

PROPOSAL ON NEGLIGIBLE IMPORTS

Paper by Turkey

The following communication, dated 22 March 2005, is being circulated at the request of the Delegation of Turkey.

The submitting delegation has requested that this paper, which was submitted to the Rules Negotiating Group as an informal document (JOB(05)/39), also be circulated as a formal document.

Introduction

Article 5.8 of the Anti-Dumping Agreement (ADA) sets out the determination of negligibility. Pursuant to the said Article, the volume of dumped imports shall be regarded as negligible, in case the volume of dumped imports from a particular country account for less than 3 per cent of imports of the like product in the importing Member. Furthermore, there is an additional cumulation clause in the same Article, which allows the authorities to cumulate imports from countries, which individually account for less than 3 per cent of imports of the like product in the importing Member, but collectively account for more than 7 per cent of total imports of the like product in the importing Member.

Turkey considers that negligibility is one of the important issues in the ADA for it determines whether the producer/exporters against whom an anti-dumping investigation is initiated would continue to be subject to that investigation, or would be left out due to their volume of imports found to be negligible according to the provisions of Article 5.8. Thus, Turkey believes that there is merit in improving the criteria and methodology to determine negligibility, which plays such a critical role in the determination of whether to initiate and continue or to terminate an anti-dumping investigation.

Proposal-1

Introduce in Article 5.8 a second methodology to find out whether the volume of dumped imports are to be regarded as negligible, according to which negligibility shall be determined on the basis of apparent market share of dumped imports in the importing Member.

For this purpose, Turkey proposes to amend Article 5.8 as follows:

“...There shall be immediate termination in cases where the authorities determine that the margin of dumping is de minimis, or that the volume or the estimated market share of dumped imports, actual or potential, or the injury is negligible. The volume of dumped imports shall normally be regarded as negligible if the volume of

dumped imports from a particular country is found to account for less than (X)¹ per cent of imports of the like product in the importing Member, or if the market share of dumped imports is less than (Y)² per cent".

Explanation

In the paper numbered JOB(05)/11 by the FANs, of which Turkey is a sponsor as well, the criteria and methodology to determine negligibility is discussed and certain improvements to Article 5.8 are proposed. In the mentioned paper, the sponsors propose to set the threshold of negligibility on the basis of the market share of dumped imports rather than on the basis of share of dumped imports in total imports of the like product in the importing Member, which is the current practice under ADA provisions. In the April 2005 NGR meeting, Turkey has presented her views on this proposal both orally and in written as well, which were circulated to Members as a room document. This time, Turkey submits her views in this paper in order to continue the discussion Members have engaged in during the last NGR meeting.

Turkey believes that the methodology to determine negligibility on the basis of market share as proposed in the above-cited paper is certainly a reliable one and should be inserted into Article 5.8 as an alternative methodology in determining negligibility. This methodology would be helpful for it creates a direct linkage between dumped imports and domestic apparent consumption as well as the sales of the domestic industry. The proposed negligibility criterion would also guarantee the termination of unnecessary and groundless investigations in cases where the apparent market share of dumped imports from a particular Member is below (Y) per cent. Authorities may determine market share of dumped imports at the initiation of an investigation on the basis of the data available at that time. However, as the investigation progresses, there might be additional or revised data on apparent consumption. Therefore, even in cases where authorities have estimated market share at the initiation of the investigation, they should make certain their market share determination throughout the investigation by taking into consideration any revised or additional data provided or obtained in the course of the proceeding. Turkey is open to discuss appropriate methodologies to estimate apparent consumption/market share.

Yet, Turkey considers that the use of market share threshold on its own may not be enough for the reasons explained below. In order to arrive at a market share figure under the proposed second methodology, the authority is to find out apparent domestic consumption. One way to estimate apparent domestic consumption is to sum up total domestic sales and total imports. It should be emphasized that determination of apparent domestic consumption at the initiation of the investigation might not be convenient or might not yield reliable and accurate results due to lack of necessary data. Hence, performing this estimation would become easier when all the questionnaires are filled out and returned back to the authority since only then accurate information on the domestic industry would be obtained.

Thus, besides incorporating an additional and very useful threshold based on market share of dumped imports for the determination of negligibility, Turkey proposes that the existing negligibility criterion based on the share of dumped imports in total imports into the importing country is also maintained. Turkey believes that the share of dumped imports in total imports is an objective criterion and it can also be calculated easily except for certain situations.

¹ In this paper, Turkey also intends to open to discussion in this Group the level of the percentage threshold for negligible imports.

² Turkey is open to discuss in the Group the appropriate level of market share below which the dumped imports shall be considered as negligible.

Turkey recognizes possible problems with the current methodology of determining negligibility. One such problem might be experienced when the product subject to investigation does not entirely cover the product types classified under the tariff heading used to describe the product under consideration. This may cause a problem especially when the import statistics are kept on the basis of tariff classifications, which is usually the case. However, in most cases, the current negligibility threshold has the potential to serve as an objective, practical and transparent tool to prevent the initiation of unnecessary investigations. This is valid particularly when authorities have difficulty in determining apparent domestic consumption at the initiation stage. Therefore, it would be useful for the investigating authority to have at hand both the current and the proposed negligibility criteria.

In a nutshell, Turkey proposes to maintain the currently existing negligibility criterion, namely, the share of dumped imports in total imports, while incorporating an additional methodology in determining negligibility, which is the share of dumped imports in apparent domestic consumption in the importing Member.

Proposal-2

Amend Article 5.8 so as to increase the current 3 per cent threshold for negligible volume of imports to (X) per cent.

Explanation

There is also merit in increasing the level of negligible volume of imports above the current 3 per cent rate. Such amendment would guarantee the exclusion from the scope of anti-dumping investigations of import sources that are too small to cause injury to the domestic industry.

Proposal-3

Delete the cumulation clause in Article 5.8, which defines an exceptional circumstance under which authorities are allowed to initiate or continue the investigation in cases where the volume of dumped imports individually account for less than the current negligibility threshold.

Explanation

Under Article 5.8, imports, which individually account for less than 3 per cent are considered to be negligible and are therefore kept out of an investigation when they are examined on their own, whereas these imports from a particular country are not considered as negligible when they cumulatively account for more than 7 per cent of total imports. This cumulation clause in Article 5.8 might encourage industries to include as many small import sources as necessary to satisfy the 7 per cent requirement to have an anti-dumping investigation initiated and continued.

As regards the impact of dumped imports on the domestic industry, it is questionable whether imports with a share in total less than 3 per cent may cause injury to the domestic industry of the importing Member. Article 3.3 stipulates the conditions under which an authority may cumulatively assess injury to the domestic industry. According to the provisions of this Article, authorities are not allowed to cumulatively assess possible adverse impacts of those imports, which individually account for less than 3 per cent of total imports but collectively account for more than 7 per cent. Thus, in such cases, authorities should carry out an individual injury assessment for dumped imports, which only satisfy the cumulation clause in Article 5.8. However, Turkey believes that such assessment does not seem fairly practicable, especially considering the non-attribution requirement under Article 3.5. For the reasons explained above, Turkey proposes that the cumulation clause in Article 5.8 be deleted.
