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Negotiating Group on Rules

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PROPOSAL ON NEGLIGIBLE IMPORTS

Paper from 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 following communication, dated 2 February 2005, is being circulated at the request of the Delegations of 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)/11), also be circulated as a formal document.

Description of the Problem:

Article 5.8 provides for mandatory termination of an investigation in case dumped imports from a particular country are less than 3% of total imports and dumped imports from all negligible sources combined do not exceed 7% of total imports. Where a country is determined to be negligible, the investigation is terminated and no antidumping measures are applied. The problem with the current provision is that the threshold of negligibility bears no relationship to the production and shipments of the allegedly damaged producers in the importing country.¹

The objective of the “negligible imports” exception is to exclude import sources that are too small to have a significant adverse impact on the industry in the importing country. The current test, based on dumped imports’ share of total imports, does not measure the imports’ impact on the domestic industry. In contrast, the dumped imports’ share of the domestic market (or of the domestic industry’s production/shipments in the domestic market) is a relevant indicator of their impact.

For example, assume that total imports of a product (from all sources) only account for 10% of domestic consumption in the importing country. In such a case, imports from an individual country under investigation would have to represent less than 0.3% of domestic consumption in order to be negligible. Moreover, imports from such “negligible” countries could still be included in the investigation if they totalled more than 0.7% of domestic consumption. These are clearly such trivial quantities that involving them in investigations is absurd.

¹ Another problem with the current negligibility test is that it encourages industries requesting antidumping relief to include as many small sources as possible, regardless of their individual impact on the industry in the importing country, merely to ensure that the collective 7% threshold is met. In effect, this allows requesting industries to shut import sources out of the market before they have even gained a foothold in the market. We are willing to discuss further on appropriate ways to address this problem.

Additionally, Article 5.8 provides no guidance as to the time period over which authorities should measure negligibility. This should be clarified, both to provide authorities with guidance, and to avoid authorities' choosing the time period on an *ad hoc* and results-oriented basis.

Elements of a Solution:

1. Modify the Basis for Determining Negligibility

Proposal:

Amend Article 5.8 to provide that the denominator of the threshold for determining whether the volume of dumped imports will be considered to be negligible should be changed to "total domestic consumption of the like product and the product under investigation in the importing country".

Note: We will further elaborate on the appropriate level of the threshold, 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.

Explanation:

Imports can affect to the economic condition of the domestic industry only when those imports are able to affect the conditions of competition in the domestic market. Imports that cannot adversely affect the domestic market must be considered negligible and thus outside the scope of anti-dumping measures. As such, the relevant measure of negligibility should be the proportion of the dumped imports from a particular country relative to the market potentially affected by them. It should not be the dumped imports' proportion of total imports, because this is irrelevant to the imports' effects on the market and industry of the importing country. The negligibility threshold should, therefore, be based on the ratio of imports from a particular country to the total consumption of the like product and the product under investigation in the importing country.

2. Time Period for Determining Negligibility

Proposal:

Clarify Article 5.8 by providing the time period over which that negligibility must be examined, based on the volume of dumped imports relative to the total consumption of the like product and the product under investigation in the importing country. The time period should be the period of investigation used by the authorities for purposes of the dumping determination.

Explanation:

Article 5.8 currently leaves to the discretion of the authorities the period for measuring negligibility. This allows the authorities to choose among imports in recent periods and to base the determination on those that exceed the negligibility threshold. Our proposal would avoid the discretion by the authorities to choose an arbitrary short-term period to get the volume to surpass the negligibility standard.

The period of investigation used by the authorities for purposes of the dumping determination is appropriate also as the time period of determining negligibility, because (a) negligibility is based on “dumped imports” from an exporting country and (b) dumping can be determined only with regard to the period in which the authorities collect data on dumping.
