

TARIFFS AND TRADE

Committee on Anti-Dumping Practices

Ad-Hoc Group on the Implementation of the Anti-Dumping Code

ACCEPTANCE, REVISION AND TERMINATION OF PRICE UNDERTAKINGS

Non-Paper by the Secretariat

Revision

For some time the Ad-Hoc Group has been considering draft recommendations on the use of price undertakings in anti-dumping proceedings involving imports from developing countries, the revision of price undertakings and the procedures for the termination of undertakings. At its meeting in June 1987 the Group requested the secretariat to examine how the problem of the existing overlap between some parts of the three draft recommendations could be resolved. In response to this request the secretariat prepared a non-paper in which an attempt was made to combine various portions of the three draft recommendations into one single text. A revised version of this non-paper, based on the discussion in the Group on 26 October 1987 and 30 May 1988, is circulated herewith.

I. Acceptance of Price Undertakings

1. General

All national legislation of Parties to the Anti-Dumping Code should enable the relevant investigating authorities to consider price undertakings offered by exporters with a view to allowing suspension or termination of investigations (ADP/W/138/Rev.3, paragraph 1).

[The possibility of accepting price undertakings should not be limited to the preliminary stage of the investigation in order to permit convincing findings of dumping and its injurious effects and to provide the exporter with sufficient grounds for offering an undertaking] (ADP/W/138/Rev.3).

[The possibility of accepting a price undertaking shall not be considered unless an investigation has been initiated in accordance with Article 5 of the Code. It shall only be considered when the investigating authority is satisfied, in the course of its investigation, that there is sufficient evidence of dumping and injury caused by such dumping. Where the exporter has indicated a serious interest in offering an undertaking, he should be provided sufficient grounds and time to consider whether to offer such an undertaking.] (ADP/W/138/Rev.3, paragraph 2).

2. Developing countries

Special efforts shall be made to accept offers of price undertakings by exporters from developing countries as a possible constructive remedy within the meaning of Article 13. It is recognized that, as provided in Article 7, undertakings offered need not be accepted if the relevant authorities consider their acceptance impractical, for example, if the number of actual or potential exporters is too great, or for other reasons. [Should the case arise, they shall provide the reasons that might lead them to consider acceptance of an undertaking as inappropriate, and shall, to the extent possible, give the exporter an opportunity to make comments thereon.] [Where practicable, should the case arise, they shall provide the reasons that might lead them to consider acceptance of an undertaking as inappropriate and give the exporter an opportunity to make comments thereon.] (ADP/W/138/Rev.3, paragraph 1).

II. Margin of dumping and price increase under a price undertaking

1. General

An undertaking can be accepted to eliminate the injurious effects of the dumping on the domestic industry of the importing country. Any price increase under an undertaking shall not be higher than necessary to eliminate the margin of dumping. It is desirable that the price increase be less than the margin of dumping if such lesser increase would be adequate to remove the injury to the domestic industry (ADP/W/139/Rev.3, paragraph 1).

2. Developing countries

For ascertaining the margin of dumping, it is necessary in determining normal value to take duly into account the methods mentioned in the Decision by the Committee on Anti-Dumping Practices taken on 5 May 1980 (ADP/2) (ADP/W/138/Rev.3, paragraph 3).

In situations where price undertakings are considered to be appropriate the relevant investigating authorities shall endeavour to settle anti-dumping cases by ensuring prices sufficient to remove the injury, even if the margin of dumping is not entirely compensated. [The terms of a price undertaking shall, to the extent possible, take due account of the particular circumstances of each case.] [The terms of a price undertaking shall, to the extent possible, take due account in each case depending on its particular circumstances of differences in physical characteristics of products from developing countries in comparison with competing products, of marketing conditions and of other differences affecting price comparability.] (ADP/W/138/Rev.3, paragraph 4).

III. Revision of price undertakings

1. General

A revision of an undertaking may be appropriate where relevant changes in the normal value of the exporter concerned or in the market situation in the importing country have occurred since its acceptance. Any revision should normally be made as a result of a formal review except where an adaptation is provided for in the undertaking itself of the exporter and the authorities of the importing country agree to an adaptation. Any revision of prices must be based on positive evidence substantiating the need for such a revision. A copy of the letter to the exporter from the authorities of the importing country suggesting a major adaptation should be sent to the authorities of the exporting country if so requested by the exporter concerned (ADP/W/139/Rev.3, paragraph 2).

A review of an undertaking should be carried out, where and insofar as warranted, either on the initiative of the authorities of the importing country or at the request of the exporters or importers concerned or the domestic industry. Such a request for a review shall be granted if the requesting party submits sufficient information to justify the need for such review. In deciding on the necessity for a review, the authorities of the importing country can also take into account the period of time that has elapsed since the acceptance of the undertaking although this factor would not necessarily be determining. If the investigating authorities decide not to undertake a review, they should provide the applicant with an explanation of the reasons for that decision (ADP/W/139/Rev.3, paragraph 4).

A [review] [formal review in the sense of paragraphs 2 and 3] shall be initiated and carried out to the extent necessary to take into account the information substantiating the need for such review. In carrying out the review, the same procedural rules and guarantees should be respected, insofar as applicable and appropriate, as during the original investigation. In particular, all interested parties should be given the opportunity to make their views known and to provide evidence¹ (ADP/W/139/Rev.3, paragraph 4).

2. Developing countries

When the relevant investigating authorities consider revising an undertaking they shall [make every effort to] take particular account of the special situation of the developing countries.

¹At the meeting of the Group on 30 May 1988, the following proposal was made for an additional subparagraph:

[Contracts existing prior to the initiation of a revision of a price undertaking shall be subject to the terms stipulated in the undertaking in force at the time when the contracts were concluded. The exporter shall notify to the competent authorities of the importing country all necessary information and evidence with a view to the precise determination of such contracts.

[As one example - and not to the exclusion of others - such measures could relate to the possibility of not reviewing an undertaking except at the request of the exporter if the volume of imports from the developing country concerned has not increased during the previous six months in relation to the base period.] [As one example - and not to the exclusion of others - such measures could relate to the possibility of not reviewing an undertaking except at the request of the exporter. If the volume of imports from the developing country concerned has increased in relation to the internal consumption of the importing country during the previous six months in relation to the base period, the importing country could proceed to such a review] (ADP/W/139/Rev.3, paragraph 5).

IV. Termination of price undertakings

1. Right of the authorities of the importing Party to terminate the acceptance of an undertaking, e.g. in case of violation of the terms of an undertaking

[Bearing in mind that an exporter is always free to denounce an undertaking and that the authorities of the importing country are free, under the Code, to refuse its acceptance, it is only logical to conclude that the authorities are also free to denounce an undertaking, in particular if it is subsequently found that the terms of an undertaking have been violated.] [Bearing in mind that an exporter is always free to denounce an undertaking and that the authorities of the importing country are free, under the Code, to refuse its acceptance, it is only logical to conclude that the authorities are also free to denounce an undertaking if it is subsequently found that the terms of an undertaking have been violated or that the undertaking is no longer satisfactory or practical.] [In such a case the exporters concerned shall be given an opportunity to make comments.] (ADP/W/140/Rev.1, paragraph 1).

2. Application of anti-dumping duties subsequent to the termination of an undertaking by the authorities of the importing Party

[Anti-dumping duties may be imposed when an undertaking has been denounced by the importing country only after consultation and after the exporter concerned has been given the opportunity of submitting his observations on the matter.] If the authorities of the importing country denounce an undertaking then it is considered that they should be free to impose an anti-dumping duty instead, provided that such imposition is consistent with the provisions of the Code and that affirmative findings have been made of the existence of dumping and injury. Where the denunciation takes place shortly after the conclusion of the initial investigating [and where circumstances of that investigation have not changed or where a party has not presented new information] it is considered that the duty may be based on the facts established during that investigation. In all other cases the authorities of the importing country shall make every effort to ensure

that definitive duties are based on as up-to-date information as possible, normally by carrying out a formal review of dumping and injury resulting therefrom. [No duties may be imposed on the import of goods that have been shipped from the country of the exporter during the period of validity of an undertaking which has been denounced by the importing country for reasons that have nothing to do with the conduct of the exporter concerned] (ADP/W/140/Rev.1, paragraph 2).

3. Termination of price undertakings as a result of a review or as a result of a "sunset" clause

[Provision should be made for a review of the need for an undertaking after a reasonable period of time has lapsed since its acceptance.] [It is recognized that the need for an undertaking may lapse after a reasonable period of time. The undertaking should be terminated after the investigating authorities have determined that it is no longer necessary.] [Provision should be made for the termination of an undertaking when it is no longer necessary, e.g. after a reasonable period of time has lapsed since its acceptance.] However, where an interested party shows that there is a need to continue the undertaking the authorities of the importing country should carry out a review during which the undertaking shall remain in force (ADP/W/140/Rev.1, paragraph 3).