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**GLOSSARY OF ANTI-DUMPING TERMS
And SUMMARY OF PROPOSALS ON ANTI-DUMPING**

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 (1) brief glossary of anti-dumping terms commonly referred to in the proposals and negotiations and (2) a tabular summary of the proposals submitted by various countries and groups of countries to the Negotiating Group on WTO Rules.

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GLOSSARY OF TERMS

Dumping: is the practice of selling below cost. It occurs when a product is introduced into the commerce of another country at an export price which is less than the comparable price for consumption of a like product sold for consumption in the exporting country.

Dumping Duty: is a tax imposed by the importing country in order to offset dumping, that is, to bring the price of the imported product in line with the "normal value" of that product in its domestic market and thereby protect domestic producers. It can be equivalent to or less than the full dumping margin, but must not be larger than the dumping margin.

Dumping Margin: Refers to the difference between the 'normal value' of a product and its dumped export price. The Anti-Dumping agreement provides guidelines on the methodology to determine whether a product is being dumped or not.

Injury: domestic producers may face difficulties because of dumped imports. Harm, or injury, can be "material" that is, meaningful or can consist of a threat of injury, or can delay the establishment of an industry in the importing country. Anti-dumping duties can only be imposed if it is found, as a result of investigations, that there is a causal link between the imported dumped products, and the harm caused to producers of the importing country.

Investigation: when the authorities of an importing country suspect that a product is being imported and sold at a price under its cost (*dumped*), they must initiate and conduct an investigation to determine whether or not dumping is actually occurring before having the right to impose anti-dumping duties. Legal conditions and requirements apply to the initiation and conduct of such investigation.

De minimis: is a requirement according to which an importing country should not initiate an anti-dumping investigation if the margin of dumping is below a minimum level or the volume of dumped products being imported is negligible.

Export price (EP): refers to the price of a product when exported to the market of a country. By comparing the export price of a product with the price of a like product prevailing in the market of the exporting country, authorities may determine whether or not dumping is occurring.

Constructed Export Price (CEP): when the export price of an imported product is not available, it can be calculated (*construed*) by reference to the price at which the imported product is first resold to an independent buyer. If the product is not resold to an independent buyer or not resold in the same conditions as when imported, then the export price may be calculated on such "reasonable basis" as the authorities of the importing country may determine.

Price Comparison: In order to determine whether a product is being sold under cost or not, the authorities of an importing country must undertake a comparison between the export price of the product and the 'normal value' of a like product. The agreement lays down three methods for the comparison. The main one is based on the price in the exporter's domestic market. The second is based on the price charged by the exporter in another country. The third is based on the sum of the exporter's production costs, other expenses and normal profit margins. The methodology used in the comparison will greatly influence the results of the investigation.

Like Product: when undertaking a comparison between prices, authorities must choose comparable products, or a *like product*, which is identical to the product that is being investigated or, should it be unavailable, a product that is similar in kind and quality. Authorities may have to undertake adjustments in order to account for differences in the products or in the conditions under which they are traded.

Ordinary Course of Trade: a transaction in the *ordinary course of trade* occurs between an independent buyer and a seller where the buyer and the seller are not related, the price being the sole consideration for the sale (*at arms length*).

Normal price or value: refers to the fair selling price at which the product is sold in the domestic market of the exporting country. That price must however be a comparable price, that is, one that takes into account differences in the product or differences in the conditions of trade.

Lesser duty Rule: If, as a result of investigations, dumping is found to occur in the sense of the Agreement, anti-dumping duties may then be imposed to offset the injurious dumping. However, the duty should not be greater than the dumping margin. Therefore, the authorities of the importing country should refrain from imposing duties that go beyond what is necessary to offset the injury caused by the dumped imports.

Sunset Clause: Once imposed, anti-dumping duties cannot last indefinitely. Article 11.3 of the Anti-Dumping Agreement establishes an automatic expiry period for all anti-dumping duties. All anti-dumping duties shall be terminated not later than five years from the date of the imposition (or review) of the anti-dumping measure.

Zeroing: Among the methods to calculate the dumping margin, authorities can compare the weighted average normal value with the weighted average of prices of all comparable export transactions. Zeroing is a method of calculation where weighted averages are calculated by assigning the negative figures a value equivalent to zero. By doing so, subgroups for which negative dumping has been found are counted not as negative numbers but as zero. That increases the value of the margins found and lead to higher anti-dumping duties.

Targeted Dumping: Allow the authorities of the importing country, in structuring their anti-dumping investigations, to address specific types of dumping: (1) one that is targeted to certain purchasers, (2) targeted to certain regions, or (3) targeted to certain time periods.

TABULAR FORM OF ANTI DUMPING PROPOSAL 2001 - 2005

<i>Substantive Provision</i>	<i>Some Specific paragraph and related topic</i>	<i>Main measure proposed and approaches</i>
<p>Article 2 Determination of Dumping</p>	<ul style="list-style-type: none"> • Normal Price determination, Art 2.1 • Definition of affiliated Party, Art 2.2 and 2.3 • Fair comparison, Art 2.4 <ul style="list-style-type: none"> ○ Comparison at Same level of Trade ○ Exclusion of export sales from the calculation of EP and CEP ○ Model Matching, “like products and product under consideration” • Prohibition of “Zeroing”, Art 2.4.2 • Currency conversion • Sales in the Ordinary Course of Trade / Profitability Test, Art 2.2.1 • Constructed Value, Art 2.2.2 • Constructed Export Price, Art 2.3 	<ul style="list-style-type: none"> • General comment: Amend, Provide more rationale, Clarify, Define, Redefine and Add provisions to Article 2 • Clarify and strengthen the method used to determine normal price • Add a provision or separate annex defining “affiliated party” • Fair comparison: Amend Art 2.4 in order to clarify and strengthen disciplines under <i>same level of trade calculation of EP and CEP and model matching</i> • Amend 2.4.2 to clarify explicitly prohibition of zeroing to initial investigations and subsequent reviews • Amend Art 2.4.2 to clarify how to calculate the overall dumping margin, including if a negative dumping is found when products are sold at a profit, should be allowed to offset dumping when products are not sold at a profit • Clarify and explicitly rule out zeroing that eliminates consideration of product sold at a price that generates profit • Clarify by defining clearly matters relating to currency conversion

<p>Article 3: Determination of Injury</p>	<ul style="list-style-type: none"> • Definition of Material Injury, Art, 3 & footnote 9 • Determination of Material Injury, Art 3 • Material Retardation, Art 3 & footnote 9 • Cumulation, Art 3.3 • Causation, Art 3.5 • Threat of Material Injury, Art 3.7 • Condition of the Domestic Industry in any Threat of Material Injury Analysis, Art 3.7 	<ul style="list-style-type: none"> • General Comment: Amend, Clarify, Establish Criteria, Add, and Further Define provisions of Art 3 • Amend by adding to footnote 9 language to clarify definition of material injury • Amend Art 3 to clarify that material injury of domestic industry is really is caused by dumped imports • Amend Art 3.3 by adding language • Amend first sentence Art 3.5 to clarify that injury must be caused by imports under investigation; Amend Art 3.5 by adding language to require a determination of other factors that might be causing injury • Amend and Clarify Art 3 to clearly define material retardation; Clarify the current footnote 9 to clarify that material retardation is not limited to industries which are established from zero, but should include industries characterised by a limited level of development and or new organization; Amend Art 3 to clearly establish a material retardation test
<p>Article 4: Definition of Domestic Injury</p>	<ul style="list-style-type: none"> • Definition of domestic industry, Art 4.1 	<ul style="list-style-type: none"> • General Comment: Establish clear criteria, Amend, clarify and Define further Art 4 • Amend Art 4.1 to clarify the definition; Add a new provision to ADA to require authorities to collect all relevant evidence to determine domestic industry

<p>Article 5: Initiation and Subsequent Investigation</p>	<ul style="list-style-type: none"> • Industry support for initiating AD action: standing requirements, Art 5.1 & 5.4 • Negligible Imports and De minimis margins of dumping, Art 5.8 • Prohibition of Back-to-Back investigations, Art 5.10 • Ex Officio initiation, Art 5.6 	<ul style="list-style-type: none"> • General Comment: Clarify, Improve disciplines, strengthen and amend provisions of Art 5 • Amend in order to improve the standing threshold to require support by more than 50 percent of the domestic industry; Ad new footnote to clarify standing determination; clarify to require a listing of all known domestic producers supporting the petition; add a provision allowing exporters to comment before initiation • Clarify so that when a sector is made up of many small producers, statistical sampling used to gather 50% of producers for case of initiation can be determined if there are 25% of producers in favour of the application
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		<ul style="list-style-type: none"> • Clarify in order to require authorities to consider if there are other factors that may be causing injury • Clarify to make more specific “major proportion”; Clarify so that small proportion should not be able to successfully apply for investigation; Clarify and amend to make individual association members identifiable and able to declare support • Amend Art 5.8 to clarify determination of negligibility and time period for determination of negligibility; • Amend to raise existing <i>de minimis</i> dumping margin of 2% of export price below which no anti dumping duty can be imposed to 5% for imports from developing countries • Amend to increase the threshold volume of dumped imports which shall be regarded as negligible from 3 to 5 per cent for imports from developing countries • Introduce and Add a second methodology in At 5.8 to determine negligibility • back-to-back: Add a provision to clarify that authority shall not initiate investigation within 12 month of determination of the same product from same member which resulted in the non application or revocation of anti-dumping measure
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<p>Article 6: Evidence</p>	<ul style="list-style-type: none"> • Standards for initiation: public notice, transparency, and fairness in proceedings Art 6, 6.5 • Treatment of confidential material, Art 6.5 • Preliminary determination • “Limited Examination”, Art 6.10 • General standard of evidence, Art 6 • Hearing and Meeting, Art 6.2 	<ul style="list-style-type: none"> • General Comment: Enhance provision, clearly define terms, elaborate, amend and clarify rules in Art 6 • Clarify to require public hearings so that interested parties can present evidence and respond to submission of others; Clarify and amend so more information can be released after investigation • Amend to require that decisions must not be solely based on the discretion of national authorities, amend to require a justification of how a final decision was reached • Amend to require investigating authorities to provide reasoned and adequate response explanation relating to limited examination; Amend to tighten provisions relating to limited examination • Clarify and tighten the administrative requirements such as: availability of relevant information on timely manner, maintenance of public records, notification of legislative changes in timely manner, reducing costs of investigation • Clarify that all preliminary determination must be issued in all AD investigation; Clarify that questionnaires must be taken into account; Clarify that provision of Art 6.2 shall continue to apply after issuance of preliminary determination • Amend to reduce cost of cooperating in investigation • Amend to ensure greater transparency in investigation • Clarify and amend requirements relating to determination of evidence
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<p>Article 7: Provisional Measures</p>	<ul style="list-style-type: none"> Provisional Measures 	<ul style="list-style-type: none"> Consider harmonising the provisions of anti-dumping and SCM agreement regarding provisional measures, especially the prohibition of collecting duties
<p>Article 8: Price Undertaking</p>	<ul style="list-style-type: none"> Price undertaking 	<ul style="list-style-type: none"> General Comment: Define clearly, consider new methodologies, clarify and elaborate Art 8 Define what constitutes price undertaking, Clarify and limit the scope of authorities under this article Define reasons for policy
<p>Article 9: Imposition and Collection of Anti-dumping Duties</p>	<ul style="list-style-type: none"> Lesser Duty Rule, Art 9.1 Reviews, Art 9.3 "All other rates", Art 9.4 Duty Assessment methodology Imposition and collection of duties Art 9 Accrual interest, Art 9.3 Refund of duties paid in excess Reviews under Art 9.3 and 9.5 	<ul style="list-style-type: none"> General Comment: Clarify, Make Mandatory, Amend, Improve and Add new annex to Art 9 Clarify and amend in order to make lesser duty rule mandatory. Add a new annex to set out a methodology to determine and calculate the proposed lesser duty. The calculation should take cognisance of Art 3.5 (causality). Clarify that investigating authorities shall calculate all other's rates to be applied to respondents that were not included in the sample Clarify that reviews for Art 9.3 can only be made by exporters; Clarify and improve rules so that reviews are not unfairly extended to prejudice the respondents Amend to require that AD duty shall not exceed the margin of dumping or the injury margin, whichever is lower; Add two alternative approaches to determine injury margin; Clarify that lesser duty should be compulsory for measures applied by developed countries to any developing country Amend to clarify "all other rates"

		<ul style="list-style-type: none"> • Clarify provisions relating to new shipper or newcomer reviews • Clarify and add ways to provide methodologies for the calculation of a duty less than the full margin of dumping but adequate to remove the injury to the domestic industry • Clarify and amend Art 9.3.(1) and (2) to reduce the time afforded to authorities to complete assessment of duty liability; clarify the right of parties to seek reviews immediately
Article 10: Retroactivity	<ul style="list-style-type: none"> • Retroactivity • Critical Circumstances 	<ul style="list-style-type: none"> • Consider retroactivity in light of the SCM • Clarify what provisional steps are appropriate to reserve the right to impose retroactivity
Article 11: Duration and Review of Anti-dumping Duties and Price Undertaking	<ul style="list-style-type: none"> • Reviews, Art 11 • Sunset Clause, Art 11.3 • Revocation reviews, Art 11, 2 	<ul style="list-style-type: none"> • General Comment: Provide clear methodology, Clarify, Add guidelines and Amend provisions of Art 11 • Clarify that reviews apply not only to the original inquiry but also any subsequent reviews • Clarify "any" and narrowly define the exception that allows a dumping duty to exist past the 5 year sunset to ensure that continuation of duty occurs only when appropriate • Add clear guidelines for expeditious reviews which should apply to determination of dumping, definition of domestic industry, initiation and subsequent investigation and evidence • Clarify that a dumping measure remain in force only and to the extent necessary to counteract dumping which is causing injury; • Clarify that no member shall initiate new

		<p>investigation no sooner than a year upon previous termination, unless there are exceptional circumstances;</p> <ul style="list-style-type: none"> • Amend Art 11.3 to clarify that the assessment of “likelihood of injury” should be based on current circumstances of domestic industry relevant exporters and any such likelihood should be in accordance to Art 3 • Generally improve and clarify reviews • Clarify that all duties shall end after five years and allow a one year (six month in exceptional cases) grace period during which information regarding dumped products can be collected • Clarify rules regarding reviews, and clarify reviews to be limited to 12 month • Clarify and add that in cases brought against developing countries by developed member, duties should automatically cease after five years and no new case should be initiated for a year
Article 12: Public Notice and Explanations of Determinations	<ul style="list-style-type: none"> • Public notice and explanations of determinations/transparency 	<ul style="list-style-type: none"> • General Comment: Improve standards, Reconsider provisions, strengthen and clarify Art 12 • Clarify Art 12.1.1 regarding the initiation of an investigation and to the imposition of provisional measures by adding through replacing pars (i)-(vi) with proposed language;
Article 13: Judicial Review	<ul style="list-style-type: none"> • Judicial Review 	<ul style="list-style-type: none"> • Discuss whether members should provide additional information on procedure within respective countries for pursuing legal recourse in anti-dumping case
Article 14 Anti-dumping Action on Behalf of a		

Third Country		
<p>Article 15: Developing Country Members & Technical Assistance</p>	<p>Special and Differential Treatment, Art 15</p>	<ul style="list-style-type: none"> • General Comment: Clearly define, Develop new measures for Art 15 • Clarify the provision relating to S&D with greater details on how S&D is to be achieved • Clarify that, in investigations against developing countries, the causal link between dumping and injury should be determined in light of the general goal of the WTO of improving higher standards of living. • A regional authority could be established to deal with dumping cases on behalf of small economies and other developing countries • Increase the technical capacity of developing country dumping authorities • Establish a special and clearly defined developing country package once clear, effective and updated rules for all WTO Members have been discussed • 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
<p>Article 16: Committee on Anti-dumping Practices</p>		
<p>Article 17: Consultation on Dispute Settlement</p>	<ul style="list-style-type: none"> • Standard review 	<ul style="list-style-type: none"> • Consider whether Article, 17.6 should be addressed to ensure that panels and appellate body properly apply it

Article 18: Final Provisions	<ul style="list-style-type: none"> Detailed National Legislation 	<ul style="list-style-type: none"> Encourage members to provide mandatory regulations or other necessary details about the procedure their authorities use to conduct investigations
Public Interest on Anti-dumping		<ul style="list-style-type: none"> Clarify and strengthen existing provisions to allow consideration of broader, economic, trade and competition policy concerns Clarify that the decision to consider public interest rest with the domestic authority Add a provision on public interest in the ADA to guide members on minimum factors for consideration, rights for interested members of the public and transparency
Other Relevant Issues		<ul style="list-style-type: none"> Clarify and address the divergence between ADA and SCM agreement Clarify the ADA to ensure that the cost of cooperation for companies does not become burdensome

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"Glossary of Anti-Dumping Terms and Summary of Proposals on Anti-Dumping"

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