

PRICE UNDERTAKINGS

Communication from Mexico

The following communication, dated 13 October 2005, is being circulated at the request of the delegation of Mexico.

The submitting delegation has requested that this paper, which was submitted to the Negotiating Group on Rules as an informal document (JOB(05)/250), also be circulated as a formal document.

The proposal contained in this document does not represent a final position and may be subject to further additions and/or amendments in the course of the negotiations.

Object

Once an anti-dumping investigation has been initiated, trade in the goods being investigated becomes seriously affected and, hence, the interests of exporters are also affected. This situation is exacerbated if provisional anti-dumping duties are imposed. Nevertheless, the Anti-Dumping Agreement contains an alternative solution that has been little used, namely, price undertakings, which could be improved to the benefit of all the WTO's Members.

Background

Price undertakings enable foreign producers and exporters to modify their behaviour by eliminating the dumping that is causing or threatening to cause injury to the domestic industry and so avoid imposition of definitive anti-dumping duties. If the undertakings are accepted, they allow fair competition in the importing Member's market.

We therefore consider it necessary to define clear rules on the exporter's right to offer price undertakings, as well as the requirements for their acceptance by the investigating authority.

Problem with the current text of the Anti-Dumping Agreement

Article 8 of the Anti-Dumping Agreement does not define precisely the requirements and procedures for acceptance of a price undertaking by the investigating authority, which means that there is a broad measure of discretion in the acceptance process and, sometimes, the proposed undertaking is rejected.

Some investigating authorities consider price undertakings to be an exception to their usual practice and do not think that they provide adequate protection against unfair imports; or else they lay

down requirements that exceed those in the Anti-Dumping Agreement, thus making it difficult to offer and accept such undertakings.

Proposed amendments

In this regard, we should consider that the fact that the exporter eliminates the dumping and its harmful effects allows healthy competition among economic agents.

A transparent procedure for acceptance or rejection of the price undertaking by the investigating authority needs to be established, avoiding ambiguous provisions that allow a broad measure of discretion.

It should be clearly stated that investigating authority may not require, as a condition for acceptance, that a price undertaking be submitted by a specified number of exporters or by a majority of them.

The investigating authority should be required to explain the reasons for rejecting an undertaking and also to give the exporter an opportunity to make comments and, where applicable, reformulate its proposal so that it can be considered anew by the investigating authority prior to imposing a definitive anti-dumping duty.

Before declaring that a price undertaking has been terminated and then applying anti-dumping duties, the investigating authority should be required to notify the exporter concerned, giving it the opportunity to make comments and, where applicable, remedy any omissions or errors encountered.

This document takes into account proposals and comments by other Members.¹

Proposed Amendments to the Anti-Dumping Agreement

(The new text is underlined and the text to be deleted is crossed out)

Article 8 – Price Undertakings

8.1 Proceedings may² be suspended or terminated without the imposition of provisional measures or anti-dumping duties upon receipt of satisfactory voluntary undertakings³ from any exporter to revise its prices or to cease exports to the area in question at dumped prices so that the authorities are satisfied that the injurious effect of the dumping is eliminated. Price increases under such undertakings shall not be higher than necessary to eliminate the margin of dumping determined for the said exporter. ~~It is desirable that~~ Pursuant to Article 9.1, the price increases shall be less than the margin of dumping if such increases would be adequate to remove the injury to the domestic industry.

8.2 Price undertakings shall not be sought or accepted from exporters unless the authorities of the importing Member have made a preliminary affirmative determination of dumping and injury caused by such dumping. Prior to making such a determination, the authorities shall inform the exporters of their right to offer price undertakings, as well as of the provisions on the applicable legal procedures and time-limits.

¹ TN/RL/W/10, TN/RL/W/26, TN/RL/W/31, TN/RL/W/47, TN/RL/W/66, TN/RL/W/81, TN/RL/W/99, TN/RL/W/118 and TN/RL/W/144, TN/RL/GEN/2 and JOB(05)/79.

² The word "may" shall not be interpreted to allow the simultaneous continuation of proceedings with the implementation of price undertakings except as provided in paragraph 4.

³ The word "satisfactory" may not be interpreted to mean that an undertaking must be submitted by "all" exporters of the product investigated to the importing Member or by a majority of them.

8.3 Acceptance or rejection of a price undertaking shall be based on its own merits. The authorities may not require as a condition for its acceptance that the undertaking be submitted by all exporters, by a majority of them or by a specific group of exporters. Likewise, it shall not be a justified reason to reject the undertakings offered need not be accepted if the authorities consider their acceptance impractical, for example, if that the number of actual or potential exporters is too great, or for other reasons, including reasons of general policy. Should the case arise and where practicable, The authorities shall provide to the exporter the reasons which have led them to consider acceptance of an undertaking as inappropriate, and shall to the extent possible, give the exporter an opportunity to make comments thereon and to reformulate its proposal.

8.4 If an undertaking is accepted, the investigation of dumping and injury shall nevertheless be completed if the exporter so desires or the authorities so decide. In such a case, if a negative determination of dumping or injury is made, the undertaking shall automatically lapse, except in cases where such a determination is due in large part to the existence of a price undertaking. In such cases, the authorities may require that an undertaking be maintained for a reasonable period consistent with the provisions of this Agreement. In the event that an affirmative determination of dumping and injury is made, the undertaking shall continue consistent with its terms and the provisions of this Agreement.

8.5 Price undertakings may be suggested by the authorities of the importing Member, but no exporter shall be forced to enter into such undertakings. The fact that exporters do not offer such undertakings, or do not accept an invitation to do so, shall in no way prejudice the consideration of the case. However, the authorities are free to determine that a threat of injury is more likely to be realized if the dumped imports continue.

8.6 Authorities of an importing Member may require any exporter from whom an undertaking has been accepted to provide periodically information relevant to the fulfilment of such an undertaking and to permit verification of pertinent data. In case of violation of an undertaking, the authorities of the importing Member shall notify the exporter concerned and shall give it an opportunity to make comments and remedy errors or omissions. Nevertheless, when the authorities determine⁴ that the exporter concerned has failed to comply with the terms of the undertaking, they may take, under this Agreement in conformity with its provisions, expeditious actions which may constitute immediate application of provisional measures using the best information available. In such cases, definitive duties may be levied in accordance with this Agreement on products entered for consumption not more than 90 days before the application of such provisional measures, except that any such retroactive assessment shall not apply to imports entered before the violation of the undertaking.

⁴ The authorities shall exercise special care when examining failure to comply with a price undertaking in order to prevent its termination.