

# WORLD TRADE ORGANIZATION

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**Committee on Anti-Dumping Practices  
Informal Group on Anti-Circumvention**

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## TOPIC 1 - WHAT CONSTITUTES CIRCUMVENTION?

### Paper by the United States

The following communication, dated 7 October 1997, has been received from the Permanent Mission of the United States.

#### Introduction

The Ministerial Decision on Anti-Circumvention was adopted by Governments at Marrakesh and forms an integral part of the Final Act Embodying the Results of the Uruguay Round Multilateral Trade Negotiations. This Decision acknowledged the problem of circumvention and recognized the desirability of applying "uniform rules in this area as soon as possible" to prevent the evasion of anti-dumping and countervailing measures resulting from circumvention.<sup>1</sup> The Decision confirms that the topic of circumvention formed part of the negotiations which preceded the Agreement on Implementation of Article VI of GATT 1994 (Anti-Dumping Agreement) and referred this matter to the Committee on Anti-Dumping Practices for resolution. To fulfil this mandate, the Committee on Anti-Dumping Practices established the Informal Group on Anti-Circumvention (Anti-Circumvention Group or Group) to examine and resolve which rules should apply uniformly to address the problem of circumvention. The Group has agreed to begin this discussion by identifying the various ways in which the problem of circumvention can arise. This paper provides an overview by the United States of the nature of the problem, including specific examples of circumvention. After discussing the nature of the problem, the Anti-Circumvention Group can proceed to discuss ways in which circumvention will be addressed.

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<sup>1</sup>Decisions and Declarations relating to the Agreement on Implementation of Article VI of the Agreement on Tariffs and Trade 1994.

Decision on Anti-circumvention:

Ministers,

Noting that while the problem of circumvention of anti-dumping measures formed part of the negotiations which preceded the Agreement on Implementation of Article VI of GATT 1994, negotiators were unable to agree on specific text,

Mindful of the desirability of the applicability of uniform rules in this area as soon as possible,

Decide to refer this matter to the Committee on Anti-dumping Practices established under the Agreement for resolution.

What Constitutes Circumvention?

Circumvention is the evasion of anti-dumping or countervailing duty measures by modifying or altering marginally the physical nature, production or shipment of merchandise otherwise subject to a anti-dumping or countervailing duty measure in a manner which ultimately undermines the purpose and effectiveness of remedies provided for under the WTO Anti-dumping Agreement and the Agreement on Subsidies and Countervailing Measures (SCM Agreement), and which WTO Members have implemented into national law.

Increased globalization has made it considerably more difficult for nations to enforce anti-dumping and countervailing duty measures. The production of goods is increasingly global and compartmentalized; parts or components of a product are often manufactured in two or more places, assembled in another location and shipped to yet another destination. These advances in manufacturing methods and strategies have increased concerns about the ability of firms to evade anti-dumping and countervailing duty measures.

The United States provides the following three clear examples to illustrate how certain producers could, and sometimes do, evade anti-dumping and countervailing duty measures. These examples have been prepared for illustrative purposes in order to provide a baseline by which to examine the question of "What Constitutes Circumvention?" Few would disagree that these examples represent clear-cut cases of circumvention. Presented for purposes of discussion, the instances described below do not encompass, in any way, the universe of all possible instances of circumvention. By highlighting them, the United States does not mean to imply that other situations, including variations of the facts given in these examples, would not also constitute circumvention.

- (a) An importing country places an anti-dumping or countervailing duty measure on nickel (the element) from an exporting country. The product description in the measure defines nickel as consisting of at least 99% pure nickel (which is the industry standard). The measure covers shipments from the exporting country that have averaged 100 tons per year over the last few years. The producer/exporter in the exporting country responds to the measure by adding a small amount of silver to the nickel during its production process, so that the resulting metal is 98.5% pure nickel, 0.5% silver, and 1% normal impurities. Exports of industry-standard nickel from the exporting country immediately drop to zero and are replaced by 100 tons per year of the new alloy, which is made by the same producers in the exporting country and sold, under the original nickel contracts, at prices and volumes so similar as to reinforce the notion that these are the same goods, sold to the same customers, for similar purposes as the previously-exported nickel.
- (b) An importing country places an anti-dumping or countervailing duty measure on hinges from an exporting country. The product description in the measure describes complete hinges, which are what the exporting country has been exporting. The producer/exporter in the exporting country responds by shipping the two hinge halves and pin separately to the importing country, or a third country, where they are assembled in a matter of minutes and sold in the importing country. The hinge components are manufactured by the same producers in the exporting country and sold at prices and volumes so similar as to reinforce the notion that these are the same goods, sold to the same customers in the importing country, under the original hinge contracts, for similar uses as before the anti-dumping or countervailing duty measure.

- (c) An importing country places an anti-dumping or countervailing duty measure on salt from an exporting country. The product description in the measure describes granular salt, which is what the exporting country has been exporting. The producer/exporter in the exporting country responds to the anti-dumping or countervailing duty measure by combining the salt with water and exporting it as saline syrup. The syrup is produced by the same producers in the exporting country and sold at prices and volumes so similar as to reinforce the notion that these are the same goods, sold to the same customers in the importing country, under the same contracts, for similar uses as before the anti-dumping or countervailing duty measure.

The United States believes it is imperative that instances of circumvention be addressed in a timely fashion to preserve the credibility of WTO rules on the enforcement of anti-dumping and countervailing duty measures. While uniform rules addressing circumvention must address such obvious examples of circumvention as those described above, they must also address the complex realities of modern production processes that may create incentives to circumvent measures in other ways, as well. In so doing, uniform rules on circumvention should require the examination of a variety of factors viewed in their totality, to account for the wide range of production methods utilized by global manufacturers. For example, rules on circumvention should take into account such factors as the nature of the production processes employed; value-added considerations; sudden increases in the flow of parts or components from a nation subject to an anti-dumping or countervailing duty measure; and others. Any discussion of uniform anti-circumvention rules must include examination of a broad range of factors relevant to determining what constitutes circumvention, because the ways in which circumvention can occur are numerous, fact-specific and unpredictable.

### Conclusion

GATT Members have long supported provisions providing relief from unfair trade practices. This was confirmed in the 1979 Tokyo Round and, most recently, in the Uruguay Round, where there was a recognition by GATT Members that a balanced package of trade reforms must include effective anti-dumping and countervailing duty measures. Attempts to evade those measures require the application of uniform rules to ensure the efficacy of those measures. To this end, the Ministerial Decision states that the applicability of uniform anti-circumvention rules is desirable.