

PROPOSAL ON PROHIBITION OF ZEROING

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

The following communication, dated 5 June 2003, has been received from the delegations of Brazil; Chile; Colombia; Costa Rica; Hong Kong, China; Israel; Japan; Korea; Mexico; Norway; the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu; Singapore; Switzerland and Thailand.

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This proposal concerns the Prohibition of Zeroing in the calculation of dumping margins. As it will be recalled, this issue has been identified in document TN/RL/W/6. Other Members have referred to this issue in document TN/RL/W/26 and TN/RL/W/66.

This proposal indicates one way to overcome or resolve the problem of the practice of zeroing in investigations and reviews. The discussions in the Negotiating Group may assist in improving this proposal. Consequently, we reserve our right to modify or complement the proposal as appropriate.

In preparing and/or analyzing specific provisions, it is clear that amendment of the existing text may have an impact on other Articles of the AD Agreement, which have so far not been explicitly addressed. These links cannot be fully addressed until we have seen a comprehensive overview of proposed amendments. Consequently, we also reserve the right to make proposals on provisions which may not have been explicitly addressed so far for clarification or improvement.

Issue : Prohibiting the Practice of Zeroing

Relevant Provision: Articles 2.1, 2.4, 2.4.2, 9.3, 9.5, 11.2 and 11.3

Description of Problem (TN/RL/W/6):

Article VI:1 of the General Agreement on Tariffs and Trade 1994 (GATT) addresses dumping in the context of “a product” being introduced into the commerce of an importing country at less than its normal value. Similarly, Article VI:2 of the GATT provides for the levying of anti-dumping duties on a product. This reference to a “product” is carried over to the AD Agreement. Article 2.1 provides that, for the purpose of the AD Agreement, “a product” is to be considered as being dumped, if the export price of “the product” is less than the comparable price for the like product. Articles 5.2(ii) and 12.2.1(ii) states that an AD investigation must be conducted with respect to the (alleged dumped) *product*. Article 6.10 obliges the authorities to determine an individual margin of dumping for each known exporter or producer of the product under investigation.

Thus, it is clear that the basic principle of the AD Agreement is that an investigation shall determine whether imports from an exporter or producer of a product as a whole have been dumped in the importing market, not whether there are individual sales of that product or models of that product, which have been sold below normal value. In this sense, the establishment of dumping margin under the Agreement should be made by evaluating the product under investigation as a whole, not just a portion of the products like some models or specifications. In this context, it should be noted that we will submit a separate proposal on the definition of “a product under investigation”.

Article 2.4 of the AD Agreement seeks to ensure a “fair comparison” between export price and the normal value of the product under consideration. As part of a fair comparison, Article 2.4.2 defines the basis of the comparison that should be made between export prices of all comparable transactions and normal value, namely comparison on a weighted average-to-weighted average or transaction-to-transaction basis. The Appellate Body confirmed this basic principle in *European Communities - Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India*.¹

Although there are many issues relating to “fair comparison” under Article 2.4 of the AD Agreement that should be addressed and such issues are interlinked, this proposal focuses on the prohibition of “zeroing”. We will submit proposals addressing other issues related to “fair comparison”, including issues related to the calculation methodologies set out in Article 2.4.2 in a separate paper.

During the course of an investigation some Members have adopted a practice whereby they first calculate the margins of dumping on a model-specific, specification-specific, or sale-specific basis within the product under consideration. In calculating the entire margin of dumping for a producer, these Members treat comparisons with individual negative dumping margins as zero rather than using these negative margins of dumping to offset positive margins of dumping found on comparison of other models, specifications, or sales. This practice, commonly known as “zeroing,” overstates the margin of dumping of the imported product because it only considers positive margins of dumping and not negative margins of dumping in arriving at the individual margin of dumping for a producer as a whole of the product under consideration.

The arbitrary creation of individual margin of dumping for a producer based on zeroing of negative margins of dumping cannot be justified in investigations or in reviews under Articles 9 and 11. Therefore, Article 2.4.2, which sets forth the basis of the comparison between export prices and normal value, needs to be clarified so as to explicitly rule out the practice of zeroing in investigations and in reviews under Articles 9 and 11.²

As such, we are making the following proposals.

¹ WT/DS141/R, WT/DS141/AB/R, adopted 12 March 2001. The report states “From the wording of {Article 2.1}, it is clear to us that the *Anti-Dumping Agreement* concerns the dumping of a *product*, and that, therefore, the margins of dumping to which Article 2.4.2 refers are the margins of dumping for a *product*.” *Id.* at para. 51. The report further states “... we see nothing in Article 2.4.2 or in any other provision of the *Anti-Dumping Agreement* that provides for the establishment of ‘the existence of margins of dumping’ for types or models of the product under investigation; to the contrary, all references to the establishment of the ‘existence of margins of dumping’ are references to the *product* that is subject of the investigation.” *Id.* at para. 53.

² In the context of the “Proposal on Reviews” (TN/RL/W/83), which proposes that the provisions of Article 2 to 6 shall apply, whenever applicable, to reviews, the prohibition of zeroing which is to be provided in Article 2.4.2 should apply to the determination of dumping margins in reviews as well.

Elements of a Solution:

1. Prohibit the Practice of “Zeroing” in the Calculation of Dumping Margins in All AD Proceedings

Proposals:

Amend Article 2.4.2 to explicitly provide that regardless of the basis of the comparison of export prices to normal value (i.e. weighted average-to-weighted average or transaction-to-transaction, or weighted average-to-transaction), all positive margins of dumping and negative margins of dumping found on imports from an exporter or producer of the product subject to investigation or review must be added up.

Further amend the first sentence of Article 2.4.2 to clarify that the Article applies to initial investigations and all subsequent reviews under Articles 9 and 11.³

Explanation:

These proposals are intended to clarify that regardless of the basis of the comparison methodology used by particular authorities, positive margins of dumping and negative margins of dumping must be added up in the determination of the margin of dumping for the imports of the product as a whole in both the initial investigations and subsequent reviews.

2. Clarify That A Single Margin of Dumping Must Be Calculated for the Entire Period of Investigation or Review.

Proposal:

Add a provision to Article 2.4 clarifying that, regardless of the comparison methodology, if margins of dumping are determined separately for imports during multiple portions of the entire period of an investigation or review, the margin of dumping to be determined in the investigation or review must be a single margin of dumping for all imports during the entire period of investigation or review.

Explanation:

It is possible to effect “zeroing” by subdividing the period of investigation or review and calculating separate margins for each such period (e.g. month, quarter, semi-annual). Calculating margins for subdivided periods separately and not offsetting the positive margins with negative margins for the entire period of investigation or review can have the same effect as zeroing. The fact that an exporter is dumping in some portion of the period of investigation or review, but has no margin of dumping on exports as a whole during the full period of investigation or review, does not justify finding margins of dumping.

³ This proposal is also related to our previous proposal on reviews, WT/RL/W/83 (25 April 2003).