

# WORLD TRADE ORGANIZATION

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Negotiating Group on Rules

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## FURTHER EXPLANATION ON THE PROPOSALS ON ARTICLE 5.8 OF THE ADA (NEGLIGIBLE IMPORTS)

### Communication from the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu

The following communication, dated 1 March 2006, is being circulated at the request of the delegation of the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu.

#### **Introduction**

During the informal plenary session of the meeting of the Rules Negotiating Group held during 25-26 November 2005, several Members provided valuable comments on the "Proposals on Article 5.8 of the ADA"(TN/RL/GEN/68), submitted by the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu. In particular, we were asked to clarify the proposed added footnote regarding cumulation rule of the said provision<sup>1</sup>. In this paper, we are pleased to provide additional explanation of the rationale of the amended footnote and how it would function.

In addition to clarifying the issue on cumulating imports from countries that are deemed as negligible, the proponent would like to urge Members to consider favourably another proposal in the submission, in which we suggest replacing the criteria of negligibility test from "import share" to "domestic market share". As explained by the proponent in the relevant discussions, domestic market share is a better indicator for assessing the impact of dumped imports to the domestic industry, compared with "import share". A more logical and liberal threshold would contribute positively to alleviating the excessive burden of anti-dumping investigation to exporting countries, in particularly those developing countries whose export volume is less significant and their exporters are less experienced in effectively defending their right during the course of the sophisticated and sometimes costly anti-dumping investigation.

#### **Clarification on cumulation rule:**

According to Article 5.8 of the ADA, if an anti-dumping investigation were launched against several countries, if the dumped imports a particular country individually account for is less than 3% of imports of the like product in the importing country, and where the dumped imports those small sources collectively accounts for are less than 7% of the imports of the like product in the importing country, the investigation against those exporting countries shall be terminated, as illustrated below:

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<sup>1</sup> Jamaica raised the relevant question in its submission, TN/RL/W/198.

Subject Country	Domestic Market Share <sup>2</sup>	Excluded
A	2.8%	Yes
B	2.0%	Yes
C	1.7%	Yes
Total	6.5%	

However, the rule is not so clear when the total volume of cumulated imports deemed as negligible is more than 7%. Here, at least two alternatives are available to the authorities, as illustrated below:

Alternative 1 If the cumulative dumped import share of countries A, B, C and D in the importing country X is more than 7%, the investigation shall be terminated immediately for countries B, C and D whose cumulative import share (4.3%), adding their volume of dumped imports in ascending order, is less than 7%, while country A (the largest source of negligible imports) will continue to be subject to the investigation.

Subject Country	Domestic Market Share	Excluded
A	2.8%	No
B	2.0%	Yes
C	1.7%	Yes
D	0.6%	Yes
Total (A-D)	7.1%	

Alternative 2 As long as the cumulative import share of A, B, C and D is greater than 7%, the investigation for all of them will be continued.

Subject Country	Domestic Market Share	Excluded
A	2.8%	No
B	2.0%	No
C	1.7%	No
D	0.6%	No
Total (A-D)	7.1%	

The text of our proposed new footnote, which intends to apply to Alternative 1 above, is as follows: *"In the event that countries which individually account for less than 3 per cent of the domestic consumption of the like product in the importing Member collectively account for more than 7 per cent of domestic consumption of the like product in the importing Member, the volume of dumped imports regarded as negligible shall refer only to those from the countries which collectively, by adding their volume of dumped imports in ascending order, account for less than 7 per cent of domestic consumption of the like product in the importing Member."*

<sup>2</sup> Notwithstanding that import share is used in the current provision of the ADA for the purpose of negligibility test, we replace it with "domestic market share" in the three illustrative examples, in order to be consistent with the proposed amendment in our proposal, TN/RL/GEN/68.

Our proposal is designed to avoid the situation under Alternative 2 above where, in practice, it is possible for domestic petitioners to add another insignificant exporting country (D) to their petition, taking the collective total to be more than 7% and thus making all four countries subject to continued investigation. Under our proposal, based on Alternative 1, at least the smallest sources of the negligible imports (B, C and D) would not be subject to the investigation.

The main advantage of the proposed clarification is therefore to prevent the absurd situation resulting from Alternative 2, where even the smallest of the importing countries are subject to the investigation. The proposal also preserves the basic principle of the ADA that anti-dumping measures should not be used against exporting countries account for negligible imports.

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