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Trade-Related Agenda, Development and Equity (TRADE) Analysis Series

**COMPILATION OF NEGOTIATING PROPOSALS  
ON ANTI-DUMPING  
2002 - July 2005**

**SYNOPSIS**

WTO negotiations for the clarification and improvement of the WTO Agreement on Anti-Dumping (ADA) have been long and produced an extremely large number of negotiating material (communications, proposals, informal papers, etc.). The various proposals have concentrated on (1) identifying areas of the ADA that require clarification, (2) justifying improvements by explaining some of the deficiencies of the Agreement, and (3) more recently on actual ways to improve the various provisions of the Agreement (e.g. by suggesting changes in language).

This document presents a thematic compilation of proposals submitted, following the current structure of the Agreement, in other words, following its articles. Proposals are divided in two parts: part one contains the proposal made from 2001 to June 2003 and Part two contains proposals made from 2004 to July 2005. Since the more recent proposals have provided greater details on the type of changes required, further elaborating on earlier proposals, Part two of this note also provides greater detail about the topics discussed.

November 2005  
Geneva, Switzerland

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## PART I: PROPOSALS SUBMITTED FROM APRIL 2002 TO 2003

### ARTICLE 2: DETERMINATION OF DUMPING

#### Definition of "Sufficient Quantity of Sales of the Like Product in the Domestic Market for the Determination of Normal Value", Art, 2.2

- clarify this provision in order to avoid that the test of "representativeness of domestic sales of the like product" be used as a way to artificially reduce the possibility of calculating normal value on the basis of the sales to the domestic market of the exporting country or to artificially increase the use of constructed values; define whether the test should be applied to the product as a whole or to the categories. **(FAN TN/RL/W/29)**

#### Particular Market Situation

- Define "particular market situation" under Article 2.2 to limit the discretion of the investigating authorities to refuse to use the normal price of the product sold domestically when comparing with the export price. **(China TN/RL/W/66)**

#### Determination of Normal Value / Affiliated Parties, Art 2.2

- Examine the issue of determination of normal value (affiliated parties). **(Australia TN/RL/W/86)**
- Discuss the issue of transactions involving affiliated suppliers, for purposes of determination of normal value (define "affiliation"). **(FAN TN/RL/W/10)**
- Address the issue of whether home-market sales to affiliates may be included in, or excluded from, the calculation of normal value. **(FAN TN/RL/W/10)**
- Establish clear guidance under the *Anti-Dumping Agreement* on the approach to treat transactions between affiliated companies in the context of normal value. **(China TN/RL/W/66)**
- Analyze the sales relationship on the domestic market of the producer/exporter and establish criteria for such analysis, since the *Anti-Dumping Agreement* provides for this formula only in respect of the relationship between exporters and importers. **(Argentina TN/RL/W/81)**
- clarify the *Anti-Dumping Agreement* to address situations in where one party is in a position to exercise *de facto* control over another, even when there is no equity ownership or other "legal" control, or where two parties are in such a position that they may be expected to act in concert (Article 4.1 of the *Anti-Dumping Agreement* defines related parties within the domestic industry for purposes of standing and injury, but does not define affiliation for purposes of analysing

issues arising from relationships among foreign producers and resellers). ( USA TN/RL/W/130)

#### Sales in the Ordinary Course of Trade / Profitability Test, Art 2.2.1

- Define "reasonable period of time" for prices which do not provide for recovery of all costs. (FAN TN/RL/W/6)
- Clarify and improve the tests for sales in the ordinary course of trade. (Brazil TN/RL/W/7)
- Identify the manner in which Members have operationalized the criteria of sales "in the ordinary course of trade" and "particular market situation" and arrive at an agreement as to the conditions and circumstances of sales that are to be considered under these specific provisions. ( Canada TN/RL/W/47 )
- Clarify whether investigating authorities should be allowed to disregard sales below cost even when prices provide for recovery of all costs in the period of investigation. (FAN TN/RL/W/6) (Australia TN/RL/W/86)
- explore the possibility of further expanding the conditions under which sales made at a loss would not be excluded for purposes of determining normal values (especially with respect to those industries whose product pricing is extremely sensitive to shifts in supply and demand, and agricultural and other commodity sectors whose producers are typically "price takers" and who usually have fixed costs that cannot be easily reduced over the short term when there is a decline in selling prices). ( Canada TN/RL/W/47)

#### Use of Cost Data, Art 2.2.1.1

- Examine the issue of authorities' discretion on the use of cost data. (Australia TN/RL/W/86 30-04-2003) Define circumstances under which authorities should be required to accept cost data as recorded in the producer's accounting book (e.g. if the accounting records are audited by duly qualified person or agency). ( FAN TN/RL/W/10 )

#### Cost Allocation Art 2.2.1.1

- Provide more comprehensive direction concerning the determination and allocation of costs. ( Canada TN/RL/W/47 28-01-2003)
- provide for the determination of costs giving recognition to the type of manufacturing or production process used in respect of the goods under investigation; for example, certain production processes result in joint-production where multiple products, that may have significantly different sales values, are produced simultaneously using the same inputs and incur the same

average production costs on a per unit basis (in such cases, an allocation of costs made on the basis of sales values results in a more meaningful comparison of costs to prices than an allocation of costs based on production volumes, provided that this allocation is made in accordance with generally accepted accounting principles). ( **Canada TN/RL/W/47** )

#### Constructed Value, Art 2.2.2

- Elaborate clearer, more comprehensive and representative criteria for calculations of constructed normal value. ( **FAN TN/RL/W/6** )
- Elaborate Article 2.2.2 to provide clear guidance for the use of information in the calculation of the constructed normal value. ( **China TN/RL/W/66** )

#### Hierarchy of Options in Constructed Value Calculation

- amend the chapeau of Article 2.2.2 specifying that the three options there under (items (i) to (iii) set three separate basis for deriving the amount for SGA expenses and profits to be used in a constructed normal value calculation) have a hierarchical significance and a subsequent option may be resorted to only in the absence of relevant data under the preceding option(s). ( **India TN/RL/W/26** )

#### Reasonability Test

- Impose the limitation enshrined in option 2.2.2(iii), in order to ensure the reasonableness of amount of profit under options 2.2.2(i) and 2.2.2(ii). ( **India TN/RL/W/26** )

#### Constructed Export Price, Art 2.3

- Examine the issue of constructed export price. ( **Australia TN/RL/W/86** )
- Consider a clear definition of what constitutes association or compensatory arrangements. ( **FAN TN/RL/W/29** )
- Establish criteria for the determination of association and the resale price. ( **Argentina TN/RL/W/81** )
- Identify the situations in which an export price could be considered to be unreliable ( **Argentina TN/RL/W/81** )
- Consider whether the investigating authority should explain, in the pertinent determination, the reasons for considering the export price unreliable, since the mere establishment of association or compensatory arrangement is not enough. ( **FAN TN/RL/W/29** )



- Clarify guidelines applicable to constructed export price so as to rule out asymmetry comparison. **(FAN TN/RL/W/10)**
- Clarify Articles 2.3 and 2.4 to provide clearer guidelines for a symmetric comparison between constructed export price and normal value. **(China TN/RL/W/66)**
- Require authorities to deduct home-market profits to observe symmetric deduction of costs and expenses between constructed export price and normal value. **(FAN TN/RL/W/10)**

#### Cyclical Markets / Perishable, Seasonal, Cyclical Products

- Discuss the issue of cyclical markets (e.g., the fact that prices of certain products may fluctuate according to seasonal factors, and the case of rapidly growing manufacturing sector). **(FAN TN/RL/W/6 )**
- Clarify and improve the rules pertaining to issues particular to anti-dumping investigations of perishable, seasonal, and cyclical products (producers may be more vulnerable to dumped or subsidized imports that enter the domestic market during the limited portions of the year when their product is sold). **(USA TN/RL/W/72 )**

#### Currency Conversion, Art 2.4.1

- agree on certain principles in order to ensure the consistent implementation of Article 2.4.1 (currently there is no general agreement on what constitutes "sustained movements" and how sustained exchange rates fluctuations should be taken into account in converting the export price). **(Egypt TN/RL/W/105)**
- Clarify Article 2.4.1 since the 60-day grace period provided for therein may, in certain circumstances; be interpreted as allowing exporters and foreign producers to delay the submission of their questionnaire responses. **(Egypt TN/RL/W/105)**
- Clarify and improve Article 2.4.1; for example, the current guidance for addressing currency movements is vague, and is particularly ill-suited for addressing sharp currency fluctuations. **( USATN/RL/W/130)**
- Clarify the agreement to require that Members use exchange rates from sources of recognized authority, and require that such sources be disclosed to interested parties. **( USATN/RL/W/130 ))**

#### Prohibition of Zeroing, Art, 2.4.2

- Clarify Article 2.4.2 to explicitly prohibit the practice of zeroing (average dumping margins by definition should be based on the average of all comparisons, including those that generate negative margins) (FAN TN/RL/W/6),(China TN/RL/W/66) (India TN/RL/W/26 )
- Amend Article 2.4.2 to explicitly provide that regardless of the basis of the comparison of export prices to normal value (i.e. weighted average-to-weighted average or transaction-to-transaction, or weighted average-to-transaction), all positive margins of dumping and negative margins of dumping found on imports from an exporter or producer of the product subject to investigation or review must be added up. (FAN TN/RL/W/113 )
- Further amend the first sentence of Article 2.4.2 to clarify that the Article applies to initial investigations and all subsequent reviews under Articles 9 and 11. (FAN TN/RL/W/113)

#### Establishment of Overall Weighted-Average Dumping Margins, Art 2.4.2

- Establish clear rules as to the manner in which the overall weighted average margins are to be calculated. (USA TN/RL/W/72 )

#### Single Margin of Dumping for the Entire Period of Investigation or Review, 2.4

- add a provision to Article 2.4 clarifying that, regardless of the comparison methodology, if margins of dumping are determined separately for imports during multiple portions of the entire period of an investigation or review, the margin of dumping to be determined in the investigation or review must be a single margin of dumping for all imports during the entire period of investigation or review. (FAN TN/RL/W/113)

#### Like Product Art. 2.6

- Clarify the definition of "like product" to limit the scope of product types that can be considered as a single "like product". (Canada TN/RL/W/47 )
- establish criteria for determining the like product; the following criteria could be suggested as part of a non-exhaustive list: physical characteristics and uses, degree of substitutability, considerations of quality, function, technical specifications, tariff classification, users' perceptions, common distribution channels, overlapping geographical areas of the domestic market and price levels. (Argentina TN/RL/W/81)
- Consider whether non-hierarchical non-exhaustive criteria, based on the criteria set out in the Japan Alcoholic Beverages case, should be incorporated in the definition of what constitutes "like product". (Australia TN/RL/W/91 )

- Consider whether the word "identical" should be replaced with "goods, which have essentially the same physical characteristics" as part of the process of specifying criteria for the purpose of determination of dumping and determination of injury, as well as for the definition of domestic industry. **(Australia TN/RL/W/91)**
- Consider whether separate criteria should be developed, which make a distinction for the purpose of Article 2 of the Anti-Dumping Agreement relating to determination of dumping and Article 3 of the Anti-Dumping Agreement relating to the determination of injury. **(Australia TN/RL/W/91)**

#### Definition of Product Under Investigation, Art 2.6

- Provide a more rational and disciplined framework to determine the scope of "product under investigation" so that anti-dumping measures would only be applied to those products found to be "dumped" and causing injury. **(FAN TN/RL/W/10 )**
- Establish a clear and strict criterion in the Anti-Dumping Agreement for the determination of "product under investigation". **(China TN/RL/W/66)**
- Discuss appropriate criteria for determining the "product under investigation" to limit arbitrary expansions of product scope. **(USA TN/RL/W/7 ) (FAN TN/RL/W/10 )**

#### "Non Market Economy" Clause

- Revoke the "non market economy" clause. **(China TN/RL/W/66 )**

### **ARTICLE 3: DETERMINATION OF INJURY**

#### Definition of "Dumped Imports", Art 3.1

- Consider the elaboration of clearer, more detailed definition of "dumped imports", in order to avoid misinterpretations and consequently the misuse of anti-dumping duties. **(FAN TN/RL/W/29)**
- consider whether the *Anti-Dumping Agreement* should be clarified to specify methods that investigating authorities can readily implement in the injury investigation to calculate the volume of dumped imports for purposes of Articles 3.1 and 3.2 which do not, in accordance with Article 6.10, require examination in the dumping investigation of each individual producer or importer. **(USA TN/RL/W/130)**

- include a note to Article 3.1 explaining that dumped imports are those coming from or originating in a country or enterprise for which a positive, more than de minimis margin of dumping has been determined. ( **Venezuela TN/RL/W/132** )

#### Material Retardation

- Clarify the term "material retardation" so as to enable investigating authorities to determine in which circumstances there is material retardation. ( **Egypt TN/RL/W/105** )
- Consider not restricting the definition of the term "*new industry*" to industries which are being established from zero; take into account the situation of embryonic, restructuring and recently privatized industries. ( **Egypt TN/RL/W/105** )
- Identify tests similar to those set forth in Article 3 of the *Anti-Dumping Agreement* with respect to material injury and threat thereof in order to assist investigating authorities to determine in which circumstances material retardation occurs. ( **Egypt TN/RL/W/105** )

#### Market Segmentation

- Consider whether Article 3 of the *Anti-Dumping Agreement* should be clarified to state expressly that investigating authorities have the discretion to engage in sectoral analysis of the impact of dumped imports on the domestic industry in appropriate circumstances, as long as their analysis of impact encompasses the entire domestic industry. ( **USA TN/RL/W/130** )

#### Cumulative Assessment of Injury / Cumulation, Art 3.3

- Establish which factors should be considered to evaluate if the conditions of competition between imported products from different countries and between them and the like domestic product are the same. ( **FAN TN/RL/W/6** ) ( **USA TN/RL/W/7** ) ( **China TN/RL/W/66** )
- Set an appropriate parameter for the definition of negligible volume of imports. ( **FAN TN/RL/W/29** )
- Develop criteria, as those being discussed within the Working Group on Implementation, in defining conditions of competition. ( **Australia TN/RL/W/86** )
- Apply a flexible approach when taking into account the factors for assessing conditions of competition (e.g. conditions of competition need to be considered over the whole of the investigation period and not just at a particular point in time). ( **Australia TN/RL/W/86** )

- establish criteria for considering the conditions of competition between the imported products of different origins and the conditions of competition between the imported products and the like domestic product (criteria similar to those set out for determining the like product are suggested). **(Argentina TN/RL/W/81)**
- Consider whether the *Anti-Dumping Agreement* and the *SCM Agreement* should be clarified to expressly provide for the cumulation of dumped imports with subsidized imports, in order to assess the effects of the unfair imports on the domestic industry. (TN/RL/W/98)

#### Injury Determination

- Clarify the rules/disciplines pertaining to injury determinations. **(Canada TN/RL/W/1)**
- design new rules on injury analysis which give more precise guidance; examine whether one could find straightforward rules for a number of typical "extreme" cases (this could be achieved by providing guidance to the application of the factors listed in Article 3.2 and Article 3.4 of the *Anti-Dumping Agreement*; such guidance could be obtained by introducing more quantitative elements where possible). **(EC and Japan TN/RL/W/138)**
- Establish adequate guidance to evaluate factors to be considered in the determination of injury. (FAN TN/RL/W/10)
- Clarify Article 3.4 and its relationship with other provisions of Article 3. **(FAN TN/RL/W/10)**
- Clarify Article 3.4 to limit the discretion of the investigating authorities in the evaluation of injury. **(China TN/RL/W/66)**
- Further elaborate some of the mandatory injury parameters for ensuring consistency and predictability among investigating authorities while making an assessment of the consequent impact of dumped imports on the domestic products of the like product. **(India TN/RL/W/26)**

#### Calculation of Injury Margins, Art 3.4

- Incorporate a provision setting forth disciplines on calculation of injury margins. **(India TN/RL/W/26)**
- deliberate upon the following questions relevant to possible disciplines on calculation of injury margins:
  - o How will objectivity and transparency in calculation of injury margins be ensured, given the fact that cost and pricing data of the domestic

producers would normally be considered to be confidential and therefore not available to all the interested parties?

- Which domestic producers should be considered for purposes of calculating the domestic producers' price for price under-cutting?
- What should be the time period over which injury margin determination should be made?
- When should price under-cutting/price under-selling appropriately be used?
- What factors should determine a reasonable profit for the domestic industry while calculating target price for under-selling margin?
- What adjustments should be made between the landed price and the domestic sales price?
- To what extent would the various methodologies which are specified in Article 2.4.2 of the *Anti-Dumping Agreement* while determining dumping margins also be applicable for injury margins?
- Should zeroing be prohibited while calculating injury margins?

#### Examination of Impact

- consider whether Article 3.4 of the *Anti-Dumping Agreement* should be clarified to provide greater certainty both to investigating authorities and to the parties that appear before them concerning the scope of the authority's obligation to examine "relevant factors and indices" other than the ones explicitly listed in Article 3.4 of the *Anti-Dumping Agreement*. **(USA TN/RL/W/130)**
- Address whether there should be an express limitation on the authority's obligation with respect to such factors that were never brought to the authority's attention during the course of its investigation. **(USA TN/RL/W/130)**

#### Causation, Art 3.5

- develop the procedures and criteria utilized to analyze the causal relationship, with a view to ensure that, even in the presence of other factors, a causal relationship will be found only when there is a clear and substantial link between the dumped imports and the injury. **(FAN TN/RL/W/6)**
- elaborate Article 3.5 so that appropriate guidance is provided to investigating authorities while separating and distinguishing the injurious effects of other factors from the injurious effects caused by the dumped imports; furthermore, to invoke anti-dumping measures, there is a need to specify an appropriate

standard for establishing causality between dumped imports and material injury. **(India TN/RL/W/26)**

- Clarify Article 3.5 in order to ensure that a causal link could only be established when the dumped import is the substantial reason for the injury of the domestic industry. **(China TN/RL/W/66)**
- Clarify the *Anti-Dumping Agreement* to provide authorities practical guidance in implementing the negative obligation of non-attribution and on how this obligation should relate to the examination of the effect of dumped imports, while ensuring that any affirmative obligations are clearly set forth in the Agreement and are workable for authorities to implement. **(USA TN/RL/W/98)**

#### Threat of Material Injury, Art 3.7

- Define factors such as those in Article 3.4 in making a determination of threat of material injury; clarify and improve the description of the factors to be considered so that investigating authorities have more concrete guidance. **(FAN TN/RL/W/6)**
- Clarify and improve Article 3.7 to specify in a more detailed manner the factors to be considered in the determination of the threat of material injury. **(China TN/RL/W/66)**
- Clarify subheading (ii) of Article 3.7. **(Egypt TN/RL/W/110)**
- Detail the factors that must be considered when determining whether or not protective actions are necessary to prevent material injury from occurring; in particular, identify the potential impact of further dumped imports on the domestic industry concerned in a manner similar to Article 3.4. **(Egypt TN/RL/W/110)**

#### Condition of the Domestic Industry in any Threat of Material Injury Analysis

- Consider whether the Agreement should be clarified to address investigating authorities' consideration of the current condition of the domestic industry in an analysis of the threat of material injury. **( USA TN/RL/W/130)**

#### "Special Care" Requirement in Respect of Determination of Threat of Material Injury

- Elaborate on the requirement of "special care" in Article 3.8, so that a clear, specific and unambiguous benchmark is specified. **(India TN/RL/W/26)**

## ARTICLE 4: DEFINITION OF DOMESTIC INDUSTRY

### Definition of Domestic Industry

- Examine the issue of definition of domestic industry. (**Australia TN/RL/W/86**)
- Establish clearer criteria for the definition of the term "major proportion". (**FAN TN/RL/W/10**) (**China TN/RL/W/66**)
- Provide more specific parameters as to what minimum percentage of the domestic production can be considered to be "a major proportion". (**Canada TN/RL/W/47**)
- Establish criteria to determine when the authorities are allowed, in exceptional cases, not to use the "domestic producers as a whole of the like products". (**FAN TN/RL/W/10**)
- Clarify the definition of domestic industry to address the special circumstances raised when domestic and foreign producers have limited selling seasons. (**USA TN/RL/W/72**)
- Consider whether Article 4.1 of the *Anti-Dumping Agreement* should be clarified to specifically prohibit the practice of limiting the injury analysis solely to those firms which supported the application. (**USA TN/RL/W/98**)
- consider whether the *Anti-Dumping Agreement* needs to be clarified to ensure that an investigating authority can satisfy its obligation to obtain reliable and objective data on a domestic industry containing an extremely large number of producers within the confines of an investigation of limited duration (issues that may be addressed in such a clarification include reliance by investigating authorities on information from industry groups or governmental statistical authorities). (**USA TN/RL/W/98**)
- Consider establishing that the domestic industry shall be taken as a major proportion of the total domestic production only when it is not possible for the authority to obtain information regarding the "domestic producers as a whole of the like products". (**FAN TN/RL/W/104**)
- consider whether the asymmetry between the *Anti-Dumping* and the *SCM Agreement* with respect to excluding from the domestic industry domestic producers who are themselves importers of a like product from **other countries** should remain (Article 16.1 of the *SCM Agreement* provides for this exclusion, whereas the *Anti-Dumping Agreement* does not contain a similar provision). (**FAN TN/RL/W/104**)

## ARTICLE 5: INITIATION AND SUBSEQUENT INVESTIGATION

### Initiation Standards, Art 5.1



- Clarify the rules/disciplines pertaining to the initiation of investigations. **(Canada TN/RL/W/1) ( AustraliaTN/RL/W/86)**
- Improve disciplines on initiation of investigations (provide adequate disciplines to protect developing country textiles firms from unnecessary initiations, particularly as these firms are generally small or medium-sized). **(FAN TN/RL/W/48)**
- Clarify and improve requirements to initiate an investigation, in order to allow for a more meaningful "examination" of the basis for beginning the investigation. **(FAN TN/RL/W/10)**
- Clarify the interpretation of the terms "examine", "accuracy" and "adequacy" of evidence. **(FAN TN/RL/W/10)**
- Strengthen the requirements for initiation of an anti-dumping investigation in various areas by, for example defining the concept of information "reasonably available" in Article 5.2. **(Canada TN/RL/W/47)**
- Amend Article 5 to require that, when examining an application for the initiation of an investigation, authorities also consider information on factors other than dumping that may be contributing to the injury being alleged. **(CanadaTN/RL/W/47)**
- consider adding, in addition to the current standards for initiation in Article 5 of the *Anti-dumping Agreement*, a requirement to the effect that clear and sufficient evidence of trade distorting practices that have led to a situation of injurious dumping should be provided to support the relevant anti-dumping petitions before the initiation of investigations. **( Hong Kong, ChinaTN/RL/W/129)**

#### Back to Back Anti-Dumping Investigations

- Require that an investigating authority shall not initiate an anti-dumping investigation where an investigation on the same product or a broader category of another product which included the product now under consideration from the same Member resulted in negative finding within 365 days prior to the filing of the petition seeking initiation of a new investigation. **( India TN/RLW/26)**
- Add a new paragraph to Article 5 of the *Anti-Dumping Agreement*: Investigating authorities shall not initiate an anti-dumping investigation where an investigation of the same product from the same Member resulted in a negative finding within the 365 days prior to the filing of the application. **(China TN/RL/W/66)**

#### Standing Rules

- Examine the issue of standing. **(Australia TN/RL/W/86)**

- Establish that applications should be supported by at least more than 50 per cent of the total domestic production. **(FAN TN/RL/W/10)**
- Require that legally sufficient "support" include complete data relevant to assessment of injury, and the causal relationship between that injury and imports. **(FAN TN/RL/W/10)**
- Require investigating authorities to conduct an "objective" assessment of the degree of industry support for an application and to refrain from taking any action that would have a foreseeable effect on the outcome of such a determination. **(Canada TN/RL/W/47)**
- Discuss the standing requirement for the initiation of an investigation to determine whether the concept of "standing" is appropriately defined to ensure that domestic producers representing a relatively small proportion of the domestic production of like products cannot successfully apply for an investigation. **(Canada TN/RL/W/47)**
- Consider requiring that, in cases where an application is made on behalf of a domestic industry by one or more industry associations, that the members of the industry association(s) be identified in the application, with a statement of support for the application. **(Canada TN/RL/W/47)**

#### Domestic Industry Consisting of Small-Scale or "Unorganized" Sector Producers

- Clarify that footnote 13, which refers to the use of sampling techniques in the case of fragmented industries, also applies to the 25 per cent requirement in the last sentence of Article 5.4 (support for application). **(India TN/RL/W/26)**

#### Initiation and Publicization of the Application

- Make clear how the obligation to notify the Government of the exporting Member can be reconciled with the obligation to avoid publicizing the application concerned. **(Venezuela TN/RL/W/132)**

#### Ex Officio Initiation

- Analyze the appropriateness of establishing guidelines for the definition of a "special" situation justifying the *ex officio* initiation of an investigation. **(Argentina TN/RL/W/81)**

#### Thresholds, Art 5.8

- Raise existing *de minimis* dumping margin of 2 per cent of export price below which no anti-dumping duty can be imposed to 5 per cent for imports from developing countries. **(India TN/RL/W/4) (China TN/RL/W/66)**

- Ensure application of the *de minimis* dumping margin of 5% in refund and review cases. **(India TN/RL/W/4)**
- Redefine 2 per cent *de minimis* dumping margin level to reflect the high degree of variance and uncertainty resulting from crude methodologies. **(FAN TN/RL/W/6)**
- Discuss whether the current 3 per cent negligible volume threshold is sufficient to justify injury when the volume of total import itself is small. **(FAN TN/RL/W/6)**
- Consider the *de minimis* issue, with a view to making any adjustments to this provision applicable to imports from all Members. **( CanadaTN/RL/W/47)**
- Increase the threshold volume of dumped imports which shall be regarded as negligible from 3 to 5 per cent for imports from developing countries. **(India TN/RL/W/4) (ChinaTN/RL/W/66)**
- Delete the stipulation that anti-dumping action can still be taken even if the volume of imports is below the threshold of 3 per cent, provided countries which individually account for less than the threshold volume, collectively account for more than 7 per cent of the imports. **(India TN/RL/W/4)**
- Delete the provision that measures can still be taken if the imports from the countries under the negligible volume collectively account for more than 7 per cent. **(China TN/RL/W/66)**
- Revisit the role of *de minimis* in duty collection process. **(FAN TN/RL/W/6)**
- Clarify Article 5.8 to determine whether imports of all origins can be cumulated whether or not they are from WTO Member countries. **(VenezuelaTN/RL/W/132)**

#### Shorter Periods for Investigations, Art 5.10

- Discuss whether the periods set out in Article 5.10 of the Agreement on Anti-Dumping could be significantly shortened (this discussion would also have to reflect that shorter deadlines impose greater discipline on investigating authorities and interested parties). **(EC and JapanTN/RL/W/138)**

## **ARTICLE 6: EVIDENCE**

### Hearing and Meetings

- Discuss whether further enhancement of Article 6.2 is necessary (currently the Agreement does not provide specific guidelines for implementing this provision or address the role of the administering authority). **(USA TN/RL/W/35)**

- Discuss whether administering authorities should be required to provide notice and a summary of all meetings that they have with outside parties when the discussions pertain to proceedings under the Agreements. **(USA TN/RL/W/35)**
- Include a requirement in Article 6 similar to Article 3 of the *Agreement on Safeguards*, which requires a public hearing or other appropriate means by which interested parties can present evidence and views, including the opportunity to respond to the submissions of other parties. **(Canada TN/RL/W/47)**

#### Availability of Relevant Information from National Authorities

- Enhance provisions concerning timely information and feedback (currently, there is no definition of what timely is and no specific guidance for national authorities). **(USA TN/RL/W/35)**
- Give a definition of the term "timely", in order to clarify the period of time involved and establish a fixed interval, so as to guarantee due process for the parties involved and transparency throughout the proceeding, thereby avoiding different interpretations of the same provision by the competent authorities of each Member. **(Venezuela TN/RL/W/132)**
- Discuss the issue of providing access to non-confidential information; for example, consider ways in which interested parties could be granted access to non-confidential information as soon as it is submitted to national authorities, regardless of whether the national authorities ultimately rely upon the information for purposes of their determination. **(USA TN/RL/W/35)**

#### Maintenance of a Public Record

- evaluate how a mechanism for providing access to non-confidential information used by national authorities in an investigation could operate (e.g. maintaining a public record of all non-confidential information submitted by the parties and all memoranda adopted or approved by the pertinent authority that explain the factual or legal bases for its determination or provide pertinent findings and conclusions in support of that determination). **(USA TN/RL/W/35)**

#### Treatment of Confidential and Non-Confidential Information

- Reflect on ways to improve disclosure and access to non-confidential documents. **(EC TN/RL/W/13)**
- Examine the issue of treatment of confidential and non-confidential information. **(Australia TN/RL/W/86)**
- Discuss the nature and treatment of confidential information. **(Argentina TN/RL/W/81)**

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- Discuss the issue of domestic legislation of countries on the different types of information. **(Argentina TN/RL/W/81)**
  - Discuss criteria for the preparation of non-confidential summaries. **(Argentina TN/RL/W/81)**
  - provide clear rules as to how non-confidential summaries should be prepared; give guidance with regard to all areas where non-confidential summaries have to be submitted including for transaction-by-transaction listings and information on cost of production; provide for the possibility of a review of such summary, e.g. by a "Permanent Group of Experts" type of body serviced by the WTO Secretariat; ask Members to establish domestic rules allowing for independent review of non-confidential summaries upon request by an interested party; built upon Article 13 of the *Anti-Dumping Agreement* as a basis for this option. **(EC and Japan TN/RL/W/138)**
  - Establish a time-limit for a party to supply a non-confidential summary. **(Australia TN/RL/W/44)**
  - Discuss whether each Member should have in place a system to allow access for appropriate persons to confidential information; such a system must incorporate appropriate measures to ensure the proper protection of confidential information. **(USA TN/RL/W/35)**
  - Consider establishing requirements for Members to maintain specific procedures to protect confidential information from unauthorised disclosure. **(USA TN/RL/W/35)**
  - Consider how access to information might be improved to ensure that parties have a proper understanding of the matter (this might include greater recourse to disclosure of information under protective order with appropriate penalties to discourage the misuse of such information). **(Canada TN/RL/W/47)**
  - Discuss whether a distinction should be made in Article 6.5 between information which is considered to be by nature confidential and information which is provided on a confidential basis, or whether the claim should be for information which is confidential. **(Australia TN/RL/W/44)**
  - Discuss the possibility of including an illustrative list setting out what information can be considered confidential. For example, information could be considered confidential if its disclosure would be likely *inter alia*:
    - o To be of significant competitive advantage to a competitor;
    - o To have a significant adverse effect upon the party who submitted the information, or the party from whom the information was acquired by the party who submitted the information;
    - o To have significant adverse effect upon any party to whom the information relates;

- To prejudice the commercial position of a person who supplied or who is the subject of the information;
- To prejudice the security or defence of a Member, or the international relations of a Member;
- To prejudice the entrusting of information to the authorities of a Member;
- To prejudice the supply of similar information or information from the same source;
- To disclose a trade secret;
- To effect the maintenance of legal privilege. (**Australia TN/RL/W/44**)
- Alternatively, discuss the possibility of identifying matters, a definition, or type of information, which would constitute, or be considered to be, "non-confidential" information. (**Australia TN/RL/W/44**)
- Discuss the introduction of a statement in the *Anti-dumping Agreement* Article 6.5 that information that is in the public domain cannot be considered to be confidential. (**Australia TN/RL/W/44**)
- Define the meaning of the term "upon good cause being shown". (**Australia TN/RL/W/44**)
- Define the meaning of the expression "demonstrated to their satisfaction from appropriate sources that the information is correct" in Article 6.5.2. (**Australia TN/RL/W/44**)
- give special consideration in the case of claims of material injury for the use of indices or ranges as being the appropriate/preferred method of providing a non-confidential summary of such information; consider whether this should be an option for all numeric data, for example responses provided in exporter questionnaires. (**Australia TN/RL/W/44**)

#### Conduct of Verifications

- Discuss steps to make verification procedures clearer (e.g. authorities could provide exporting Members and their firms with detailed outlines prior to verification specifying what topics will be covered and what type of supporting documentation will be required; a report on the verification findings should be issued to all interested parties as soon as possible). (**USA TN/RL/W/35**)
- explore whether and to what extent standard procedures for on-spot verifications would help (the provisions of Annex I of the *Anti-Dumping Agreement* are a good starting-point for further clarifications in this respect). (**EC and Japan TN/RL/W/138**)

### Facts Available

- Elaborate more stringent rules to provide more clarity to discipline the excessive use of "facts available". (FAN TN/RL/W/6)
- Establish objective criteria for determining when the implementing authority considers that the best information available should be used. ( **Argentina TN/RL/W/81**)
- Examine criteria that could be used to determine whether or not to grant an extension of time for information and before facts available can be used (the Working Group on Implementation's criteria could form a basis of criteria in the *Anti-Dumping Agreement*). ( **Australia TN/RL/W/86**)
- Specify the circumstances in which an investigating authority may resort to total facts available. In other situations the investigating authority shall be required to take into consideration all information which meets the criteria of Annex II:3, although some other information may not meet this criteria. ( **India TN/RL/W/26**)
- Amend the current text of Article 6.8 to explicitly state that "facts available" are to be used only for the purpose of substituting missing or rejected information; examine how the concept of "significant impediment", which may be a cause of misinterpretation due to its ambiguity, has been applied, and thus whether it is appropriate to maintain this concept in the Agreement, and instead to add the concept of "refusal of verification" to clarify that facts available can be used also in a situation where an interested party refuses verification of necessary information. (FAN TN/RL/W/93)
- Amend Annex II.1 to provide that authorities may not resort to "facts available" in an investigation or review unless the authorities have made all reasonable efforts to obtain necessary information from respondents; to fulfill the reasonable effort requirement, the authority must notify the respondent in detail of information which was insufficient in the response to the authorities' questionnaire; the authority must also permit the respondent to submit the required information within a reasonable period of time; in this connection, "a reasonable period of time" must be determined on a case-by-case basis in the light of the specific circumstances of each investigation. (FAN TN/RL/W/93)
- Amend Annex II.3 to make it mandatory for authorities to use any and all submitted information that is verifiable, germane to the investigation and not proven to be inaccurate, as well as complying with the other requirements set out in Annex II. 3. (FAN TN/RL/W/93)
- Amend Annex II.7 to provide that authorities shall choose, whenever authorities resort to facts available in accordance with the *Anti-Dumping Agreement*, information from a secondary source that properly represents the prevailing state of the industry or the relevant market with respect to the missing or rejected information; the information shall be chosen, where practicable, based on an

objective examination of all information obtained by authorities during the course of an investigation/review in light of the requirements set out in Annex II.7. (FAN TN/RL/W/93)

- in connection with above) amend Article 6.6 so that the distinction between the authority's obligation with respect to an "Article 6.8 situation" and the other situation is eliminated; for this purpose, delete the exception clause at the beginning of Article 6.6 and the phrase "supplied by interested parties". (FAN TN/RL/W/93)
- improve the last sentence of Annex II.7 by clarifying that a party shall be regarded as being cooperative, *inter alia*, if the party provided a substantial portion of the entire information requested by authorities and substantially all of that information could be verified, or if the party made reasonable efforts to submit the requested information in light of its ability to submit the information and its ability to fulfill the instructions provided by the authorities. (FAN TN/RL/W/93)
- Amend Annex II.6 to provide that when the authorities resort to "facts available", they must either in the preliminary determination or in the disclosure pursuant to Article 6.9, provide a sufficient explanation of the reasons why the submitted information has been totally or partially rejected and specifically identify the information that the authorities intend to substitute for the rejected information; due regard must be given to confidential information relating to the disclosure in accordance with Articles 6.4 and 6.5. (FAN TN/RL/W/93)

#### Disclosure / Evidence

- Consider whether the Agreement should be clarified as to what constitutes "sufficient time for parties to defend their interests" as well as to what constitutes adequate disclosure of the "essential facts" in the context of Article 6.9 of the Agreement. ( USA TN/RL/W/98)
- Address the lack of indication of the period of time necessary for the parties to make their comments in defence of their interests and the lack of an indicative list of the elements which the communication should contain, with a view to standardizing the criteria and avoiding significant differences between one investigation and another, depending on the Member concerned. ( Venezuela TN/RL/W/132)
- Clarify rules on disclosure (Art. 6.9 of the *Anti-Dumping Agreement*); any rules on disclosure should aim at defining the minimum information to be given. (EC and Japan TN/RL/W/138)
- Consider whether a requirement might be warranted for a disclosure meeting for the authorities to review with the interested parties, upon request, how the



dumping margins and countervailing duty rates were calculated. (USA TN/RL/W/130)

- consider improving the existing provisions on evidence (i.e. Article 6) by providing exporters or producers subject to investigation with an additional opportunity for defense through presenting evidence that:(a) they are not earning above-market profit margins in their home market; or (b) there does not exist any home-market sanctuaries that enable them to enjoy artificial advantages (e.g. evidence of open markets, like, free entry to domestic markets, low tariffs, etc.). (Hong Kong, China TN/RL/W/129) Treatment in Case of a Large Number of Exporters, Producers, Importers or Types of Products
- Elaborate clear and precise criteria for the application of Article 6.10, particularly to clarify terms like "reasonable number" or "largest percentage of the volume ... which can reasonably be investigated". ( Hong Kong, China TN/RL/W/29)
- Ensure that relevant criteria of representativeness are established. ( Hong Kong, China TN/RL/W/29)
- Qualify the situations where samples may be used. (Hong Kong, China TN/RL/W/29)

#### Favored Exporter Treatment, Art 6.10

- Consider whether changes to the Agreement should be made to specifically prohibit the practice of excluding by name, *ab initio*, certain favoured exporters from any investigation and from coverage of any eventual anti-dumping measure, even though they produce merchandise like that which is under investigation. (USA TN/RL/W/98)

#### Procedural Issues / Sampling

- Clarify the precise manner by which a statistically valid sample can be developed (e.g. what are the relevant characteristics of the underlying population, and what is the relationship between the available sampling units and the parameter value to be estimated?). (USA TN/RL/W/78)

#### Interested Parties

- consider taking industrial users and consumer organizations into account in the definition of "interested parties" in the *Anti-Dumping Agreement*, with a view to securing them the opportunity, if they so wish, to fully participate in anti-dumping investigations since their initiation. (FAN TN/RL/W/104)

## ARTICLE 7: PROVISIONAL MEASURES

### Provisional Measures

- Consider harmonizing the provisions of the *Anti-Dumping* and *SCM Agreement* regarding the application of provisional measures, especially the prohibition of collecting provisional duties. (FANTN/RL/W/104)

## ARTICLE 8: PRICE UNDERTAKING

### Price Undertakings

- Define what should constitute “satisfactory voluntary undertakings”. ( FAN TN/RL/W/10)
- Elaborate Articles 8.1 and 8.3 to limit the discretion of investigating authorities in rejecting proposals for price undertakings, such as the expressions of "satisfactory voluntary undertakings" and "reasons of general policy". ( ChinaTN/RL/W/66)
- agree on more specific provisions relating to price undertakings, seeking answers to some questions including the following:
  - o How to determine the undertaking 'price' to be given in a price undertaking? [Article 8.1]
  - o What shall be treated as 'satisfactory' and what shall be 'unsatisfactory' price undertaking? [Article 8.1] Relevant conditions for non-acceptance of price undertakings shall be more specifically clarified [Article 8.3]. (India TN/RL/W/26)
- Define “reasons of general policy” in the context of refusal by authorities of proposals for price undertakings in Article 8.3. (FAN TN/RL/W/10)
- Confirm that price undertakings need only eliminate injurious effects of dumping. (FAN TN/RL/W/10)
- Take into account the needs of developing countries. (FAN TN/RL/W/10)
- Consider ways to provide appropriate methodologies for the calculation of a duty that is less than the full margin of dumping but which is adequate to remove the injury to the domestic industry. (Canada TN/RL/W/47)
- provide that developed countries shall accept price undertaking proposals from developing country exporters as long as the undertaking offsets the dumping margin determined; even in cases where the actual or potential exporters are great, the investigating authorities shall accept such proposals from those cooperating exporters whose share individually in the total exports from the

targeted country where the exporters are located to the importing developed country Member is more than 10%. **(China TN/RL/W/66)**

- Establish inappropriateness of a level of price undertaking that implies a price increase higher than necessary to remove injury. **(FAN TN/RL/W/29)**
- Give an outline of the procedure to be followed in cases where only some exporters submit price undertakings, and of the treatment applicable to the others. **(Argentina TN/RL/W/81)**
- Clarify that the authorities in the importing country cannot require all exporters, the majority of exporters or a specific proportion of the exporters to offer price undertakings as a condition for the acceptance of price undertaking offers from one or a limited number of exporters. **(FAN TN/RL/W/118)**
- require authorities to provide, in a public notice, the criteria and reasons for non-acceptance of a price undertaking offer, and to permit, before a final decision is taken and within the time-limits of the investigation, comments from the exporter offering the price undertaking. **(FAN TN/RL/W/118)**
- minimize the wide level of discretion and ambiguity contained in Article 8.3; this include, *inter alia*, to clarify that the existence of a large number of exporters in itself is not a valid reason for rejection, except in clearly defined exceptional circumstances, including when compliance cannot be monitored. **(FAN TN/RL/W/118)**
- Clarify that price undertaking offers shall be accepted if they offset injury caused by dumping and comply with the procedures and other conditions necessary for the implementation of the price undertaking. **(FAN TN/RL/W/118)**
- clarify that authorities, prior to the preliminary determination of injury and dumping, shall inform exporters of their right to offer price undertakings as well as make known to them the applicable rules and procedures to be followed in requesting consideration of price undertakings, including any procedural deadlines. **(FAN TN/RL/W/118)**
- clarify that exporters have the right to request an adjustment of the price undertaking if there are changes in circumstances, including situation where domestic market price falls below the level stipulated in the price undertaking. **(FAN TN/RL/W/118)**
- Clarify that price undertakings should be implemented in good faith and in a predictable manner, and that they should not be terminated merely because of minor non-compliance of procedural requirements, provided the substantive commitments are respected. **(FAN TN/RL/W/118)**

## ARTICLE 9: IMPOSITION AND COLLECTION OF ANTI-DUMPING DUTIES

### Lesser duty

- Make the lesser duty rule mandatory while imposing an anti-dumping duty against imports from a developing-country Member by any developed-country Member. **(India TN/RL/W/4) (China TN/RL/W/66)**
- Make the lesser duty rule mandatory when investigating dumping of imports from a developing country. **(Brazil TN/RL/W7)**
- Consider the mandatory application of the lesser duty rule by developed Members in anti-dumping proceedings concerning developing Members. **(Egypt TN/RL/W/110)**
- Discuss a mandatory lesser duty rule. **( EC TN/RL/W/13)**
- Consider ways to provide appropriate methodologies for the calculation of a duty that is less than the full margin of dumping but which is adequate to remove the injury to the domestic industry. **(Canada TN/RL/W/47)**
- Discuss the appropriateness of applying anti-dumping duties that are higher than necessary to counteract injury. **(FAN TN/RL/W/6)**
- Discuss the appropriateness of imposing and collecting duties when a *de minimis* margin is determined for the collection of duty. **(Brazil TN/RL/W/7)**
- Discuss whether there should be a distinction between mandatory consideration and mandatory application of the lesser duty rule. **(Australia TN/RL/W/86)**
- Discuss whether there should be some distinction in the application or consideration of the lesser duty rule depending on the country of export. **(Australia TN/RL/W/86)**
- Discuss whether there are situations when the lesser duty rule would be inappropriate, e.g., where systematic and persistent dumping in a particular product has disrupted world markets. **(Australia TN/RL/W/86)**
- Amend Articles 9.1, 9.3 and 9.4 to provide for the mandatory application of the lesser duty rule. **(FAN TN/RL/W/119)**
- Add a new sub-article after the current Article 9.1 to explain that: (i) the calculation of the lesser duty level must be based on a methodology which will be provided in Annex III; and (ii) the lesser duty level shall only apply if it is lower than the margin of dumping. **(FAN TN/RL/W/119)**
- Add a new Annex III which provides that the lesser duty level shall be calculated in accordance with the following methods and that the calculation of the lesser duty level shall take full account of the obligation set out in Article 3.5 to separate the injurious effects of other factors from the dumped imports, so as not to attribute these effects to the lesser duty level:

- price undercutting method: the lesser duty level is calculated as the difference between the price, normally at the ex-factory level, of the domestic like product and the CIF landed price of the dumped imports; with appropriate adjustment based on differences affecting price comparability between the domestic like product and the imported product including market characteristics affecting customers' purchase decision between them in the market of the importing Member;
  - representative cost plus profit method: the lesser duty level is calculated as the difference between the representative per unit cost of production, selling, general and administrative costs ("SG&A"), and profit of the domestic like product; and the CIF landed price of the dumped imports; with appropriate adjustment based on differences affecting the price comparability between the domestic like product and the imported product including market characteristics affecting customers' purchase decision between them in the market of the importing Member;
  - Non-dumped import price method: the lesser duty level is calculated as the difference between the CIF landed price of the non-dumped imports of the like products and the CIF landed price of the dumped imports.
- Ensure in Annex III that Article 2.4, including the prohibition of zeroing, applies *mutatis mutandis* to the calculation of the lesser duty level. **(FAN TN/RL/W/119)**

#### Exclusion of Companies, Art 9.2

- Consider whether the Agreement needs to be clarified specifically to ensure that any examined exporter or producer found not to be dumping during an investigation may not be covered by any measure which results from that investigation. **(USA TN/RL/W/98)**

#### Imposition and Collection of Duties, Art 9.3

- Clarify and improve the rules on imposition and collection of duties when a *de minimis* margin is determined for the collection of the duty. **(Brazil TN/RL/W/7)**
- Discuss the different assessment methodologies (retrospective and prospective) with a view to creating more predictable duty enforcement systems so that exporters and importers can operate in a more certain environment, while providing the requisite protection from material injury to the domestic industry. **(Canada TN/RL/W/47)**

#### Accrual of Interest

- Consider whether changes to the Agreement may be necessary to address the lack of a provision requiring payment of interest on any excess monies collected and held by the importing Member. **(USA TN/RL/W/98)**

#### Refund or Reimbursement of the Duty Paid in Excess

- Improve the provisions regarding reimbursement of duties paid in excess. **(FAN TN/RL/W/104)**
- Consider whether the *Anti-Dumping* and *SCM Agreements* should be equally precise in the provisions regarding reimbursement of duties paid in excess. **(FAN TN/RL/W/104)**
- Insert a provision guaranteeing the payment of interest on refunded anti-dumping duties in Article 9.3. **(Egypt TN/RL/W/110)**

#### "All-Others" Rate

- Discuss whether it is logical to require authorities to ignore zero/*de minimis* margins in the calculation of all-others rate, regardless of the fact that zero and *de minimis* margins also represent actual performance of exporters/producers from the exporting country. **(FAN TN/RL/W/10)**
- Improve Article 9.4 so that *de minimis* margins are considered for the determination of "all others" rate for exporters/producers which are not sampled. **(China TN/RL/W/66)**
- consider whether Article 9.4 should be clarified to permit appropriate use of dumping margins which may include limited amounts of facts available information in calculating the all-others rate. **(USA TN/RL/W/72)**
- remove the present uncertainty arising from the present lacuna (Article 9.4 prohibits the use of certain margins in the calculations of the ceiling for the all-others rate but does not address the issue of how that ceiling should be calculated in the event that all margins are excluded), by adopting a provision like that in Article 2.2.2(iii), i.e. determining dumping margins by "any other reasonable method". **(Australia TN/RL/W/90)**
- improve Article 9.4 in order to ensure that the "all-other" rate can be calculated using an appropriate and reasonable method in circumstances where exporters and producers investigated have been found to cooperate insufficiently (in certain circumstances it would be appropriate to take into account dumping margins that are based on constructed normal values for the determination of the "all-others" rate; experience has shown that this may reveal necessary in situations where a limited amount of facts available was used during the investigation in the anti-dumping margin determination). **(Egypt TN/RL/W/110)**

Article 9 and 11 Reviews (Article 9.3 - anti-dumping duty assessment, 9.5 - new shipper reviews, 11.2 - revocation reviews, and 11.3 - sunset reviews)

- Clarify the rules/disciplines pertaining to the review of existing anti-dumping measures. **(Canada TN/RL/W/1) ( Australia TN/RL/W/86)**
- Provide a clear methodological framework for reviews. **(EC and Japan TN/RL/W/138)**
- Address the absence of clear criteria and procedures for the initiation of final reviews and reviews upon request, and for the determinations resulting therefrom. **(Brazil TN/RL/W/7)**
- Clearly articulate the concepts, procedures and methodologies applicable to reviews under Article 9.3 (anti-dumping duty assessment), Article 9.5 (new shipper reviews), Article 11.2 (revocation reviews) and Article 11.3 (sunset reviews). **(FAN TN/RL/W/10)**
- clarify that the provisions of Articles 2 (Determination of Dumping), 3 (Determination of Injury), 4 (Definition of Domestic Injury), 5 (Initiation and Subsequent Investigation), and 6 (Evidence) shall apply to the reviews, whenever applicable, under Articles 9.3, 9.5 and 11.2, with the exception of the specific rules concerning these reviews (In particular, the *de minimis* rule and/or its threshold in Article 5.8 should be applied to these reviews to the extent that it is appropriate. In any case, the *de minimis* threshold should be applied to duty assessment conducted under Article 9.3. In addition, the same methodology that was applied to the original investigation for comparison between the normal price and the export price as stipulated in Article 2.4.2 should be applied to these reviews unless a different methodology is requested by the exporters). **(FAN TN/RL/W/83)**
- Examine minimum standards of information for the initiation of reviews and elements of analysis in relation to the recurrence of dumping and injury. **(Argentina TN/RL/W/81)**
- Apply same rules as those used in the initial investigation to reviews. **(FAN TN/RL/W/10)**
- Formulate clear provision in the *Anti-Dumping Agreement* to require that the procedures and methodologies used in the initial investigation shall be applied in the reviews under Articles 9.3, 9.5, 11.2 and 11.3. **(China TN/RL/W/66)**
- clarify the Agreement to stipulate which, if any, provisions that were originally intended to apply to initial investigations also apply to the various review provisions under the Agreement; in cases where, because of the fundamental differences between initial investigations and reviews, certain provisions of the Agreement cannot be reasonably applied to reviews, consideration should be

- given to providing rules that apply specifically to reviews. **(Canada TN/RL/W/47)**
- Ensure application of the *de minimis* dumping margin of 5 per cent in refund and review cases. **(India TN/RL/W/4)**
  - Limit to a maximum of 12 months the duration of reviews stipulated in Article 11.4. **(FAN TN/RL/W/10) (China TN/RL/W/66)**
  - Examine whether or not there should be mandatory deadlines for review investigations and whether these deadlines could be significantly shorter than the ones which are currently applicable for new investigations. **(EC and Japan TN/RL/W/138)**
  - Add a new provision to Article 11 whereby a review can be undertaken on the basis of positive evidence submitted by any interested party based on the findings of a judicial review establishing that the underlying investigation was flawed. **(India TN/RL/W/26)**
  - Discuss the appropriateness of an expansive use of sunset reviews to continue anti-dumping orders. **(FAN TN/RL/W/6)**
  - provide that all anti-dumping measures shall remain in force only for as long as and to the extent necessary to counteract dumping which is causing injury and shall without exception be terminated at the latest 5 years from the imposition of the order. **(FAN TN/RL/W/76)**
  - provide that a Member shall not initiate a new anti-dumping investigation, either on its own initiative or based on a petition, until a date no sooner than one year following the termination of the anti-dumping measure, unless there are exceptional circumstances that justify the initiation in a shorter period, which shall not be less than six months; the authority shall give a full description of the exceptional circumstances and present the reasons justifying the initiation of the investigation within such a shorter period in the public notice of initiation. **(FAN TN/RL/W/76)**
  - Adopt "automatic sunset" of anti-dumping measures, and allow a one year grace period until re-investigation. **(Korea TN/RL/W/111)**
  - Establish that anti-dumping measures taken by developed country Members against exports from developing country Members shall automatically cease after five years, and that no application to initiate new investigations against the same products from the same developing country shall be accepted before 365 days after the previous measures have ceased. **(China TN/RL/W/66)**
  - Clarify the circumstances that might lead to the continuation of a measure, and provide an indicative list of factors that authorities should consider in determining whether the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury. **(Canada TN/RL/W/47)**



- Improve the rule so that the reviews are not unfairly extended to the prejudice of responding parties (to this end, clarify (1) that reviews under Articles 9.3 and 11.2 must be completed within 12 months, (2) that authorities are encouraged to pay interest at a reasonable rate if duties are not refunded within 90 days following the completion of the review and (3) that reviews under Article 9.5 must be completed within 9 months after the date on which a request for a review has been made, unless an extension of the procedure is requested by the new shipper). **(FAN TN/RL/W/83)**
- Apply the 12-month time-limit set forth in Article 11.4 to sunset reviews. **(Egypt TN/RL/W/110)**
- Authorize members to amend the level of the measures imposed following sunset reviews which concluded that injurious dumping was likely to continue or recur, in order to guarantee under Article 11.3 the "adequate" character of anti-dumping measures stated in Article 9.1. **(Egypt TN/RL/W/110)**
- Include guidelines for expeditious reviews for new exporters. **(Brazil TN/RL/W/7)**
- Determine whether Article 9.5 needs to be clarified in order to prevent misuse of the special provisions for new shippers. **(USA TN/RL/W/72)**
- Establish detailed procedural guidelines on how to conduct new exporter reviews, with a particular emphasis on situations where export prices are not known because the company concerned has not yet affected exports but intend to sell to the country which imposed an anti-dumping measure. **(Argentina TN/RL/W/81)**
- improve Article 9.5 in order to prevent its use by exporters and producers subject to anti-dumping measures as a circumventing instrument; such improvement could be achieved by examining, among other elements, the circumstances in which the initiation of newcomer reviews can be requested, the newcomer review procedure and duration and the measures applicable to new exporters or producers while newcomer reviews are carried out. **(Egypt TN/RL/W/110)**
- Clarify that the request for Article 9.3 reviews can only be made by exporters or importers. **(FAN TN/RL/W/83)**
- clarify that the margin of dumping in an Article 9.3 review shall be based on all imports from a specific exporter that were entered into the importing Member for not less than one year, and not on an individual import basis. **(FAN TN/RL/W/83)**
- clarify, through the development of *harmonized indicative lists* relating to the assessment of dumping and the "likelihood of injury" under Article 11.2, that the burden of proof is on those parties advocating the continuation of the anti-dumping order (as for the assessment of dumping, the following points shall be included in the *harmonized indicative list*, (1) dumping margins to be considered

are those based on current market conditions and pricing, not the pricing during the period of the original investigation; and (2) in case the measure is subject to reviews after the original measure, the authorities shall rely on the margin found in the most recent review; (3) if no dumping margin has been found, the "likelihood of injury" test shall not apply and the measure shall be terminated. The following points should be included in the *harmonized indicative list* with respect to the assessment of the "likelihood of injury", (1) the likelihood of injury caused by the imports shall be based on the current competitive circumstances of the domestic industry and the relevant exporters, and not on information from the original investigation; (2) the authorities shall conduct their examination in accordance with Article 3 of the *Anti-Dumping Agreement*, based on facts, and not merely on allegation, conjecture or speculation; (3) the determination made by the authorities whether the continuation of the anti-dumping duty is warranted or not, shall be based on the current volume of the dumped imports). (FAN TN/RL/W/83)

- Explore the differences between reviews under Articles 11.2 and 11.3, going beyond the issue of the point in time at which such reviews may be conducted and the parties that may request them. (Argentina TN/RL/W/81)
- Consider whether there should be a greater symmetry between the provisions of Article 19.3 of the *SCM Agreement* and Article 9.5 of the *Anti-Dumping Agreement* with regard to the basis on which such reviews must be carried out. (FAN TN/RL/W/104)

## ARTICLE 10: RETROACTIVITY

### Retroactivity

- Consider whether the end result of the discussions on the issue of retroactivity should reflect symmetry between the *Anti-Dumping* and the *SCM Agreement*. (FAN TN/RL/W/104)

### Critical Circumstances

- consider clarifying what provisional steps are appropriate to preserve the right to impose duties retroactively (where there is a finding of critical circumstances); clarify and improve Article 10.6 in order to make it more effective (provide a sufficient remedy). (USA TN/RL/W/72)

## ARTICLE 12: PUBLIC NOTICE AND EXPLANATIONS OF DETERMINATION

### Public Notice and Explanation of Determinations / Transparency

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- Improve standards and procedures for public notices and explanations of determinations; such procedures should provide the public and any interested party with all facts, methods and assessments, including a detailed description on how the exact results relating to dumping and injury determination have been derived at, in order to allow independent scrutiny. **(FAN TN/RL/W/29)**
  - revisit Article 12.1 in order to seek greater clarification and detail and to guarantee transparency in the investigation since its initiation (Article 12.1 establishes that adequate information on different aspects of the investigation should be introduced either in the public notice or in a separate report, however, it does not mention fundamental information such as the period under investigation for dumping and injury, as well as the conclusions reached by the investigating authorities upon the evidence presented in the public notice). **(FAN TN/RL/W/29)**
  - further detail Articles 12.2.1 and 12.2.2 in order to guarantee that the relevant and necessary explanations will be made available; for example:
    - o consider whether it would be worth mentioning that where the investigating authority should adopt the normal price of exportation for a third country, it should explain the criteria used for selecting the third country;
    - o consider whether, in case of using samples as provided in Article 6.10, the criteria for the selection should be explained;
    - o consider whether in case of using the constructed price, the investigating authority should explain the reasons for choosing certain criteria for establishing the amounts of administrative costs, of sales and general costs, as well as the amount of profit;
    - o Consider whether the investigating authorities should be required to present the analysis on the impact of other factors on the domestic industry. **(FAN TN/RL/W/29)**
  - Examine the issue of transparency in investigatory procedures. **(Australia TN/RL/W/86)**
  - consider ways to promote greater disclosure of decisions and calculations performed; for example, investigating authorities could be required to give detailed descriptions of decisions made, the facts on which those decisions were based and the calculation methodology applied to determine the dumping margin. **(USA TN/RL/W/35)**
  - Provide definition of "sufficient detail" in Article 12. **(USA TN/RL/W/35)**
  - Consider bolstering the information requirements in Article 12 of the *Anti-Dumping Agreement* in order to ensure greater transparency and procedural fairness. **(Canada TN/RL/W/47)**

- Lay down guidelines with respect to the level of detail required in determinations. **(Venezuela TN/RL/W/132)**
- develop a detailed and practical guide to best practice options for implementing transparency provisions in the AD Agreement; have a draft document developed on which to base further discussions; options on how this work could be progressed include: having the matter taken up in the Working Group on Implementation; establishing a “transparency working group” under the auspices of the Rules Group; asking the Secretariat to develop a draft document; or commission some work from outside sources. **(TN/RL/W/137)**

### **ARTICLE 13: JUDICIAL REVIEW**

#### Judicial Review

- Discuss whether Members should provide additional information on procedures within their respective countries for pursuing legal recourse in an anti-dumping case (e.g. identify the court or other judicial system put in place and explains how that legal system operates). **(USA TN/RL/W/35)**

### **ARTICLE 15: DEVELOPING COUNTRY MEMBERS**

#### Special and Differential treatment, Article 15

- Establish a special and clearly defined developing country package once clear, effective and updated rules for all WTO Members have been discussed.<sup>1</sup>
- Take account in the course of the negotiations of the situation of small economies more vulnerable to the harm caused by unfair trade practices, as well as the situation of developing country Members, bearing in mind that the scope of special and differential treatment should be confined to operations between developed countries and developing countries.<sup>2</sup>
- develop the terms of Article 15 to make the provision fully operational; for instance, elaborate on the idea of "special regard" and "constructive remedies" (provisions could be developed both as for the exemplification of ways to give "special regard" and constructive remedies that should be explored by the authorities of the developed country and as regards the procedures to be followed in each situation) - consider including specific provisions to give developing country members meaningful and effective S&D treatment.<sup>3</sup>

<sup>1</sup> TN/RL/W/13 8 July 2002, submitted by European Communities

<sup>2</sup> TN/RL/W/36 4 December 2002, submitted by Morocco

<sup>3</sup> TN/RL/W/46 24 January 2003, submitted by FAN

- "special regard", "special situation", and "essential interests of developing country Members", read together, shall be understood to require that developed country Members shall specifically take into account the development needs of developing and least-developed country Members particularly for sustainably maintaining or increasing market access for products of export interest to them; in this regard:
- the causal link between the fact of dumping and of injury on the one hand, to imports from developing and least-developed country Members on the other, shall be determined on a case by case basis taking into account the WTO goals of improving living standards in developing and least-developed country Members through growth in the trade of these countries, in a manner that demonstrates that the achievement of these goals in developing and least-developed country Members has duly been taken into account; and
- Coherence shall be ensured between the *Anti-Dumping* and the *SCM Agreements* on the basis of the importance of sustainably maintaining or increasing market access for products of export interest to developing and least-developed country Members; and of maintaining their export competitiveness.
- "constructive remedies provided for by this Agreement" shall within the context of Article 15 be understood to include:
  - consultations for mutually agreed solutions within the meaning of the paragraph above other than anti-dumping duties, price undertakings, or any action prohibited by the Agreement on Safeguards;
  - internal reforms in developed country Members regarding market conditions, and employment and investment conditions to improve competitiveness on the basis of fair competition rather than taking anti-dumping measures against imports; and
  - exploring solutions against anti-competitive practices if determined to have taken place, on the basis of taking into account and protecting the interests of domestic consumers, rather than taking any anti-dumping measures.

## ARTICLE 17: CONSULTATION AND DISPUTE SETTLEMENT

### Standard of Review

- Consider whether Article 17.6 should be addressed to ensure that panels and the Appellate Body properly apply it. (USA TN/RL/W/130)
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## ARTICLE 18: FINAL PROVISIONS

### Detailed National Legislation/Regulation

- Provide the Negotiating Group on Rules with a comprehensive overview of how Members have applied the procedural fairness provisions of the Agreement in their national laws, regulations and practices, as a starting point in the discussion on principles and procedures that could be adopted into the Agreement. **(USA TN/RL/W/35)**
- Encourage Members to provide binding regulations or other administrative guidelines that give the necessary details about the procedures their authorities use to conduct investigations. **(USA TN/RL/W/35)**

## OTHER ISSUES

### Duty Refund

- consider having special dispute settlement provisions for the *Anti-Dumping Agreement* in cases where the imposition of duties under this agreement has been found to be inconsistent with the provisions of the agreement; these new provisions would require the return of anti-dumping duties or duty deposits in cases where a Member's compliance action with a DSB decision results in the measure being withdrawn, or a partial return of duties or duty deposits where the amount of duties/deposits that would have been collected under a WTO-compliant measure is less than the amounts actually collected. **(Canada TN/RL/W/47)**

### Harmonization of the Anti-Dumping Agreement and the SCM Agreement

- Address divergences between similar provisions of the *Anti-Dumping* and the *SCM Agreements*, so that, where appropriate, differences in similar provisions of the two agreements are eliminated. **(Canada TN/RL/W/47)**

### Reducing the Cost of Investigations

- Explore whether an improvement could be achieved by screening all procedural aspects with a view to identifying those areas where changes can bring about a reduction in the cost of co-operation while at the same time maintaining the quality of the investigation. **(EC TN/RL/W/13)**
- Discuss the simplification and standardization of information collection, particularly at the initial stages of investigations. **(EC TN/RL/W/13)**

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- Identify areas where increased procedural fairness can reduce costs of investigations. **(USA TN/RL/W/35)**
  - Explore standardizing verification outlines and the structure of verification reports. **(USA TN/RL/W/35)**
  - Explore the possibility of model/standard questionnaires which are to be applied by Members carrying out AD investigations; examine whether or not it would be appropriate to have simplified questionnaires for SMEs. **(EC and Japan TN/RL/W/138)**
  - Explore whether and to what extent standard procedures for on-spot verifications would help (the provisions of Annex I of the *Anti-Dumping Agreement* are a good starting-point for further clarifications in this respect). **(EC and Japan TN/RL/W/138)**
  - discuss whether the periods set out in Article 5.10 of the *Anti-Dumping Agreement* could be significantly shortened (this discussion would also have to reflect that shorter deadlines impose greater discipline on investigating authorities and interested parties). **(EC and Japan TN/RL/W/138)**
  - Examine whether or not there should be mandatory deadlines for review investigations and whether these deadlines could be significantly shorter than the ones which are currently applicable for new investigations. **(EC AND Japan TN/RL/W/138)**
  - Discuss whether the current ADA should be clarified by explicitly forbidding the mandatory representation by lawyers of a co-operating party. **(EC and Japan TN/RL/W/138)**
  - provide clear rules as to how non-confidential summaries should be prepared; give guidance with regard to all areas where non-confidential summaries have to be submitted including for transaction-by-transaction listings and information on cost of production; provide for the possibility of a review of such summary, e.g. by a "Permanent Group of Experts" type of body serviced by the WTO Secretariat; ask Members to establish domestic rules allowing for independent review of non-confidential summaries upon request by an interested party; built upon Article 13 of the *Anti-Dumping Agreement* as a basis for this option. **(EC and Japan TN/RL/W/138)**
  - Clarify rules on disclosure (Art. 6.9 of the *Anti-Dumping Agreement*); any rules on disclosure should aim at defining the minimum information to be given. **(EC and Japan TN/RL/W/138)**
  - Provide a clear methodological framework for reviews. **(EC and Japan TN/RL/W/138)**
  - design new rules on injury analysis which give more precise guidance; examine whether one could find straightforward rules for a number of typical "extreme" cases (this could be achieved by providing guidance to the application of the

factors listed in Article 3.2 and Article 3.4 of the *Anti-Dumping Agreement*; such guidance could be obtained by introducing more quantitative elements where possible). (EC and Japan TN/RL/W/138)

#### Technical Assistance / Capacity Building

- develop standardized training programs; organize meetings of administrators to learn and discuss technical issues (USA TN/RL/W/35)

#### Public Interest

Clarify the rules/disciplines pertaining to the consideration of the broader public interest. (Canada TN/RL/W/1)

Strengthen rules in order to ensure that relevant information pertaining to public interest is taken into account in a more substantive manner. (FAN TN/RL/W/6)  
discuss whether authorities should take into account the interests of the other economic sectors affected by the anti-dumping measure. (FAN TN/RL/W/6)

Discuss the establishment of a public interest test (in terms of an examination of the impact on economic operators) as an additional condition before measures can be imposed. (EC TN/RL/W/13)

Examine the unintended effects of anti-dumping action and efforts to strengthen existing provisions of the Agreement so as to fully consider the consequences of anti-dumping duties for broader economic, trade and competition policy concerns. (Canada TN/RL/W/47)

#### Concurrent Application of Anti-Dumping and Safeguard Measures

- Suspend the imposition of anti-dumping measures or adjust the level of duty as long as the safeguard measure is enforced, in situations which result in concurrent imposition of anti-dumping and safeguard measures on the same product. (India TN/RL/W/26)

#### Small Economies: Regional Authority

- Explore proposal for a regional trade authority (proposed in the context of the Work Programme on Small Economies), which would conduct trade remedy cases on behalf of individual Members. (USA TN/RL/W/35)
- Consider how a regional authority (designated by small economies that do not have the resources to maintain a "competent authority") might function, and any changes in the *Anti-Dumping Agreement* which may be necessary. (USA TN/RL/W/72)



## PART II: PROPOSAL SUBMITTED FROM 2004 - 2005

### ARTICLE 2: DETERMINATION OF DUMPING

"Affiliated Parties", Article 2.2 and 2.3<sup>4</sup>

#### **Description of problems:**

- The issue of "affiliation" arises in various places in the ADA i.e. the calculation of normal value and the use of constructed export price (CEP), and plays a crucial role in the determination of dumping margins. Yet the ADA does not provide a clear and concrete set of criteria for determining when parties should be considered "affiliated" and does not adequately address those situations in which the existence of possibly affiliated parties affects the calculation of dumping margins. Given the importance of these issues, it is important to rethink the issue of affiliation and ensure that the ADA clearly and appropriately defines these various issues. The definition of affiliated parties should be applied consistently in all situations, and specific rules should be applied both in determining affiliation and in the proper treatment of affiliated party transactions

#### **Proposal:**

- *Definition of "Affiliated Party"*: Add a provision (or separate annex) defining "affiliated parties" to be applied in all determinations of dumping where parties are related, associated or affiliated, and where the prices in transactions between such parties could be unreliable. Accordingly, the definition should read as follows: An "affiliated party" shall be any party, which is considered to, directly or indirectly, control or be controlled by another party or which is under the common control of a third party. For the purposes of this definition, control is the power to govern the financial and operating policies of an enterprise by having: (a) more than one half of the voting power of an enterprise; (b) power over more than one half of the voting rights by virtue of an agreement with other investors; (c) such power under a statute or an agreement; (d) power to appoint or remove the majority of the members of the board of directors or equivalent governing body; or (e) power to cast the majority of votes at meetings of the board of directors or equivalent governing body. Moreover the term "association" in

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<sup>4</sup> TN/RL/W/146 14 March 2004 and TN/RL/GEN/19 15 September 2005, submitted by Friends of Antidumping (FAN) The friends of Anti-Dumping consist of the following countries Brazil; Chile; Colombia; Costa Rica; Hong Kong, China; Israel; Japan; Korea Rep of; Norway; Singapore; Switzerland; The separate territory of Taiwan, Penghu, Kinmen and Matsu; and Thailand.

Article 2.3 should be replaced by “affiliated parties” and should follow the single unified definition.

- *Calculation of Dumping Margins where Affiliated Parties are Involved: Sales to Affiliated Parties for Determining Normal Value*: Amend Article 2.2 to clarify that the authorities shall exclude all sales by the responding party to its affiliated parties from the sales in the exporting country (or to the third country) for determining the normal value - clarify that such comparison shall be done for the same products sold at the same level of trade, taking into account differences in product mix - clarify that when the authorities exclude such sales under the condition mentioned above, the excluded data shall not be replaced with any data - clarify that in case there are no or too few unaffiliated parties with respect to sales by the responding party to make the above-mentioned comparisons, the authorities shall disregard all the sales in the exporting country and base the determination of the normal value on the constructed value under Article 2.2 - amend Article 2.2 to clarify that in no event shall the authorities request that a responding party submit information in connection with sales by the affiliated parties to third parties - clarify that the authorities do not have any discretion whether or not to follow the above-mentioned procedures on a case-by-case basis. Sales Expenses by Affiliated Service Providers: Add provisions to clarify that a responding party’s sales expenses for services that are provided by affiliated parties shall be based on the actual price charged to the responding party by the affiliated supplier. Costs by Affiliated Suppliers: amend Article 2.2.1.1 to clarify that a responding party’s costs for inputs provided by affiliated suppliers shall be based on the actual prices charged to the responding party by the affiliated suppliers. Export to Affiliated Parties (CEP): Amend Article 2.3 to further clarify that the authorities shall disregard the export price as unreliable and use CEP, only if the weighted average price of export sales by the responding party to the affiliated importers varies by more than (V) per cent from the weighted average price of export sales to all the unaffiliated importers - clarify that such comparison shall be done for the same products sold at the same level of trade, taking into account differences in product mix - clarify that in case there are no or too few unaffiliated parties with respect to export sales by the responding party to make the above-mentioned comparisons, the authorities shall disregard all the export sales and construct the export price pursuant to Article 2.3 of ADA- clarify that the authorities do not have any discretion whether or not to follow the above-mentioned procedures on a case-by-case basis.

#### Fair Comparison, Article 2.4<sup>5</sup>

<sup>5</sup> The discussion of this Article focuses specifically on five interrelated aspects of “fair comparison” that is, comparison at the same level of trade (TN/RL/W/158 28 May 2004 and TN/RL /GEN/24 20 Oct 2004), exclusion of certain of export sales from the calculation of export price and constructed export price

### Description of Problem:

- Article 2.4 of the ADA requires that authorities make a “fair comparison” between export price and the normal value of the product under consideration. Authorities must ensure that a fair comparison is made at the same level of trade, with due allowance being made for differences that affect price comparability. However, the language of the current ADA is very general, and lacks specific disciplines. As a result, authorities often fail to make a fair comparison. This paper proposes changes to Article 2.4 that would address some of the more significant problems.
- *“Same level of Trade”*: Article 2.4 further requires that the fair comparison between export prices (EP)/(CEP) and normal value (NV) must be made at the same level of trade. Improper or insufficient adjustments to EP/CEP and NV result in EP/CEP and NV being compared at different levels of trade. The ADA does not expressly provide specific guidance on how such adjustment shall be made leading to some authorities not making proper adjustment necessary to place sales at same level of trade. Lastly, while most Members currently require exporters to show that they are entitled to adjustments, the ADA should state clearly that the authorities have the burden to ensure and make “due allowances” for all differences which affect price comparability.
- *Exclusion of certain types of export sales from the calculation of EP and CEP*: The ADA provides for the exclusion of sales “not in the ordinary course of trade” from normal value. However, the treatment of such sales with respect to export price and constructed export price is not explicitly addressed in the ADA, therefore it is impossible for authorities to make a “fair comparison” with respect to such sales, hence the ADA should be amended to set forth specific rules with regard to the exclusion of such sales from the calculation of export price and constructed export price that are relevant for the purpose of ensuring symmetry.

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(TN/RL/W/158 28 May 2004), the method of comparison under Article 2.4.2(TN/RL/W/158 28 May 2004), model matching(TN/RL/W/158 28 May 2004 and TN/RL/GEN/18 15 September 2004), and prohibition of Zeroing (TN/RL/GEN/8), submitted by FAN

- *The method of comparison under Article 2.4.2:* Article 2.4.2 currently provides three alternative methods for comparing export prices with normal value: weighted average normal value to weighted average of prices of all comparable export transactions; transaction-to-transaction; or weighted average normal value to individual export transactions, for so-called “targeted dumping” cases. Accordingly, only the first method yields fair comparison. The second method provides authorities with unpredictably broad discretion to choose among the transactions to be used as the basis for normal value. The last method is objectionable because the concept of “targeted dumping” lacks any theoretical or empirical basis.
- *Model Matching:* When calculating the dumping margin, the exported products and the like product in the home market will usually be further sub-divided into models, and the comparison between the normal values and export prices will first be performed between corresponding models, as an interim step, and then aggregated in order to arrive at a dumping margin for the product as a whole. Article 2.6 defines the “like product” as “a product which is identical, i.e. alike in all respects to the product under consideration, or in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration”. The ADA obliges authorities to determine which models of products used to determine normal value are “like” the models of the exported products. In the absence of model of like products that are “identical” to a particular model of the exported products, authorities are free to decide which models for the normal value, if any, “closely resemble” the exported model and thus may be used in the calculation of dumping margins. Despite the fact that the methodology to identify models of the like products to be used for comparison with models of the exported products is often crucial to the outcome of the dumping margin calculation, and the determination of dumping, the ADA fails to provide guidance for interpreting the standard “closely resembling”, thereby leading to authorities having a wide discretion to determine “closely resembling”. This excessive discretion causes uncertainty for exporters. It also exposes authorities to possible WTO challenges by respondents. Both respondents and authorities would therefore benefit from clearer rules regarding model matching.
- *Prohibition of Zeroing:* Despite fundamental principles prohibiting zeroing, there exist disagreements among members over the scope and extent of the prohibition of zeroing.

### **Summary of Proposal:**

- *“Same level of Trade”:* It is proposed with regard to adjustments selling expenses that Article 2.4 be amended to clarify that, in a comparison between export price (including CEP) and NV, all selling expenses related to sales activities for the product under consideration and like products must be fully deducted from the

export price (including CEP) and NV. Regarding burden of ensuring a fair comparison firstly- Amend Article 2.4 to state that “the obligation to ensure a fair comparison lies on the authorities” and further, delete from the third sentence of Article 2.4 the phrase “are also demonstrated to”. Secondly - Amend the beginning of the fifth sentence of Article 2.4 to delete the conditional clause at the beginning of the sentence “If in these cases price comparability has been affected...” Instead, state an absolute obligation on the part of the authorities: “The authorities shall establish the normal value ...”

- *Exclusion of certain types of export sales from the calculation of EP and CEP:* - Amend Article 2.1 to provide that the following types of sales shall be excluded from the calculation of export price and constructed export price: sales of samples, sales to employees, barter sales, sales of the like products to a teller or subcontractor for further-manufacture, upon the condition that the further-manufactured products will be returned to the responding party, and certain sales to affiliated parties.
- *The method of comparison under Article 2.4.2:* - Abolish the last two methodologies set out in Article 2.4.2 and allow only the comparison of weighted-average normal value with weighted-average export price or constructed export price - Make clear that the calculation methodology set forth in Article 2.4.2 (amended as set forth above) shall apply to all investigations and reviews under this Agreement. Delete the phrase “in the investigation phase,” or provide a definition stating that this term refers to all anti-dumping proceedings - Require that authorities calculate weighted-average normal value and weighted-average export price/constructed export price using all sales during the period of data collection.
- *Model Matching:* - Impose disciplines on authorities’ selection of the characteristics to be used in identifying the “identical” and “most closely resembling” models; impose limits on products that may be deemed “Closely Resembling” -Amend the ADA to require that, for purposes of identifying the “identical” and “most closely resembling” models (“model matching”), the authorities must use all characteristics that have a significant effect on the commercial value or the end use of the product - Amend the ADA to require that, where there are no models for determining normal value that are identical to an export model, allowances for differences in physical characteristics for purposes of Article 2.4 shall be made based on the difference in the per-unit variable cost of manufacture between the exported model and the model used as the basis for normal value- Amend the ADA to require that, where a product under consideration consists of more than one model, responding parties be given adequate opportunities to propose model matching characteristics that determine identical and most resembling models, and to respond to those proposed by the petitioners and the authorities.
- *Prohibition of Zeroing:* - Amend Article 2.4.2 to explicitly provide that regardless of the basis of the comparison of export prices to normal value (i.e. weighted

average-to-weighted average or transaction-to-transaction, or weighted average-to-transaction), all positive margins of dumping and negative margins of dumping found on imports from an exporter or producer of the product subject to investigation or review must be added up- Further amend the first sentence of Article 2.4.2 to clarify that the Article applies to initial investigations and all subsequent reviews under Articles 9 and 11.

#### Currency Conversion, Article 2.4.1<sup>6</sup>

##### **Description of Problems:**

- The absence of definition of the terms "fluctuations" and "sustained movements" make it difficult for exporting producers and investigating authorities to determine when they should depart from the general currency conversion methodology set forth in the first sentence of Article 2.4.1. Also, in the absence of definitions, Members remain free to determine, on a case-by-case basis, whether or not exchange rates fluctuations should be ignored or sustained movements reflected.

##### **Proposal:**

- Define the term "fluctuations" and precisely set forth when currency conversion fluctuations are to be ignore pursuant to article 2.4.1.- Define the terms "sustained movements" and set forth how sustained movements in exchange rates should be reflected. Also, clarify the time periods during which these sustained movements should be reflected.

#### "Like products and products under consideration", Article 2.6<sup>7</sup>

##### **Description of the problems:**

- *Product under consideration*: The lack of guidance in the ADA on the concept of product under consideration creates systemic problems. In particular, it can lend itself to Members capturing, in a single investigation, determination and remedy, products that can be completely different in terms of their physical characteristics, end uses, and channels of distribution.
- *"Domestic like Product"*: The Agreements define "like product" as "a product which is identical, i.e. alike in all respects to the product under consideration, or in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under

<sup>6</sup> TN/RL/W/183 1 July 2005, submitted by Egypt

<sup>7</sup> TN/RL/GEN/26 1 Dec 2004, submitted by Canada

consideration.” This definition does not give any indication as to the characteristics by reference to which “identical” and “closely resembling” products are to be determined.

**Proposal:**

- *Product under consideration:* The ADA should be clarified by the introduction of a provision in Article 5 requiring that, in each investigation, the authorities make a determination of the scope of the product under consideration. The Agreement should also illustrate the types of product characteristics that may be relevant in this context.
- *“Domestic like Product”:* consider elaborating on Article 2.6 in order to provide distinct guidance on the types of characteristics that may be relevant to determinations of like product. A sentence should be added to Article 2.6 to provide that a determination of the domestic like product shall be based on all relevant product characteristics.

**ARTICLE 3: DETERMINATION OF INJURY**

Determination of injury<sup>8</sup>

**Description of problem:**

- *Definition of Material Injury:* The only attempt at defining the magnitude of injury necessary to make an affirmative determination of injury is contained in footnote 9 to Article 3 which references “material” without further elaboration. In order to ensure and avoid imposition of antidumping measures in the absence of any meaningful extent of injury to the domestic industry, the definition of material injury should be clarified.
- *Determination of Material Injury:* Article 3 is confusing in terms of the relationship of the two determinations which must be made, namely that the domestic industry in the importing country must be injured and that the injury must be caused by the dumped imports. The current ambiguity leaves open the possibility that the two concepts are mixed and could also allow the application of lower standards of injury in cases where causal relationship between the injury and the imports may be strong, but the injury itself may not be material.
- *Causation: Injury caused by dumped imports:* Article 3.5 is ambiguous in terms of the relationship between the injury being experienced by the domestic industry in the importing country and the dumped imports.

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<sup>8</sup> TN/RL/GEN/28 2 Dec 2004 & TN/RL/GEN738 23 Mar 2005 Submitted by FAN

- *Causation: Correlation analysis:* Members may take different approaches to determining whether there is a causal relationship between dumped imports and injury to the domestic industry in the importing country, which result in different analytical methods. While other analyses may affect the outcome of any individual case, it is important both to encourage the use of correlation analysis and to ensure that it is applied in a uniform manner.
- *Causation: Non-attributable rule - Pricing analysis:* Where multiple countries are involved in an investigation or there are multiple producers in the domestic industry and authorities undertake a pricing analysis exclusively based on average prices of imports or domestic products. The use of averages can, in fact, mask the true pricing dynamics in the market and the source of pricing pressures on the domestic industry.

### **Proposal:**

- *Definition of material injury:* Amend foot note 9 in order to clarify the definition of material injury, in particular by adding the following: “The term ‘material injury to a domestic industry’ means the state of the domestic industry as demonstrated by an important and measurable deterioration in the operating performance of the domestic industry, based on an overall assessment of all relevant economic factors and indices having a bearing on the state of the domestic industry including those enumerated in Article 3.4.
- *Determination of Material Injury:* Proposes that an overarching framework of determination of material injury caused by dumped products be adopted. To that extent it is proposed that Article 3 be amended in order to clarify that, when authorities examine whether dumped imports cause material injury, a determination of material injury shall be based upon determinations of (1) whether the domestic industry in the importing country is experiencing material injury, and (2) if so, whether it is the dumped imports under investigation that are causing material injury.
- *Causation: Injury caused by dumped imports:* Amend the first sentence of Article 3.5 as follows: “It must be demonstrated that the dumped imports in and of themselves are, through the effects of dumping, as set forth in paragraph 2 and 4, causing injury within the meaning of this agreement.”
- *Causation: Correlation analysis:* Proposes that a new sentence be added after the second sentence in Article 3.5 as follows: “If the authorities can find neither a strong correlation between a significant increase in dumped imports and the injury to the domestic industry nor a strong correlation between a significant price undercutting by the dumped imports and the injury to the domestic industry, the authorities shall presume that there is no causal relationship between dumped imports and injury, unless the authorities clearly demonstrate, based on other evidence, that there nevertheless exists a causal relationship



between dumped imports and injury.” Also it proposed that the following additions be made “In the presence of a strong correlation between a factor or factors other than the dumped imports and the injury to the domestic industry, authorities shall presume that there is no causal relationship between the dumped imports and injury, unless authorities clearly demonstrate, based on other evidence, that the dumped imports, in and of themselves and apart from any other factors, are causing injury.

- *Causation: Non-attributable rule - Pricing analysis:* Proposes the inclusion of the following in Article 3.5: “Authorities shall examine the possible impact that certain domestic producers of the like product have on the state of the domestic industry. In particular, authorities shall examine the impact of the sales volume and the prices of domestic producers of the like product to determine whether there is a significant price undercutting or depression caused by the price of one or more domestic producers of the like product, and shall not attribute injury caused by such price undercutting or depression to dumped imports.”

#### Cumulation, Article 3.3<sup>9</sup>

##### **Description of Problem:**

- Article 3.3 of the ADA, plays an important role for any injury determination. It provides for a country-based *de minimis*, making explicit reference to the definition of *de minimis* in Article 5.8. Bearing in mind that, as a rule, individual dumping margins should be determined for each known exporter or producer, the wording of Article 3.3(a) creates uncertainty as to the reason why the *de minimis* should be country-based in this Article and to what extent the concepts in Articles 3.3 and 5.8 are comparable, similar or unlike. It should be noted that the cross-reference to Article 5.8 is explicitly made only to *de minimis*, not to negligibility. It is not clear, for that reason, whether the concept of negligibility in Article 3.3 is the same as in Article 5.8. In principle, there should be no reason why the thresholds would not apply for both Articles, and that is what most authorities assume in their practice. If there were different standards in Article 3.3 as opposed to Article 5.8, authorities could face a situation in which imports from a country do not meet the requirements to be excluded according to Article 5.8 and also do not fulfil all the conditions to be cumulated together with the imports of other countries under Article 3.3. Furthermore, Article 3.3(b) intends to indicate that authorities may not make a cumulative assessment of the effects of the dumped imports from different countries if those dumped imports are not under the same conditions of competition. The ADA, however, provides no guidelines on how to assess the conditions of competition. Several Members have also recognized that it would be helpful to have some guidelines on how to assess the conditions of competition for the purpose of cumulation.

<sup>9</sup> TN/RL/GEN/51 1 July 2005, submitted by FAN

**Proposal:**

- We suggest that Article 3.3 be amended as follows: “Where imports of a product from more than one country are subject to the same investigation, the investigating authorities shall cumulatively assess the effects of such imports, provided that imports from any investigation terminated under paragraph 8 of Article 5 are excluded from the cumulative assessment. If imports from more than one country are subject to different investigations for which the period of investigation is the same or largely overlapping, the investigating authorities may cumulatively assess the effects of such imports, provided that such cumulation is appropriate in the light of the conditions of competition between the products under consideration of each investigation and that imports from any investigation terminated under paragraph 8 of Article 5 are excluded from the cumulative assessment. The assessment of those conditions of competition shall be based upon an evaluation of the physical characteristics of the products, including technical specifications and quality, and their market characteristics, including end uses, substitutability, pricing levels and distribution channels. This list is not exhaustive, nor can one or several of these factors necessarily give decisive guidance. Authorities shall not cumulate imports from more than one country subject to different investigations if the products under consideration of each investigation do not reach the same geographical market or do reach the same geographical markets at different periods of time.”

Material Retardation, Article 3<sup>10</sup>**Description of Problem:**

- The ADA neither defines nor governs "*material retardation*" determinations. The concept of "*material retardation*" is intimately connected to the definition of the concept of "*industry in the process of establishment*". It is generally accepted that material injury refers to actual injury and threat of material injury to a clearly foreseen and imminent injury however, "*material retardation*" remains to be precisely defined. There is currently no indication in the ADA of how the terms "*material retardation of the establishment of the industry*" should be interpreted. Also the ADA fails to identify tests similar to those laid down in Article 3 of the ADA concerning material injury and threat thereof with respect to *material retardation*. While Article 3 of the Anti-Dumping Agreement clearly identifies the factors and elements which must be considered in order to determine whether material injury or threat of material injury is established, it does not indicate which factors are relevant for the determination of whether the domestic industry suffers from *material retardation*. Furthermore, the criteria set forth under Articles 3.4 and 3.7

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<sup>10</sup> TN/RL/W/175 31 March 2005, submitted by Egypt

of the ADA cannot be used to determine whether industries in the process of establishment suffer injury.

**Proposal:**

- *Definition of the concept of material retardation:* Clarify the current text of footnote 9 to Article 3 to clarify that the concept of "material retardation" is not limited to industries which are established from zero, but should apply to all domestic industries which are characterized by a limited level of development and/or a new organization. Accordingly, this proposal intends to clarify cases in which investigating authorities should examine whether material retardation occurs. It is crucial not to limit the "material retardation" test to industries which are newly established; hence particular concern should be paid to embryonic, restructuring and newly privatized industries which should also be regarded as industries in the process of establishment. This matter is of specific concern to developing country Members since their domestic industries are rarely developed.
- Material retardation test: Clarify Article 3 of the Anti-Dumping Agreement to specify criteria determining in which circumstances material retardation occurs. To that extent, investigating authorities should consider and evaluate the factors listed in Article 3.4 also in case of material retardation. This seems supported by the Panel's findings in *Mexico – HFCS WT/DS132/R*. In that case, the Panel explained that Article 3.7 sets out additional factors that must be considered in a threat case, but does not eliminate the obligation to consider the impact of dumped imports on the domestic industry in accordance with the requirements of Article 3.4. In other words, according to the Panel, investigating authorities should consider both the factors listed in Article 3.7 as well as the factors listed in Article 3.4 in a threat case. The Panel explained that this conclusion is mandated by the text of Article 3 which, as a whole deals with the determination of injury which is defined as material injury, threat of material injury, or material retardation of the establishment of a domestic industry. The purpose of a new paragraph in Article 3 would be to list factors on the basis of which investigating authorities can establish that there is material retardation.

**ARTICLE 4: DEFINITION OF DOMESTIC INDUSTRY**

Definition of Domestic Industry, Article 4.1<sup>11</sup>

**Description of Problem:**

- Article 4.1 of the ADA defines the term "domestic industry" as referring to (a) "the domestic producers as a whole of the like products" or to (b) "those of them whose collective output of the products constitutes a major proportion of the

<sup>11</sup> TN/RL/GEN/27 2 Dec 2004, submitted by FAN

total domestic production of those products". Although Article 4.1 encompasses the idea that the domestic industry shall refer if not to the producers as a whole at least to the major part of such producers, a former WTO panel<sup>12</sup> found that the term "a major proportion" does not require the majority (more than 50 per cent) but "important, serious or significant" proportion of total domestic production. In the absence of unequivocal guidance in the ADA on the issue, antidumping duties may be adopted on the basis of an injury determination found to exist in a quite limited proportion of the domestic production of the like product.

- There is no clear discipline establishing the conditions or situations in which "the major proportion" of the total domestic production of the like product is to be used. The lack of clarity in this regard has a potential impact on how injury determinations are to be carried out.

### Proposal

- Amend Article 4.1 as follows: "For the purpose of this Agreement, the term "domestic industry" shall be interpreted as referring to the domestic producers as a whole of the like products or in exceptional cases provided for in this Agreement, to as high a proportion of the producers as possible, but not less than those of them whose collective output of the products constitutes the major proportion (**more than 50%**) of the total domestic production of those products."
- Add a new provision to the ADA as follows: "Authorities shall make every effort to obtain all relevant evidence concerning all domestic producers of the like product for the purpose of making an injury determination. In exceptional cases where it is not possible to obtain evidence which covers all domestic producers, authorities shall use all evidence obtained relating to domestic producers, provided that such evidence relates to as high a proportion of the producers as possible, but not less than those of them whose collective output of the products constitutes the major proportion (more than 50%) of the total domestic production of those products. In such a case, the authorities shall provide a reasoned explanation demonstrating why it could not base the injury assessment on evidence covering domestic producers as a whole."

## ARTICLE 5: INITIATION AND SUBSEQUENT INVESTIGATION

### Initiation and completion of investigations, Article 5<sup>13</sup>

#### Description of Problems:

- The determination by the authorities to initiate an investigation is one of the most important stages in an anti-dumping proceeding, with significant

<sup>12</sup> Argentina- Definitive Anti-dumping duties of poultry from Brazil (WT/DS241/R)

<sup>13</sup> TN/ RL/GEN/ 23 20 OCT 2004, submitted by FAN

administrative and financial burdens on exporters as well as negative impact on business activities. Such effects and burdens are not warranted in cases where the initiation is poorly justified.

- Article 5.1 of the ADA requires authorities to determine that the application has been made “by or on behalf of the domestic industry”, sometimes referred to as “standing” requirement. Art 5.4 on the other hand provides that the standing requirement is fulfilled if an application is supported by at least 50 per cent of those expressing an opinion and by at least 25 percent of the domestic industry. This provision, however, may enable the initiation of an investigation even if less than 25 per cent of the total production of the domestic industry supports the petition.<sup>14</sup> Also the current ADA does not provide exporters and producers with the opportunity to comment prior to initiation.
- Article 5.10 establishes that the investigation must be concluded within one year and in no case more than 18 months. Accordingly this is excessive. Finally, if an investigation is concluded without the application of final anti-dumping measures, or if an authority otherwise issues a decision that results in the revocation or non-application of measures, there should be no reason to initiate a new investigation on the same product from the same Member within one year. **(Prohibition of back to back investigations).**

#### Proposal:

- Improve the standing threshold to require support by more than 50 per cent of total production of the like products by amending Article 5.4 in order that an investigation shall not be initiated unless the application is supported by domestic producers of the like product whose collective output exceeds a threshold of at least 50 per cent of the total domestic production of the like product in the importing country.<sup>15</sup>
- Add a new footnote in Article 5.4 to clarify that the standing determination should be based on the positions expressed by individual domestic producers, not on positions expressed collectively.
- Clarify that an application for an anti-dumping investigation must list all known domestic producers who support the application. To that extent add to Article 5.2(i) the requirement that the applicant must list all known individual domestic

<sup>14</sup>Under the current two-pronged standing test, an anti-dumping proceeding may be initiated based on only minority support. For example, even where 24 per cent of the producers of the like products oppose an anti-dumping petition, 25 per cent of the producers can still satisfy the standing requirement where the majority of the producers of the like products, 51 per cent in this case, remain silent.

<sup>15</sup> The FANs propose only a single test -- *i.e.*, companies supporting the petition must meet the threshold of at least 50 per cent of total domestic production of the like product. Given that the threshold would be 50 per cent of domestic production, there would be no need for two separate tests or prongs.

producers of the like product who support the application, and the volume and value of each of such producer's domestic production of the like product.

- Provide opportunity for exporters and producers to comment before initiation of investigation by adding a new provision in Article 5 to clarify that the authorities shall disclose the application for the initiation of an investigation to the known exporters and producers in the exporting Member concerned, and to the government of the exporting Member in particular providing them with sufficient evidence to justify the initiation of investigation. Also replace the expression in Article 5.5 "unless a decision has been made to initiate an investigation" with the expression "until the authorities disclose the application for the initiation of an investigation in accordance with Article 5.
- Regarding Duration of investigation, it is proposed that Article 5.10 should be changed to require that investigations must be concluded within one year after initiation, unless exceptional circumstances require an extension of the investigation. Where such exceptional circumstances exist, the investigation must be concluded no more than [Y] months after initiation, with the proviso that the public and all interested parties should be notified of such extension.
- Regarding prohibition of back to back Investigations, it is proposed that an authority must not initiate an anti-dumping investigation within 12 months of a determination regarding the same product from the same Member which resulted in the non-application or revocation of anti-dumping measures.

#### Product under Considerations, Article 5<sup>16</sup>

##### **Description of the Problem:**

- The lack of guidance in the Agreement on the concept of product under consideration creates systemic problems. In particular, it can lend itself to Members capturing, in a single investigation, determination and remedy, products that can be completely different in terms of their physical characteristics, end uses, and channels of distribution. In order to avoid that investigating authorities define a group of products destined for very different market segments to be a single product under consideration and thus subject to the same investigation, it should be clarified that each investigation should encompass only products that are under the same conditions of competition. A better scoping of any investigation in its very beginning will not only enhance predictability and reduce costs for all interested parties, but also help solving problems throughout the investigation

##### **Proposal**

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<sup>16</sup> TN/RL/GEN/50 1 July 2005, submitted by FAN

- The ADA should be clarified so as to require investigating authorities to scope the product under consideration based on the conditions of competition, as a condition for initiating any investigation. We propose inserting in Article 5 the following provision: *“An investigation can be initiated and subsequently conducted only with a proper definition of the scope of the product under consideration which can encompass only products that are under the same conditions of competition. The assessment of those conditions of competition shall be based upon an evaluation of the physical characteristics of the products, including technical specifications and quality, and their market characteristics, including end uses, substitutability, pricing levels and distribution channels. This list is not exhaustive, nor can one or several of these factors necessarily give decisive guidance. Products that do not reach the same geographical market or that do reach the same geographical markets at clearly distinct periods of time are not to be considered the same product under consideration.”*

#### Negligible Imports and De Minimis Margins of Dumping, Article 5.8<sup>17</sup>

##### **Description of Problems:**

- *Negligible Imports:* Article 5.8 provides for mandatory termination of an investigation in case dumped imports from a particular country are less than 3% of total imports and dumped imports from all negligible sources combined do not exceed 7% of total imports. The problem with the current provision is that the threshold of negligibility bears no relationship to the production and shipments of the allegedly damaged producers in the importing country. The current test, based on dumped imports’ share of total imports, does not measure the imports’ impact on the domestic industry.
- *De Minimis Margins of Dumping:* Article 5.8 provides that the margins of dumping in an investigation shall be considered *de minimis* if such margins are less than 2 percent of the export price. *De minimis* margins result in a negative determination of dumping and no application of anti-dumping measures. It is accordingly submitted that the threshold is too low.

##### **Proposal:**

- *Negligible Imports: Determination of Negligibility:* Amend Article 5.8 to provide that the denominator of the threshold for determining whether the volume of dumped imports will be considered to be negligible should be changed to “total domestic consumption of the like product and the product under investigation in the importing country”. Time period for determining negligibility: Clarify Article 5.8 by providing the time period over which that negligibility must be examined, based on the volume of dumped imports relative to the total consumption of the

<sup>17</sup> TN/RL/GEN/31 8 Feb 2005, TN/RL/GEN/30/Rev.1 14 Feb 2005 and TN/RL/GEN/30 8 February 2005. submitted by FAN

like product and the product under investigation in the importing country. The time period should be the period of investigation used by the authorities for purposes of the dumping determination.

- *De Minimis Margins of Dumping*: Amend Article 5.8 to provide that a margin of dumping of less than [X] % is to be considered *de minimis* and should result in a negative determination of dumping.

### Negligible Imports, Article 5.8<sup>18</sup>

#### **Proposal:**

- Introduce in Article 5.8 a second methodology to find out whether the volume of dumped imports are to be regarded as negligible, according to which negligibility shall be determined on the basis of apparent market share of dumped imports in the importing Member. To that extent, amend Article 5.8 as follows: "...There shall be immediate termination in cases where the authorities determine that the margin of dumping is *de minimis*, or that the volume or the estimated market share of dumped imports, actual or potential, or the injury is negligible... The volume of dumped imports shall normally be regarded as negligible if the volume of dumped imports from a particular country is found to account for less than (X) per cent of imports of the like product in the importing Member, or if the market share of dumped imports is less than (Y) per cent".
- Amend Article 5.8 so as to increase the current 3 per cent threshold for negligible volume of imports to (X) per cent.
- Delete the cumulation clause in Article 5.8, which defines an exceptional circumstance under which authorities are allowed to initiate or continue the investigation in cases where the volume of dumped imports individually account for less than the current negligibility threshold.

### Responding and comment procedure after initiation<sup>19</sup>

#### **Description of the problem:**

- As far as the respondents are concerned, the current practice requires that they must make the decision on whether to respond, decide on their defense strategy, set up a working team, hire lawyers, compiling past sales data, collect company information, respond to questionnaires, have the responses translated, bound and posted all within 30 days after receipt of the questionnaires. For firms with a large amount of exports and transactions, especially those small- and medium-sized firms from developing countries, they often choose not to respond for fears

<sup>18</sup> TN/RL/GEN 33 22 March 2005, submitted by Turkey

<sup>19</sup> TN/RL/GEN/55 4 July 2005, submitted by China



of not being able to complete the questionnaires within such a short period of time

**Proposal:**

- The following paragraph should be added in Article 5 of the ADA: "The authorities shall in the public notice on the initiation of an investigation give the interested parties a period of 20 days after the date of initiation to notify the latter's intention to participate in the proceeding, provide the relevant information<sup>20</sup> and comment on the information contained in the notice of initiation, such as the representative ness of the applicant, the scope of the product under consideration and the evidence given to justify the initiation of the investigation. The authorities shall take due account of such comments. Questionnaires shall be sent to the interested parties within 10 days after the date of expiry of the above responding and comment period."

**ARTICLE 6: EVIDENCE**

Evidence, Articles 6.1, 6.2, 6.4, 6.9, 6.1321

**Proposal:**

Norway proposes the following amendments: To clarify and improve these provisions to ensure that investigating authorities fulfil their duty under Article 6 to actively seek accurate, relevant and representative evidence, and to conduct the investigation in an objective and unbiased manner; - To clarify and improve these provisions to ensure that interested parties are given full opportunity to present their facts and views during the course of an investigation, by strengthening their rights under Article 6 to defend their interests and by improving the notices under Article 12; - To strengthen the transparency of anti-dumping investigations, including providing greater and more timely access to the "file" or "record" for interested parties; To make explicit the requirement for reasoned and adequate explanations for all determinations, to be set out in any disclosure and in all notices under Article 12; and Additional requirements for specific information that must be set out in the public notices at each step- Clarify, strengthen and make mandatory the provision in

<sup>20</sup> Information may include but not be limited to name, address, legal representative, contact details and contact person of the interested parties, total volume and value of the product under investigation exported to the investigating Member during the investigation period, and the official seal of the interested parties or signature of the legal representative.

<sup>21</sup> TN/RL/GEN/49 1 July 2005, submitted by Norway

paragraph 7 of Annex I regarding pre-verification notices; - Require that investigating authorities keep an updated index of all information that is part of "the file" or "record", including an index of all information withheld because of a justified need to preserve confidentiality. Regarding Disclosure in Article 6.9 and 6.7 It is submitted that that there is a need to strengthen the requirements for the disclosure preceding a decision where provisional or definitive duties are imposed

"Limited Examination", Article 6.10<sup>22</sup>

**Description of Problem:**

- *Limited Examination:* Article 6.10 ADA provides that authorities shall, as a rule, determine an individual margin of dumping for each exporter or producer. However, the Agreement also provides an exception to this general rule in circumstances set forth in Article 6.10. The exception provides that where the number of respondents is so "large" as to make individual determinations for all "impracticable", authorities are entitled to limit their examination by providing individual margins to a sample of respondents. The problem is that investigating authorities have wide discretion to decide: what constitutes a "large" number of respondents; when providing individual margins is "impracticable"; and, how to select a sample for investigation. As a result, the exceptional right to limit the examination is susceptible to widely diverging applications that afford little predictability. This situation deprives some respondents of their usual due process rights to influence an investigation that may affect their commercial viability. Accordingly, the lack of clarity in Article 6.10, favors the convenience of investigating authorities over the legitimate rights and interests of respondents.

**Proposal:**

- *Limited Examination:* Require that investigating authorities provide a reasoned and adequate explanation for a conclusion that the number of respondents is so "large" as to make it "impracticable" to comply with the general obligation to provide an individual determination for each respondent - require that investigating authorities choose the sample in consultation with respondents - ensure that any sample is sufficiently representative of all respondents - ensure that respondents that are not part of a sample can obtain an individual margin by submitting necessary information, given that certain requirements are fulfilled - ensure that authorities determine one single dumping margin for all exporters or producers not examined.

<sup>22</sup> TN/RL/GEN/46 10 June 2005, submitted by FAN

Preliminary determination, Article 6<sup>23</sup>

**Summary of proposal:**

- Clarify that preliminary determinations of dumping must be issued in all anti-dumping, and that interested parties must be informed of the scheduled date of preliminary determinations- Clarify that a preliminary determination may not be issued prior to the time when responses from interested parties to questionnaires pertaining to that determination are due - Clarify that those questionnaire responses should be taken into account by the authorities in making a preliminary determination, bearing in mind the provisions of Article 6.8 of the ADA - Clarify that the provisions of Article 6.2 of the ADA, shall continue to apply after issuance of a preliminary determination and that authorities shall provide sufficient time between the preliminary and final determinations in order that interested parties may have a reasonable opportunity to exercise their rights under those provisions

**ARTICLE 9: IMPOSITION AND COLLECTION OF ANTI-DUMPING DUTIES**

Duty Assessment Methodologies, Article 9<sup>24</sup>

**Description of problems:**

- The ADA provides little guidance to WTO Members on methods of duty imposition. Articles 9.3.1 and 9.3.2 recognize that Members may apply widely different types of duty assessment systems, based on either a *prospective* approach or on a *retrospective* approach. Like many WTO Members Canada maintains a prospective duty assessment system, while other Members assess duties on a retrospective basis. Under a retrospective system, at the time of importation, the importer does not have any certainty with respect to the maximum amount of final antidumping duties that will eventually be levied. This leads to an uncertain business environment and adds to the level of protection intended by the measure. By contrast, under a prospective system, importers generally know at the time of importation the amount of anti-dumping duties, if any, that they are required to pay, thus creating a more stable business environment. Uncertainty about anti-dumping duty liability at the time of importation has an effect on trade that goes beyond the intended purpose of the anti-dumping measure.

<sup>23</sup> TN/RL/GEN/25 20 October 2004 , submitted by USA

<sup>24</sup> TN/RL/GEN/3 14 July 2004, submitted by Canada

**Proposal:**

- Tighter time frames for ADA Article 9.3 reviews or refunds - Final anti-dumping liabilities should be determined at a time as close as possible to the time of importation of the product subject to an anti-dumping measure. Consequently, Articles 9.3.1 and 9.3.2 of the ADA could be amended to reduce the time afforded to authorities to complete assessments of duty liability (retrospective system) or to complete refund of duties paid in excess (prospective system). Clarify the right of parties to seek reviews immediately after importation - Clarify Article 9.3.1 of the ADA by establishing that a request for a final assessment may be made immediately after entry.

The Lesser Duty Rule, Article 9<sup>25</sup>

**Summary of Problem and basic principle**

- The “lesser duty rule” incorporates the principle that an AD duty be less than the margin of dumping to the extent that such lesser duty would be adequate to remove the injury from the dumped imports to the domestic industry. The objective of the rule is not to arbitrarily reduce the amount of an AD duty, but to ensure that any AD duty is set at a level adequate to permit the domestic like product to compete with products subject to antidumping measures without being injured. A mandatory lesser duty rule would be consistent with the objectives of eliminating the injurious effect of dumping both under the GATT and the ADA.

**Proposal<sup>26</sup>**

- *Mandatory Incorporation proposal:* Clarify that application of the lesser duty rule be mandatory by amending Article 9.1 by deleting the phrase “, and the decision whether the amount of the anti-dumping duty to be imposed shall be the full margin of dumping or less,” from the first sentence, and by substituting the following sentence for the last sentence in that provision: “While it is desirable the imposition be permissive in the territory of all Members, any duty imposed shall be less than the margin of dumping to the extent that such lesser duty is adequate to remove the injury to the domestic industry. The provisions of Annex IV shall be followed in determining the level of the lesser duty adequate to remove the injury to the domestic industry.” - Amend the chapeau of Article 9.3

<sup>25</sup> TN/RN7GEN/43 13 May 2005, submitted by FAN

<sup>26</sup> There are two parts to the proposal; first it is proposed that the lesser duty rule be incorporated as a mandatory requirement in Article 9.1 of the Agreement and that it apply *mutatis mutandis* to Articles 8.1, 9.3 and 9.4. Second, it is proposed that a new Annex, Annex IV, be attached to the Agreement to provide the details of how the lesser duty rule is to be applied and its relationship to reviews under Article 9 and Article 11. Document TN/RL/GEN/43 13 May 2005 provides a full explanation of the proposals and the proposed annex.

by adding “the lesser of the injury margin as established under Annex IV or” between the words “exceed” and “the” in the first sentence -Amend Article 9.4(i) by adding “the lesser of the weighted average injury margin as established under Annex IV or” at the beginning of the subparagraph.

- Proposed annex IV: Injury Margin*: - The injury margin is defined as the difference between the price of the dumped imports (“the import price”) and the non-injurious price (“the NIP”) of the domestic products like the products under investigation (“domestic like products”). Calculation of NIP: - The authorities shall choose one of the methodologies listed below to calculate the NIP that is appropriate with regard to the specific situations of the case: (a) The NIP is calculated as the current price of the domestic like product, (b) The NIP is calculated as the price of the domestic like product during a period prior to being affected by dumping, provided that such period is, except for the absence of the effect of dumping comparable to the dumping investigation period taking into account relevant market factors, (c) The NIP is calculated as the price of non-dumped imports of the product under investigation or the like products, provided that such price is representative and the volume of the non-dumped imports is not negligible for the importing market. The non-dumped imports shall be selected from all sources including like products imported from foreign producers in a country or countries not subject to antidumping investigations or measures or products under investigation which have been found not to be dumped, (d) The NIP is calculated as per unit cost of production plus a reasonable amount for selling, general and administrative costs and for profits of the domestic producers of the domestic like product. Fair comparison: -A fair comparison shall be made between the NIP and the import price. The comparison shall be made at the same level of trade. Due allowance shall be made in each case, on its merits, for differences which affect price comparability, including differences in conditions and terms of sale, taxation, levels of trade, quantities, physical characteristics, and any other differences which are also demonstrated to affect price comparability. Procedural Requirements: - Before the final determination in any investigation, the authorities shall indicate which methodology they are intending to use to determine the injury margin and provide interested parties the opportunity to comment on whether such methodology is appropriate. Authorities shall provide a reasoned explanation supporting their use of an appropriate methodology and the evidence in support of their choice. Evidence and Data collection: - The disciplines of evidence under Article 6 apply *mutatis mutandis* to the determination of the injury margin. For the sake of the accuracy of the NIP, the authorities shall collect relevant data to establish the NIP for a sufficient period of time comparable to the period of investigation for the dumping determination (normally twelve months). Reviews:- The lesser duty rule shall be applied to reviews under Article 9 and 11-

Mandatory application of Lesser Duty Rule, Article 9<sup>27</sup>

**Description of Problems:**

- The ADA envisages that the anti-dumping duty shall not exceed the margin of dumping as established under Article 2 of the Agreement. However, Article 9.1 leaves it to the discretion of the authorities of the importing Member whether or not to impose an anti-dumping duty in cases where all requirements for the imposition have been fulfilled and whether the amount of anti-dumping duty to be imposed shall be the full dumping margin or less. Article 9.1 further states that the duty may be less than the margin if such lesser duty would be adequate to remove the injury to the domestic industry. India is of the view that there is a need to make the application of the “lesser duty rule” mandatory. This, in turn, would require Members to agree on disciplines for determination of the injury margin.

**Proposals:**

- Amend Article 9.1 of the ADA to provide for mandatory application of the “lesser duty rule” by requiring that the anti-dumping duty shall not exceed the margin of dumping or the injury margin, whichever is lower.
- Two broad options are proposed for determining the injury margin. Under the first option, injury margin shall be the difference between the price of the like product produced by the domestic industry and the price of the dumped imports, for each exporter or producer under investigation. Under the second option, injury margin shall be the difference between the target price for the domestic industry and the price of the dumped imports for each exporter or producer under investigation.
- For determining the target price, four options are proposed viz. (i) the price of the domestically produced like product prior to being affected by dumping; (ii) the price of the product concerned, when exported by those exporters or producers who are found not to have dumped the product concerned during the investigation period; (iii) the price of the like product, when exported during the investigation period from appropriate third countries; and (iv) the cost of production method.
- The existence of injury margins is proposed to be established on the basis of a comparison on a weighted average basis of all comparable transactions or by a comparison on a transaction-to-transaction basis. The Authorities shall also ensure that all negative values are taken into account.

Reviews, Article 9.3 and 9.5<sup>28</sup>

<sup>27</sup> TN7RL/GEN/32 22 March 2005 Submitted by India

### Description of problem

- The current ADA does not clearly articulate the concepts, procedures and methodologies applicable to reviews under Article 9.3 (anti-dumping duty assessment), Article 9.5 (new shipper reviews) and Article 11.2 (revocation reviews). The lack of explicit rules makes it possible for the authorities to arbitrarily introduce rules, procedures, and methodologies into these reviews that differ substantially from those in the original investigations and thereby place an undue burden on the respondent. Such practices are also pursued to artificially inflate the calculated dumping margins and/or to continue to impose an anti-dumping duty that is not necessary to offset dumping.

### Proposal:

- Clarify that the provisions of Articles 2 (Determination of Dumping), 3 (Determination of Injury), 4 (Definition of Domestic Industry), 5 (Initiation and Subsequent Investigation), and 6 (Evidence) shall apply to the reviews, whenever applicable, under Articles 9.3, 9.5 and 11.2, with the exception of the specific rules concerning these reviews. The *de minimis* rule and/or its threshold in Article 5.8 should be applied to these reviews to the extent that it is appropriate.
- *Request for Article 9.3 Review:* Clarify that the request for Article 9.3 reviews can only be made by exporters or importers.
- *Import Period for Dumping Margin under Article 9.3:* Clarify that the margin of dumping in an Article 9.3 review shall be based on all imports from a specific exporter that were entered into the importing Member for not less than one year, and not on an individual import basis.
- *Review Periods:* Improve the rule so that the reviews are not unfairly extended to the prejudice of the responding parties. To this end, clarify (1) that reviews under Articles 9.3 must be completed within 12 months, (2) that authorities are encouraged to pay interest at a reasonable rate if duties are not refunded within 90 days following the completion of the review and (3) that reviews under Article 9.5 must be completed within 9 months after the date on which a request for a review has been made, unless an extension of the procedure is requested by the new shipper.

### "All Other's Rate" Article 9.4<sup>29</sup>

#### Description of problem:

<sup>28</sup> (TN/RL/ GEN/ 10 14 July 2004 and TN/RL/GEN/44 13 May 2005 TN/RL/GEN/52 1July 2005, submitted by FAN

<sup>29</sup> TN/RL/GEN/46 10 June 2005, submitted by FAN

- *All Other's Rate*: Article 9.4 provides that investigating authorities may apply anti-dumping duties to respondents that were not included in the sample examined under Article 6.10. In *US - Hot Rolled Steel (WT/DS184/AB/R)*, the Appellate Body held that: Article 9.4 does not prescribe any method that WTO Members must use to establish the "all others" rate that is actually applied to exporters or producers that are not investigated. Rather, Article 9.4 simply identifies a maximum limit, or ceiling, which investigating authorities "shall not exceed" in establishing an "all others" rate. It is clear from this that authorities retain discretion to apply an all others rate that is lower than the prescribed ceiling but, in no circumstances, can they apply a rate that is higher. It is accordingly clear from these reasoning that Article 9.4 envisages one single "all other's rate."

### Summary of proposal

- *All Other's Rate*: Clarify that the investigating authorities shall calculate a single all others rate to be applied to respondents that were not included in the sample.

## ARTICLE 11: DURATION AND REVIEW OF ANTI- DUMPING DUTIES AND PRICE UNDERTAKING

### Reviews, Article 11.2<sup>30</sup>

#### Description of problem:

- Article 11.2 (revocation reviews) lacks explicit rules regarding procedures and methodologies applicable to reviews thus making it possible for the authorities to arbitrarily introduce rules, procedures, and methodologies into these reviews that differ substantially from those in the original investigations and thereby placing an undue burden on the respondent. Such practices are also pursued to artificially inflate the calculated dumping margins and/or to continue to impose an anti-dumping duty that is not necessary to offset dumping.

#### Summary of Proposal:

- *Review Periods*: Improve the rule so that the reviews are not unfairly extended to the prejudice of the responding parties. To this end, clarify (1) that reviews under Articles 11.2 must be completed within 12 months, (2) that authorities are encouraged to pay interest at a reasonable rate if duties are not refunded within 90 days following the completion of the review

<sup>30 30</sup> (TN/RL/ GEN/ 10 14 July 2004 and TN/RL/GEN/44 13 May 2005 TN/RL/GEN/52 1July 2005, submitted by FAN. Proposal under this documents have not been fully captured under this summery as they seek to redraft the whole of article 11.2. See document for full reference to the proposal



- *Assessment of Dumping and “Likelihood of Injury” under Article 11.2:* Clarify, through the development of *harmonized indicative lists relating to the assessment of dumping and the “likelihood of injury”* under Article 11.2, that the burden of proof is on those parties advocating the continuation of the antidumping order. The following points shall be included in the *harmonized indicative list*; (1) dumping margins to be considered are those based on current market conditions and pricing, not the pricing during the period of the original investigation; (2) in case the measure is subject to reviews after the original measure, the authorities shall rely on the margin found in the most recent review; and (3) if no dumping margin has been found, the “likelihood of injury” test shall not apply and the measure shall be terminated. As for the assessment of the “likelihood of injury”, the following points shall be included in the *harmonized indicative list*: (1) the likelihood of injury caused by the imports shall be based on the current competitive circumstances of the domestic industry and the relevant exporters, and not on information from the original investigation; (2) the authorities shall conduct their examination in accordance with Article 3 of the ADA, based on facts, and not merely on allegation, conjecture or speculation; (3) the determination made by the authorities whether the continuation of the antidumping duty is warranted or not, shall be based on the current volume of the dumped imports.

## ARTICLE 12: PUBLIC NOTICE AND EXPLANATIONS OF DETERMINATION

### Explanations of Determinations and Decisions, Article 12<sup>31</sup>

#### **Description of problem:**

- The ability of a party to effectively defend its interests throughout an anti-dumping investigation depends largely on the sufficiency of explanations issued by the investigating authority in respect of the legal and factual basis of determinations and decisions made at each stage of the process. Article 12 of the ADA provides some guidance on the information to be provided at the initiation, preliminary determination and final determination stages of an investigation, however there is scope for the further elaboration of these provisions with the aim of providing greater transparency in regard to the decisions being made.

#### **Proposal:**

- *Regarding the initiation of an investigation:* Add to Article 12.1.1 by replacing (i) to (vi) with the following: (a) a description of the product under investigation to which the initiation applies, including its tariff classification for Customs purposes, the name of the exporting country or countries, and the names of the

<sup>31</sup> TN/RL/GEN/21 19 Oct 2004, submitted by Canada

known exporters and foreign producers of the product under investigation; (b) information concerning the domestic like product and domestic industry, including the names of the domestic producers of the like product submitting and supporting the application, the names of other domestic producers of the like product insofar as they are known to the investigating authorities and, if relevant, information regarding any exclusion of producers for the purposes of defining the domestic industry; (c) information concerning the procedural background of the investigation, including the date on which the application was received, the date on which the application was found to be in compliance with the requirements of Article 5 as to the allegations of dumping and injury and the determination of industry support, and the date of initiation of the investigation; (d) the basis on which dumping is alleged in the application; (e) a summary of the factors on which the allegation of injury is based, and (f) information relevant to the continuation of the investigation, including next steps in the process, and related time frames, and information concerning a contact to whom representations by interested parties should be directed.

- *Regarding the imposition of a provisional measure:* Add the following to Article 12.2.1 by replacing (i) to (iv) with: (a) a description of the product under investigation, including its tariff classification for Customs purposes, the name of the exporting country or countries, and the names of the known exporters and foreign producers of the product under investigation; (b) the periods of data collection for both the preliminary dumping and preliminary injury analysis, and an explanation of the rationale for the selection of such periods; (c) the margins of dumping established and information concerning the calculation of the dumping margin, including information regarding: normal values, including whether normal values were based on sales in the home market, sales to a third market or constructed normal value; export prices, including, if appropriate, the adjustments related to the construction of export price; the methodology of comparisons including adjustments, and, if appropriate, information on any application of sampling; (d) information concerning any situation where the determination of dumping was made on the basis of full or partial facts available, including information as to why resort was had to facts available, and what information the authorities used to determine the dumping margin. The information provided should include, if applicable, the reasons why information submitted by a party was rejected in favor of recourse to facts available; (f) information concerning the domestic like product and domestic industry, including the names of all known domestic producers of the like product and, if relevant, information regarding any exclusion of producers for the purposes of defining the domestic industry; (g) information, as is reasonably available, relevant to the injury determination as set out in Article 3, including information concerning the domestic market for the subject imports and the like product, the volume and the price effects of the subject imports, the consequent impact of the subject imports on the domestic industry and, if relevant, the factors leading to a

conclusion of threat of material injury; (h) information concerning the verification of information used by the authorities, if undertaken; (i) information on the provisional measures being imposed, including the form, level, and duration of such measures; (j) information relevant to the continuation of the investigation, including next steps in the process, and related time frames, and information concerning a contact to whom representations by interested parties should be directed; and (k) information concerning the possibility for exporters to offer price undertakings

Make explicit the requirement for reasoned and adequate explanations for all determinations, Article 12<sup>32</sup>

**Proposal:**

- Any decision to impose a definitive anti-dumping measure must take into account the comments received in response to a provisional measure (if such a measure has been taken), and must also include an explanation of any changes made in the facts relied on, basis for determination or other methodological changes or analyses - Under the ADA, the authorities must establish the facts properly and evaluate them in an unbiased and objective manner - make explicit the requirement of a reasoned and adequate explanation of all determinations (findings and conclusions) reached on all issues of fact and law relied upon by the authorities in the investigation

**PUBLIC INTEREST**

Outline of problem and basic principles<sup>33</sup>

- The ADA allows an anti-dumping measure to be used to protect the domestic industry of an importing member from injurious dumping. However, the effects of an anti-dumping measure are not confined to the domestic industry of the importing member, but also on trade and economy of the importing member. The existence of an anti-dumping measure affects the trade flow between the importing member and the members where the dumped products originate or pass through. Despite these widespread effects, the current Anti-Dumping Agreement contains no provision for the broader economic interest of the importing member to be taken into account before a decision is taken to impose an anti-dumping measure, nor, from that perspective, provides opportunities for

<sup>32</sup> TN/RL/GEN/49 1 July 2005, submitted by Norway

<sup>33</sup> TN/RL/W/174 29 March 2005 TN/RL/GEN/ 53 1 JULY 2005, submitted by FAN

relevant parties to present their views on the broader economic consequences that the measure may entail.

**Proposal:**

- *Inclusion of Provisions on public interesting ADA:* include a provision in the ADA providing for authorities to determine, before applying an anti-dumping measure, whether the proposed measure is in the overall economic interest of that Member. The anti-dumping measure should not be applied, or the measure should be mitigated if the application of the measure is not in the overall economic interest of that Member. Minimum factors for consideration: to ensure a balanced and meaningful consideration of public interest, the ADA should specify certain key economic factors which should be taken into account when considering public interest, for example, the cost effect of the proposed anti-dumping measure on industrial users, consumers, importers, wholesalers and retailers, productivity effect on downstream users, competition and availability of choice to users. Such list would be non-exhaustive and would not preclude Members from taking into account other economic factors which they consider relevant for the purpose of the consideration. Right for interested members of the public to present information: interested members of the public should be able to present facts and views in connection with the consideration of public interest, and to access relevant information for this purpose. Transparency: authorities should disclose their findings and explain how relevant facts have been evaluated in their determination.
- Proposal regarding amendment of text: [x.1] before applying a definitive anti-dumping measure, authorities shall provide full opportunity for persons who may be affected by the measure to comment on the matter. To this end, authorities shall give public notice and separate notifications known relevant persons, and shall give relevant persons at least [ ] days to comment as referred to in paragraph 2 below. [x.2] Relevant persons may comment on, *inter alia*, possible effects of the anti-dumping measure on the following: (i) costs for the industrial users, consumers, importers, wholesalers and retailers of the product under consideration; (ii) competition in the market of the product under consideration in the importing member; (iii) choice or availability of like products at competitive prices for industrial users and consumers; (iv) profitability and competitiveness of industrial users, importers, wholesalers and retailers of the product under consideration. [x.3] Opportunity to comment under paragraph 1 shall be provided at the earliest opportunity when relevant persons are able to provide meaningful comments. Where opportunity to comment is provided before the details of the proposed definitive anti-dumping measure (including the reasons for the dumping and injury determinations) are known, then relevant persons shall be given [ ] days to supplement the comments originally provided after such details are known. [x.4] for the

purposes of this Article, relevant persons who are not already interested parties shall also enjoy the rights of interested parties under paragraph 1 (except 1.1 and 1.3), paragraphs 2 to 5 and paragraphs 9 and 13 of Article 6. [x.5] Comments received pursuant to this Article shall be taken into due consideration by the authorities in an objective and unbiased evaluation. Where no information is received or information received is considered incomplete, authorities shall take into account best information available from public sources if such information is already in their possession or is reasonably obtainable by them. If thereafter the importing Member concludes that it is not in its economic interest to impose the definitive anti-dumping measure, the measure shall not be imposed.

**READERSHIP SURVEY QUESTIONNAIRE**

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