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Negotiating Group on Rules

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NEGLECTIBLE IMPORTS

Communication from the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu

The following communication, dated 27 March 2008, is being circulated at the request of the Delegation of the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu.

The Delegation of the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu presents this document concerning the issue of "Negligible Imports" under the Anti-Dumping Agreement (ADA). This paper addresses the omission of the Rules Chair's text (TN/RL/W/213) on this issue as a contribution to the discussions in this Group and to the overall balance of the Chair's text. This is, therefore, without prejudice to the views we may have on other parts of the text. We may reserve the right to modify or co-sponsor it with other Members at a later stage.

I. INTRODUCTION

We recall that during the discussion in the Negotiating Group in February 2008, many members expressed concerns at the failure of the Chair's text to include the proposals submitted by members on Negligible Imports. We, therefore, reintroduce this issue to this Group for further discussion.

II. DISCUSSION

As you are aware, the current threshold standard for Negligible Imports under Article 5.8 of the ADA is based on a comparison of the volume of dumped imports with the total imports of the like product in the importing member. We find this premise irrelevant to the actual market situation of the importing member. The current standard ignores the role played by the dumped imports to the injury borne by the domestic industry producing the like product. When deciding Negligible Imports, we think it is more meaningful to assess the effect of such imports to the overall domestic market situation of the like product in the importing members. The negligibility threshold should, therefore, be based on the ratio of imports from a particular country to the total consumption of the like product and the product under investigation in the importing country.

Article 5.8 currently leaves the decision of the period for measuring negligibility to the discretion of the authorities. This allows the authorities to choose among imports in recent periods and to base the determination on those that exceed the negligibility threshold. The following proposed amendment would help prevent such discretion and provide a clear guidance for the authorities to decide such a period. Furthermore, we think this period should be consistent with the period of investigation used by the authorities for dumping determination, because (a) negligibility is based on "dumped imports" from an exporting country and (b) dumping can be determined only with regard to the period in which the authorities collect data on dumping.

Our proposed amendment, moreover, addresses another problem with the current negligibility test regarding cumulation. We find that targeting investigation at sources that only engage in negligible imports would exhaust administrative resources rather than effectively protect domestic industry from being injured by negligible imports, since such imports have limited impact on domestic industry. Moreover, in practice, applicants tend to choose the largest sources of imports of the like product as the targets for dumping investigation. As a result, the cumulation clause is rarely used to include the imports that are negligible. We, therefore, propose to eliminate this clause in the current text of the ADA.

III. PROPOSED TEXT

Article 5.8:

"... The volume of dumped imports shall normally be regarded as negligible if the volume of dumped imports from a particular country during the period of dumping investigation is found to account for less than 3 per cent of the domestic consumption ~~imports~~ of the like product in the importing Member, ~~unless countries which individually account for less than 3 per cent of imports of the like product in the importing Member, collectively account for more than 7 per cent of imports of the like product in the importing Member.~~
