

PROPOSAL ON DUMPED IMPORTS

Communication from Brazil; Chile; Hong Kong, China; Israel; Japan;
Korea, Rep. of; Mexico; Norway; Pakistan; Peru; Singapore; the Separate
Customs Territory of Taiwan, Penghu, Kinmen and Matsu; and Thailand

Revision

The following communication, dated 16 September 2005, is being circulated at the request of the Delegations of Brazil; Chile; Hong Kong, China; Israel; Japan; Korea, Rep. of; Mexico; Norway; Pakistan; Peru; Singapore; the 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)/188/Rev.1), also be circulated as a formal document.

1. In a previous submission to the NGR¹, some Members noted that although it is established in Article 3.1 of the Antidumping Agreement (ADA)² that a determination of injury for the purposes of Article VI of GATT 1994 shall be based on positive evidence and shall involve an objective examination of the volume of the dumped imports, some Members understand that such concept might mean the total volume of imports from the country under investigation.

2. We believe that this interpretation might lead to serious distortions in the application of anti-dumping measures. Moreover, this particular view contradicts the interpretation regarding the coverage of dumped imports provided in the Panels *Argentina – Poultry* and *EC – Bed linen*. Like other Members³ that have raised dumped imports as a potential issue for negotiations, we consider that Article 3.1 would benefit from clarification regarding the definition of dumped imports.

Jurisprudence

3. In *Argentina – Poultry*, the Panel was called to clarify the meaning of the term “dumped imports”. In a finding that was not reviewed by the Appellate Body, the Panel⁴ ruled:

¹ TN/RL/W/29

² “3.1. A determination of injury for purposes of Article VI of GATT 1994 shall be based on positive evidence and involve an objective examination of both (a) the volume of the dumped imports and the effect of the dumped imports on prices in the domestic market for like products, and (b) the consequent impact of these imports on domestic producers of such products.”

³ Venezuela (TN/RL/W/132) and USA (TN/RL/W/130)

⁴ WT/DS241/R

7.300 We consider that a determination of dumping is made with reference to a product from a particular producer/exporter. If a particular producer/exporter has been found not to have dumped, then we see no basis for including that producer/exporter's imports in the category of "dumped imports". We note that the term "dumped imports" was interpreted by the panel in *EC – Bed Linen*, and by the subsequent panel reviewing India's recourse to Article 21.5 of the *DSU* regarding the EC's implementation of the results of the original proceeding.

[...]

7.302 In the implementation proceedings under Article 21.5 of the *DSU*, the panel "agree[d] fully" with the preceding observation of the *EC – Bed Linen* panel and in turn found that:

"the question of which imports are to be considered dumped is readily answered – 'dumped imports' are all imports attributable to producers or exporters for which a margin of dumping greater than *de minimis* is calculated. This was the decision of the original Panel in this dispute, rejecting the argument that the imports attributable to a single producer found to be dumping should be divided into two categories – 'dumped' and 'not-dumped' sales transactions."

7.303 We agree with the findings of the *EC – Bed Linen* and the *EC – Bed Linen (Article 21.5 – India)* panels, and with the abovementioned observation by the *EC – Bed Linen* panel. On the basis of the ordinary meaning of the text, we find that the term "dumped imports" refers to all imports attributable to producers or exporters for which a margin of dumping greater than *de minimis* has been calculated. The term "dumped imports" excludes imports from producers/exporters found in the course of the investigation not to have dumped.

4. We understand that the wording of Article 3.1 of the ADA must be improved in order to clarify that "dumped imports" shall be construed to comprise all imports attributable to producers or exporters for which a margin of dumping greater than *de minimis* has been calculated.

Proposed approach

5. We suggest the inclusion of a footnote (footnote 10, following the current footnote numbering of the ADA) to Article 3.1 in order to clarify that:

10. Dumped imports shall not include imports from producers/exporters: a) found not to have dumped; and b) for whom the investigating authorities have determined that the margin of dumping is de minimis.

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