

# WORLD TRADE ORGANIZATION

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Negotiating Group on Rules

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## ADDITIONAL PROPOSAL ON TRANSPARENCY UNDER ARTICLE 12 OF THE ADA<sup>1</sup>

Paper from Hong Kong, China

Addendum

The following communication, dated 20 April 2006, is being circulated at the request of the Delegation of Hong Kong, China.

The submitting delegation has requested that this paper, which was submitted to the Rules Negotiating Group as an informal document (JOB(05)/286/Add.1), also be circulated as a formal document.

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In TN/RL/GEN/83, Hong Kong, China proposes that importing Members currently applying anti-dumping measures be required to establish and maintain a public register of all the definitive anti-dumping measures currently in force in that Member, and setting out relevant details of the measures in question.

While the Anti-dumping Agreement contains various transparency requirements in respect of anti-dumping proceedings, there is little requirement for transparency in respect of the anti-dumping measures themselves. It is therefore extremely difficult for governments and exporters of other WTO members, as well as members of the public generally, to get a comprehensive picture of the anti-dumping measures currently in force in a Member. The importance of transparency of existing measures should not be overlooked. After all, as at 30 June 2005, there were over 1,200 definitive measures in force<sup>2</sup>. In some Members, the number of anti-dumping measures exceeds 100, or even 200. Many of these measures exist beyond the 5-year term; in some cases, for more than 20 years.

The requirement to maintain a register of all anti-dumping measures currently in force in an importing Member would provide a useful overview of all the anti-dumping measures currently in force in an importing Member. It would allow traders quick access to relevant information about anti-dumping measures on products of interest to them. Equally if not more importantly, it would enhance transparency to the general public of the use of anti-dumping measures in the importing Member, in furtherance of the objectives of good governance and public accountability.

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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.

<sup>2</sup> Based on Report (2005) of the Committee on Anti-dumping Practices G/L/758.

Hong Kong, China appreciates the comments and suggestions for improvements made by other Members on its proposal at the plenary session of the Negotiating Group on Rules in January 2006, and in subsequent informal consultations. The textual proposal in this paper has been revised to in view of the comments and suggestions by Members. Major changes include:

- (1) removal of the requirement for domestic production figures, in view of the difficulties raised by members in collecting the information;
- (2) while the requirement for annual update of volume or value of import, and market share of imports [item (vi)], is retained, the figures may be based on best estimates if actual figures cannot be obtained despite the use of best endeavours;
- (3) providing for information to be withheld to protect business confidentiality [item (vi)];
- (4) new item on the total amount of anti-dumping duties collected [item (vii)];
- (5) consequential amendment to Article 16.4, in order to provide for Members to submit an updated copy of their register to the WTO once a year, to be included in the relevant semi-annual report.

The Annex to this paper contains a sample register for reference.

Some Members have suggested including information as to whether price undertakings have been accepted on the register. Likewise, some members have suggested keeping a list of initiated investigations. Hong Kong, China welcomes further discussion on these suggestions.

### **Textual Proposal**

#### ***Add a new paragraph 4 to Article 12:***

"12.4 The authorities shall maintain a public register of all definitive anti-dumping measures currently in force in that Member. The register shall contain the following information in respect of each of the anti-dumping measures in question:

- (i) the subject product (including its tariff classification for customs purposes);
- (ii) the exporting country or countries concerned;
- (iii) the date(s) of imposition of the anti-dumping measure and subsequent review(s)<sup>3</sup>;
- (iv) in respect of each exporting country concerned, the range (i.e. the highest and lowest) of individual anti-dumping duty rate currently in force, the applicable duty for "all other" exporters under paragraph 4 of Article 9 and the lesser duty rate<sup>4</sup>;
- (v) the size<sup>5</sup> of the domestic industry;
- (vi) the total volume or value of import of the subject product from each exporting country concerned, and the share of the domestic consumption of the like product (including the product under consideration) in the importing Member, for the most recent calendar or financial year<sup>6</sup>, unless information has to be withheld to protect confidential business information of producers/exporters;

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<sup>3</sup> where the measure is subject to ongoing review, the type of review and the date of initiation; if the measure is terminated during the reporting period, the date of termination.

<sup>4</sup> (i) for Members operating a prospective normal value system, information on the range of anti-dumping duty rate and all others rate to be provided refers to the relevant dumping margins established at the time of the original investigation;

(ii) where duty is suspended, the date and duration of suspension should be given.

<sup>5</sup> i.e. the actual or estimated number of producers and employees at the time of initiation, or more recent figures if available. Information should be based on identified official or other independent sources. If such sources are not available, information may be based on best estimates.

<sup>6</sup> where actual figures cannot be obtained despite best endeavours, the figures may be based on best estimates.

- (vii) the total amount of anti-dumping duty collected<sup>7</sup> on the subject product imported during the most recent calendar or financial year from each exporting country."

The public register may be maintained on a public website of the government of the importing Member. Alternatively, the register shall be made available for inspection by members of the public, and its full contents shall be published in a public notice at least once a year.

***Consequential amendment to Article 12.3:***

"12.3 The provisions of paragraphs 1 and 2 of this Article shall apply mutatis mutandis to the initiation and completion of reviews pursuant to Article 11 and to decisions under Article 10 to apply duties retroactively."

***Consequential amendment to Article 16.4:***

"16.4 Members shall report without delay to the Committee all preliminary or final anti-dumping actions taken. Such reports shall be available in the Secretariat for inspection by other Members. Members shall also submit, on a semi-annual basis, reports of any anti-dumping actions taken within the preceding six months. The semi-annual reports shall be submitted on an agreed standard form. Once a year, Members shall also submit to the Committee an updated copy the public register maintained pursuant to paragraph 4 of Article 12, to be included in the relevant semi-annual report."

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<sup>7</sup> in the case of a retrospective duty assessment system, this includes the cash deposits paid in respect of entries made during the reference period.

Annex

**SAMPLE REGISTER OF DEFINITIVE ANTI-DUMPING MEASURES IN FORCE DURING [CALENDAR YEAR 2005]<sup>8</sup>**

(1) Product	(2) Country/ Customs Territory	(3) Date of imposition and date(s) of decisions of subsequent review(s) <sup>9</sup>	(4) Range of anti-dumping duty rate, all others rate and lesser duty rate (most recent figures only) <sup>10</sup>	(5) Domestic industry: number of producers and workforce size <sup>11</sup>	(6) Total volume or value of imports subject to the AD measure, and market share (as a % of domestic consumption) during reporting period <sup>12</sup>	(7) Total amount of AD duty collected during the reporting period <sup>13</sup>	(8) Whether price undertaking has been accepted
Coated Groundwood paper (HSxxxxxx)	A	27.10.1995 (30.9.2000) (sunset review initiated 1.3.2005, decision pending)	(1) 5-20% (2) 15% (3) 18%	(1) 20 (2) 1000 [Figures from official industry survey as at 31.12.2004]	(1) 30,000MT (2) 30%	\$XXX	No
Egg pasta (HSxxxxxx)	B	9.5.1999 (30.4.2004)	(1) 60-80% (2) 65% (3) 65% [Measure suspended for 15 mths w.e.f. 31.12.2004]	(1) 2 (2) 150 [Official estimates as at last review - 1.1.2003]	(1) 9.5M lbs (2) 95%	\$XXX	Yes
Frozen concentrated orange juice (HSxxxxxx)	A	1.5.2000 (17.5.2005)	(1) 20-40% (2) 25% (3) 24%	(1) 30 (2) 1000 [Official estimates as at last review - 30.6.2004]	(1) 80,000,000 litres (4) 40%	\$XXX	No
Frozen concentrated orange juice	C	1.5.2000	(1) 5-10% (2) 7%	As above	(1) 0	\$XXX	No

<sup>8</sup> The reporting period may be a full calendar year or a full fiscal year.

<sup>9</sup> If there is an ongoing review, please provide date of initiation of such review.

<sup>10</sup> (a) For Members operating a prospective normal value system, information on the range of anti-dumping duty rate and all others rate to be provided refers to the relevant dumping margins established at the time of the original investigation.

(b) Where AD measure is suspended please provide the date and duration of suspension.

<sup>11</sup> Based on data available at initiation, or more recent data if available. Please specify data source.

<sup>12</sup> Actual data, or best estimates (please specify) if actual data not available despite best endeavours. Where information is withheld to protect business confidentiality, please specify.

<sup>13</sup> in the case of a retrospective duty assessment system, this includes the cash deposits paid in respect of entries made during the reference period.

(1) Product	(2) Country/ Customs Territory	(3) Date of imposition and date(s) of decisions of subsequent review(s) <sup>9</sup>	(4) Range of anti-dumping duty rate, all others rate and lesser duty rate (most recent figures only) <sup>10</sup>	(5) Domestic industry: number of producers and workforce size <sup>11</sup>	(6) Total volume or value of imports subject to the AD measure, and market share (as a % of domestic consumption) during reporting period <sup>12</sup>	(7) Total amount of AD duty collected during the reporting period <sup>13</sup>	(8) Whether price undertaking has been accepted
(HSxxxxxx)		(17.5.2005)	(3) 20% (N/A) [Measure terminated w.e.f. 17.5.2005]		(2) 0%		
Machine tufted carpeting (HSxxxxxx)	D	1.1.2004	(1) 4-9% (2) 7% (3) 15% (N/A)	(1) 100 (2) 10,000 [Official estimates as at initiation – 1.1.2003]	(1) 20M Sq. Metres (2) 20%	\$XXX	Yes
Machine tufted carpeting (HSxxxxxx)	E	1.1.2004	(1) 5-30% (2) 20% (3) 20%	As above	(2) 70M Sq Metres (2) 70%	\$XXX	No

*Editorial note*

- Information in columns 1, 2 and 3 currently collected in semi-annual reports
- Information in column 8 not part of Hong Kong, China's proposal but has been suggested for inclusion by some members during discussions at the plenary session of the Negotiating Group on Rules in February 2006