

**FURTHER SUBMISSION ON ISSUES RELATING TO THE INITIATION
AND COMPLETION OF INVESTIGATIONS¹**

Paper from Chile and Hong Kong, China

Revision

The following communication, dated 20 April 2006, is being circulated at the request of the Delegations of Chile and Hong Kong, China.

The submitting delegation has requested that this paper, which was submitted to the Rules Negotiating Group as an informal document (JOB(06)/106/Rev.1), also be circulated as a formal document.

In TN/RL/GEN/69, Hong Kong, China proposed several textual changes to Article 5 of the Anti-dumping Agreement.

In view of the discussions in the Negotiating Group on Rules, Hong Kong, China would like to make revisions/additions to two aspects of its earlier proposal:

(1) Article 5.3

Given that Article 5.3 sets the standard of initiation of an investigation, there should be a common understanding among members of what “sufficient evidence” means. Hong Kong, China notes however that authorities often simply refer to the existence of “sufficient evidence” in notices of initiation. For this reason, in TN/RL/GEN/69, Hong Kong, China proposes that the requirement of “sufficient evidence” should be clarified to refer to sufficient evidence of dumping, injury and a causal link – in other words, the same standard as for self-initiation under Article 5.6.

In addition to the proposal in TN/RL/GEN/69, Hong Kong, China notes that the margin of dumping in the petition is often estimated based on constructed normal value using the petitioner’s own cost of production. Since dumping refers to price discrimination by the exporter in the exporter’s domestic and export market sales, the petitioner’s own cost of production may cast serious doubt on the fairness and reliability of the allegation of dumping. Moreover, such cost data is usually withheld to protect confidentiality, and this makes it even more difficult for exporters to challenge the basis of the allegation of dumping. Hong Kong, China believes therefore that constructed normal value (or third country export price) should only be used to estimate dumping as a last resort, if home market

¹ The proposal contained in this document does not represent a final position and may be subject to further addition and/or modification in the course of the negotiations. Other provisions of the Anti-Dumping Agreement that may be affected by the proposal may be examined in the later stages of the negotiations when Members have a more comprehensive picture of the amended Agreement.

sales prices are not available, and if authorities consider that the constructed or third country price is prima facie a fair substitute for home market normal value, having regard to the assumptions and methodologies used in deriving the constructed or third country price.

Moreover, we support the proposal from Chile, in TN/RL/GEN/75, that authorities should not take the allegations in the petition at face value, but should check the evidence against information from independent public sources. This is also incorporated in the draft text in the Annex to this paper.

(2) Articles 5.5 and 5.8:

In view of the lack of quick and effective recourse to dispute settlement over initiation, in TN/RL/GEN/69, Hong Kong, China proposes that prior to initiation, exporters and the exporter government be given a copy of the non-confidential version of the petition, and a 15-day period to comment on it. Authorities should address those comments before initiation, or within 60 days thereafter.

Hong Kong, China continues to believe that giving exporters opportunity to comment on the petition is a preferable solution as it offers a more effective means to identify early, and to avoid, investigations that are initiated based on insufficient information. However, in view of the concerns raised by a number of Members, Hong Kong, China is prepared to propose an alternative to this aspect of our proposal. Under this alternative, while the exporters and the exporter governments should be given a copy of the non-confidential version of the petition prior to initiation, there will be no mandatory period for comment prior to initiation. However, should authorities subsequently receive comments from exporters or the exporting government concerning the accuracy or sufficiency of the petition, backed by public data, the authorities must provide a full reply to the exporters within 90 days of receipt of those comments. To ensure transparency, the comments received and the authorities' response should also be included in the relevant notice under Article 12.

These further amendments are shown in **bold** in the Annex to this paper.

This paper supplements, and should be read together with, the proposals in TN/RL/GEN/69. Hong Kong, China continues to stand by the other proposals in that paper, namely Articles 5.4 (modified as suggested by Norway in its TN/RL/GEN/103); Article 5.5.1; Article 5.10; Article 5.11 and consequential amendments to Articles 5.6 and 6.1.3. Hong Kong, China reserves the right to make further additions or revisions to the proposals in that paper.

ANNEX

Revisions to Article 5.3

5.3 The authorities shall examine the accuracy and adequacy of the evidence provided in the application to determine whether there is sufficient evidence² of dumping, injury and a causal link to justify the initiation of an investigation.

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Revisions to Articles 5.5 and 5.8

5.5 The authorities shall avoid, unless a decision has been made to initiate an investigation, any publicizing of the application for the initiation of an investigation. However, promptly after receipt of a properly documented application and before proceeding to initiate an investigation, the authorities shall notify and provide the full text (due regard to be paid to the requirement for the protection of confidential information, as provided for in paragraph 5 of Article 6) of the application to the government of the exporting Member and, where practicable, to the exporters and foreign producers identified in the application³.

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5.8 “An application under paragraph 1 shall be rejected and an investigation shall be terminated promptly as soon as the authorities concerned are satisfied that the standing requirement under paragraph 4 has not been met at the time of the initiation (in case of investigation initiated on the basis of an application) or that there is not sufficient evidence of ~~either dumping, or of injury or~~ causal link to justify proceeding with the case...⁴”

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6.1.3 [Consequential amendments to Article 6.1.3 as per TN/RL/GEN/69]

² New footnote: Authorities shall, *inter alia*, check the evidence in the application against information from other independent public sources. Normal value shall not be based on third country export price or constructed normal value, unless home market sales prices are unavailable, and authorities are satisfied that the third country export price or constructed normal value is a prima facie fair substitute for home market sales prices, having regard to the assumptions and methodologies used.

³ New footnote: It being understood that, where the number of exporters involved is particularly high, the full text of the written application may instead be provided to the relevant trade association.

⁴ New footnote: Where an interested party alleges that there is insufficient standing or evidence justifying initiation, and supports its allegations with public data such as official statistics, or otherwise alerts the authorities as to the inconsistencies in the application, the authorities shall promptly look into the complaint and provide a full reply to the party and other interested parties within [90] days thereof, or, if the investigation is expected to conclude within [six] months of initiation, no later than at the time of the final determination. [Editorial note: Article 12 should be amended to provide for the notice of initiation, preliminary determination or final determination (whichever is the relevant earliest notice) to state the comments received and the authorities' response to those comments.]