

PRICE UNDERTAKINGS¹

Communication from Hong Kong, China; Mexico; Norway;
Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu

Revision

The following communication, dated 20 April 2006, is being circulated at the request of the above delegations.

The submitting delegations have requested that this paper, which was submitted to the Negotiating Group on Rules as an informal document (JOB(05)/250/Rev.1), also be circulated as a formal document.

The co-sponsors of this proposal have benefited from the discussions at the Negotiating Group on Rules of a textual proposal from Mexico on Price Undertakings (TN/RL/GEN/76; JOB(05)/250). The co-sponsors particularly share the general feeling among the membership that price undertakings, if properly used, can effectively serve its purpose as a trade remedy, while at the same time providing greater certainty to traders. However, this form of constructive remedy is currently under-utilised. To enable greater use of price undertakings, the existing provisions of the Anti-dumping Agreement need to be amended to prevent arbitrary rejection of price undertakings by the importing Member.

The proposed amendments contained in this draft build on the Mexican proposal, taking account of comments and suggestions by Members at the Negotiating Group. The major changes/additions in this proposal are highlighted below:

- Article 8.2 is amended to provide for opportunity to offer/accept price undertakings even if no affirmative preliminary determination is made, but authorities decide to proceed with the investigation. In such cases, we propose that exporters should be informed of the right to make price undertakings, and be given adequate opportunity (for example, at least 30 days after preliminary determination or, where applicable, final disclosure under Article 6.9) to make a price undertaking offer;
- While acceptance or rejection of a price undertaking will be based on its own merits, the transparency element of the proposal is strengthened by amending Article 8.3 to provide for authorities to publish the standard terms and conditions of a price undertaking, as well as the

¹ 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.

general factors normally used for assessing the merits of a price undertaking offer. While making clear that a price undertaking may not be rejected on grounds of “policy”, an exception is warranted in the case of a prospective duty assessment system based on prospective normal value, since the practical effects of price undertakings are similar to a prospective normal value system;

- Article 8.6 is further amended to elaborate on the revocation of price undertakings. Given that price undertakings can be highly effective in eliminating dumping, while at the same time provide more predictability to traders and are therefore more trade-friendly than a duty-based trade remedy, the use of price undertakings should be encouraged. The benefits of this remedy would be greatly reduced if price undertakings can be easily revoked on grounds that are “over-sensitive”. We therefore propose that the decision to revoke a price undertaking be exercised with special care, and that price undertakings should not be revoked for minor reasons;
- Article 8.7 is added to make clear that an exporter subject to a price undertaking has the right to request an adjustment of the minimum price subject to the undertaking as a result of changed circumstances.

Proposed Amendments to the Anti-Dumping Agreement

(The new text is underlined and the text to be deleted is crossed out)

Article 8 – Price Undertakings

8.1 Proceedings may² be suspended or terminated without the imposition of provisional measures or anti-dumping duties upon receipt of satisfactory voluntary undertakings from any exporter to revise its prices or to cease exports to the area in question at dumped prices so that the authorities are satisfied that the injurious effect of the dumping is eliminated. Price increases under such undertakings shall not be higher than necessary to eliminate the margin of dumping determined for the said exporter. It is desirable that the price increases be less than the margin of dumping if such increases would be adequate to remove the injury to the domestic industry³.

8.2 Price undertakings shall not be sought or accepted from exporters unless the authorities of the importing Member have made a preliminary affirmative determination of dumping and injury caused by such dumping, ~~or, if no affirmative preliminary determination is made, and the investigation is not otherwise terminated, unless the authorities have made the final disclosure pursuant to paragraph 9 of Article 6.~~ The authorities shall inform the exporters of their right to offer price undertakings, as well as of the applicable rules and procedures, including relevant time limits, and give them adequate opportunity (at least [X] days after the affirmative preliminary determination or, in the absence of an affirmative preliminary determination, at least [X] days after the disclosure pursuant to paragraph 9 of Article 6) to make a price undertaking offer⁴.

8.3 Acceptance or rejection of a price undertaking shall be based on its own merits. Authorities shall publish and inform exporters of the standard terms and conditions of the price undertakings, and the general factors normally used to assess the merits of a price undertaking offer. Moreover, the authorities may not require as a condition for acceptance of a price undertaking that price undertakings be offered by or accepted from some or all other exporters. Likewise, they may not reject an ~~Undertakings offered on grounds need not be accepted if the authorities consider their acceptance impractical, for example, if that the number of actual or potential exporters is too great, or for other reasons, including reasons of general policy, unless the importing Member concerned operates a prospective duty assessment system whereby anti-dumping duty is assessed at entry by reference to a prospective normal value. Should the case arise and where practicable, (~~The authorities shall provide to the exporter the reasons which have led them to consider acceptance of an undertaking as inappropriate, and shall ~~to the extent possible,~~ give the exporter an opportunity to make comments thereon and to reformulate its proposal.

8.4 If an undertaking is accepted, the investigation of dumping and injury shall nevertheless be completed if the exporter so desires or the authorities so decide. In such a case, if a negative determination of dumping or injury is made, the undertaking shall automatically lapse, except in cases where such a determination is due in large part to the existence of a price undertaking. In such cases, the authorities may require that an undertaking be maintained for a reasonable period consistent with the provisions of this Agreement. In the event that an affirmative determination of dumping and injury is made, the undertaking shall continue consistent with its terms and the provisions of this Agreement.

² **Existing footnote 19:** The word "may" shall not be interpreted to allow the simultaneous continuation of proceedings with the implementation of price undertakings except as provided in paragraph 4.

³ **Editorial note:** Wording of the last sentence to be reviewed in light of negotiations on lesser duty

⁴ **Editorial note:** Period for making price undertaking offers to be negotiated. A 30-day period would seem reasonable.

8.5 Price undertakings may be suggested by the authorities of the importing Member, but no exporter shall be forced to enter into such undertakings. The fact that exporters do not offer such undertakings, or do not accept an invitation to do so, shall in no way prejudice the consideration of the case. However, the authorities are free to determine that a threat of injury is more likely to be realized if the dumped imports continue.

8.6 Authorities of an importing Member may require any exporter from whom an undertaking has been accepted to provide periodically information relevant to the fulfilment of such an undertaking and to permit verification of pertinent data. In case of violation of an undertaking, the authorities of the importing Member may take, under this Agreement in conformity with its provisions, expeditious actions which may constitute immediate application of provisional measures using the best information available. In such cases, definitive duties may be levied in accordance with this Agreement on products entered for consumption not more than 90 days before the application of such provisional measures, except that any such retroactive assessment shall not apply to imports entered before the violation of the undertaking. However, the authorities shall exercise its decision to revoke a price undertaking with special care. Prior to revocation of a price undertaking, the authorities of the importing Member shall provide the exporter concerned an opportunity to comment. A price undertaking may not be revoked on grounds of inadvertent errors, non-compliance for reasons outside the control of the exporter, or for minor inconsistencies.

8.7 An exporter subject to a price undertaking shall have the right to request an adjustment of the minimum price stated in the undertaking if there are changed circumstances⁵.

⁵ **Editorial note:** Members should discuss further the need for a definition of changed circumstances.