

**SUBMISSION ON ISSUES RELATING TO THE INITIATION<sup>1</sup>**

Communication from Chile

The following communication, dated 13 October 2005, is being circulated at the request of the Delegation of Chile.

The submitting delegation has requested that this paper, which was submitted to the Rules Negotiating Group as an informal document (JOB(05)/249), also be circulated as a formal document.

**The sponsors of** document TN/RL/GEN/23 identified the importance of the determination by the authorities to initiate an investigation as one of the most important stages in an anti-dumping proceeding due to the following considerations:

- It has significant chilling effects on trade.
- The initiation of an investigation involves administrative and financial burdens on exporters who will have to respond to highly detailed questionnaires has a substantial negative impact on business activities.
- It also involves administrative costs for the authorities that must bear with the burden of reviewing and verifying those questionnaire responses.

Those effects are particularly negative when the initiation is poorly justified.

Furthermore, from Chile's perspective, the current legal framework on initiation allows for several interpretations, thus creating uncertainty. This prevents the full development of the potential of the investments in the export sector and an efficient allocation of resources. Indeed, grey areas or insufficient requirements affect export development even in the absence of anti-dumping investigations because uncertainty affects expectations, particularly for exporters from developing countries which have to deal with a permanent threat of a poorly justified anti-dumping investigation, should they intend to increase their exports to certain destinations.

In that context we propose to modify several provisions contained in article 5. The main proposals are summarised below:

- (i) Paragraph 5.2: To improve the evidential requirements for an application;

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<sup>1</sup> The proposal contained in this document does not represent a final position and may be subject to further addition and/or modification in the course of the negotiations. Other provisions of the Anti-Dumping Agreement that may be affected by the proposal may be examined in the later stages of the negotiations when Members have a more comprehensive picture of the amended Agreement.

- (ii) Paragraph 5.3: Authorities shall reject an application which does not contain sufficient evidence;
- (iii) Paragraph 5.4: To ensure that an application receives substantial support from the domestic industry;
- (iv) Paragraph 5.5 and 5.6: To establish a mechanism of consultation with the interested parties, prior to the initiation of an investigation
- (v) Paragraph 5.10: To change the denominator of the ratio for the calculation of negligibility and to eliminate the current cumulation mechanism.
- (vi) Paragraph 5.12: To establish a 12 months period for the period of investigation.
- (vii) Paragraph 5.14: To prohibit back to back investigations.

Article 5

*Initiation and Subsequent Investigation*

5.1 Except as provided for in paragraph 6 8, an investigation to determine the existence, degree and effect of any alleged dumping shall be initiated upon a written application by or on behalf of the domestic industry.

5.2 An application under paragraph 1 shall include evidence of (a) dumping, (b) injury within the meaning of Article VI of GATT 1994 as interpreted by this Agreement and (c) a causal link between the dumped imports and the alleged injury. Simple assertion, unsubstantiated by relevant evidence, cannot be considered sufficient to meet the requirements of this paragraph. The application shall contain ~~such information as is reasonably available to the applicant on the following information~~<sup>2</sup>:

- (i) the identity of the applicant, ~~and~~ a description of the volume and value of the domestic production of the like product by the applicant- and a list of all known domestic producers of the like product;
- (ii) Where a written application is made on behalf of the domestic industry, the application shall identify the industry on behalf of which the application is made by a list of all known domestic producers of the like product (or associations of domestic producers of the like product), indicating individual producers who are known to support the application, and, ~~to the extent possible~~, a description of the volume and value of domestic production of the like product accounted for by such producers<sup>3</sup>;
- ~~(ii)~~(iii) a complete description<sup>4</sup> of the allegedly dumped product, the names of the country or countries of origin or export in question, the identity of each known exporter or foreign producer and a list of known persons importing the product in question;
- ~~(iii)~~(iv) information on prices at which the product in question is sold when destined for consumption in the domestic markets of the country or countries of origin or export (or, where appropriate, information on the prices at which the product is sold from the country or countries of origin or export to a third country or countries, or on the constructed value of the product) and information on export prices or, where appropriate, on the prices at which the product is first resold to an independent buyer in the territory of the importing Member<sup>5</sup>;
- ~~(iv)~~(v) information and a reasoned explanation on the evolution of the volume of the allegedly dumped imports, in absolute terms and relative to consumption and production in the importing country; the effect of these imports on prices of the like product in the domestic market, including those indicated in paragraph 2 of Article 3; and the consequent impact of the allegedly dumped imports on the domestic industry,

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<sup>2</sup> In the case that the applicant claims that some of the information requirements listed in this paragraph is unavailable, a complete description of the efforts made by the applicant in order to obtain such information shall be provided.

<sup>3</sup> In the case of associations of domestic producers, application shall list those producers who expressly support the petition and the volume and value of the like product by each of them.

<sup>4</sup> The description must refer to the physical characteristics of the product. It must also indicate the HS Code corresponding to the import product and is this HS Code covers another type of product.

<sup>5</sup> The information must indicate, for each case, the sources consulted and the methodology used to calculate the prices.

as demonstrated by relevant factors and indices having a bearing on the state of the domestic industry, ~~such as~~ including all those listed in paragraphs 2 and 4 of Article 3.

- (vi) When the applicant alleges a threat of material injury, the application shall contain all elements stated on paragraph 7 of Article 3.

5.3 The authorities shall examine the accuracy and adequacy of the evidence<sup>6</sup> provided in the application to determine whether there is sufficient evidence of dumping, injury and causality to justify the initiation of an investigation. The authorities shall promptly reject the application and terminate all proceedings when they find there is not sufficient evidence in the application.

5.4 An investigation shall not be initiated pursuant to paragraph 1 unless the authorities have determined, on the basis of an examination of the degree of support for, or opposition to, the application expressed<sup>7</sup> by domestic producers of the like product, that the application has been made by or on behalf of the domestic industry.<sup>8</sup> The application shall be considered to have been made "by or on behalf of the domestic industry" if it is supported by those domestic producers whose collective output<sup>9</sup> constitutes more than 50 per cent of the total production of the like product ~~produced by that portion of the domestic industry expressing either support for or opposition to the application. However, no investigation shall be initiated when domestic producers expressly supporting the application account for less than 25 per cent of total production of the like product produced by the domestic industry.~~

5.5 The authorities shall avoid, unless a decision has been made to initiate an investigation, any publicizing of the application for the initiation of an investigation. However, after receipt of a properly documented application and before proceeding to initiate an investigation, the authorities shall notify and send a non confidential version of the application to the government of the exporting Member concerned as well as each known exporter and foreign producer.

5.6 As soon as possible after an application is accepted, and in any event before the initiation of any investigation, interested parties shall be invited to provide comments on the standing of the application and the accuracy of the information submitted.

5.7 Without prejudice to the obligation to afford reasonable opportunity for consultation, the provision stated in paragraph 6 is not intended to prevent the authorities or a Member from proceeding expeditiously with regard to initiating the investigation, reaching preliminary or final determinations, whether affirmative or negative, or from applying provisional or final measures, in accordance with the provisions of this Agreement.

5.6.8 If, in special circumstances, the authorities concerned decide to initiate an investigation without having received a written application by or on behalf of a domestic industry for the initiation of such investigation, they shall proceed only if all the provisions stipulated in this Article are fulfilled ~~the have sufficient evidence of dumping, injury and a causal link, as described in paragraph 2, to justify the initiation of an investigation.~~

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<sup>6</sup> For this purpose, authorities shall check evidence contained in the application with reliable and independent information from public records, intra-governmental records and other available sources.

<sup>7</sup> In the case of fragmented industries involving an exceptionally large number of products, authorities may determine support and opposition by using statistically valid sampling techniques.

<sup>8</sup> ~~Members are aware that in the territory of certain Members employees of domestic producers of the like product or representatives of those employees may make or support an application for an investigation under paragraph 1.~~

<sup>9</sup> The representation of producer associations or groups shall be determined only in terms of individual support of their members.

5.7 9 The evidence of both dumping and injury shall be considered simultaneously (a) in the decision whether or not to initiate an investigation, and (b) thereafter, during the course of the investigation, starting on a date not later than the earliest date on which in accordance with the provisions of this Agreement provisional measures may be applied.

5.8 10 An application under paragraph 1 shall be rejected and an investigation shall be terminated promptly as soon as the authorities concerned are satisfied that there is not sufficient evidence of ~~either dumping, or of injury~~ or causal link between them to justify proceeding with the case. 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~~ X per cent<sup>10</sup>, 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 is found to account for less than 3 per cent of ~~imports~~ the total domestic consumption of the like product in the importing Member<sup>11</sup> of the like product in the importing Member, ~~unless countries which individually account for less than 3 per cent of the 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.~~

5.9 11 An anti-dumping proceeding shall not hinder the procedures of customs clearance.

5.10 12 Investigations shall, ~~except in special circumstances,~~ be concluded within one year, ~~and in no case more than 18 months,~~ after their initiation.

5.13 A new investigation can not be initiated for the same product before 12 months have passed since the publication of a negative final determination notice of non-application or revocation, referred to the previous investigation.

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<sup>10</sup> The *de minimis* threshold should be subject to negotiation, as stated in the FANs documents TNRL/GEN/30 and TNRL/GEN/31.

<sup>11</sup> Negligibility shall be measured considering the entire period of dumping investigation, that is not less than 12 months.