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Negotiating Group on Rules

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PUBLIC INTEREST

Paper from Chile; Costa Rica; Hong Kong, China; Israel; Japan; Korea, Rep. of;
Norway; Switzerland; the Separate Customs Territory of Taiwan, Penghu,
Kinmen and Matsu; and Thailand

The following communication, dated 24 March 2005, is being circulated at the request of the Delegations of Chile; Costa Rica; Hong Kong, China; Israel; Japan; Korea, Rep. of; Norway; Switzerland; the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu; and Thailand

A. Description of the problem

The Anti-Dumping Agreement allows an anti-dumping measure to be used to protect the domestic industry of an importing member from injurious dumping. However, the effects of an anti-dumping measure are not confined to the domestic industry of the importing member, but also on trade and economy of the importing member. The existence of an anti-dumping measure affects the trade flow between the importing member and the members where the dumped products originate or pass through. Within the domestic context, the effects of an anti-dumping measure spread to other sectors of the economy such as purchasers of the investigated products (industrial users and consumers) and the import, wholesale and retail services sectors, affecting productivity, competition, allocation of resources, purchasing and consumption decisions. While an anti-dumping measure directly addresses the concerns of the domestic industry, the cost of such measures is borne by the economy of the importing member as a whole, ultimately passing to taxpayers.

Given the widespread effects anti-dumping measures may have on the economy of the importing member as a whole, besides affecting external trade flows and potentially reducing market access benefits secured by a member under the WTO agreements, the current Anti-Dumping Agreement nevertheless contains no provision for the broader economic interest of the importing member to be taken into account before a decision is taken to impose an anti-dumping measure, nor, from that perspective, provides opportunities for relevant parties to present their views on the broader economic consequences that the measure may entail.

Providing for the broader economic interest of an importing member to be considered before anti-dumping measures are applied would help ensure that, while Members still have the right to use anti-dumping measures, the application of such measures will be consistent with the overall economic interest of the importing member. Such analysis, if properly conducted, would help ensure that the use of anti-dumping measures has a sound economic basis, and would help dispel concerns that some members may use anti-dumping measures as a convenient tool to reduce access to their markets. This would have a positive effect on promoting trade of the importing member and on the economic development in the importing member, and suits the multilateral trading system well.

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B. Provisions on public interest

The inclusion of provisions on public interest in the Anti-dumping Agreement was raised in an earlier paper of the Friends of Anti-dumping Negotiations (“FANs”).¹ This paper elaborates on our thinking, and proposes a possible framework for such provisions focusing on the following four main elements:

1. **public interest**²:: include a provision in the Anti-Dumping Agreement providing for authorities to determine, before applying an anti-dumping measure, whether the proposed measure is in the overall economic interest of that Member. The anti-dumping measure should not be applied, or the measure should be mitigated³, if the application of the measure is not in the overall economic interest of that Member;
2. **minimum factors for consideration**: to ensure a balanced and meaningful consideration of public interest, we propose that the ADA specifies certain key economic factors which should be taken into account when considering public interest, for example, the cost effect of the proposed anti-dumping measure on industrial users, consumers, importers, wholesalers and retailers, productivity effect on downstream users, competition and availability of choice to users. Such list would be non-exhaustive and would not preclude Members from taking into account other economic factors which they consider relevant for the purpose of the consideration;
3. **right for interested members of the public to present information**: interested members of the public should be able to present facts and views in connection with the consideration of public interest⁴, and to access relevant information for this purpose;
4. **transparency**: authorities should disclose their findings and explain how relevant facts have been evaluated in their determination.

The FANs reserve the right to elaborate on these proposals in future. In particular, the FANs would be happy to discuss with Members further on how the public interest provision would work in practice, both in terms of substance and procedures.

¹ TN/RL/W/6. Canada and the EC have also made proposals for including a public interest element in the ADA - see TN/RL/W/1 and 47; TN/RL/W/13.

² While the public interest provision proposed in this paper focuses on economic considerations, this proposal does not preclude Members from taking other non-economic considerations into account in deciding not to apply an AD measure.

³ The FANs would be open to discuss with Members as to how AD measures may be mitigated (for example, by reducing the duty level, reducing the period of application of the anti-dumping measure, or by suspension of the measure).

⁴ For this purpose, public notice should be published, notification sent to known interested persons (e.g. industrial users, consumer organisations, wholesalers, retailers, importers and parties to the investigation), and members of the public given a reasonable period to present their facts and views.