

**DRAFTING PROPOSALS ON ISSUES RELATING TO THE PHASING-IN OF THE
AMENDMENTS TO THE ANTI-DUMPING AGREEMENT (ARTICLE 18.3 *BIS*
AS PROPOSED BY THE CHAIR IN TN/RL/W/213)**

Communication from Norway

The following communication, dated 16 April 2008, is being circulated at the request of the Delegation of Norway.¹

1. Introduction

1. The issue of the phasing-in or entry into force of the amendments to the *Anti-Dumping Agreement* has been among the issues identified by Members that must be addressed in the negotiations. This paper analyses the Chair's text (TN/RL/W/213) on the above-mentioned issue as a contribution to the further negotiations in the Negotiating Group.

2. Together with the comments and suggestions made in the Negotiating Group, they form the basis for the textual proposal set out below. We suggest that these amendments to the Chair's text be made so as to provide Members with a better basis for further negotiations regarding these issues.

3. This submission is without prejudice to the views we may have on other parts of the Chair's text.

2. The phasing in of the amendments

4. Members have engaged in the negotiations under the DDA to address a number of short-comings in the existing *Anti-Dumping Agreement*. These short-comings have become apparent in respect of measures that have been in place or that are still in place.

5. Members need clarity on when the new amendments will enter into force, and how they will affect existing anti-dumping measures.

6. After the Uruguay Round, a major flaw in the result was that certain Members could refuse to do sunset-reviews before the year 2000. This led to the perpetuation of old anti-dumping measures, *firstly* for 5 additional years. *Secondly*, as certain Members just "rolled over" anti-dumping measures without doing a proper review, it had as a consequence that anti-dumping measures pre-dating the Uruguay Round still remain in place today.

¹ This paper was submitted to the Negotiating Group as a room document in March 2008.

7. The result of the DDA must bring changes to this situation, and ensure that an effective sunset provision immediately applies to pre-existing measures. The mistake of the Uruguay Round must not be continued.

8. It is, therefore extremely disappointing to see the proposal by the Chair, which reads:

18.3 bis Subject to subparagraph 3.1bis, the results of the DDA shall apply to investigations, and reviews of existing measures, initiated pursuant to applications which have been made on or after the date of entry into force of those results or, where an investigation or review is initiated by the authorities without those authorities having received an application, the investigation or review was initiated on or after the date of entry into force of those results.

18.3.1bis For the purpose of Article 11.3.5, anti-dumping measures in existence as of the date of entry into force of the results of the DDA shall be deemed to be imposed on that date.

9. Although Article 18.3 *bis* makes the result of these negotiations applicable to reviews of existing measures, Article 18.3.1 *bis* makes the new sunset provisions applicable only [5][8][10] years after the entry into force of the amended agreement.

10. The consequence will be that certain anti-dumping measures will have been in place for 20, 30 or 40 years, or more, before the new provision kicks in. This is not acceptable. Any anti-dumping measure that has been in effect longer than the maximum period prescribed in Article 11.3 must be immediately terminated upon the entry into force of the DDA agreements. Furthermore, for all other anti-dumping measures, the maximum period set forth in Article 11.3 shall take effect when the measure reaches that maximum, computed from the entry into force of the measure itself. We therefore suggest the following modifications in the Chair's text:

Amend Article 18.3.bis of the Chair's text as follows:

~~18.3 bis Subject to subparagraph 3.1bis, T~~the results of the DDA shall apply to investigations, and reviews of existing measures, initiated pursuant to applications which have been made on or after the date of entry into force of those results or, where an investigation or review is initiated by the authorities without those authorities having received an application, the investigation or review was initiated on or after the date of entry into force of those results. Any anti-dumping measure in existence as of the date of entry into force of the DDA, and that has been in effect longer than the maximum period prescribed in Article 11.3, shall be terminated immediately upon the entry into force of the results of the DDA. For other existing anti-dumping measures, the maximum period in Article 11.3 shall be calculated from the entry into force of the measure itself.

~~18.3.1bis For the purpose of Article 11.3.5, anti dumping measures in existence as of the date of entry into force of the results of the DDA shall be deemed to be imposed on that date.~~
