

**PRICE UNDERTAKINGS<sup>1</sup>**

Communication from Brazil; Chile; Colombia; Costa Rica; Hong Kong, China;  
Japan; Korea, Republic of; Norway; Switzerland; Separate Customs  
Territory of Taiwan, Penghu, Kinmen and Matsu; and Thailand

The following communication, dated 7 April 2004, is being circulated at the request of the Delegations of Brazil; Chile; Colombia; Costa Rica; Hong Kong, China; Japan; Korea, Republic of; Norway; Switzerland; Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu; and Thailand.

The submitting delegations have requested that this paper, which was submitted to the Rules Negotiating Group as an informal document (JOB(04)/41 and Rev.1\*), also be circulated as a formal document.

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**Basic Principle:**

- *Allow exporters to manage their regular business* without the imposition of anti-dumping duties, *while at the same time protecting the domestic industry* from the injurious effects of dumping.
- There must be *clearly defined terms and procedures for the price undertaking* that provide meaningful opportunities for exporters to offer, through a price undertaking, the removal of the injury caused by dumping.

**Problem with the current AD Agreement:**

- Article 8 currently provides few guidelines on terms and procedures relating to price undertaking. It also leaves authorities a wide level of discretion to refuse offers of price undertakings.

**Proposal for Amendment:**

1. Clarify that the authorities in the importing country cannot require all exporters, the majority of exporters or a specific proportion of the exporters to offer price undertakings as a condition for the acceptance of price undertaking offers from one or a limited number of exporters.
2. Require authorities to provide, in a public notice, the criteria and reasons for non-acceptance of a price undertaking offer, and to permit, before a final decision is taken and within the time-limits of the investigation, comments from the exporter offering the price undertaking.

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<sup>1</sup>This issue has been referred to by Members in documents TN/RL/W/10, TN/RL/W/26, TN/RL/W/31, TN/RL/W/47, TN/RL/W/66 TN/RL/W/81, TN/RL/W/99, TN/RL/W/118, TN/RL/W/144.

\*In English only.

As regard Article 8.3, this sets out certain grounds for rejection of price undertakings, including reasons of “impracticability” and “other reasons”. In our view, it is necessary to minimize the wide level of discretion and ambiguity contained in this provision. This includes, *inter alia*, to clarify that the existence of a large number of exporters in itself is not a valid reason for rejection, except in clearly defined exceptional circumstances, including when compliance cannot be monitored. Furthermore, the general policy reasons set out in Article 8.3 does not constitute an acceptable reason for rejection of offers of price undertakings.

3. Clarify that price undertaking offers shall be accepted if they offset injury caused by dumping and comply with the procedures and other conditions necessary for the implementation of the price undertaking. This proposal should be seen in the context of the proposal on “Lesser Duty”.

4. Clarify that authorities, prior to the preliminary determination of injury and dumping, shall inform exporters of their right to offer price undertakings as well as make known to them the applicable rules and procedures to be followed in requesting consideration of price undertakings, including any procedural deadlines.

5. Clarify that exporters have the right to request an adjustment of the price undertaking if there are changes in circumstances, including situation where domestic market price falls below the level stipulated in the price undertaking.

6. Clarify that price undertakings should be implemented in good faith and in a predictable manner, and that they should not be terminated merely because of minor non-compliance of procedural requirements, provided the substantive commitments are respected.

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