

WORLD TRADE ORGANIZATION

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Negotiating Group on Rules

Original: English

LESSER DUTY RULE¹

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

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; Israel; Japan; Korea, Republic of; Mexico; Norway; Singapore; Switzerland; 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(04)/40 and Rev.1*), also be circulated as a formal document.

Basic Principle:

- Anti-dumping measures are intended to be used for the limited purpose of protecting the domestic industry from the injurious effects of dumping.
- There must be a mechanism that ensures that the amount of the anti-dumping duty does not exceed the amount necessary to offset the injurious effect by dumped imports.

Problem of the current AD Agreement:

- Current Article 9.1 provides ONLY a simple non-mandatory statement of this principle without any guidelines on how to establish the level of lesser duty.

Amendment:

1. Improve the AD Agreement by ensuring that anti-dumping duties are not imposed in excess of what is required to remove the injury caused by dumping:

- Amend Articles 9.1, 9.3 and 9.4 to provide for the mandatory application of the lesser duty rule.

¹This issue has been referred to by Members in documents TN/RL/W/4, 6, 7, 13, 22, 25, 26, 28, 29, 34, 45, 47, 54, 55, 56, 62, 65, 66, 73, 74, 79, 86, 94, 99, 101, 103, 106, 110, 118, 119, 121, and 134.

*In English only.

2. In order to properly implement a mandatory lesser duty rule, specify the methods for determining the duty level which will be adequate to remove the injury caused by dumping (referred to in this paper as “lesser duty level”).

- Add a new sub-article after the current Article 9.1 to explain that : (i) the calculation of the lesser duty level must be based on a methodology which will be provided in Annex III; and (ii) the lesser duty level shall only apply if it is lower than the margin of dumping; and
 - Add a new Annex III which provides that the lesser duty level shall be calculated in accordance with the following methods and that the calculation of the lesser duty level shall take full account of the obligation set out in Article 3.5 to separate the injurious effects of other factors than the dumped imports, so as not to attribute these effects to the lesser duty level:
 - (a) Price Undercutting Method: the lesser duty level is calculated as the difference between the price, normally at the ex-factory level, of the domestic like product and the CIF landed price of the dumped imports; with appropriate adjustment based on differences affecting the price comparability between the domestic like product and the imported product including market characteristics affecting customers’ purchase decision between them in the market of the importing Member;
 - (b) Representative Cost Plus Profit Method: the lesser duty level is calculated as the difference between the representative per unit cost of production, selling, general and administrative costs (“SG&A”), and profit of the domestic like product; and the CIF landed price of the dumped imports; with appropriate adjustment based on differences affecting the price comparability between the domestic like product and the imported product including market characteristics affecting customers’ purchase decision between them in the market of the importing Member;
 - (c) Non-dumped Import Price Method: the lesser duty level is calculated as the difference between the CIF landed price of the non-dumped imports of the like products and the CIF landed price of the dumped imports.
 - Ensure in Annex III that Article 2.4, including the prohibition of zeroing, applies *mutatis mutandis* to the calculation of the lesser duty level.
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