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PROPOSAL ON *DE MINIMIS* MARGINS OF DUMPING

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

Revision

The following communication, dated 2 February 2005, is being circulated at the request of the Delegations of Brazil; Chile; Colombia; Costa Rica; Hong Kong, China; Israel; Japan; Korea, Rep. of; Norway; Singapore; Switzerland; the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu; Thailand; and Turkey

The submitting delegations have requested that this paper, which was submitted to the Rules Negotiating Group as an informal document (JOB(05)/10/Rev.1), also be circulated as a formal document.

Description of the Problem:

Article 5.8 provides that the margins of dumping in an investigation shall be considered *de minimis* if such margins are less than 2 percent of the export price. *De minimis* margins result in a negative determination of dumping and no application of anti-dumping measures. We believe that this threshold is too low.

It is normal business practice that companies set different prices for different sales transactions depending on various factors, such as their relationship with their customers, sales volume, market conditions, etc. Thus, small differences in the price are common in a competitive market. In a case where the calculated dumping margin, i.e. the difference between the export price and the normal value, is small, such small margins are more likely to be the result of normal price variation, rather than a pattern of dumping. The imposition of AD duties on companies with such small margins has the risk of hindering normal and healthy competition among companies.

This risk is further amplified by the margin of error which is inherent in any dumping margin calculation. Authorities collect detailed data on price, volume, cost from the respondents, and the calculation of the normal value, the export price and the dumping margin involves very complex treatment of such data. Thus, even if authorities try to undertake the dumping margin calculation as accurate as possible, it is inevitable that the authorities and the respondents have to face the problem of a certain level of margin of error in the calculation. If the calculated margin is small and there is a possibility that such margin is within the margin of error, the risk of punishing normal business behaviour for the reason of small calculated margins should not be overlooked.

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The concept of *de minimis* margins of dumping also assumes that dumping at or below a certain level is unlikely to seriously affect a domestic industry in an importing country. Companies with margins of dumping which have little or no effect on competition in the importing country should not be subject to the burdens of antidumping investigations. An investigation itself can inhibit trade. The cost to a producer/exporter, especially to SMEs, of cooperating in an investigation is substantial and adds to the costs of trading. By raising the threshold for the imposition of antidumping measures, cases that have little or no competitive effects would be eliminated.

In addition, companies that seek to avoid dumping should not be forced to carry out extremely precise calculations on an ongoing basis, only for anti-dumping purposes, to ensure that their sales are above normal value. Currently, exporters often cannot know whether they are likely to be found dumping. This is because authorities in anti-dumping investigations often change the methodologies that companies use in the ordinary course of business to calculate their costs and set their domestic and export prices.[1] These changes can affect the dumping margin.

Considering the above, it should be questioned whether or not the current 2% *de minimis* threshold is appropriate in order that a calculated small margin, which inherently contains a margin of error, would not hinder normal and healthy business activities and in order to identify the margin that cannot cause material injury to a domestic industry. Raising the *de minimis* level would have little effect on the legitimate protection of industries in importing countries from dumping. It would, however, reduce the application of anti-dumping measures in situations where they would provide little, if any, real protection.[2]

Proposal:

Amend Article 5.8 to provide that a margin of dumping of less than [X] % is to be considered *de minimis* and should result in a negative determination of dumping.

Note: We will further elaborate on the appropriate level of "X" % to which the *de minimis* threshold should be raised, giving particular consideration to the developmental needs of developing countries, particularly LDCs, whose exports are particularly vulnerable to the imposition of AD measures by other Members.

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[1] For example, in one case investigating authorities changed the costs that a respondent had reported using its normal books and records. The authorities changed the company's normal cost allocation methods, which substantially increased the production costs that were used for the dumping calculation. Authorities often make such changes, even when the respondents' normal accounting methodologies are reasonable and not inconsistent with the GAAP of the exporting country. Such changes can directly affect the dumping margin. As a result, it is impossible for respondents to estimate the dumping margin that the authorities will calculate. They therefore cannot organize their operations in order to avoid dumping. A modest increase in the *de minimis* threshold would improve this situation.

[2] For example, a study in a major user of AD measures showed that nearly 80 percent of all AD investigations in that country result in margins of dumping of over 10%, with the mean duty being nearly 50%. This same study showed that the measures of that country are not aberrational. Numerous countries have higher mean rates and, between 1995 and 1999, no country had a mean rate below 5%. Another major user of AD measures, which applies the lesser duty rule, had mean duty rates between 1995 and 1999 of 27.7%. This indicates that it is large margins of dumping which are the problem, not small margins which reflect legitimate competition.