

PROPOSALS ON ARTICLE 5.8 OF THE ADA

Communication from the Separate Customs Territory
of Taiwan, Penghu, Kinmen and Matsu

The following communication, dated 12 October 2005, is being circulated at the request of the Delegation of the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu.

The submitting delegation has requested that this paper, which was submitted to the Rules Negotiating Group as an informal document (JOB(05)/231), also be circulated as a formal document.

Introduction

This paper is developed based on the earlier submissions of the Friends of Anti-Dumping Negotiations (FAN) (TN/RL/GEN/30/Rev.1, TN/RL/GEN/31/Rev.1). The suggested text changes are included for the purpose of assessing the actual effects of the relevant proposals to the current provision of Article 5.8 of the Anti-Dumping Agreement.

Explanation of the proposals¹:

1. *De minimis* margin of dumping

We suggest that *de minimis* margin of dumping should be increased to 5 per cent.

2. Negligible dumped imports

The proposed draft text moreover addresses another problem with the current negligibility test regarding cumulation as it encourages domestic industries requesting antidumping relief to include as many small sources as possible, regardless of their individual impact on the industry in the importing country, merely to ensure that the collective 7 per cent threshold is met. It is suggested that cumulation of negligible dumped imports shall not include those exporting countries whose collected market share does not exceed 7 per cent of the domestic consumption.

¹ As mentioned in the introduction section, this paper does not further elaborate the proposals contained in the earlier relevant submissions of the FANs regarding revising the denominator of the threshold of negligibility test, and clarifying the time period for calculating negligibility.

Proposed Text

Article 5.8:

“... There shall be immediate termination in cases where the authorities determine that the margin of dumping is *de minimis*, or that the volume of dumped imports, actual or potential, or the injury, is negligible. The margin of dumping shall be considered to be *de minimis* if this margin is less than ~~2~~ 5 per cent, expressed as a percentage of the export price. The volume of dumped imports shall normally be regarded as negligible if the volume of dumped imports from a particular country during the period of dumping investigation is found to account for less than 3 per cent of the domestic consumption imports of the like product in the importing Member²; ~~unless countries which individually account for less than 3 per cent of imports of the like product in the importing Member, collectively account for more than 7 per cent of imports of the like product in the importing Member.~~

² **New footnote:** In the event that countries which individually account for less than 3 per cent of the domestic consumption of the like product in the importing Member collectively account for more than 7 per cent of domestic consumption of the like product in the importing Member, the volume of dumped imports regarded as negligible shall refer only to those from countries which collectively, by adding their volume of dumped imports in ascending order, account for less than 7 per cent of domestic consumption of the like product in the importing Member.