

FURTHER SUBMISSION OF PROPOSALS ON SUNSET

Communication from Chile; Hong Kong, China; Japan; Korea, Rep. of;
Norway; Switzerland; Separate Customs Territory of
Taiwan, Penghu, Kinmen and Matsu; and Thailand.

The following communication, dated 13 October 2005, is being circulated at the request of the Delegations of Chile; Hong Kong, China; Japan; Korea, Rep. of; Norway; Switzerland; Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu; and Thailand.

The submitting delegations have requested that this paper, which was submitted to the Rules Negotiating Group as an informal document (JOB(05)/246), also be circulated as a formal document.

This paper elaborates upon the proposals contained in document TN/RL/W/76 (Sunset).¹ The following proposed amendments to the *Anti-Dumping Agreement* do not represent a final position and may be subject to further addition, modification, and/or deletion in the course of the negotiations.

I. PROPOSED AMENDMENT:

11.3 Notwithstanding the provisions of paragraphs 1 and 2, any definitive anti-dumping duty measure shall be terminated on a date not later than five years from its imposition ~~(or from the date of the most recent review under paragraph 2 if that review has covered both dumping and injury, or under this paragraph), unless the authorities determine, in a review initiated before that date on their own initiative or upon a duly substantiated request made by or on behalf of the domestic industry within a reasonable period of time prior to that date, that the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury.~~²³ ~~The duty may remain in force pending the outcome of such a review.~~

Explanation:

The problem is that the sunset system does not function in a way the name suggests. In a practical sense, as we understood it at the conclusion of the UR, the structure of the current provision (“...shall be terminated..., unless...”) suggests that most, if not all, AD measures will be terminated after 5 years. However, the current situation is that the undue emphasis has been put on the ‘unless’ clause, resulting in the statistics in Annex I.

¹ Another submission related to the sunset topic is TN/RL/W/111.

This proposal is intended to restore the intrinsic meaning of the sunset system. The proposal does not prejudice Members' right to re-impose an anti-dumping measure through proper initiation under Article 5 and subsequent investigation, and it should not be mischaracterized as forbidding any AD measure after 5 years.

The essence of the proposal is to prevent the case of extending AD measures through a forward-looking analysis (i.e., likelihood test). After the lapse of the 5 years, exporters must be given clearance and a further restriction should only be made possible through an analysis on the current (or immediate past) situation ("*he is (has been) dumping*") and not by the prediction of the future ("*he is likely to dump*"). An anti-dumping measure must not be taken in a pre-emptive manner.

<Annex> Statistics on the Duration of AD Measures²

		<u>1970-74</u>	<u>1975-79</u>	<u>1980-84</u>	<u>1985-89</u>	<u>1990-94</u>	<u>1995-99</u>	<u>2000-04</u>
Developed Member	A	1	6	7	42	60	52 (104)	111 (115)
	B					18	25 (105)	78 (88)
	C			3	1	9	20 (34)	45 (46)
Developing Member	X						17 (61)	187 (241)
	Y						3 (65)	41 (74)

² The Members in the table were chosen based on the total number of AD measures in the last 10 years (1995-2004).

The numbers in each cell represent the number of AD measures taken in that period and remaining in force as of 31/12/2004. The sources are Members' semi-annual reports to the AD committee or the website of the investigating authorities where their semi-annual reports do not provide the first date of imposition of the measures.

The numbers in () are the total number of AD measures taken in that period from the WTO Secretariat's statistics in the WTO website.

The data may be inaccurate due to many practical reasons including the difference in the counting method, for instance, whether a duty measure and a price undertaking to the same exporting country are counted as one or two, and so forth.