

EXPORTERS' RIGHT OF DEFENCE (RIGHT TO THE CALCULATION OF AN INDIVIDUAL DUMPING MARGIN)

Communication from Mexico

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

The Mexican delegation has requested that this document, which was submitted to the Negotiating Group on Rules as an informal document (JOB(05)/251), should 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. We also urge other Members to put forward comments.

Object

To establish more precise rules that guarantee the right of exporters wishing to take part in an anti-dumping investigation or administrative review so that an individual dumping margin can be calculated for them because in some instances investigating authorities, by means of a discretionary decision, choose those exporters who will receive a questionnaire and will be the only exporters with the right to calculation of such a margin, thereby preventing all other exporters and those wishing to do so from replying voluntarily.

Problem with the current Anti-Dumping Agreement

Article 6.1 of the Anti-Dumping Agreement requires investigating authorities to give notice to "All interested parties" of the information which they require and to give exporters "ample opportunity" to present in writing "all evidence" which they consider relevant.

In this connection, we consider that, in order to comply with the aforementioned provision, the authorities should take into account "all evidence" presented by exporters. It is, therefore, important to bear in mind that, by preventing one or more exporters from completing the questionnaire for the purpose of calculating an individual dumping margin, the authorities are denying them the opportunity to defend their interests. Imposing an anti-dumping duty upon an exporter who has not been allowed to reply to the questionnaire also violates his rights because he has not been given an opportunity to demonstrate that his exports are not being dumped.

Article 6.10 provides in this respect that, as a rule, the authorities shall determine a margin of dumping for each exporter or producer, but provides for an exception when the number of exporters,

producers, importers or types of products is so large as to make such a determination impracticable, allowing the authorities to limit their examination to a sample.

We consider that the words " ... so large as to make such a determination impracticable ... " need to be clarified and the obligation to calculate an individual margin for those exporters who wish to be given their dumping margin should be met as some authorities arbitrarily select exporters to reply to the questionnaires, thus violating the general rule and frequently preventing exporters not selected from replying on a voluntary basis.

We also consider it important to clarify the obligation on investigating authorities laid down in Article 6.10.1 in relation to consultation with exporters and obtaining their consent.

Proposed amendments

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 6 – Evidence

6.1 All interested parties in an anti-dumping investigation shall be given notice of the information which the authorities require and ample opportunity to present in writing all evidence which they consider relevant in respect of the investigation in question.

6.1.1 The authorities shall send to all exporters or foreign producers ~~receiving~~ questionnaires used in an anti-dumping investigation and they shall be given at least 30 days for reply.² Due consideration should be given to any request for an extension of the 30-day period and, upon cause shown, such an extension should be granted whenever practicable.

6.1.2 Subject to the requirement to protect confidential information, evidence presented in writing by one interested party shall be made available promptly to other interested parties participating in the investigation.

6.1.3 As soon as an investigation has been initiated, the authorities shall provide the full text of the written application received under paragraph 1 of Article 5 to the known exporters³ and to the authorities of the exporting Member and shall make it available, upon request, to other interested parties involved. Due regard shall be paid to the requirement for the protection of confidential information, as provided for in paragraph 5.

¹ TN/RL/W/29, TN/RL/W/143, TN/RL/W/181 and TN/RL/GEN/46.

² As a general rule, the time-limit for exporters shall be counted from the date of receipt of the questionnaire, which for this purpose shall be deemed to have been received one week from the date on which it was sent to the respondent or received by ~~transmitted to~~ the appropriate diplomatic representative of the exporting Member or, in the case of a separate customs territory Member of the WTO, an official representative of the exporting territory.

³ It being understood that, where the number of exporters involved is particularly high, the full text of the written application should instead be provided only to the authorities of the exporting Member or to the relevant trade association.

6.10 The authorities shall, as a rule, determine an individual margin of dumping for each known exporter or producer concerned of the product under investigation. In cases where the number of exporters, producers and importers who reply to the questionnaire or types of products involved is so large⁴ as to make such a determination impracticable⁵, the authorities may, on an exceptional basis, limit their examination either to a reasonable number of interested parties⁶ or products by using samples which are statistically valid on the basis of information available to the authorities at the time of the selection, or to the largest percentage of the volume of the exports from the country in question which can reasonably be investigated.

6.10.1 Any selection of exporters, producers, importers or types of products made under this paragraph shall be made known ~~preferably be chosen in consultation with to interested parties and with the consent of the exporters, producers or importers concerned, giving them a time-limit in which to express their opinion on the said selection.~~

6.10.2 In cases where the authorities have limited their examination, as provided for in this paragraph, they shall nevertheless determine an individual margin of dumping for any exporter or producer not initially selected who submits the necessary information in time for that information to be considered during the course of the investigation, except where the number of exporters or producers is so large that individual examinations would be unduly burdensome to the authorities and prevent the timely completion of the investigation. The authorities shall consider voluntary responses ~~shall not be discouraged~~ submitted by exporters and shall calculate an individual margin for them, unless the number of exporters is so large that it is impracticable to do so.

⁴ It shall be understood that the number of exporters is "so large" when more than 15 exporters or producers in an investigation involving a single country reply to the questionnaire. In the case of investigations involving products of several origins, the authorities shall consider an individual dumping margin for at least five exporters for each country.

⁵ The authorities shall give a reasoned explanation why it is "impracticable" to calculate an individual margin for all the exporters involved interested in taking part in the investigation. If the number of exporters replying to the questionnaire is so large, the authorities shall select exporters representing at least 60 per cent of total exports, when this percentage is composed of several exporters, otherwise the percentage should be higher, in order to guarantee the right of defence to exporters who do not account for a substantial share of total exports.

⁶ Under no circumstances may "a reasonable number of interested parties" be less than five exporters, although in the case of investigations into imports originating in several countries, the examination should include at least 15 exporters from all the origins.