

PRODUCT UNDER CONSIDERATION¹

Paper from Hong Kong, China

The following communication, dated 19 October 2005, is being circulated at the request of the Delegation of Hong Kong, China.

The submitting delegation has requested that this paper, which was submitted to the Rules Negotiating Group as an informal document (JOB(05)/259), also be circulated as a formal document.

Hong Kong, China welcomes the textual proposals on definition of product under consideration by Brazil; Chile; Israel; Korea, Rep. of; Singapore; Switzerland and Thailand (TN/RL/GEN/50), and by Canada (TN/RL/GEN/73).

Hong Kong, China has benefited from previous discussions on the former submission, noting, in particular, that several members have pointed out that one key concept in defining the scope of product under consideration is the “homogeneity” of the product. Hong Kong, China also notes with interest the textual proposal in the Canadian submission, which appears to build on the former. Hong Kong, China believes the draft text in the Canadian submission can provide a good basis for discussing a new definition on product under consideration. Using the Canadian draft text as the basis, Hong Kong, China marks up its further proposed changes. The main differences are:

- The obligation to define the product under consideration should be a positive obligation to include only the right goods in the product scope. It should not be a passive/negative obligation whereby all goods are included unless authorities determine that some goods should be excluded.
- It clarifies the concept of homogeneity, by specifying that only goods which are alike in all respects, or which have closely resembling physical and market characteristics, should be included in the same product scope. In examining market characteristics, it also adds a requirement to consider whether the goods compete in the same geographical market in the same period².
- It provides, in the case of a split definition subsequent to the initiation, that authorities should re-examine the adequacy of standing in relation to the re-defined product. The rationale is that exporters should not be prejudiced by an inappropriate definition of product under consideration at the time of initiation.

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.

² A similar point was also made in the textual proposal in TN/RL/GEN/50.

In addition, the exporter should have adequate opportunity to comment on the scope of the product under consideration, and its comments should be duly considered by the authorities in determining the scope of the product under consideration. An express provision in Article 5 would be merited³.

³ This issue is also raised in editorial note 8 to the Further Submission on Issues relating to the Initiation and completion of Investigations (TN/RL/GEN/69) from Hong Kong, China.

Textual proposal

5.x An investigation can only be initiated and subsequently conducted with a proper determination of the scope of the product under consideration. ~~Where~~ Only goods which, on the basis of the evidence available at initiation, authorities determine to be alike in all respects or have closely resembling physical and market characteristics, may be included in the definition of product under consideration, and be subject to the same investigation. ~~that there is more than one distinct product under consideration, they shall initiate a separate investigation for each such distinct product.~~ Subsequent to the initiation of an investigation, if the further evidence obtained indicates to authorities that the investigation is with respect to two or more than one distinct products under consideration (i.e. goods that do not have closely resembling physical and market characteristics), an anti-dumping duty shall not be imposed on any distinct product unless a separate determinations of standing⁴, dumping and ~~a separate determination of injury~~ are made with respect to that product.

5.x.1 A determination of whether two goods have closely resembling physical and market characteristics ~~there is more than one distinct product under consideration~~ shall be based on an objective examination of the physical characteristics of the imports, including technical specifications and quality, and their market characteristics, including end uses, substitutability, pricing levels, ~~and distribution channels, and whether they compete in the same geographical market in the same period.~~ This list is not exhaustive, nor can one or several of these factors necessarily give decisive guidance.

⁴ Authorities shall terminate the investigation in respect of a distinct product forthwith if they find that the standing criteria under Article 5 would not have been met at the time of initiation had that product been treated as a distinct product at the time of the initiation.