

**PROPOSAL TO DELETE THE RECASTING OF ANTI-DUMPING  
DUTIES AS "SECURITY"**

Communication from India, Thailand and Vietnam

Revision

The following communication, dated 23 May 2008, is being circulated at the request of the Delegations of India, Thailand and Vietnam.

**I. INTRODUCTION**

1. The Delegations of India, Thailand and Vietnam present this Working Document concerning the recasting of anti-dumping duties collected at the time of entry of goods subject to definitive measures as "security" in the Rules Chair's text (TN/RL/W/213). In our view, this recasting constitutes a radical departure from the current *Anti-Dumping Agreement* and Members' practices because it means anti-dumping duties would no longer be capped at the previously-determined margin of dumping. Accordingly, the proponents of this paper propose to delete the use of and references to the term "security" in revised Articles 9.3 and 11.2 (footnote 49) in TN/RL/W/213.

2. We hope this paper will contribute to the ongoing balancing process, and we note that the views expressed therein are without prejudice to the views we may each have on other parts of the text. We also reserve the right to modify or co-sponsor this paper with other Members at a later stage.

**II. DISCUSSION**

3. We recall that during the Negotiating Group discussions in March 2008, Members questioned the implications of the insertion of the term "security" into Article 9.3 and footnote 49 to Article 11.2 of TN/RL/W/213, including whether monies collected after importation could be described as "security" in said Articles.

4. The ensuing debate did not provide convincing answers or address the consequences stemming from the recasting of anti-dumping duties as "security". For example, reference was made to the existing, benign use of the term "security" in Articles 7.2 and 10.3 of the current text of the *Anti-Dumping Agreement*. However, while the reference to "security" in those Articles correctly pertains exclusively to provisional measures, the proposed recasting of anti-dumping duties as security in Articles 9.3 and 11.2 of TN/RL/W/213 refers to the period covered by definitive anti-dumping measures.

5. The implications of recasting definitive anti-dumping duties as security are troubling: if anti-dumping monies collected at the time of importation are no longer considered "duties" but are simply

"security", they would not be subject to the requirement set out in Articles 9.1, 9.2, and the *chapeau* of Article 9.3 of the *Anti-Dumping Agreement* that the amount of such duties may not exceed the margin of dumping established in accordance with Article 2 of the *Agreement*.

6. This is a radical departure from the scope of current permissible remedies against dumping. The purpose of AD measures is to eliminate the injurious effects of dumped imports on the domestic industry in the importing country. Therefore, the *Anti-Dumping Agreement* limits the amount of anti-dumping duties to the margin of dumping, and also allows for the collection of even a lesser amount. Excessive measures that over-burden exporters are not justified and are contrary to this underlying principle of the *Anti-Dumping Agreement*. All WTO Members adhere to this principle and thus currently cap measures imposed at the time of entry at the previously-determined margin of dumping. Recasting definitive anti-dumping duties as "security", on the other hand, would allow Members to exceed that amount. In this context, we note that TN/RL/W/213 provides no guidance on how such "security" would be regulated.

7. This is completely contrary to the purpose of GATT Article VI and the *Anti-Dumping Agreement*, which since 1947 has been understood to be to limit action against dumping to duties equal to the amount of injurious dumping. All three actions against dumping currently permissible under GATT Article VI and the *Anti-Dumping Agreement* (provisional measures, price undertakings, and definitive duties) are limited to offsetting the margin of dumping. Members have neither negotiated nor agreed to a departure from this understanding that would permit action against dumping that would not be limited to the amount of a previously-determined margin of dumping. We are therefore of the view that the recasting of anti-dumping duties as "security" in Article 9.3 and footnote 49 to Article 11.2 in TN/RL/W/213 constitutes a radical change to the *Anti-Dumping Agreement*.

8. For these reasons, we propose the deletion of the term "security" from revised Article 9.3 and the deletion of footnote 49 to Article 11.2 in TN/RL/W/213.

### **Proposed Amendments to TN/RL/W/213**

Article 9.3:

9.3 The amount of the anti-dumping duty shall not exceed the margin of dumping as established under Article 2. In this regard, each Member shall establish procedures [fn39] to ensure a prompt refund, upon request, where the duty ~~or security~~ collected exceeds the actual margin of dumping [fn40]. In this respect, the following subparagraphs shall apply.

Footnote 49 to Article 11.2:

11.2 The authorities shall review the need for the continued imposition of the duty, or for a modification of the level of the duty [fn49], where warranted, . . . .

<sup>49</sup>~~Or in the case of a retrospective system, of the level of any security collected. Where the anti-dumping duty imposed takes the form of a prospective normal value, this requirement relates to the modification of the prospective normal value.~~