Instead we intend to solve the issue constructively in the negotiations by reflecting actual discussions in the Negotiating Group and respecting Members' reasonable expectations on continuing the dependability, transparency and predictability for the Multilateral Trading System that were achieved during the last decade. We believe continued disputes between Members on zeroing should be avoided by clearly codifying the prohibition of zeroing at all stages of procedures under the DDA.

II. Discussion

This Rules negotiation is aimed at clarifying and improving disciplines under the Agreements on Implementation of Article VI of the GATT 1994. To accomplish this purpose with respect to the calculation of margins of dumping, we propose the following modifications to the Chair's text:

1. Clarification of general prohibition of the Zeroing methodology (Articles 2.4.2, 2.4.3 and 9.3.1 *New*):

The vast majority of Members correctly understand, and wish to clarify, that the current text of the ADA prohibits zeroing in all antidumping proceedings as contemplated in GATT Article VI. The ADA also should observe and clarify the basic principle under GATT Article VI:2 that the amount of an AD duty shall not exceed the margin of dumping, which are calculated without zeroing. We therefore propose to codify and clarify these rules in the ADA by deleting the phrase "during the investigation phase" in Article 2.4.2, by modifying Article 2.4.3 of the Chair's text, and by deleting Article 9.3.1 *New* thereof.¹

2. The time period of transactions for which the overall margin of dumping shall be calculated (Article 2.4.5):

The ADA has no explicit provision with respect to the time period of transactions for which the overall margin of dumping for an exporter or producer must be calculated. We recall that Members agreed at the AD Committee that the period of data collection for dumping investigations should normally be one year, and in any case no less than six months.² We propose that this agreement be codified in new Article 2.4.5 of the ADA. Please see our draft text of Article 2.4.5 *New* below. This discipline should apply to both investigations initiated pursuant to Article 5 and reviews pursuant to Article 9 or 11.

3. Consistent use of the margin calculation methodology in reviews

(1) Article 9.x

We understand that an authority determines the existence of margins of dumping based on a methodology that the authority considers appropriate for such determination in an investigation initiated pursuant to Article 5. In any review of such determination and the margins of dumping, it would be most reasonable to re-examine the margins of dumping in accordance with the methodology used in the original determination. Indeed, an authority would not have any reasonable basis to deviate in a review from the methodology used in the original determination absent compelling reasons found in the particular review, such as a fundamental change of circumstances. The authorities also must adequately explain reasons for their determination.³ The application of different methodologies on an *ad hoc* or results-oriented basis could result in potential manipulation of margins of dumping. We thus propose that the ADA clarify that the authorities must use the same methodology in subsequent margin determinations in reviews as that which was used in the initial investigation absent an adequate explanation of the reasons on the basis of which the authorities decided to deviate from the methodology that they previously used.

¹ We reaffirm the clear principle that "Zeroing" must be prohibited in all methods of comparison and in all AD proceedings. We will work in order to improve and strengthen the disciplines regarding the second sentence of Article 2.4.2.

² See G/ADP/6.

³ See Article 12.2.2 of the ADA.

(2) Article 11.x

Where an authority reviews the necessity to offset dumping under proceedings pursuant to Article 11.2 or 11.3, the authority may base its determination on the current or past margins of dumping. In such a case, the ADA sets forth in Article 2.1 the fundamental discipline that such margin of dumping must be calculated in accordance with the provisions of Article 2. It is clear that this requirement applies throughout the ADA, due to the language "for the purpose of this Agreement". In the past, however, misunderstandings of this discipline have been observed in the practices of some Members. To avoid a recurrence of such confusion in the future, we propose that the ADA explicitly provide in Article 11 that margins of dumping -- as the evidentiary basis for determinations under Article 11 -- must be calculated pursuant to Article 2.

III. Proposed modifications to the Chair's text:

For the reasons discussed above, we propose that Chair's text be modified as follows:

Article 2.4.2:

2.4.2 (first sentence) Subject to the provisions governing fair comparison in paragraph 4, the existence of margins of dumping ~~in an investigation initiated pursuant to the Article 5~~ shall normally be established on the basis of comparison of a weighted average normal value with a weighted average of prices of all comparable export transactions or by a comparison of normal value and export prices on a transaction-to-transaction basis. (second sentence)...

Article 2.4.3:

2.4.3 When the authorities aggregate the results of multiple comparisons in order to establish the existence or extent of a margin of dumping, ~~the provisions of this paragraph shall apply:~~

(i) ~~when, in an investigation initiated pursuant to Article 5 and in a review pursuant to Article 9 or 11, the authorities aggregate the results of multiple comparisons of a weighted average normal value with a weighted average of prices of all comparable export transactions, they shall take into account the amount by which the export price exceeds the normal value for any of the comparisons.~~

(ii) ~~when, in an investigation initiated pursuant to Article 5, the authorities aggregate the results of multiple comparisons of normal value and export prices on a transaction to transaction basis or of multiple comparisons of individual export transactions to a weighted average normal value, they may shall not disregard the amount by which the export price exceeds the normal value for any of the comparisons.~~

(iii) ~~when, in a review pursuant to Articles 9 or 11, the authorities aggregate the results of multiple comparisons, they may disregard the amount by which the export price exceeds the normal value for any of the comparisons.~~

Article 2.4.5:

2.4.5 For the purpose of this Agreement, an individual margin of dumping for an exporter or producer shall be determined with respect to all export transactions during a period of time which shall normally be one year and, in no case, less than six months.

Article 9.x:

9.x The provisions of Article 2 shall apply to all determinations pursuant to paragraphs 3 and 5 of this Article. The authorities shall normally use the same methodologies consistently in determining a margin of dumping in an investigation initiated pursuant to Article 5, and in subsequent determinations pursuant to paragraph 3. If the authorities find that they cannot use the same methodology in a subsequent determination pursuant to paragraph 3, the authorities shall disclose a different methodology to be used and give a full explanation of why such different methodology was used, in order to provide interested parties with a sufficient opportunity to make comments.

Article 9.3.1 New:

~~9.3.1New~~ — A determination of final liability for payment of anti-dumping duties, or of whether a duty in excess of the margin of dumping has been paid, may be made on the basis of (i) individual import transactions, (ii) all import transactions by an importer from an exporter or producer, or (iii) all import transactions from an exporter or producer. In determining the existence or amount of liability for any duty, or the entitlement to any refund, the authorities may disregard the amount by which the export price exceeds the normal value for any comparisons.

Article 11.x:

11.x If the authorities base its determination on the margin of dumping in a review under this Article, such margin of dumping shall be calculated in accordance with the provisions of Article 2.
