

# WORLD TRADE ORGANIZATION

RESTRICTED

**G/ADP/W/407/Rev.2**

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## **Committee on Anti-Dumping Practices**

### **NOTE FROM THE SECRETARIAT**

#### Revision

At its regular meeting on 29 October 1998, the Committee decided to ask Members to submit suggestions for items to be deleted from the list of topics referred to the Ad Hoc Group on Implementation for consideration. The Committee further decided to ask Members to submit suggestions for new items to be added to that list.

As of 1 February 1999, the Secretariat has received the following suggestions of items to be deleted from and/or added to the list of topics referred by the Committee to the Ad-Hoc Group for consideration. The Member submitting each suggestion is identified in the list below.

The suggestions are being circulated to Members for their consideration. Members may be invited to discuss these items during the meeting of the Ad Hoc Group in April 1999, or may be invited to discuss them informally prior to that time. At the regular meeting of the Committee in April 1999, a decision on items to be deleted from and/or added to the list of topics referred to the Ad Hoc Group will be considered by the Committee.

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#### **A. Suggestions for items to be added to list of topics referred to Ad Hoc Group**

1. (Israel) Article 2  
A discussion as to the application of the Anti-Dumping Agreement regarding the situation of bids and tenders.
2. (Turkey) Non-market economy country in connection with the term "ordinary course of trade" – Article 2.1.  
In determining "ordinary course of trade" as used in Article 2.1 of the Agreement, whether the exporting country is a market or non-market economy country becomes important. Given the fact that there are no rules in the A-D Agreement defining non-market economy countries, Turkey would like to know what the other members' practice on this specific issue is.
3. (Turkey) Meaning of the term "Reasonable Amount" as used in Article 2.2
4. (Turkey) Constructed export price – Article 2.3.  
Article 2.3 of the Agreement states that when the actual export price is unreliable because of a compensatory arrangement between the exporter and the importer or a third party the export price may be constructed on the basis of the price at which the imported products are first resold to an independent buyer.

Does this mean that the authorities should use constructed export price even in cases where they possess some reliable export price data, or, can they calculate the export price by using the reliable export price data that they have and disregard the unreliable data?

5. (Israel) Article 2.4 – Fair Comparison

A discussion as to the various types of differences that may affect price comparability and which are in fact recognized when calculating dumping margins.

6. (New Zealand) Exchange Rates – Article 2.4.1

The footnote to this Article states that “normally, the date of sale would be the date of contract, purchase order, order confirmation, or invoice, whichever establishes the material terms of sale”. This may bear no relation to the price actually paid for the goods, particularly in a situation where there is a sustained movement in exchange rates which does not come within the last sentence of Article 4.2.1, i.e. when the normal value currency declines against the export price currency

7. (Japan) Establishment of appropriate exchange rate.

Article 2.4.1. stipulates the principles of how to determine exchange rates in calculating dumping margin. Moreover, it also prescribes that "fluctuations in exchange rates" shall be ignored and that exporters shall be given time to adjust export prices to reflect "sustained movements in exchange rates". What situations should be recognized as giving rise to fluctuations that can be ignored or to sustained movements for adjusting export prices, and in such situations how should the appropriate exchange rate be established specifically?

8. (Australia) Article 2.4.2.

Practical issues raised in the application of this provision such as: the different circumstances for using transaction-to-transaction and weighted average-to-weighted average comparisons; the incidence of using the alternative methods; and the determination of whether the margin of dumping is *de minimis* under the transaction-to-transaction approach.

9. (Turkey) Sampling in injury under Article 3

10. (United States) Negligible imports.

Discuss the implementation of Article 3 concerning the termination of investigations caused by determinations based on *de minimis* volumes of dumped imports.

11. (New Zealand) Cumulation – Article 3.3

What is the practice of other administrations in applying this Article?

12. (Turkey) Cumulative assessment – Article 3.3.

In accordance with the provisions of Article 3.3 of the Agreement, what are the experiences of the other members in determining the conditions of competition between the imported products and between the imported products and the like product?

13. (European Community) Article 4/5.4

Definition of domestic industry (exclusion of producers related to importers/exporters, survey for standing determination).

14. (New Zealand) Domestic industry – Article 4.1 (i)

What is the practice of other Members in applying this article? The article provides for discretion, “...may be interpreted...”. How do authorities decide when to apply this article and exclude related producers?

15. (Turkey) Interpretation of Article 4.1 – (Footnote 11) and 3.5 simultaneously.

Under Article 4.1, related producers may be excluded from the definition of the domestic industry. On the other hand, Article 3.5 requires that other factors injuring the domestic industry be examined and injuries caused by these factors not be attributed to the dumped imports.

In some instances some of the exporters under investigation may have set up their manufacturing plants in the territory of the importing member. In such cases, the investigating authorities of the importing member must not attribute the effect of these branches on the sector subject to the investigation to dumped imports originating in another country if the authorities have information about the related producers.

Taking into consideration this hypothetical case Turkey would like to know how other members interpret these two articles simultaneously.

16. (Turkey) Evidence – Article 5.

Article 5 of the Agreement states that the application for the initiation of an investigation shall include evidence of dumping, injury and the causal link between the two. However, there is no clarification as to what form of information may constitute evidence.

17. (United States) Questionnaires/requests for information.

Discuss the implementation of Article 6.1 and Article 6.1.1, including the form and nature of questionnaires issued; the different sections or types of questionnaires and their purpose(s); who are the appropriate recipients of questionnaires in both dumping and injury investigations; time to respond; and opportunities to submit additional information in response to supplemental questionnaires or otherwise.

18. (European Community) Article 6.1

Questionnaires and other information provided by exporters/foreign producers (whether time limits are adequate for returns to be made, whether there is genuine flexibility on timing, including whether due allowance is made for SMEs, companies without computerized records, etc.).

19. (Japan) Extension of deadline for reply to questionnaire

Regarding the extension of the deadline for a reply to questionnaires prescribed in Article 6.1.1, what "cause" should be provided for the extension to be granted and in what situation should such extension be deemed as "practicable"?

20. (United States) Availability of evidence.

Discuss the implementation of the Article 6.1.2 requirement that, subject to the requirement to protect confidential information, evidence presented in writing by one interested party shall be made available promptly to other interested parties participating in the investigation.

21. (United States) Access to information.

Discuss the implementation of Article 6.4, which requires that, whenever practicable, authorities should provide timely opportunities for all interested parties to see all information that is relevant to the presentation of their cases that is not confidential under Article 6.5, and is used by authorities in an investigation, including, e.g. memoranda and other documents prepared and used by the authorities in reaching their determinations.

22. (United States) Conduct of verifications.

Discuss the implementation of Article 6.7, which provides that authorities may carry out investigations in other countries as required, provided they obtain the agreement of the firms concerned, and they notify the representatives of the government of the countries in question (unless the latter object to the investigation). Address issues such as whether governments

provide verification outlines, lists of participants, or other preparatory information prior to the verification; and whether the verification findings are memorialized in written reports or otherwise.

23. (European Community) Article 6.8

Use of information available (how do users of the instrument use information available, or intend to use it, adverse consequences of using information available).

24. (Israel) Article 6.12

A discussion pertaining to the practices of the various authorities as to how and at what stages in the investigation, they provide opportunities for industrial users and consumer organizations to provide information which is relevant to the proceedings.

25. (Canada) Article 6.12

Article 6.12 requires that anti-dumping authorities provide an opportunity for industrial users of the product under investigation and consumer organizations to provide information which is relevant to the investigation. How do authorities accommodate this requirement?

26. (Malaysia) Article 9.5 – "Expedited/new shipper review"

27. (European Community) Article 9.5

Handling of newcomer reviews (date of starting exports, newcomers in cases where sampling has been applied (individual treatment), treatment of one-off shipments).

28. (Japan) Conditions for the Retroactive levying of A-D duties.

What should be the criteria to determine the following conditions for the retroactive levying of A-D duties prescribed in Article 10.6?

(1) the importer was, or should have been, aware that the exporter practices dumping and that such dumping would cause injury (10.6(i));

(2) the injury is caused by massive dumped imports of a product in a relatively short time which in light of the timing and the volume of the dumped imports is likely to seriously undermine the remedial effect of the definitive anti-dumping duty to be applied (10.6(ii)).

29. (Turkey) Recurrence of Injury – Articles 11.2 and 11.3.

How do the investigating authorities of the other members examine, during a review investigation initiated under Articles 11.2 or 11.3, whether the injury will continue or recur if the definitive anti-dumping duty is terminated? What specifically does recurrence mean as used in these paragraphs?

30. (Japan) Review investigations prescribed in Article 11.2 or 11.3

When determining whether anti-dumping duty is "no longer warranted" (Article 11.2) or when determining whether "the expiry of the duty would be likely to lead to the continuation or recurrence of dumping and injury" (Article 11.3), what factors should the authorities take into account, and in what situation can the authorities determine to terminate or to continue the duty?

31. (United States) Judicial, arbitral or administrative review.

Discuss the implementation of Article 13, and whether there is an opportunity for prompt review of administrative actions relating to final determinations and reviews of determinations. Discuss, e.g. the types of review provided (judicial, arbitral, administrative), whether determinations can be appealed, and to what court or other institution.

32. (European Community) Article 13  
Judicial Review (what steps taken to implement this provision, types of review available).
33. (New Zealand) Third Country Dumping – Article 14.4  
New Zealand has investigated two cases of dumping on behalf of a third country. In both cases, differing opinions were held by various members as to what constituted “action” under Article 14.4, and what the procedures are for gaining approval from the Council for Trade in Goods for such action.

**B. Suggestions for items to be deleted from list of topics referred to Ad Hoc Group**

1. (New Zealand) Topic 1 – Treatment of Confidential Information
  2. (New Zealand) Topic 2 – Period of Data Collection
  3. (New Zealand and Turkey) Topic 5 – Notification to the exporting member
  4. (Turkey) Topic 6 – Hearings
  5. (New Zealand and Turkey) Topic 7 – Provisions of essential facts
  6. (New Zealand and Turkey) Topic 8 – Public notices
  7. (New Zealand and Turkey) Topic 9 – Contents of preliminary affirmative determinations
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