

WORLD TRADE ORGANIZATION

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**Committee on Anti-Dumping Practices
Ad Hoc Group on Implementation**

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**POSSIBLY RELEVANT CRITERIA REGARDING CONDITIONS OF
COMPETITION FOR CONSIDERATION IN DECIDING WHETHER
A CUMULATIVE ASSESSMENT OF THE EFFECTS OF IMPORTS
IS APPROPRIATE IN LIGHT OF THOSE CONDITIONS
(DOCUMENT G/ADP/AHG/W/93)**

Comments by Brazil

The following communication, dated 25 October 2000, has been received by the Permanent Mission of Brazil.

The note prepared by the secretariat in Document G/ADP/AHG/W/93 tried to list possibly relevant criteria regarding the conditions of competition with a view to determining whether a cumulative assessment is appropriate in light of those conditions.

Brazil's evaluation of that paper showed that, among the listed topics, some criteria are indeed essential to the proposed discussions and others are somewhat ancillary.

Topics 1 and 3

1. *Physical characteristics and uses of the domestic like product and imports from each of the countries proposed for cumulation, including consideration of quality, technical specifications, function, and trade mark;*
3. *The degree interchangeability, fungibility and substitutability of the domestic like product and the products from each of the countries proposed for cumulation in the user markets, including considerations of customer perception and specific customer requirements;*

Given the fact that, to be subject to the same conditions of competition, a basic requirement is that products must be aimed at the same market, Brazil believes that items 1 and 3 are fundamental aspects of the analysis at hand. An evaluation of those two topics would allow a determination on whether or not the investigated products and the like product are aimed at the same market, competing for the same consumers/users.

Therefore, if the products under investigation, originating in different countries, have distinct physical characteristics that lead to different uses (if they are not interchangeable consequently), such fact would lead to the conclusion that those products are not intended for, or do not compete in the same market. Thus, not only would a cumulative assessment be inappropriate, but also the domestic industry would need to be re-examined. In other words, the like product itself would have to be

evaluated separately, in light of the different types of imported products aimed at, or competing in different markets.

Let's suppose that an investigation is opened on imports of product X, originating in countries A and B. For the purpose of identifying the domestic industry, the like product was considered to be identical to the imported one – product X therefore. However, at some point during the investigation, a more detailed analysis of the physical attributes, function, and replacement characteristics of the imported products “vis-à-vis” the domestic product, showed that the products from countries A and B are in fact “unlike”, and that they compete in different markets. The product from country A is in fact X_1 , and the one from country B is X_2 . If we assume that the importing country produces only X_1 and X_2 , then imports from A and B could not be accumulated, and the evaluation of the domestic industry should focus on each one of those products separately. The domestic industry, as a result, would have to be redefined. It would have to be broken down into producers of X_1 like products and of X_2 like products.

Another possibility would involve a situation where the domestic industry produced only one of the like products: X_2 for instance. Under these circumstances, country A should be excluded from the investigation, since its product - X_1 - would not be affecting the domestic industry.

On the other hand, if the investigation demonstrated that the products originating from countries A and B are mutually replaceable, despite the fact that they exhibit distinct characteristics, then imports from A and B could be accumulated to determine the injury caused to the domestic industry.

Topics 2 and 5

1. *Volume and share of the domestic market of imports from each of the countries proposed for cumulation, including consideration of the levels and trends in the imports, either in absolute terms or relative to production or consumption in the importing country;*
2. *The levels and trends of prices for the domestic like products and imports from each of the countries proposed for cumulation, the levels and trends for price undercutting by imports from each of the countries proposed for cumulation, and the levels and trends of price depression or suppression in the domestic market caused by imports from each of the countries proposed for cumulation;*

It seems that, for the purpose of establishing whether or no “cumulation” is appropriate, trends concerning (i) imports volume and market share in the importing market; as well as (ii) prices of imports should be taken as secondary or ancillary elements of the evaluation. Products subject to the same competition forces may well display different trends in volume and prices, even though they are competing in the same market, for the same buyers.

Hence, such aspects could not be the decisive element in the decision to cumulate or not. They could, all the same, provide useful guidance on the analysis of the conditions for competition and possibly even reveal the need for a re-evaluation of the aspects described in topics 1 and 3.

To illustrate this point, let's assume that a product originating in country B is a perfect replacement for a product imported from country C. During the investigated period it maintained constant volume and market share in the apparent consumption (which was also stable). Conversely, imports from C increased in volume and consequently increased its participation in the domestic market. The fact that imports from B were stable - neither being displaced by imports from C, nor taking up sales from the domestic industry – could well be an indication that the analysis under topics 1 and 3 above was not proper. In this case, the investigating authorities should re-examine whether

the products from B and C are truly mutually replaceable. The same reasoning would apply to price trends.

Topic 6

5. *The extent to which the domestic like product and imports from each of the countries proposed for cumulation were present in the market during the same time-period;*

One should clarify what is meant exactly by “the same time period”. Is this a reference to simultaneous or concurrent investigations (that use the same period for dumping and injury), does it refer to the timing of imports (for instance: imports from A enter the market in the first semester, while imports from B occur in the second semester), or is this expression meant to address any other situation?

If it refers to simultaneous investigations, Brazil believes that this is not a criterion, but rather a precondition for cumulative assessments. Brazil would provide further comments in light of the response given to clarification requested above.

Topic 7

5. *The extent to which the domestic like product and imports from each of the countries proposed for cumulation are sold in overlapping geographic regions of the domestic market;*

In cases where the two products comply with the criteria set out in topics 1 and 3, considerations on geographical patterns of sales would take a secondary or supplementary role in the decision to cumulate or not, under given conditions of competition. This seems to be evident, since products subject to different conditions of competition may well be sold in the same geographical regions. It just depends on whether or not consumers or users of both products are established in that particular geographical area.

Even if two products don't reach the same regions at the same time, this doesn't mean that the market is fragmented, or that the imported products and the like product could not reach any geographical point in the importing country. Therefore, this criterion should not be relevant, unless there are clear elements that indicate a partitioning of the market, such as product perishability, together with transportation costs. Under these circumstances, the domestic industry should be subdivided, as established in Article 4.1.ii of the AD Agreement.

Topic 4

4. *The existence of common or similar channels of distribution for the domestic like products and imports from each of the countries proposed for cumulation;*

Brazil invites the Members that utilize this criterion to submit examples of how, for mutually replaceable products, different distribution channels would affect the conditions of competition.
