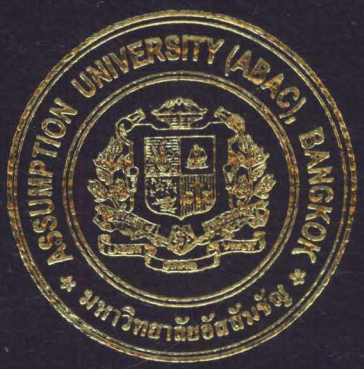

THE SITUATIONS OF DEVELOPING COUNTRIES UNDER ANTI-DUMPING AGREEMENT: THAILAND'S EXPERIENCE

BY

MR. KULACHAI THONGLONGYA

AN INDEPENDENT STUDY SUBMITTED IN PARTIAL FULFILLMENT OF THE REQUIREMENT FOR THE DEGREE OF MASTER OF LAWS (BUSINESS LAWS)

GRADUATE SCHOOL OF LAW
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Independent Study Title	:	The Situations of Developing Countries under Anti-Dumping Agreement: Thailand's Experience
Author	:	Mr. Kulachai Thonglongya
Major	:	Master of Laws (Business Law)
Advisor	:	Mr. Wutipong Vechayanon

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ABSTRACT

Developing countries are main targets of the antidumping regime and developed countries, along with a few large developing countries are main users of the regime. Developing countries expect that WTO will arrange the suitable regime to govern all contracting parties and bring the fairness to all of them. Nonetheless, the current Antidumping Agreement is still imperfect and that leads to the unfair competition.

The situation of Thailand is not different to those developing countries, still struggle to deal with antidumping problems. In this regard, there is no practical special and differential treatment for developing countries under the present antidumping regime. Also, the non-market economy treatment results in the majority of antidumping charges because the normal value of imports is determined on the basis of a surrogate country and therefore exaggerated. The lack of defendant's rights is also attributed to this regime. The constraints of the role of panels in the dispute settlement make developing countries more vulnerable than in other WTO regimes. Developing countries also suffer from the sharp shortages of financial and human resources which are essential no matter when they face anti-dumping charges or they set up their own antidumping institution. The complexity of anti-dumping procedure makes this situation more difficult for developing countries. The reviewing process to stop collecting the duties still depends too much on authority of importing countries. Developed countries sometime use unfair method to determine the dumping margin in which WTO ruled that the method to determine the dumping margin so-called

"Zeroing" is against GATT's regulations but until now there is no provision clearly prohibits such method in the Anti-dumping Agreement.

The reality is that developed countries, which have a huge number of antidumping cases in force, are reluctant to fully fulfill their commitments and this regime is being abused. Based on the above deficiencies of antidumping regime, the possible solutions for developing countries are proposed. They are the abolishment of non-market economy regime; increase of the enforceable S&D treatment for developing countries, lifting the constraints of the role of panel in the procedure of dispute settlement, providing financial support and expertise assistance, lastly the zeroing measure should be clearly prohibited.

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Kulachai Thonglongya

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Chapter I
Introduction

A. Background and General Statement of the Problems

29 February 2008 should be the day to remember for Thailand's shrimp exporters as the WTO's dispute settlement panel rendered the verdict ruling against USA who imposed the Anti-Dumping measure on Thai shrimp exporters.[1] But this victory will be merely an illusion if the existing Anti-Dumping Agreement of GATT is not yet revised, there is more unfair antidumping charged to come.

After the conclusion of Uruguay Round of Trade Negotiations, the WTO attempts to reduce trade restrictive, trade measures such as tariffs, import quotas, import bans or discretionary permits are gradually limited. During this negotiation, The WTO has adopted an anti-dumping provision as part of its rule structure. The Agreement on Anti-Dumping ("AD Agreement") is a significant achievement of the Uruguay Round. This Agreement is clarified on Article VI of the GATT.

The fundamental purpose of AD Agreement is to allow countries to act unilaterally to restrict imports by imposing antidumping duties if imports are priced below "normal value" and they cause or threaten material injury to the domestic industry.[2] Sometime it knows as contingent protection measures, however, it is widely acknowledged among economists that anti-dumping measures have become weapons of choice for protectionist to employ it as unfair trade protection, while the main purposed is to decrease foreign competitors.

Prior to 1990, developed countries initiated most of the anti-dumping cases. USA, EC, Canada and Australia, known as traditional users, these four developed countries would generally invoke AD Agreement against mainly exporters from developing countries by referring to the injury in their domestic countries. Many

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[1] United States v. Thailand, Report of the Panel, Measures Relating to Shrimp From Thailand, WT/DS343/R (29 February 2008).

[2] GATT 1947, Article VI.

exporters of developing countries are being subject to more and more anti-dumping measures. Thailand is not an exception, the exporters from Thailand has to encounter with AD measures from USA and Europe, particularly shrimps, steels, plastic products and etc.

The uncertainty and restrictiveness of antidumping measures have created trade disruption affecting not only particular trade but also longer-term trade in the targeted product.The frequent use of anti-dumping actions against exports from developing countries by major trading countries has become a matter of serious concern.

Currently, developing countries are playing an increasingly important role in the world trade. This paper is to view the existing anti-dumping regime under the framework of the WTO from the perspective of developing countries.[3]

Thailand and other developing countries had little influence on international anti-dumping law-making. Before the change of the GATT, most developing countries were not independent politically and economically. During the first several rounds of multilateral trade negotiations, they were economically weak and paid more attention to their domestic economies. That is why developing countries were not seen in the anti-dumping arena during the most time of last century. However, with the development of export oriented economies, developing countries became increasingly aware of their role in world trade and anti-dumping measure as well.

This paper will therefore focus on the situations and problems of developing countries, particularly Thailand, under the current anti-dumping regime. Then, the

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[3] For this purpose, Edwin Vermust and John H. Jackson considered, Argentina Brazil, Bulgaria, Chile, China Colombia, Costa Rica, Croatia, Czech Rep, Ecuador, Egypt, Honduras, Hungary, Hong Kong, India, Indonesia, Kazakhstan, Korea, Macedonia, Malaysia, Mexico, Nicaragua, Panama, Peru, Philippines, Romania, Russia, Slovakia, S. Africa, Thailand, Trinidad & Tobago, Turkey, Ukraine, Venezuela and Zimbabwe as developing countries, Marco Bronckers & Reinhard Quick, New Directions in International Economic Law (Hague: Kluwer Law International) 259 (2000).

relevant cases will be discussed and some proposals for the next round of multilateral negotiation will be given in this paper.

B. Hypothesis of the Study

The hypotheses of this research paper are:

1. The current AD Agreement which provided by WTO has a systematic weakness and need to be reformed.

2. The uncertainty and restrictiveness of antidumping measures have created trade disruption affecting not only particular trade but also longer-term trade in the targeted product.The frequent use of anti-dumping actions against exports from developing countries by major trading countries has become a matter of serious concern.

C. Objective of the Study

1. To describe the history of AD Agreement and its background in general. In this regard, Thailand shall be the main focus for discussion.

2. To address what makes developing countries are in unfavorable situation. This will be categorized as unfair non-market economy system, special and differential treatment, role of the panel, complexity of the procedure, the reviewing procedure and the zeroing measure. The relevant cases will be discussed.

3. To give some proposals for the next round of multilateral negotiation.

D. Study Methodology

The Methodology of this research is a documentary research. The regulation provided by WTO and its Panel Report will be studied. Additionally, the research will also discuss the domestic laws and policy for related countries such as Thailand Antidumping Law and its policy, US Antidumping Law or EC Antidumping

Regulation as the case may be. Furthermore, related books, articles in law journals and the internet will be studied.

E. Scope of the Study

The research will examine the problem which arises from the AD Agreement. The existing regulation gives the negative affect to most developing countries, including Thailand. After the related cases are discussed, the research will give the suggestion as a ground to reform.

F. Expectation of the Study

To know the situation and problem of developing countries and Thailand where get affected from the AD Agreement.

The research expects to give the appropriate proposal, idea and suggestion for WTO, developing countries and Thai Government as an additional agenda to be used for the next round of WTO negotiation.

After revising the AD Agreement, it should reduce unnecessary cases against Thailand and other developing countries and could also help them from disadvantages position, and gain greater benefits from their increased participation in world trade.

Chapter 2

Anti-Dumping Law under GATT/WTO

A. Intro to Antidumping Law under GATT/WTO

Article VI of the GATT provides for the right of contracting parties to apply anti-dumping measures against imports of a product at an export price below its "normal value", normally the price of the product in the domestic market of the exporting country. WTO members have agreed that dumping is to be condemned if it causes or threatens material injury to an established industry in another member country, or materially retards the establishment of a domestic industry.[4]

Anti-dumping duties are designed to counter the effects of dumping. They are an extra tax on a product from a particular exporting country.[5] This makes the product more expensive to export, forcing exporters to raise their prices in the destination country. However, Anti-dumping duties can be imposed only after appropriate investigation determines that goods are being dumped, and that the dumped goods are causing material injury.[6] However, though all these requirements have been met, anti-dumping duties are only imposed if the importing members decide to do so.

Only just initiation of investigation can have a chilling effect on trade.[7] Sometime, it is argued that the existence of anti-dumping is a tool of protectionist using against overseas competitors. Critics argue that a forceful competition law

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[4] GATT 1947, Article VI (1).

[5] Ibid., Article VI (2).

[6] Agreement on Anti-dumping Measures 1994, Article 2 (determination of dumping) and Article 3 (determination of injury).

[7] Han Soo Kim, "Anti-Dumping: Practical and Legal Issues in the Post-Doha Scenario," Report on the AITIC / UNCTAD Workshop, Geneva, February 2002 .

against predatory pricing is sufficient to protect both consumers and producers.[8] Nonetheless, many governments take action against dumping in order to protect their domestic industries.

The current AD Agreement did not express whether or not there should be anti-dumping. Instead, they rule the use of anti-dumping to ensure that the parties conduct fair investigation procedures. This is important because as tariff rates have been lowered over time and that lead anti-dumping duties have become increasingly common.

B. History and General Background

Antidumping actions are legitimate measures permitted under the WTO rules, and are now the most frequently used trade remedies. Over the past decade, around 3,000 anti-dumping actions have been initiated and notified to the WTO.

The information disclosed by WTO perhaps offers the best evidence, pointing out that in terms of the quantity of trade litigation; antidumping has lapped the field, several times over. Between 1995 and 2000, WTO members reported 61 safeguard investigations, 115 countervailing duty investigations, and 1,441 AD investigations. It can be said that over the past 25 years there have been more disputes under the AD Agreement than under all the other GATT/WTO trade statutes put together.

Canada was, in 1904, the first to introduce anti-dumping legislation protecting its domestic steel industry from predatory pricing by US Steel. New Zealand followed in 1905, Australia in 1906 and the US in 1916, all citing predatory pricing by foreign exporters.[9]

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[8] Philippe Brusick, "Anti-Dumping: Practical and Legal Issues in the Post-Doha Scenario, Report on the AITIC / UNCTAD Workshop," Geneva, February 2002.

[9] Michael J. Finger, Issues and Options for US-Japan Trade Policies (University of Michigan Press) 139 (2002).

The original General Agreement on Tariffs and Trade (GATT) of 1947 set out rules for the imposition of anti-dumping duties under article VI. By the 1960s, however, it became apparent that there was a need to introduce greater discipline in the use of these measures, and the Agreement on the Implementation of article VI, known as the first anti-dumping code, was negotiated in the closing phases of the Kennedy Round in 1966–67. In the years between the Kennedy Round and the launching of the Tokyo Round in 1975, the use of anti-dumping measures by Australia, Canada, the US and the European Community (EC) increased significantly. This led to the negotiation of a second anti-dumping code during the Tokyo Round, which was accepted by a small number of mostly developed countries.[10]

During the Uruguay Round a third antidumping agreement was negotiated. At this round less than half the members of the World Trade Organization (WTO) have passed anti-dumping legislation, but all accepted the agreement under the single undertaking.

After the negotiations in Uruguay round, there has been focused on the strengthening of the multilateral disciplines on safeguards including the prohibition and elimination of voluntary export restraints and the commitments to withdraw the Multi-Fibre Arrangement (MFA)[11] quotas under the Agreement on Textiles and Clothing (ATC) appears to have provoked an increasing resort to antidumping measures. Certain countries and product sectors, such as steel and textiles, have been targeted more than others.[12]

At the same time, there has been an increasing resort to antidumping measures by non-traditional users particularly developing countries, many of them have introduced antidumping measure since the entry into force of the WTO

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[10] Edwin Vermust, Anti-Dumping in the Second Millennium: The need to Revise Basic Step, p. 259.

[11] The Multi Fibre Agreement (MFA) is fully integrated into the general WTO rules as any other commodity in January 2005.

[12] Thomas Prusa, On the Spread and Impact of Anti-dumping, NBER working Paper No.7404 (National Bureau of Economic Research: Cambridge Mass, 1999), p. 14.

Agreements. Just three years after signing the anti-dumping code, Mexico had filed more than 30 cases. Similarly, Argentina, which filed its first anti-dumping case in 1991, averaged almost 20 cases a year throughout the 1990s.[13]

Nevertheless, developing countries continue to be the main target of anti-dumping measures. In addition, many least-developed countries, including a number of African countries, have complained of their inability to deal with massive inflows of dumped imports. These create instability and uncertainty for their trade, which has resulted in reductions in trade volumes and market shares for their goods.

The increased resort to anti-dumping measures and the rising number of disputes related to these measures have motivated many countries, including several developing countries, to call for improvements in the application of these measures.[14]

During the first five years of the WTO Agreements (1995–99) 1,229 anti-dumping cases were initiated, 66 per cent of them against developing countries[15].The rapid liberalization of trade regimes by developing countries has led them to pass anti-dumping legislation and to rely on it heavily, because it is the most effective way to counter the flow of import competitions while still conforming to WTO rules. Although developing countries have dramatically increased their use of anti-dumping measures, they however
remain the main targets of such measures.

When anti-dumping actions are applied, it can have a devastating impact on individual industries, particularly developing countries, affecting the entire economy. Developing countries have therefore pressed for tighter rules governing the use of antidumping measures and for improved provisions on special and differential treatment to consider of their vulnerability.[16]

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[13] Ibid.

[14] See Chapter 4 'Disadvantage situation of developing countries' p. 21.

[15] Third World Network, available at http://www.twnside.org.sg/ (last visited 6 September 2008).

[16] See Chapter 4, 4.2 "Special and Different Treatment for Developing Countries," p. 25.

1. Friends of Antidumping

In Doha round, After US officials wanted to negotiate expanded market access for US exporters, especially in the agriculture and service sectors, such an intention motivated the WTO's members who are likely to be a target decided to form a group for negotiation and seeking to tighten rules on the application of antidumping measures called "Friend of Antidumping", the established member, mostly developing countries, consist of Brazil, Chile, China, Colombia, Costa Rica, Hong Kong, India, Israel, Japan, Korea, Mexico, Norway, Singapore, Switzerland, Turkey, and Thailand.[17]

The aimed for establishing this group is particularly to discuss about antidumping activities. The group also believed that any new framework for negotiations should include talks on improving WTO trade remedy rules. Recently, they submitted a large number of proposals in the context of the implementation issues and concerns relating to AD Agreement, which expected to be solved in the next round of negotiation.

C. Experience of Thailand

Anti-Dumping Law in Thailand was firstly introduced in 1964 known as "Anti-Dumping Act B.E. 2507" which was monitored by Financial Minister. However, there was no investigation or any action against dumping case in accordance with this act due to its certain restrictions such as the process of investigation was not duly defined in details and the law did not cover the case of subsidy issue. While, internal industries were reluctant to file the complaint, therefore, the Government considered that this act should be reviewed.[18]

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[17] Vivian C. Jones, "WTO: Antidumping Issues in the Doha Development Agenda," CRS Report for Congress, p. 13, April 2006.

[18] Thammavit Terdudomtham, "Antidumping Measures: Agreement and Experience," WTO Watch: Bangkok, Academic Paper No.6 (2006): 84.

In 1991, the Ministry of Commerce launched the draft of "Anti-Dumping Subsidies and Countervailing Act" which aimed to protect domestic industries from the dumping and subsidy matters. Nonetheless, the House of Representative was revoked before such act would be approved. Therefore, The Ministry of Commerce authorized by "Export and Import of Products into the Kingdom B.E. 2522" to launch the regulations which allowed the government to collect the special duty against unfair import and subsidies' goods. The government temporary applied this regulation to initiate an investigation against dumping products from France and German since 3 August 1993 but the case was found no dumping in such product. However, the government also took the investigation against Hydrogen Peroxide from India and collected 30% special duty on this product since 8 November 1994.[19]

After the negotiations in Uruguay Round, WTO achieved to launch "Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1947", This Agreement clarifies and elaborates on Article VI of the GATT. Thailand, as a member country of WTO since 1 January 1995, needed to review the current Anti-Dumping Act in order to comply with the Agreement from GATT. Ministry of Commerce of Thailand decided to repeal its previous regulation B.E. 2534 and launched the new regulation B.E. 2539 in order to collect the special duty on antidumping and subsidies measures, the regulation took effect since 14 October 1996 and in compliance with Article 6 of GATT.

Ministry of Commerce archived to utilize this regulation to investigate the complaint and imposed antidumping duty against steel products from Poland, South Korea, Ukraine, Russia and Indonesia

Thereafter, on 22 March 1999, Thailand finally launched "Anti-Dumping and Countervailing Measures Act B.E. 2542" (Act B.E. 2542) under the ground of enactment that the certain provisions in previous Antidumping Act (B.E. 2507) were unclear and unsuitable to the economic expanding and the old law also did not cover the subsidies issue and was noncompliance with international law.[20]

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[19] Ibid., pp.85-86.

[20] Commentary Note of Anti-Dumping and Countervailing Measures Act B.E. 2542.

The new Antidumping Act of Thailand was enacted in line with Antidumping Act of European Community (Council Regulation No. 384/96), which authorities from Department of Foreign Trade of Thailand considered that the Act of EC is comprehensible clear and complied with the AD Agreement of WTO

Thailand also decided to become a member of "Friends of Antidumping" in order to increase its power of negotiation in respect of antidumping measure because Thailand, as a developing country, has a very limited power in negotiations on the world state.

1. Summary of Thai Antidumping Act B.E. 2542

a. Government Authority

The Minister of Finance shall take charge and control of the execution of this Act. He can issue Ministry Regulation or announcement in order to follow the Act (Section 5). Department of Foreign Trade (DFT) shall be responsible for investigation of dumping and injury. In practice, DFT has a division to protect and defense of trade benefit which perform in accordance with the Act B.E. 2542. It can be said that Thailand has a single authority system to initiate investigation and probe the injury which is similar to a system used by EU, India and others developing countries. This is however different to USA system where two divisions bear responsible for conducting the processes, in this regard, Ministry of Commerce of USA shall investigate the dumping issue and International Trade Commission (ITC) investigates injury matter. The two division investigation system is deemed to add more transparency but it also consumes man power and times.[21]

To consider antidumping matter, the Cabinet will appoint the committee for considering dumping and subsidy (Committee). The Committee consists of Commercial Minister as a president, Undersecretary Ministry of

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[21]Thammavit Terdudomtham, Antidumping Measures: Agreement and Experience, p.86.

Commerce, Undersecretary Ministry of Finance and so on as provided by the law. The Committee will be responsible to consider the applications, make decision on whether or not to conduct an investigation into the complained dumping or subsidy practice, carry out the preliminary and final investigation of the dumping and dumping margin or the subsidy and subsidy margin and make respectively the preliminary and final decisions on such investigations, decide whether or not to stay the investigation and whether or not to resume them, and announce all the preliminary and final decisions on the case involved. In this sense, Financial Minister will take responsible in the part of custom work.[22]

b. Determination of Antidumping

Thai Government may use antidumping measure by collect duties in a situation which the dumping product causes injury to the domestic industries (Section 12). Therefore, to use antidumping measure, three conditions must be met, 1) having a dumping, 2) having an injury to domestic industry and 3) having a relation between dumping and injury.

The Act B.E. 2542 defined the meaning of "Dumping" as complied with the Article VI of GATT, Section 13 of the Act B.E. 2542 provided that a product will be deemed being dumped if it is introduced into the commerce of Thailand at less than its normal value. Therefore the normal value of the product has to be determined and this is done by looking at the comparable price, in the ordinary course of trade, of the product when sold in the exporting country (Section 14). This information is obtained from the questionnaires completed by the exporters. If this information is readily available, then the calculation of the normal value is simple.

However, the Act B.E. 2542 also provides for a situation where there are no sales of the like product in the ordinary course of trade in the exporting country for some reason. Then the normal value is determined by using the export price of the

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[22] Anti-Dumping and Countervailing Measures Act B.E. 2542, Section 4, 8, 56 and 72.

like product to an appropriate third country or by constructing normal value by calculating the cost of production in the country of origin plus a reasonable amount for administrative, selling and general costs and for profits (Section 15). The problem usually arises with this last option.

c. Determination of injury

In order to levy an antidumping duty, it is not enough only proving that dumping has occurred. Section 19 of the Act B.E. 2542 requires that injury to the domestic industry also has to be proved as one of following,

1. cause material injury to the domestic industry or
2. cause material injury which may arise with domestic industry or
3. cause material obstruction to delay the establishment or development of domestic industry.

To consider whether there is an injury to domestic industry or not, the authority must consider four factors in accordance with Section 22,

1. the increasing rate of import of dumping products
2. the increasing ability of exporter
3. the price reduction of the like product within domestic market
4. the number of products which remained in the stock within the Thailand

The fact is the factors provided by Section 22 of Thai Act did not cover to 15 factors as defined by Article III of the Agreement. This caused problem during the investigation of steel product from Poland (1997), Thai authority did not consider all 15 factors and the Panel of WTO decided that Thai did not perform in compliance with the GATT regulation and ruled that no dumping be found from such products. From then on, DFT begins to examine the material injury by considering to 15 factors as following,

1. actual and potential decline in sales
2. actual and potential decline in profits

3. actual and potential decline in output
4. actual and potential decline in market share
5. actual and potential decline in productivity
6. actual and potential decline in return on investment
7. utilization of capacity
8. factors affecting domestic prices
9. the magnitude of the margin of dumping
10. actual and potential negative effects on cash flow
11. actual and potential negative effects on employment
12. actual and potential negative effects on wages
13. actual and potential negative effects on growth
14. actual and potential negative effects on ability to raise capital
15. actual and potential negative effects on investments

However, the AD Agreement does not mention that how to consider all factors and how to give a weight of each factor, therefore, Thai authority will describe to all 15 required factors in general and will use their discretion to consider the case whether it causes injury to domestic industry. It can be said that to consider all required 15 factors are not much import as the examining will be based on the sole discretion of the authority.

d. Determination of antidumping duty

According to Section 49 of the Act B.E. 2542, the imposition of antidumping duty is only to be sufficient to offset the injury suffered or threatened to the domestic industry and is not allowed to collect the duty beyond dumping margin. Thus, to determine antidumping duty the authority shall calculate 1) dumping margin and 2) injury margin and choose the lesser one as antidumping duty. This principle is called 'Lesser Duty Rule' and it is being used by antidumping law of EC. Thai Act also uses the method of calculation similar to EC which is 'The Price Underselling Method: Target Price'.

e. Price Undertaking

Section 43 of Thai Act allows the use of voluntary undertakings from any exporter to revise its prices or to cease exports to the area in question at dumped prices provided that investigating authorities are satisfied that the injurious effect of the dumping is eliminated. This principle is conformed to Article VIII of the Agreement but in practice, price undertaking never been used by Thai authorities.

f. Duration of investigation

The period of investigation is defined in Section 54, each antidumping investigation shall not be exceeded 1 year from the beginning of the process to the final decision has been made, unless authorities consider that it is necessary to expand such period, the expanding period shall not exceed 6 months.

Chapter 3

Present Practice of Anti-dumping Measures in the World Trade

A. Developed Countries: The Main Users

Generally viewing, US, EU, Australia and Canada have been main users of anti-dumping measures. These four initiated 1489 of the 1558 anti-dumping cases in 1980s.[23] According to the statistics released by the WTO, during the period of July 1, 1999 to June 30, 2000, there were 236 cases initiated. The most active Members, in terms of initiations of anti-dumping investigations, were the European Community (49), the United States (29), India (27), Argentina (23) Australia (18), Brazil (17), Indonesia (13), and Canada and South Africa (11).[24] The four traditional members initiated 107 cases, taking more than 45% of the total amount of anti-dumping cases recorded by the WTO.

However, it should be noticed that with the development of developing countries, more and more large developing countries, such as India, Argentina, Brazil, and South Africa, become the anti-dumping regular users. They initiated 91 anti-dumping cases, taking 38.5% of the total amount of anti-dumping cases.[25] Currently, it seems that those large developing countries could compete with the traditional users, in term of quantities.

Nevertheless, as far as anti-dumping measures in force are concerned, the traditional users are still main forces of anti-dumping. Till 30 June 1999, there were 23 Members reported anti-dumping measures in force. As the 1121 measures in force reported, 300 measures were maintained by the United States, 190 by the European Community, 104 by South Africa, 91 by India, 88 by Canada, and 80 by Mexico. Other members reporting measures in force each accounted for 5% or less of the total

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[23] Thomas Prusa, On the Spread and Impact of Anti-dumping, p. 14.

[24] WTO, World Trade Organisation Annual Report 2001 (Geneva: WTO Publications,) 65(2001).

[25] Ibid.

number of measures in force. The four traditional users accounted for about 56% of all anti-dumping measures in force.[26] It can be seen that although more developing countries joined the anti-dumping users, the large contribution to anti-dumping cases was still from the four members.

The reason for developed countries to employ anti-dumping measures is, since multilateral negotiations on free trade have taken several times, all tariff barriers and quantitative restrictions are steadily prohibited according to the WTO agreements. This situation led to intensive use of anti-dumping measures by developed countries. Inevitably, they have to invoke anti-dumping measures if they need to satisfy the domestic industries even seems to be in protectionist way.

On the other hand, with the respect to the developed countries, flood of import might probably damage their domestic industries, especially medium and small firms. Accordingly, antidumping duties must be imposed in order to protect such industries from unfair import competition. Moreover, developed countries found that the investigation process in developing countries can be in questionable procedural and legal assumptions and conclusion. In this point, The United States has raised some of these issues in the Doha Development Round negotiations.[27]

The current AD Agreement did not mention about the compensation if an antidumping measure is initiated and the claim is eventually found to be invalid. Compared with Safeguards measure, it requires applying member make concessions and bears other obligations to exporting Members which would be affected by such as measure.[28] Therefore, if the importing country takes an anti-dumping action they do not need to pay a price for their protection measures.

In addition, anti-dumping regime is country-specific while safeguard regime is industry-specific. That means if a country takes an anti-dumping action, the

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[26] Ibid.

[27] Office of the U.S. Trade Representative, Basic Concepts and Principles of the Trade Remedy Rules by Communication from the United States (DC: Office of the U.S. Trade Representative) 44 (2002).

[28] Agreement on Safeguards, Article 8.

affected countries are particularly selected and usually one country. As to safeguard measures, the affected countries cannot be selected by the importing country and usually are too many. It is likely to risk conflicting with those countries. As a result, it can be seen that so many anti-dumping cases have been reported to WTO and few safeguard cases. In 1980s, the four traditions anti-dumping measures users only undertook 25 cases of safeguard, while the total amount of anti-dumping cases was 1489.[29]

However, protectionism arises as a result of poor economic performance. There were more anti-dumping cases when the economy didn't perform well. Greg Mastel concluded by analyzing statistics from 1980 to 1997 that "in general, the volume of cases seems to be inversely correlated with the strength of the economy in the past year or more".[30]

According to some large developing countries like Argentina and Brazil, who took antidumping actions more frequently since the Uruguay Round, the most possible reason is those countries were afraid that stream of imports would damage their domestic industries, because tariff barriers and quantitative restrictions were not available. Therefore, antidumping is a good choice which can reduce the risk of participation in the world trade, just like a kind of compensation for the increasing liberalization of tariffs and non-tariff barriers.[31] There is another version of explanation which is to more morally and strategically address this issue; J. Michael Finger thought developing countries frequently initiated anti-dumping actions as a kind of retaliation. They expect developed countries will reduce anti-dumping actions against them and they can export their products in developed countries' markets

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[29] Michael J. Finger, Antidumping: How it works and who gets hurt (Michigan: University of Michigan Press) 11 (4th ed. 2001).

[30] Greg Mastel, Antidumping Laws and the U.S. Economy (New York: M.E. Sharpe Inc.) 30 (2001).

[31] United Nations, "Conference on Trade and Development Preparing for Future Multilateral Trade Negotiations: Issues and Research Needs from a Development Perspective," p. 123., Geneva, 2001

smoothly.[32] In this regard, their primary objective is not to protect domestic industries or block imports but to support domestic exporters but it is merely a tool for negotiation.

B. Developing Countries: The Main Targets

According to WTO statistic[33], products exported from the European Community or its Member States were the subject of the most anti-dumping investigations initiated during the year (32), followed by products exported from China (30), the Republic of Korea (23), Indonesia (15), Chinese Taipei (13), Thailand (12), India, Japan, and Russia (11 each), and the United States (10). 33 developing countries or regions, EC and other 4 developed countries were affected. 180 out of 236 cases were against developing countries, accounting for 76.2% of total cases. Relative to the share of world trade of developing countries, the proportion was very high. Definitely developing countries were victims of anti-dumping measures. The trend that an increasing number of large developing countries used the anti-dumping measure more frequent didn't change the situation of developing countries. In this regard, it is likely to make things worse than before because those new anti-dumping users mainly targeted other developing countries.[34]

It particularly happened with East Asian countries which have long been the main targets of AD actions, accounting for about one-third of all AD actions during the 1980s, more than 40% of all AD actions during the 1990s, and almost 50% of all AD actions in recent years.

Developing countries are easily to be targeted because, firstly, export-oriented economy is easy to cause trade disputes. The positively engaging in export is the shortcut to develop the domestic economy (Japan and South Korean are good

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[32] Michael J. Finger, Antidumping: How it works and who gets hurt, p. 6.

[33] WTO, World Trade Organisation Annual Report 2001, p. 65.

[34] United Nations, Conference on Trade and Development Preparing for Future Multilateral Trade Negotiations: Issues and Research Needs from a Development Perspective, p. 125.

examples)[35] , many developing countries adopted export-oriented policy. As a result, their economies are more dependent on foreign trade than developed countries and unsurprisingly there are lots of
dispute between developing countries and developed countries.

Second, the prices of exports from developing countries are normally low. Because the labour force is much cheaper than in developed countries, costs of products are understandably low. In addition, products from developing countries are usually not well decorated and designed which affect to raise prices. In contrast, the cost of living in developed countries is higher, including labour cost which higher than developing countries, from these elements we can estimate that the products in developed countries' domestic market are high.

C. Experience of Thailand: As a User

When Thailand has enacted its Anti-Dumping Act B.E. 2542, it began to employ antidumping measure more than the past. Under this law, Thailand initiated to use antidumping measure against 6 products from its 16 trading partner countries.[36]

Considering from the information disclosed to WTO during 1995-2005, it can be found that Thailand takes the investigations of 34 cased against dumping and 24 cases against subsidies, mostly of these cases concern to the dumping of steel products.[37]

Until now, the Government of Thailand is able to gather antidumping duties from 8 products which mostly are metal and chemical products from India, China, Indonesia, Russia, Japan, EC, Korea and Ukraine.

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[35]WTO, World Trade Organisation Annual Report 2001, p. 65.

[36] Thammavit Terdudomtham, Antidumping Measures: Agreement and Experience, p. 123.

[37] Top 10 users of anti-dumping 1995-2005 (initiations), available at http://www.antidumpingpublishing.com/ (last visited 6 September 2008).

Sometime, antidumping measure is also concerned to public policy as prescribed in Section 7 of the Act B.E. 2542, for instance, when the president of Ukraine visited Thailand during March 2004; Thailand decided to reduce antidumping duty on steel products from Ukraine for 6 months in order to keep on a good relationship between trading partner country.[38]

D. Experience of Thailand: As a Target

Countries who are trading partners of Thailand began to use antidumping measure since 1985; USA initiated the investigation on Steel Pipe from Thailand on 17 March 1985. Afterward, Canada, EU and Australia also launched investigations with Thai's products. However, the number of cases arising during such period was still small.[39]

Since the establishment of WTO in 1995, the volume of cases and investigations initiated by trading partners of Thailand are continually higher. During 1995-2005, Thai's products were investigated the dumping issues totally 111 cases; the products to be investigated are plastic, steel, textile, corn and shrimp.[40]

Presently, there are 15 countries who use antidumping measures to Thailand, these can be separated in 5 developed countries and 10 developing countries (certain products are in the process of investigation), in this regard, steel products are the main products to be investigated.

USA, EU and India are the countries who use the most antidumping measures to Thai products (9 cases) whereas Australia is the second with 6 cases launched.

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[38] Thammavit Terdudomtham, Antidumping Measures: Agreement and Experience, p. 106.

[39] Touchamai Rerksasut, Antidumping and Subsidies and Countervailing Measures of USA (Bangkok:Winyuchon Publishing) 30 (2006).

[40] Top 20 targets of AD investigations 1995-2005 (intiations), available at http://www.antidumpingpublishing.com/ (last visited 6 September 2008).

The increase of dumping and antidumping problem urged the Thai Government to make the complaint that antidumping actions on their products, as well as illegal dumping in their country, affects their economies disproportionately.

Chapter 4

Disadvantage Situations of Developing Countries

As has been seen, developing countries are the main targets of the anti-dumping regime and developed countries, along with a few large developing countries are the main users of the measures. Developing countries expect that WTO will arrange the suitable regime to govern all contracting parties, which bring the fairness to the all of them. Nonetheless, the current AD Agreement is still imperfect and that leads to the unfair competition, mostly between developed countries and developing countries. Next, the paper will address the apparent issues that make developing countries vulnerable on world trade.

A. Special and Different Treatment for Developing Countries

The S&D treatment issue was first raised by developing countries in the Conference on Trade and Employment, the Havana Conference. They argued that trade liberalisation based on the Most Favoured Nation (MFN) principle could not necessarily result in their economic growth and development. There were two main reasons. Firstly, particular structural conditions of economies of developing countries are different. Secondly, trade liberalisaition might be distorted due to the negotiation powers of industrialized countries in the word trading system.[41]

Therefore, in order to establish fair competition in the word market, the S&D treatment should be taken into account. Those claims were adopted by the GATT. The main preferential treatments can be seen in the WTO Agreements;

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[41] United Nations, "Issues and Research Needs from a Development Perspective," Paper presented at Conference on Trade and Development Preparing for Future Multilateral Trade Negotiations, United Nations, Geneva, 2001.

1. Preferential access under the Generalised System of Preferences (GSP).[42]

2. The right to benefit from multilateral trade agreements, particularly on tariffs in accordance with the MFN principle, without being obliged to offer reciprocal concessions.

3. The freedom to create preferential regional and global trading arrangements without conforming to the GATT requirement on free trade areas and custom union.[43]

4. The right to maintain trade barriers to deal with balance-of-payment problems and to protect their infant industries,[44]

5. The right to offer governmental support to their domestic industries using various industrial and trade policy measures.[45]

Generally the S&D treatment is expressed in terms of transitional periods, differences in threshold levels and technical assistance.

As far as anti-dumping is concerned, the S&D treatment was not taken into account until the Tokyo Round. At that time, developing countries found the 1967 Kennedy Round Antidumping Code substantially damaged their interests and claimed it was hard for them to adhere to the Code. As a compromise, developed countries agreed to give special regard to the situation of developing countries when considering the application of antidumping measures under the Code, but they did not specifically exempt the developing countries form the Code's general provisions.[46] It is only a general promise, no exclusive provisions were given.

During the Uruguay Round, a lot of progress was made on anti-dumping issue, but the question of the S&D treatment was still there. There is only one article

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[42] Under the GSP, developing countries are granted unilateral and autonomous tariff reductions, which even can imply tariff free importation of manufactured goods and particular agricultural products.

[43] GATT 1947, Article XXIV.

[44] Ibid., Article XII.

[45] Ibid., Article XVIII.

[46] K.Oteng Kufuor, "the Developing Countries and the Shaping of GATT/WTO Antidumping Law," J.W.T Vol. 32 No.6 (1998):167,175.

governing special treatment for developing countries. Article 15 of the Anti-dumping Agreement generally prescribes that "*special regard must be given by developed country Member to developing country Members when considering the application of antidumping measures under this Agreement. Possibilities of constructive remedies provided for by this Agreement shall be explored before applying anti-dumping duties where they would affect the essential interests of developing country Members*" .There is no detailed provisions about what the "*special regard*" and "*constructive remedies*" are.

Thailand and many of the developing nations in the "Friends of Antidumping" group argued that trade remedy actions disproportionately affect their economies, and that the AD Agreement should require that developed nations provide some form of "special and differential treatment" when investigating products originating in developing nations.

This is contrary with Agreement on Subsidies and Countervailing Measures (ASCM). According to Article 27 of ASCM[47], it is designed exclusively for developing countries but Article 15 of the Anti-dumping Agreement said in short and general. No special threshold levels for developing countries are given as ASCM does. Article 15 suggests developed countries should explore constructive remedies before applying anti-dumping duties where they would affect the essential interests of developing country Members, but how can we judge the essential interests of developing country Members affected? What is the standard? Who is entitled to make a judgment? There are no answers in the current AD Agreement.

In view of the findings of the Panel in '*EC v. India, Bed Linen case*'[48] that the obligation to explore the possibilities of a "constructive remedy" when considering the application of antidumping measures in terms of Article 15 of the AD Agreement does not cast an obligation on Members to actually provide or accept any constructive remedy that may be identified or offered.

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[47] Agreement on Subsidies and Countervailing Measures, Article 27.

[48] EC v. India, Report of the Panel, Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India, WT/DS141/R, para. 6.238. (30 October, 2000).

Therefore, everything is at the discretion of the authorities of developed countries. Unfortunately, developed countries are reluctant to do more on this issue. So far we haven't seen any "constructive remedies" provided by developed countries in the course of their anti-dumping enforcement. In fact, it is rarely to find any differential treatment between developing countries and developed countries in the past, due to article 15 lacks of specific and enforceable provisions.

To date, the way to enhance S&D treatment is serious for developing countries because developing countries are facing harder situations in the world trading system than before. According to prohibition of different types of trade barriers by the WTO agreements, developed countries shift their barrier methods to antidumping measures. Statistics released by the WTO[49] shows anti-dumping cases are increasing and developing countries become more frequently targets of anti-dumping measures since some large developing countries like, India, Brazil, Mexico become frequently users of the anti-dumping measures after the Uruguay Round. Facing those new challenges, developing countries are still defenseless because Article 15 fails to provide effective protection for them.

B. Non-Market Economy System

According to WTO Agreements, there are two forms of dumping. One is price dumping by which the exporter sells its products to the importing country at lower prices than in the home market. The other is cost dumping by which the exporter sells its products to the importing country at below cost prices. In fact, there is still the third form of dumping.[50] During the period of 1995 to 1998, 47 out of 141 company-specific determinations were from non-market economy investigations in the U.S.[51] It is clear that non-market economy system plays an important role in the

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[49] See Chapter 2 p. 6 and Chapter 3, p. 15.

[50] F. Engering, H. De Brabander and E. Vermulst, "EC Antidumping Policy in a Globalizing World: A Dutch Perspective," J.W.T. Vol.32 No. 6 (1998):115-126.

[51] Brink Lindsy, "The US Antidumping Law: Rhetoric versus Reality," Cato Trade Policy Analysis No. 7 (16 August 1999): 210.

whole antidumping regime. WTO agreements don't give a clear definition of "non-market economy". The only source is the second interpretative Note to Article VI of the GATT.[52]

In this case, it is widely known that imports from a country which has a complete, or substantially complete, monopoly of its trade and where all domestic prices are fixed by the State, will have special difficulties in determining price comparability.

The purpose of this status is to determine export prices and normal value of the imported products from those countries where economies are seriously planned by their states. There are two preconditions which should be satisfied if non-market economy measure is applied. First, the country concerned has a complete, or substantially complete, monopoly of its trade and. Second, in the country all domestic prices are fixed by the State. However, the treatment of non-market economy varies depending on how importing countries interpret them. As a result, an exporting country may be given a different status in different markets. Also, when the countries are classified as a non-market economy, this will lead to an almost automatic assumption of dumping against exporters.

China is the best example; as a developing country, China is a dynamic country whose national economy is undergoing massive transformation at an accelerating rate. Many observers consider that the circumstances prevailing in the Chinese market are more characteristic of a market based economy than they are of a non-market economy. China, however, continues to be treated by many of its trading partners as a non-market economy for purposes of antidumping and countervailing duty investigations and this treatment has the clear potential to treat Chinese exporters less favorably than exporters of other "market" economies.[53]

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[52] Donghui Fu "EC Anti-Dumping Law and Individual Treatment Policy in Cases involving Imports from China" J.W.T. Vol 31 No.1 (1997): 73.

[53] Thailand has approved the status of China as market economy system since July 2004.

Both US law and EC legislation on this issue extend the application of non-market economy treatment. According to US legislation[54] , there are 6 principles to determine non-market economy country: (1) convertibility of currency, (2) extent to which wage rates are set by the market, (3) extent to which foreign investment and joint ventures are permitted, (4) extent of government ownership and control of production, (5) extent of government control of resources, and (6) other factors deemed appropriate. EU has got the similar regulations.[55]

It can be seen that the US legislation gives too much extend to the authorities. This puts almost all reforming non-market economy countries under its jurisdiction. Many developing countries are building their economies on the market-oriented base, but there are still non-market remains, for instance, currency is not completely convertible. Nonetheless, they are not well fitted into the second interpretative note to Article VI of the GATT 1994 since the state monopoly of trade has been destroyed and the prices are basically based on the market.[56] When the countries are determined as non-market economy, there following problems is the authority of importing countries may refer them as a surrogate country and they may have no right to defense themselves.

1. Reference to a Surrogate Country

Basically if the importing country authorities want to establish the antidumping charge they will first consider if the imports are priced at less than their price in the home market.[57] If there are no sales or low volume sales in the domestic market which do not permit a proper comparison, the margin of dumping will be

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[54] The US Tariff Act of 1930, Section 771(18) (B) as amended 19 U.S.C. § 1677(18) (B).

[55] Council Regulation (EC) No 905/98 (27 April 1998), amending Regulation (EC) No 384/96, Article 1.

[56] Donghui Fu, EC Anti-Dumping Law and Individual Treatment Policy in Cases involving Imports from China, pp. 73, 82.

[57] Agreement on Anti-dumping Measures 1994, Article 2.1.

referred to the price in a third country where the like products are import from the exporting country in question.[58] If the above cannot be determined, the margin of dumping will be based on the gap between the
import price and the cost of production.

When a country is regarded as a non-market economy the importing country authorities will not consider above methods to determine the margin of dumping. They determine the normal value by reference to a surrogate country where market economy is established and its development level is similar to that of the exporting country. It gives the authorities a lot of discretion to choose an appropriate country as a reference. It is not surprising that the United States has been most frequently chosen by the EC institutions as a surrogate country for the determination of the normal value of most developing imports.[59] Because the domestic markets are highly protected and the prices of some products are extremely high, countries like India and Sri Lanka are also chosen as ideal surrogate countries.

This measure has easily created trade harassment. For example, *paint brushes case China vs. EC.*[60] China exported such paint brushes into Germany. Because China is a non-market economy country, the normal value of the brushes had to be calculated on the basis of prices in a market economy country. The basic regulation provided that such a country should be chosen "in an appropriate and not unreasonable manner".[61] In this case, Sri Lanka was chosen as the analogue country. Due to the fact that, the paint brushes in Sri Lanka were monopolized by the two

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[58] Anti-dumping Agreement 1994, Article 2.2.

[59] Jianyu Wang, "A Critique of the Application to China of the Non-market Economy Rules of Antidumping Legislation and Practice of the European Union," J.W.T Vol.33 No.3 (1999):117,131.

[60] Council Regulation (EEC) No. 725/89 (20 March 1989), imposing a definitive anti-dumping duty on imports of paint, distemper, varnish and similar brushes originating in the People's Republic of China and definitively collecting the provisional anti-dumping duty on such imports.

[61] Article 2(5) of the former version of the basic regulation, Council Regulation (EEC) No 2423/88, OJ 1988 L 209, 1.

companies, thus the normal value of paint brushes established for Sri Lanka was higher than the price on the EC market. Finally, the European Court of Justice annulled the anti-dumping measures imposed on imports from China on the grounds that the choice of the surrogate country was inappropriate.

There is no doubt that it is ambiguous area for gross inaccuracy and if the problem remains unsolved, there will be a serious questioned relating to the final result of market based cost.

2. Defendant's Rights

Right to defense is very important in an anti-dumping case since the authorities are powerful in the whole course of anti-dumping. There is a lot of legislation governing this issue. European Union's Anti-Dumping Regulation, Article 20, states that[62]

"The complainants, importers and exporters and their representative associatins, and representatives of the exporting country may request disclosure of the details underlying the essential facts and considerations, on the basis of which provisional measures have been imposed...

The parties mentioned in paragraph 1, may request final disclosure of the essential facts and considerations, on the basis of which it is intended to recommend the imposition of definitive measures, or the termination of an investigation or proceedings without the imposition of measures, particular attention being paid to the disclosure of any facts or considerations which are different from those used for any provisional measures..."

Since an anti-dumping action is initiated against the non-market economy country, the export price will be determined on the basis of the average export price of all exporters. The importing country authorities always refuse to disclose detailed facts on the ground that they are obliged to protect confidential data supplied by each of exporters according to Article 6.5 of Anti-dumping Agreement and related domestic

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[62] Council Regulation (EC) No. 384/96 (22 December 1995), on protection against dumped imports from countries not members of the European Community.

regulations. This means that the defendant is deprived of the right to know how the margin of dumping is calculated and thus it is powerless to defend itself against any errors or inappropriate methods made by the authorities of the importing country.

Due to the reasons mentioned above, dumping charges against non-market economy countries like China are easy to be justified. That is why non-market economy countries are always the leading target of anti-dumping.

C. The Role of Panels

Generally, the WTO is a rules-based multilateral forum for world trade. There is no doubt that this system is good for developing countries since they can establish connection to negotiate with main trading partners. Therefore, the bargaining power of developing countries expected to be expanded. As a result of the rule under the WTO framework, the WTO dispute settlement procedures are designed for providing the fairness to all members. Although it still has many controversial issues, it can protect vulnerable developing countries from any discriminatory treatment by powerful developed country trading partners.

Yet, disputes arising from anti-dumping issue can not be solved under the normal WTO dispute settlement procedure. There is a special procedure for them. According to Article 17.6 of Agreement on Anti-dumping, "*the panel shall determine whether the authorities' establishment of the facts was proper and whether their evaluation of those facts was unbiased and objective. If the establishment of the facts was proper and objective, even though the panel might have reached a different conclusion, the evaluation shall not be overturned*". The question is all parties almost have no different opinions on established facts and what they concerned about is the legal relevance and legal consequences of those acknowledged facts.[63]

Furthermore, if there is more than one permissible interpretation of the relevant provisions of the Anti-dumping Agreement and the authorities' measures fit into any of them, even if the panel has different interpretation on the provisions, those

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[63] David Palmeter, "A Commentary on the WTO Anti-Dumping Code," J.W.T Vol. 30 No.4 (1996): 43, 62.

measures can be deemed as justified.[64] Even this provision is in conflict with the first sentence of this paragraph, "*the panel shall interpret the relevant provision of the Agreement in accordance with customary rules of interpretation of public international law*". Traditional anti-dumping users argue that the second sentence is an exception. However, the Article 31 of the Vienna Convention on the Law of Treaties explicitly provides that: "*...a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of this object and purpose.*" In this sense, there should no longer several permissible interpretations. The only explanation is traditional users are reluctant to be bound by panels' decisions.

What developing countries are concerned about is the panels have less power to deal with this kind of dispute. Therefore, during the Uruguay Round Negotiations, developing countries supported broader to review for the role of Panels. This was aimed at checking and strengthening the functions of the WTO panel. [65]

In addition, the Agreement did not contain any provisions for immediately terminating anti-dumping measures or refunding the collected duties, that appeared to increase unfair situations which have arisen in the past, for example, *'United States vs. Korea – DRAMs'* despite a panel ruling in the dynamic random access memory (DRAMs) dispute between Korea and the United State, such ruling was in favor of Korea , the United States amended only a portion of its anti-dumping law and maintained its anti-dumping measures for some time. The US did not withdraw its measures until Korea referred the matter to the original panel for implementation.[66]

However, as mentioned above, in the Uruguay Round, developed countries were committed to excluding trade barriers. As a result, anti-dumping is the last

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[64] Anti-dumping Agreement 1994, Article 17.6(ii).

[65] K. Oteng Kufuor, "the Developing Countries and the Shaping of GATT/WTO Antidumping Law" J.W.T Vol. 32 No.6 (1998): 167,185.

[66]United States v. Korea, Anti-Dumping Duty on Dynamic Random Access Memory Semiconductors (DRAMs) of One Megabit or Above from Korea, Report of the Panel, WT/DS99/R, 7 November 2000.

method against imports for developed countries and any activity that giving power to the panels will decrease their opportunities. Finally, the proposal raised by developing countries was not adopted by the new Anti-dumping Agreement.

Lack of power in the dispute settlement proceedings just means the Anti-dumping Agreement excludes the application of the multilateral mechanism in this field. These situation forces developing countries to negotiate with their powerful developed trading partners on a bilateral basis, which developing countries always try their best to avoid. In this regard, it seems that the restriction of the role of panels is conflict with the principle of multilateralism of the WTO.

Since most developing countries adopt export-oriented economies and they more frequently participate in world trade, anti-dumping cases against them is increasing rapidly, which are mainly from traditional anti-dumping users like US, EU, and new anti-dumping users like India, Brazil and Mexico. Therefore, developing countries need enhancing multilateral negotiation mechanism to protect their interests. Broad discretion of importing countries' authorities should be balanced. Lifting the constraints of the role of panels and making panels more powerful are regarded as effective methods against abuse of anti-dumping measures.

D. Complexity of Anti-Dumping Measures

Anti-dumping Agreement progressed a lot in the Uruguay Round. The agreement had been improved to be more transparent and practical. However, it still has some issues that make developing countries more vulnerable regardless of the role as complainants or defendants. It is the more complex of the procedure and that leads to the high demand for the personnel and services.

The occurred problem is developing countries face the lack of competent lawyer who are familiar with anti-dumping procedure and also well-coped with international customary rules. But, this is not the problem of developed countries where high quality personnel available. Even their delegates in the WTO "often lack technical expertise and negotiating experience; lack access to in-depth analysis of the

implications of the proposal they are required to negotiate and receive inadequate support and guidance from their home capitals".[67]

Thus, it can be seen that when developing countries are involved in the antidumping case, they are defenseless as the case being initiated by other countries. In fact, WTO can predict that this situation can not be easily changed within a short period of time.

Developing countries, particular small government often do not have their expertise that is capable to deal some of complex cases, even some of simple cases. Normally, such countries found the disadvantage against large entities like USA or EC which always have specialists. Inevitably, these smaller countries consequently have been eager to retain the services of private attorney, usually Europeans or Americans.

However, even though developing countries can get full support from foreign law firms, the defense against an anti-dumping charge is not always successful, since there is a lack of good understanding between them and foreign lawyers are not familiar with their own production process.

In addition to the human resource problem, another fundamental problem for developing countries is the financial burden. Because of lack of professionals at home, the only way to secure a case is to hire foreign legal practitioners. This means developing countries need to pay expensive legal fees. In Thailand, the legal matter related to antidumping matter can only be found in international law firms in which the rate of lawyer's fee is extremely high.

Usually, the long period of dispute settlement proceedings makes things worse. As a result, many developing countries hesitate to participate in anti-dumping investigations when they consider the financial expenditure. Even though India, China or Korea is the large developing country with the highest economic growth rate, it still can not afford the heavy financial burden arising from antidumping lawsuits. We can image what situations other developing countries are facing.

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[67]T. Ademola Oyejide, Interests and Options of Developing and Least-developed Countries in a New Round of Multilateral Trade Negotiations (Geneva: United Nations) 24 (2001).

Most developing countries called on tough and fair restrictions on anti-dumping initiations and this, therefore, leads to more complexity of the proceedings. When they consider taking anti-dumping measures, they have to be bound by the stringent regulations which are binding on all Member States; whist S&D treatment for developing countries is not available over this issue at present. In addition to some problems I mentioned above, such as lack of professionals and financial support, developing countries are difficult to set up and make use of anti-dumping measures because they are lack of experiences compared with traditional users who has entered in anti-dumping activities for nearly a century.[68]

National laws and regulations of most developing countries, even where existing, are still imperfect. They are usually less detailed than the multilateral agreements, whereas on the contrary, the national laws and regulations of the major developed countries are more detailed than the multilateral agreements.[69] Developing countries will need to modernize their national laws and regulations, and the techniques for containing unfair
import competition.

These disadvantages might be reduced with the increasing participation in anti-dumping lawsuits. However, in the short term, developing countries will suffer a lot. It can be predicted that the cases submitted to the Dispute Settlement Body will increasing, especially when developing country authorities target developed country members who have much experience in anti-dumping activities.

E. The Process for Reviewing of Anti-Dumping Duties

Before the AD Agreement 1994 the EU, Canada and Australia had anti-dumping review procedures so-called "sunset review", however, sunset review knew

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[68] Edvin Vermulst, "Adoption and Implementing Anti-dumping Laws: Some Suggestions for Developing Countries," J.W.T Vol. 31 No.2 (1997): 5-7.

[69] Thomas Prusa, On the Spread and Impact of Anti-dumping, p. 14.

as one of the important change as a result of Uruguay Round. [70] According to Article 11.3, all anti-dumping duties shall be terminated after five years after its imposition unless authorities determine in a review[71] that its expiration would be likely to lead to a recurrence of dumping and subsequent injury to the domestic producer.[72]

The sunset review seems to be good for developing countries as it set the terminated time for imposing duties. However, if we carefully look though the Article 11, there are some hints that developing countries might gain little from them. Article 11.1 illustrates the principle of sunset review, that *"an anti-dumping duty shall remain in force only as long as and to the extent necessary to counteract dumping which is causing injury"*. In the light of Article 11.1, although any definitive anti-dumping duty shall be terminated on a date not later than five years from its imposition or from the date of the most recent review under Article 11.2 and 11.3, if the authorities of dumping country determine that the expiry of duty would likely lead to continuation or recurrence of dumping and injury, they still hold an opportunity to continue collecting duties. This kind of review can be initiated by the authorities themselves before that date or upon a duly substantiated request made by or on behalf of the domestic industry within a reasonable period of time prior to that date. Therefore, the result after five year's anti-dumping duty imposition is still unpredictable and the review depends too much on the consideration of authorities.

As a result, under the sunset review, the authorities may extend the period of anti-dumping duties over the five-year period because Article 11 only specifies that such a review should be initiated before that date when the anti-dumping duty is supposed to be terminated unless otherwise specified.

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[70] Michael O. Moore, "Antidumping Reform in the United States: A Faded Sunset," J.W.T Vol.33 No.4 (1999): 1, 5.

[71] The authorities of importing country shall review the need for the continued imposition of the duty their own initiative or, provided that a reasonable period of time has elapsed since the imposition of the definitive anti-dumping duty, upon request by any interested party which submits positive information substantiating the need for a review (Anti-dumping Agreement, Article 11.2).

[72] Anti-dumping Agreement, Article 11.3.

Paragraph 4 of Article 11 generally requires that the authorities should conclude such a review normally within twelve months of the date of initiation of the review. It is not a compulsory provision and experience in the past has shown that the duration of reviews can greatly exceed this recommended limit and greatly affected the parties.[73] For example, *EC fax-machines case*, definitive antidumping duties were imposed on imports into the European Community of personal fax machines from Thailand, China, the Republic of Korea, Malaysia, Singapore and Taiwan and by Council Regulation (EC).[74] Article 11.4 provides that reviews shall be carried out expeditiously and shall normally be concluded within 12 months from initiation. According to the fact, EC wasted more than 18 months from the date of initiation of the review. While the measures continue to seriously affect EU customers and complaint companies. Following a review procedure conducted by the Commission, the Council decided to repeal the Regulation imposing a definitive anti-dumping duty and to close the anti-dumping proceeding in respect of imports of these products. But no compensation had been given after match.

In addition, where the findings of the review lead to the continuation of the duty, the new five-year period will start run based on the timing of the review. This is because there is no definitive date to terminate the anti-dumping duty. Subsequently, developing countries have to fight for the same case again and again every five years. It will cause an extra financial burden for them.

Finally, the scope of the sunset review is unreasonably limited. According to Article 5.8, the margin of dumping which is less than 2 per cent expressed as a percentage of the normal value will be deemed as de mininis and thus the injury is

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[73] United Nations Conference on Trade and Development A Positive Agenda for Developing Countries: Issues for Future Trade Negotiations, p. 296., United Nations,Geneva, 2001.

[74] EC v. China, Japan, the Republic of Korea, Malaysia, Singapore, Taiwan and Thailand, Council Regulation (EC) No 904/98 (27 April 1998), imposing anti-dumping duties on imports into the Community of personal fax machines.

negligible. As a result, all cases under the proceedings should be terminated immediately. This provision is another significant change of the Uruguay Round. However, according to the traditional users' implementation, it is applicable only on newly initiated cases, not in review and refund cases.[75]

F. Problems of Thailand

As a developing country, the economic of Thailand is an export-oriented economy which is easy to cause trade disputes. Because positively engaging in export is the shortcut to develop the domestic economy, many developing countries adopted export-oriented policy. As a result, Thai economy is more dependent on foreign trade than developed countries and unsurprisingly there are lots of frictions between developing countries and developed countries. The price of exports from Thailand is normally lower than the price
in foreign countries and may be easily determined as dumping products.

Therefore, the problems regarding dumping matter in Thailand will be generally similar to others developing countries or exporting countries as discussed above. In this part, the paper will discuss the recent situation of Thai products which are faced antidumping measures by "unfair antidumping duty assessment".

Antidumping duty assessment is a method use to calculate dumping margins and impose the duty on targeted products. In this regard, many WTO members believe that the methodology used by some countries leads to highly inflated duties that are disproportionate to the amount needed to mitigate the injury to the domestic industry, as well as the level of dumping practiced by the exporters.[76]

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[75] United Nations Conference on Trade and Development A Positive Agenda for Developing Countries: Issues for Future Trade Negotiations, p. 296.

[76] Vivian C. Jones, "WTO: Antidumping Issues in the Doha Development Agenda," CRS Report for Congress (April 2006):14.

Some Members have particularly criticized US methodology, so called "Zeroing", where, if it would have been applied, the target products had tended to be a dumped product up to 60%-70%.[77]

1. Zeroing Measure

"Zeroing" is a calculation methodology which ignores negative margins of dumping and therefore results in an unfair increase of the dumping liability of Thai exporters. The use of zeroing by the United States was first condemned by the WTO in 2004, and more recently in May 2006 at the request of the European Union, and again in July 2008 at the request of Thailand. However, these previous rulings left open a number of issues which are now covered by the new request for consultations.

Zeroing is best explained with a simple example: a Thai firm sells 1 unit of two models of a certain product in both the Thailand and US markets.[78]

Price in Thai/ Price in US/ Difference

Model A 10/ 12/ + 2

Model B 10/ 8/ - 2

Total 1 (no zeroing) 20 20 0

Total 2 (with zeroing) 20 18 – 2

In the above example, model A is sold in the US at above its Thai price, while model B is sold for less than its Thai price. In establishing a dumping margin for the whole product, WTO rules require a weighted-average of the prices of both models to be made. On this basis (Total 1), there is no dumping. However, the US "zeroing approach" (Total 2) takes the US price of model B, but considers the US price of model A to be the same as the Thai price. By considering the US price of model to be less than it really is, the US finds a dumping margin of 2 and could

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[77] "EU Requests WTO consultations with US on "zeroing" in anti-dumping cases," WTO Thailand: Hot Issue (2006): 32.

[78] Ibid.

therefore impose an anti-dumping duty of 10%, even though a normal weighted average calculation reveals no dumping.

The US "zeroing" is empowered by US Antidumping Law and it is practically having a significant adverse economic impact on Thailand exporters in various sectors including steel, chemicals and most recent shrimps. In most cases, without "zeroing", the dumping margin would have been de minimis or even negative and, therefore, no anti-dumping duty would have been imposed. Several hundred million dollars of trade volume is involved. Some of the products - hot-rolled steel, stainless steel bars, ball bearings - are major export items and other important products will inevitably be involved in the future if the US is allowed to continue "zeroing".

Several other countries heavily criticised the text's provisions for explicitly opening the door to zeroing. A joint statement from most developing countries including Brazil, Chile, China, Hong Kong, India, Korea, Mexico, Taiwan and Singapore said that "Zeroing is a biased and partial method for calculating the margin of dumping and inflates anti-dumping duties. If the use of such practice prevails in the future, it could nullify the results of trade liberalisation efforts". Clarified and improved disciplines under the Anti-Dumping Agreement do not imply increased opportunities for imposing barriers to trade,[79]

Hong Kong described the zeroing provisions as a major step backward. It said that they did not accord with the views of much of the WTO Membership, an opinion that was echoed by Korea. Brazil suggested that the zeroing rules could even make countries want to backtrack on liberalisation in the negotiations on agriculture and industrial goods. China warned of increased protectionism; Canada said that zeroing was unacceptable. [80]

The most recent experience of Thailand with US' zeroing method occurred against Thai shrimps products.

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[79]TN/RL/W/214, available at http://docsonline.wto.org (last visited 10 September 2008)

[80] Vivian C. Jones, "WTO: Antidumping Issues in the Doha Development Agenda," CRS Report for Congress (April 2006):12.

The case occurred during 2003, where shrimp productions highly increased worldwide and caused the price of shrimp products to decrease (from 10 US Dollar per ounce to 4-5 US Dollars per ounce). Such circumstance forced Southern Shrimp Alliance or SSA which consists of 8 States on the southern part of USA jointly filed the case to Department of Commerce of USA (US DoC) against Thailand and claimed that Thailand dumped shrimp markets.

US DoC considered the case and made an announcement to initiate antidumping measure against Thai shrimp products on 17 February 2004. Prior to 1 February 2005, the United States had also sent notices to 33 importers beginning on 6 August 2004, of which 12 importers furnished shrimp from Thailand was being sold at less than fair value in the United States. The US has collected a minimum bond equivalent to 10 per cent of the import duties from Thai shrimp exporters, which made an adverse affect to Thai exporters and the country.

Thailand emerged to complain that the US unfairly inflates the fees it applies through a complicated procedure for determining tariff rates as zeroing. It also said the procedures for paying the levies were overly to carry on.

Thailand then requested consultations with the United States concerning antidumping measures on imports of frozen warm water shrimp. The grounds for seeking consultations was the United State's application of the practice of "zeroing" negative dumping margins, the effect of which was to artificially create large margins of dumping, and the consequent imposition of definitive antidumping measures on imports of certain frozen warm water shrimp from Thailand. Thailand considered that through its use of zeroing, the United States has failed to make a fair comparison between the export price and the normal value, and calculated distorted margins of dumping. Thailand and the United States held consultations, but failed to resolve the dispute.

Therefore, on 15 September 2006, Thailand requested WTO the establishment of a panel pursuant to Article XXIII of the GATT 1994, Articles 4 and 6 of the DSU, and Article 17 of the Anti-Dumping Agreement.

Until 29 February 2008, the WTO Disputes Panel has upheld Thailand's claims that the United States acted inconsistently with Article 2.4.2 of the AD Agreement by using 'Zeroing' to calculate margins of dumping in respect of the Anti-

Dumping Measure. It has therefore; make a recommendation that the United States bring the measure into conformity with its obligations under the AD Agreement.[81]

Thai shrimp exporters are certain to be delighted by the ruling. However, it is far from clear that when the US will actually comply with the decision. Thus, as long as the practice of zeroing is not yet prohibited, the other export items from Thailand, including export items from other countries, will inevitably be involved with these messes in the future.

2. The other problems of Thailand

Thailand, by its nature, tends to be rather target of investigation than user itself because there are only few big industries and few big business operators which acquire potential ability to conduct antidumping measures.

Considering from domestic industries which have been protected by antidumping law, some of them have a monopoly market and some have only 2-3 producers in the market (Duopoly). Thus, it can be seen that the protected industries in Thailand will have only few producers (Oligopoly) in the market or just one producer. It seems that small business operators are not duly protected by the antidumping law of Thailand.

The Provision in the Act B.E. 2542 is a part of this problem; it provides that to initiate the procedure of antidumping case, parties who file the application must be supported from the producers of the same type of goods in the country in amount of more than half of the total productions.[82] Practically, the big industries which have small number of producers such as steel and chemical industries will have more chance to collect the supporters as to meet the number provided by the law, whereas the industries which have a lot of producers such as textile industry may

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[81] United States v. Thailand, Report of the Panel, Measures Relating to Shrimp From Thailand, WT/DS343/R (29 February 2008).

[82] Anti-Dumping and Countervailing Measures Act B.E. 2542, Section 33.

encounter the difficulty to find such supporters. Moreover, the industries which have a lot of producers are unlikely to recognize the information of producers and quantity productions; as a result, it is quite difficult to indentify that how many supporters they do need in order to reach the number required by law (more than half of the total productions).

Moreover, as mentioned earlier in chapter 4.4, launching the antidumping measure always requires the sum amount of money, good accounting management and competent individuals or professional in this area in order to prepare all necessary processes such as filling the application for antidumping probe, to join into the probe and even to lobby public officials to favor a case and decision. In this sense, the big size industries which have a few producers will have a greater ability to cope such requirement while the industries which having large numbers of producers are unlikely to meet certain requirements.

As the initiation of investigation required huge expenses and small injured business operators may decide to quit from the probe as it will not be worth and the condition which requests the disclosure of trading information seems to urge them to stand still. Once injured company decide not to initiate the measure, it will entitle the country or company who dumped the product keep continuing such performance and result in negative affect to the international trade.

Previously, Thai relevant authorities lack of experience regarding the negotiation in order to agree or terminate (price undertaking) the dumping from other countries. The price undertaking method is widely used among developed countries like USA, EC, Canada, Australia and so on. The price undertaking is cheaper and entitling parties to save all costs for investigations.[83]

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[83] Anti-dumping : AD, available at http://gotoknow.org/home (last visited 15 September 2008).

Chapter 5

Recommendations and Conclusion

In this part, I will guide some proposals from the viewpoint of developing countries for the next round of multilateral negotiations on anti-dumping issue.The suggestion will be based on my studied through the experience of developing countries.[84]

A. Special Treatment for Developing Countries

As discussed so earlier, the lack of clarity in certain provisions has complex the problems, including the fact that Article 15 of the Agreement which provides the only reference to the special circumstances in developing countries is vague and practically inoperative.

Although S&D is widely accepted by all Member States to deal with the vulnerability of developing countries in the free trading system, just as I stated above, Article 15 is too general to be enforceable. It is only a best-endeavour clause, since this issue has not been well addressed in the Anti-dumping Agreement.[85] As a result, it is increasingly seen that the Member countries are not giving adequate regard to the implementation of this provision. Therefore, the operational of Article 15 of the Agreement with a view to explored the possibility of constructive remedies before applying anti-dumping duties against exports from developing countries have to be revised through the next round of negotiation. In this regard, the Agreement should

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[84] "The Impact of Anti-Dumping and Countervailing Actions," UNCTAD Report of the Expert Meeting, p. 47., Geneva, December 2000.

[85] "India's proposals Regarding the Anti-Dumping Agreement in terms of Paragraph 9(a)(i)," p. 101., Geneva Ministerial Declaration, Geneva, June 1999. 101

separate the standard status of developed countries, developing countries and least-developed countries. For example, in the case of the existing de minimis dumping margin of 2% of export price below which no anti-dumping duty can be imposed.[86] When dispute arise between developed countries and developing countries, the de minimis dumping margin for developing countries should be raised to 5% from the current standard 2%, which rarely find anti-dumping duty can be imposed. And if the dispute arises with least-developed countries, the threshold should be increased to 8%, for the sake of such subordinate countries.

B. Non-Market Economy Treatment

A common concern among transition economies is that, former centrally-planned economies, the Antidumping Agreement does not offer sufficient guidance on how it should be interpreted. So the treatment of non-market economies still fluctuated, it greatly depends on how importing countries interpret the Agreement. As a result, an exporting country may be given a different status in different markets. This leads to serious affected on many developing countries which are presumed as non-market economy.

Developing countries has been inducing developed countries to relax non-market economy rule and that has made some progress. Both U.S. and EU have adjusted some obsolete policies on non-market economy countries according to the economic realities of those countries. For instance, if the products are produced by a market-oriented industry, the U.S. complies to determine the normal value based on the prices and costs in countries in transition.[87] Japan, Korea, Australia and Canada have similar positive adjustment. In contrast, EU seems more conservative. Although

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[86] Anti-dumping Agreement, Article 5.8.

[87] Joseph A. Laroski Jr., "NMEs: a love story - nonmarket and market economy status under U.S. antidumping law," Law and Policy in International Business Vol. 30 issue 2 (Winter, 1999): 369.

it removed China from the list of non-market economy, in fact it still applies the non-market economy rule to those countries on the case by case approach.[88]

Nevertheless, the legislation of developed countries is far behind the realities. Developing countries are still seriously affected by the non-market economy rules. Minor adjustment can not remove its inherent disadvantages. In order to encourage well-being of developing countries, especially former centrally-planed countries, to carry on further economic reforms, the non-market economy measures should be abandoned.

C. Strengthen the Functions of the WTO Panel

The functions of WTO dispute panel on anti-dumping issue are confined to determining the objectivity or appropriateness of fact verification by investigative authorities. It seemed that WTO gives such panels' limited authorities.

When a panel determines that antidumping measures have been improperly imposed, the Agreement should contain provisions for terminating anti-dumping measures, refunding the collected duties, and providing appropriate compensation within a reasonable period of time. This would eliminate unfair circumstances which have arisen in the past.

According to Article 17.6 (ii), although developing countries support to enhance the role of panels in the dispute settlement and reduce the discretion of importing countries' authorities, they failed to persuade developed countries users to do so. Since developing countries more focus on world trade than before and more developing countries are expected to join the WTO, there will be more anti-dumping

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[88]Jianyu Wang, "A Critique of the Application to China of the Non-market Economy Rules of Antidumping Legislation and Practice of the European Union," J.W.TVol.33 No.3 (1999):139-142.

cases submitted to the DSB. The restrictions of the role of panels in article 17.6 (ii) should be abolished. Any disputes arising from anti-dumping issue should be solved under the normal procedure of DSU.

D. Financial and Legal Support

According to the complexity of antidumping measure, it leads to the high demand for the personnel and services and that drives the problem of heavy financial burden to contracting parties.

This problem so far caused developing countries have not been positively in anti-dumping processes and the existing Agreement did not mention on this issue. In this case, if a developed country initiates an antidumping investigation against a developing country and the claim is eventually found to be invalid, the losing party should bear the legal fees. If this rule is implemented, confidently, most of developing countries would likely to participate in the case and defending their right.

Moreover, before a country can conduct an antidumping investigation, it must have the resources and expertise needed to handle the case and avoid violations of the WTO Agreements. As antidumping is a highly specialized area of the law, therefore, many developing countries found that it is difficult to seek experienced personnel in these areas. Accordingly, the attempt to provide expertise aid is critical for them to participate in antidumping actions. In this regard, there should be a special training program for developing countries. Particularly, when they face antidumping actions or they intend to establish their own antidumping institutions, expertise support should be available with reasonable and fair costs. The WTO and the government of developing countries must play a part to secure the problem.

E. Reduce the Duration and Improve the Process of Review

One of the existing problems for developing countries is the role of the importing country's authorities. Since they can initiate a review by themselves regardless the domestic country does make an application on time or not. In addition, the current Agreement does not contain strict time limit for sunset review. Therefore,

reviews may have the effect of extending the period of application of the anti-dumping duties beyond the five-year period, and in addition, where the findings of the review of lead to continuation of the duty, the new five-year period will start to run based on the timing of the review.

For that reason, the future review to the Anti-dumping Agreement should examine the issue of tightening the time-limits for the conduct and completion of sunset reviews.

The period of imposition of definitive anti-dumping duties as specified in Article 11.3 should be reduced from the current five years to three years. According to Article 11.4, it is necessary to deprive the authorities of any right to initiate sunset review and the word "normally" should be abandoned. Then it should add that if the case can not be justified within a fixed period, reviews should be concluded and anti-dumping duties
should be terminated.

F. Pre-Consultation Requirements

This is the further suggestion, it has been proved that the initiation of an anti-dumping proceeding alone has a considerable impact on the developing country targeted no matter what a claim is found to be valid or not. It is necessary, in this place, to establish a practical measure for preventing such damages to developing countries since they can not provide by themselves. Edwin Vermulst recommended that consultation before
anti-dumping investigation is procedurally practical.[89]

Under this system, investigating agency should inform the exporting country to recognize of the fact that they are violating anti-dumping measures and request them to stop violating before the investigation will begin. In this period of time, if the claim of importing country is reasonable, the exporting countries will have adequate time correcting its violation. However, if there is no response from the violating

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[89] United Nations Conference on Trade and Development A Positive Agenda for Developing Countries: Issues for Future Trade Negotiations, p. 296.

country within the fixed time, the importing country may begin the investigation measures and follow what the authorities can do according to the existing procedure.

In this sense, it is worth to notice Article 13.1 of SCM Agreement which would require an investigating agency to invite the exporting affected companies to consult with the aim of clarifying the situation and arriving at a mutually agreed solution.[90]

In Thailand, the Thai Act B.E. 2542 contained the provision related to the prior negotiation or price undertaking but Thai authorities fail to use; therefore, Thai government should consider and support the use of prior negotiation and price undertaking, if any chance, in order to save costs and keep the good relationship between trading countries, instead of launching the investigation measure or file the case to WTO immediately.

The additional step should benefit for both sides. Developing countries can have an opportunity to correct their violating conducts and possibly avoid an expensive law proceeding. Developed countries can solve dumping problems more efficiently and
effectively within a predictable time.

G. Prohibit Zeroing

In the light of *US-Thai shrimp products* case, the practice of zeroing has been found to violate the current AD Agreement. Presently, certain users of Zeroing voluntarily decide to abandon this method. EU is the best example, in a case brought by India against the European Union involving bed linen, the WTO Appellate Body ruled in March 2001 that the EU's practice which applied zeroing to determine dumping margins was WTO-inconsistent.[91] The EU has since changed its practice as a consequence of the Appellate Body's ruling.

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[90] Agreement on Subsidies and Countervailing Measures, Article 13.1.

[91] EC v. India, Report of the Panel, Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India, WT/DS141/R, para. 6.238. (30 October, 2000).

However, the practice of zeroing continues applied in United States. The US Department of Commerce has thus far refused to change its practice, dismissing the *EU–Bed Linen* case on the ground that the US was not a party. Therefore, such unfair method will still harm the exporting countries which mostly are developing countries, including Thailand, unless there is a revision of the AD Agreement to expressly prohibit zeroing.

Even EU ,also agreed with the idea for revision, formally reported that in several recent antidumping cases of USA, if USA had not used zeroing, the dumping margin would have been minimal, or even negative, and therefore, no antidumping duty would have probably been imposed.[92]

Eliminating zeroing would help to ensure that the exporting countries can rely that the fairness of antidumping duty assessment is actually exist, not just relying on the sole discretion of importing country.

H. Conclusion

Since the conclusion of the Uruguay Round, one of the major trends in international trade today is the widespread use of anti-dumping measures by countries around the world. The trend has grown in part because of globalization, and in part because the WTO has attempted to eliminate other trade-restrictive, leaving anti-dumping measures as one of few legitimate tools for national industries to address import competition. Developing Countries are also increasingly adopting anti-dumping laws; some large developing countries become the frequent users. However, this trend doesn't change the vulnerable situation of developing countries. Although developing countries have dramatically increased their use of anti- dumping measures, they nevertheless remain the main victims of such measures. Thailand is not an exception, struggling to deal with this kind of measures and still have a lot to learn from its experiences. Apart from some weakness existing in these countries, the main reasons for this worse situation are considered to the uncertain Anti-dumping system.

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[92] Vivian C. Jones, WTO: Antidumping Issues in the Doha Development Agenda, p. 14.

The provisions of AD Agreement do not provide adequate guidance in the application of non-market economy treatment or in regard to extending special treatment to developing countries. The non-market economy has caused some disadvantages to countries which are striving for market construction. The normal value is not based on the basis of the exporter's data, but on a surrogate country, together with lack of defendant's rights, always makes dumping charges simple to be valid. This leads to serious affect on many developing countries which are presumed as non-market economy. Additionally, there are some procedural issues which harm the interests of developing countries. The roles of panels are strictly limited compare with normal Dispute Settlement Procedure. In short, panels can do nothing if establishment of facts is proper and evaluation of those facts is unbiased and objective.

Moreover, as anti-dumping is a highly specialized area of the law, thus, the complex procedure makes developing countries difficult to use it as both a complaining party and a defending party. Many developing countries found that they lack of expertise and financial burden. These leads developing countries have not been positively in anti-dumping processes. Next, due to the original purposed of sunset review, it seems to be good for developing countries as it sets the terminated time for levying taxes. However, developing countries gain little since the review depends too much on the consideration of authorities. And the scope of the sunset review in the current Anti-dumping Agreement is unreasonably limited. Meanwhile, many developing countries are struggling to deal with the unfair antidumping duty assessment which called "Zeroing" from USA which extend the dumping duties misappropriate.

Based on those problems against developing countries, proposals for the next round of multilateral negotiation are unambiguous. Removing the unfair non-market economy treatment and giving enforceable Special and Different treatment for developing countries will significantly reduce anti-dumping cases. Then the role of panels should be considered, any unnecessary restriction of the role of panels should be eliminated in order

to embody the multilateral mechanism and the rule of law. Additional, WTO should provide reasonable financial support and expertise assistance for the purpose of facilitating developing countries to participate in anti-dumping lawsuits. Meanwhile, WTO should examine the issue of tightening the time-limit for the conduction and

completion of sunset reviews. Lastly, Zeroing measure should be expressly prohibited in the next round of negotiation.

Finally I believe that, revising the AD Agreement to reduce unnecessary cases against developing countries could also help them from disadvantages position, then Thailand and other developing countries can gain greater benefits from their increased participation in world trade.

APPENDIX A

AGREEMENT ON IMPLEMENTATION OF ARTICLE VI OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE 1994

("Anti-dumping Agreement")

Members hereby agree as follows:

PART I

Article 1: Principles

An anti-dumping measure shall be applied only under the circumstances provided for in Article VI of GATT 1994 and pursuant to investigations initiated[1] and conducted in accordance with the provisions of this Agreement. The following provisions govern the application of Article VI of GATT 1994 in so far as action is taken under anti-dumping legislation or regulations.

Article 2: Determination of Dumping

2.1 For the purpose of this Agreement, a product is to be considered as being dumped, i.e. introduced into the commerce of another country at less than its normal value, if the export price of the product exported from one country to another is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country.

2.2 When there are no sales of the like product in the ordinary course of trade in the domestic market of the exporting country or when, because of the particular

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[1]The term "initiated" as used in this Agreement means the procedural action by which a Member formally commences an investigation as provided in Article 5.

market situation or the low volume of the sales in the domestic market of the exporting country[2], such sales do not permit a proper comparison, the margin of dumping shall be determined by comparison with a comparable price of the like product when exported to an appropriate third country, provided that this price is representative, or with the cost of production in the country of origin plus a reasonable amount for administrative, selling and general costs and for profits.

2.2.1 Sales of the like product in the domestic market of the exporting country or sales to a third country at prices below per unit (fixed and variable) costs of production plus administrative, selling and general costs may be treated as not being in the ordinary course of trade by reason of price and may be disregarded in determining normal value only if the authorities[3] determine that such sales are made within an extended period of time[4] in substantial quantities[5] and are at prices which do not

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[2] Sales of the like product destined for consumption in the domestic market of the exporting country shall normally be considered a sufficient quantity for the determination of the normal value if such sales constitute 5 per cent or more of the sales of the product under consideration to the importing Member, provided that a lower ratio should be acceptable where the evidence demonstrates that domestic sales at such lower ratio are nonetheless of sufficient magnitude to provide for a proper comparison.

[3] When in this Agreement the term "authorities" is used, it shall be interpreted as meaning authorities at an appropriate senior level.

[4] The extended period of time should normally be one year but shall in no case be less than six months.

[5] Sales below per unit costs are made in substantial quantities when the authorities establish that the weighted average selling price of the transactions under consideration for the determination of the normal value is below the weighted average per unit costs, or that the volume of sales below per unit costs represents not less than 20 per cent of the volume sold in transactions under consideration for the determination of the normal value.

provide for the recovery of all costs within a reasonable period of time. If prices which are below per unit costs at the time of sale are above weighted average per unit costs for the period of investigation, such prices shall be considered to provide for recovery of costs within a reasonable period of time.

2.2.1.1 For the purpose of paragraph 2, costs shall normally be calculated on the basis of records kept by the exporter or producer under investigation, provided that such records are in accordance with the generally accepted accounting principles of the exporting country and reasonably reflect the costs associated with the production and sale of the product under consideration. Authorities shall consider all available evidence on the proper allocation of costs, including that which is made available by the exporter or producer in the course of the investigation provided that such allocations have been historically utilized by the exporter or producer, in particular in relation to establishing appropriate amortization and depreciation periods and allowances for capital expenditures and other development costs. Unless already reflected in the cost allocations under this sub-paragraph, costs shall be adjusted appropriately for those non-recurring items of cost which benefit future and/or current production, or for circumstances in which costs during the period of investigation are affected by start-up operations.[6]

2.2.2 For the purpose of paragraph 2, the amounts for administrative, selling and general costs and for profits shall be based on actual data pertaining to production and sales in the ordinary course of trade of the like product by the exporter or producer under investigation. When such amounts cannot be determined on this basis, the amounts may be determined on the basis of:

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[6] The adjustment made for start-up operations shall reflect the costs at the end of the start-up period or, if that period extends beyond the period of investigation, the most recent costs which can reasonably be taken into account by the authorities during the investigation.

(i) the actual amounts incurred and realized by the exporter or producer in question in respect of production and sales in the domestic market of the country of origin of the same general category of products;

(ii) the weighted average of the actual amounts incurred and realized by other exporters or producers subject to investigation in respect of production and sales of the like product in the domestic market of the country of origin;

(iii) any other reasonable method, provided that the amount for profit so established shall not exceed the profit normally realized by other exporters or producers on sales of products of the same general category in the domestic market of the country of origin.

2.3 In cases where there is no export price or where it appears to the authorities concerned that the export price is unreliable because of association or 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, or if the products are not resold to an independent buyer, or not resold in the condition as imported, on such reasonable basis as the authorities may determine.

2.4 A fair comparison shall be made between the export price and the normal value. This comparison shall be made at the same level of trade, normally at the ex-factory level, and in respect of sales made at as nearly as possible the same time. Due allowance shall be made in each case, on its merits, for differences which affect price comparability, including differences in conditions and terms of sale, taxation, levels of trade, quantities, physical characteristics, and any other differences which are also demonstrated to affect price comparability.[7] In the cases referred to in paragraph 3,

[7]It is understood that some of the above factors may overlap, and authorities shall ensure that they do not duplicate adjustments that have been already made under this provision.

allowances for costs, including duties and taxes, incurred between importation and resale, and for profits accruing, should also be made. If in these cases price comparability has been affected, the authorities shall establish the normal value at a level of trade equivalent to the level of trade of the constructed export price, or shall make due allowance as warranted under this paragraph. The authorities shall indicate to the parties in question what information is necessary to ensure a fair comparison and shall not impose an unreasonable burden of proof on those parties.

2.4.1 When the comparison under paragraph 4 requires a conversion of currencies, such conversion should be made using the rate of exchange on the date of sale[8], provided that when a sale of foreign currency on forward markets is directly linked to the export sale involved, the rate of exchange in the forward sale shall be used. Fluctuations in exchange rates shall be ignored and in an investigation the authorities shall allow exporters at least 60 days to have adjusted their export prices to reflect sustained movements in exchange rates during the period of investigation.

2.4.2 Subject to the provisions governing fair comparison in paragraph 4, the existence of margins of dumping during the investigation phase shall normally be established on the basis of a comparison of a weighted average normal value with a weighted average of prices of all comparable export transactions or by a comparison of normal value and export prices on a transaction-to-transaction basis. A normal value established on a weighted average basis may be compared to prices of individual export transactions if the authorities find a pattern of export prices which differ significantly among different purchasers, regions or time periods, and if an explanation is provided as to why such differences cannot be taken into account appropriately by the use of a weighted average-to-weighted average or transaction-to-transaction comparison.

2.5 In the case where products are not imported directly from the country of origin but are exported to the importing Member from an intermediate country, the price at which

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[8]Normally, the date of sale would be the date of contract, purchase order, order confirmation, or invoice, whichever establishes the material terms of sale.

the products are sold from the country of export to the importing Member shall normally be compared with the comparable price in the country of export. However, comparison may be made with the price in the country of origin, if, for example, the products are merely transshipped through the country of export, or such products are not produced in the country of export, or there is no comparable price for them in the country of export.

2.6 Throughout this Agreement the term "like product" ("produit similaire") shall be interpreted to mean a product which is identical, i.e. alike in all respects to the product under consideration, or in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration.

2.7 This Article is without prejudice to the second Supplementary Provision to paragraph 1 of Article VI in Annex I to GATT 1994.

Article 3: Determination of Injury[9]

3.1 A determination of injury for purposes of Article VI of GATT 1994 shall be based on positive evidence and involve an objective examination of both *(a)* the volume of the dumped imports and the effect of the dumped imports on prices in the domestic market for like products, and *(b)* the consequent impact of these imports on domestic producers of such products.

3.2 With regard to the volume of the dumped imports, the investigating authorities shall consider whether there has been a significant increase in dumped imports, either

[9] Under this Agreement the term "injury" shall, unless otherwise specified, be taken to mean material injury to a domestic industry, threat of material injury to a domestic industry or material retardation of the establishment of such an industry and shall be interpreted in accordance with the provisions of this Article.

in absolute terms or relative to production or consumption in the importing Member. With regard to the effect of the dumped imports on prices, the investigating authorities shall consider whether there has been a significant price undercutting by the dumped imports as compared with the price of a like product of the importing Member, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. No one or several of these factors can necessarily give decisive guidance.

3.3 Where imports of a product from more than one country are simultaneously subject to anti-dumping investigations, the investigating authorities may cumulatively assess the effects of such imports only if they determine that *(a)* the margin of dumping established in relation to the imports from each country is more than *de minimis* as defined in paragraph 8 of Article 5 and the volume of imports from each country is not negligible and *(b)* a cumulative assessment of the effects of the imports is appropriate in light of the conditions of competition between the imported products and the conditions of competition between the imported products and the like domestic product.

3.4 The examination of the impact of the dumped imports on the domestic industry concerned shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in sales, profits, output, market share, productivity, return on investments, or utilization of capacity; factors affecting domestic prices; the magnitude of the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments. This list is not exhaustive, nor can one or several of these factors necessarily give decisive guidance.

3.5 It must be demonstrated that the dumped imports are, through the effects of dumping, as set forth in paragraphs 2 and 4, causing injury within the meaning of this Agreement. The demonstration of a causal relationship between the dumped imports and the injury to the domestic industry shall be based on an examination of all relevant evidence before the authorities. The authorities shall also examine any known factors other than the dumped imports which at the same time are injuring the domestic

industry, and the injuries caused by these other factors must not be attributed to the dumped imports. Factors which may be relevant in this respect include, *inter alia*, the volume and prices of imports not sold at dumping prices, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry.

3.6 The effect of the dumped imports shall be assessed in relation to the domestic production of the like product when available data permit the separate identification of that production on the basis of such criteria as the production process, producers' sales and profits. If such separate identification of that production is not possible, the effects of the dumped imports shall be assessed by the examination of the production of the narrowest group or range of products, which includes the like product, for which the necessary information can be provided.

3.7 A determination of a threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances which would create a situation in which the dumping would cause injury must be clearly foreseen and imminent.[10] In making a determination regarding the existence of a threat of material injury, the authorities should consider, *inter alia*, such factors as:

(i) a significant rate of increase of dumped imports into the domestic market indicating the likelihood of substantially increased importation;

(ii) sufficient freely disposable, or an imminent, substantial increase in, capacity of the exporter indicating the likelihood of substantially increased dumped exports to the importing Member's market, taking into account the availability of other export markets to absorb any additional exports;

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[10] One example, though not an exclusive one, is that there is convincing reason to believe that there will be, in the near future, substantially increased importation of the product at dumped prices.

(iii) whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports; and

(iv) inventories of the product being investigated. No one of these factors by itself can necessarily give decisive guidance but the totality of the factors considered must lead to the conclusion that further dumped exports are imminent and that, unless protective action is taken, material injury would occur.

3.8 With respect to cases where injury is threatened by dumped imports, the application of anti-dumping measures shall be considered and decided with special care.

Article 4: Definition of Domestic Industry

4.1 For the purposes of this Agreement, the term "domestic industry" shall be interpreted as referring to the domestic producers as a whole of the like products or to those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products, except that:

(i) when producers are related[11] to the exporters or importers or are themselves importers of the allegedly dumped product, the term "domestic industry" may be interpreted as referring to the rest of the producers;

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[11] For the purpose of this paragraph, producers shall be deemed to be related to exporters or importers only if *(a)* one of them directly or indirectly controls the other; or *(b)* both of them are directly or indirectly controlled by a third person; or *(c)* together they directly or indirectly control a third person, provided that there are grounds for believing or suspecting that the effect of the relationship is such as to cause the producer concerned to behave differently from non-related producers. For the purpose of this paragraph, one shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter.

(ii) in exceptional circumstances the territory of a Member may, for the production in question, be divided into two or more competitive markets and the producers within each market may be regarded as a separate industry if *(a)* the producers within such market sell all or almost all of their production of the product in question in that market, and *(b)* the demand in that market is not to any substantial degree supplied by producers of the product in question located elsewhere in the territory. In such circumstances, injury may be found to exist even where a major portion of the total domestic industry is not injured, provided there is a concentration of dumped imports into such an isolated market and provided further that the dumped imports are causing injury to the producers of all or almost all of the production within such market.

4.2 When the domestic industry has been interpreted as referring to the producers in a certain area, i.e. a market as defined in paragraph 1(ii), anti-dumping duties shall be levied[12] only on the products in question consigned for final consumption to that area. When the constitutional law of the importing Member does not permit the levying of anti-dumping duties on such a basis, the importing Member may levy the anti-dumping duties without limitation only if *(a)* the exporters shall have been given an opportunity to cease exporting at dumped prices to the area concerned or otherwise give assurances pursuant to Article 8 and adequate assurances in this regard have not been promptly given, and *(b)* such duties cannot be levied only on products of specific producers which supply the area in question.

4.3 Where two or more countries have reached under the provisions of paragraph 8(a) of Article XXIV of GATT 1994 such a level of integration that they have the characteristics of a single, unified market, the industry in the entire area of integration shall be taken to be the domestic industry referred to in paragraph 1.

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[12] As used in this Agreement "levy" shall mean the definitive or final legal assessment or collection of a duty or tax.

4.4 The provisions of paragraph 6 of Article 3 shall be applicable to this Article.

Article 5: Initiation and Subsequent Investigation

5.1 Except as provided for in paragraph 6, an investigation to determine the existence, degree and effect of any alleged dumping shall be initiated upon a written application by or on behalf of thedomestic industry.

5.2 An application under paragraph 1 shall include evidence of *(a)* dumping, *(b)* injury within the meaning of Article VI of GATT 1994 as interpreted by this Agreement and *(c)* a causal link between the dumped imports and the alleged injury. Simple assertion, unsubstantiated by relevant evidence, cannot be considered sufficient to meet the requirements of this paragraph. The application shall contain such information as is reasonably available to the applicant on the following:

(i) the identity of the applicant and a description of the volume and value of the domestic production of the like product by the applicant. Where a written application is made on behalf of the domestic industry, the application shall identify the industry on behalf of which the application is made by a list of all known domestic producers of the like product (or associations of domestic producers of the like product) and, to the extent possible, a description of the volume and value of domestic production of the like product accounted for by such producers;

(ii) a complete description of the allegedly dumped product, the names of the country or countries of origin or export in question, the identity of each known exporter or foreign producer and a list of known persons importing the product in question;

(iii) information on prices at which the product in question is sold when destined for consumption in the domestic markets of the country or countries of origin or export (or, where appropriate, information on the prices at which the product is sold from the country or countries of origin or export to a third country or countries, or on the constructed value of the product) and information on export prices or, where

appropriate, on the prices at which the product is first resold to an independent buyer in the territory of the importing Member;

(iv) information on the evolution of the volume of the allegedly dumped imports, the effect of these imports on prices of the like product in the domestic market and the consequent impact of the imports on the domestic industry, as demonstrated by relevant factors and indices having a bearing on the state of the domestic industry, such as those listed in paragraphs 2 and 4 of Article 3.

5.3 The authorities shall examine the accuracy and adequacy of the evidence provided in the application to determine whether there is sufficient evidence to justify the initiation of an investigation.

5.4 An investigation shall not be initiated pursuant to paragraph 1 unless the authorities have determined, on the basis of an examination of the degree of support for, or opposition to, the application expressed[13] by domestic producers of the like product, that the application has been made by or on behalf of the domestic industry.[14] The application shall be considered to have been made "by or on behalf of the domestic industry" if it is supported by those domestic producers whose collective output constitutes more than 50 per cent of the total production of the like product produced by that portion of the domestic industry expressing either support for or opposition to the application. However, no investigation shall be initiated when domestic producers expressly supporting the application account for less than 25 per cent of total production of the like product produced by the domestic industry.

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[13] In the case of fragmented industries involving an exceptionally large number of producers, authorities may determine support and opposition by using statistically valid sampling techniques.

[14] Members are aware that in the territory of certain Members employees of domestic producers of the like product or representatives of those employees may make or support an application for an investigation under paragraph 1.

5.5 The authorities shall avoid, unless a decision has been made to initiate an investigation, any publicizing of the application for the initiation of an investigation. However, after receipt of a properly documented application and before proceeding to initiate an investigation, the authorities shall notify the government of the exporting Member concerned.

5.6 If, in special circumstances, the authorities concerned decide to initiate an investigation without having received a written application by or on behalf of a domestic industry for the initiation of such investigation, they shall proceed only if they have sufficient evidence of dumping, injury and a causal link, as described in paragraph 2, to justify the initiation of an investigation.

5.7 The evidence of both dumping and injury shall be considered simultaneously *(a)* in the decision whether or not to initiate an investigation, and *(b)* thereafter, during the course of the investigation, starting on a date not later than the earliest date on which in accordance with the provisions of this Agreement provisional measures may be applied.

5.8 An application under paragraph 1 shall be rejected and an investigation shall be terminated promptly as soon as the authorities concerned are satisfied that there is not sufficient evidence of either dumping or of injury to justify proceeding with the case. There shall be immediate termination in cases where the authorities determine that the margin of dumping is *de minimis*, or that the volume of dumped imports, actual or potential, or the injury, is negligible. The margin of dumping shall be considered to be *de minimis* if this margin is less than 2 per cent, expressed as a percentage of the export price. The volume of dumped imports shall normally be regarded as negligible if the volume of dumped imports from a particular country is found to account for less than 3 per cent of imports of the like product in the importing Member, unless countries which individually account for less than 3 per cent of the 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.

5.9 An anti-dumping proceeding shall not hinder the procedures of customs clearance.

5.10 Investigations shall, except in special circumstances, be concluded within one year, and in no case more than 18 months, after their initiation.

Article 6: Evidence

6.1 All interested parties in an anti-dumping investigation shall be given notice of the information which the authorities require and ample opportunity to present in writing all evidence which they consider relevant in respect of the investigation in question.

6.1.1 Exporters or foreign producers receiving questionnaires used in an anti-dumping investigation shall be given at least 30 days for reply.[15] Due consideration should be given to any request for an extension of the 30-day period and, upon cause shown, such an extension should be granted whenever practicable.

6.1.2 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.

6.1.3 As soon as an investigation has been initiated, the authorities shall provide the full text of the written application received under paragraph 1 of Article 5 to the known exporters[16] and to the authorities of the exporting Member and shall make it

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[15] As a general rule, the time-limit for exporters shall be counted from the date of receipt of the questionnaire, which for this purpose shall be deemed to have been received one week from the date on which it was sent to the respondent or transmitted to the appropriate diplomatic representative of the exporting Member or, in the case of a separate customs territory Member of the WTO, an official representative of the exporting territory.

[16] It being understood that, where the number of exporters involved is particularly high, the full text of the written application should instead be provided only to the authorities of the exporting Member or to the relevant trade association.

available, upon request, to other interested parties involved. Due regard shall be paid to the requirement for the protection of confidential information, as provided for in paragraph 5.

6.2 Throughout the anti-dumping investigation all interested parties shall have a full opportunity for the defence of their interests. To this end, the authorities shall, on request, provide opportunities for all interested parties to meet those parties with adverse interests, so that opposing views may be presented and rebuttal arguments offered. Provision of such opportunities must take account of the need to preserve confidentiality and of the convenience to the parties. There shall be no obligation on any party to attend a meeting, and failure to do so shall not be prejudicial to that party's case. Interested parties shall also have the right, on justification, to present other information orally.

6.3 Oral information provided under paragraph 2 shall be taken into account by the authorities only in so far as it is subsequently reproduced in writing and made available to other interested parties, as provided for in subparagraph 1.2.

6.4 The authorities shall whenever practicable provide timely opportunities for all interested parties to see all information that is relevant to the presentation of their cases, that is not confidential as defined in paragraph 5, and that is used by the authorities in an anti-dumping investigation, and to prepare presentations on the basis of this information.

6.5 Any information which is by nature confidential (for example, because its disclosure would be of significant competitive advantage to a competitor or because its disclosure would have a significantly adverse effect upon a person supplying the information or upon a person from whom that person acquired the information), or which is provided on a confidential basis by parties to an investigation shall, upon good

cause shown, be treated as such by the authorities. Such information shall not be disclosed without specific permission of the party submitting it.[17]

6.5.1 The authorities shall require interested parties providing confidential information to furnish non-confidential summaries thereof. These summaries shall be in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence. In exceptional circumstances, such parties may indicate that such information is not susceptible of summary. In such exceptional circumstances, a statement of the reasons why summarization is not possible must be provided.

6.5.2 If the authorities find that a request for confidentiality is not warranted and if the supplier of the information is either unwilling to make the information public or to authorize its disclosure in generalized or summary form, the authorities may disregard such information unless it can be demonstrated to their satisfaction from appropriate sources that the information is correct.[18]

6.6 Except in circumstances provided for in paragraph 8, the authorities shall during the course of an investigation satisfy themselves as to the accuracy of the information supplied by interested parties upon which their findings are based.

6.7 In order to verify information provided or to obtain further details, the authorities may carry out investigations in the territory of other Members as required, provided they obtain the agreement of the firms concerned and notify the representatives of the government of the Member in question, and unless that Member objects to the investigation. The procedures described in Annex I shall apply to investigations carried out in the territory of other Members. Subject to the requirement to protect confidential

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[17] Members are aware that in the territory of certain Members disclosure pursuant to a narrowly-drawn protective order may be required.

[18] Members agree that requests for confidentiality should not be arbitrarily rejected.

information, the authorities shall make the results of any such investigations available, or shall provide disclosure thereof pursuant to paragraph 9, to the firms to which they pertain and may make such results available to the applicants.

6.8 In cases in which any interested party refuses access to, or otherwise does not provide, necessary information within a reasonable period or significantly impedes the investigation, preliminary and final determinations, affirmative or negative, may be made on the basis of the facts available. The provisions of Annex II shall be observed in the application of this paragraph.

6.9 The authorities shall, before a final determination is made, inform all interested parties of the essential facts under consideration which form the basis for the decision whether to apply definitive measures. Such disclosure should take place in sufficient time for the parties to defend their interests.

6.10 The authorities shall, as a rule, determine an individual margin of dumping for each known exporter or producer concerned of the product under investigation. In cases where the number of exporters, producers, importers or types of products involved is so large as to make such a determination impracticable, the authorities may limit their examination either to a reasonable number of interested parties or products by using samples which are statistically valid on the basis of information available to the authorities at the time of the selection, or to the largest percentage of the volume of the exports from the country in question which can reasonably be investigated.

6.10.1 Any selection of exporters, producers, importers or types of products made under this paragraph shall preferably be chosen in consultation with and with the consent of the exporters, producers or importers concerned.

6.10.2 In cases where the authorities have limited their examination, as provided for in this paragraph, they shall nevertheless determine an individual margin of dumping for any exporter or producer not initially selected who submits the necessary information in time for that information to be considered during the course of

the investigation, except where the number of exporters or producers is so large that individual examinations would be unduly burdensome to the authorities and prevent the timely completion of the investigation. Voluntary responses shall not be discouraged.

6.11 For the purposes of this Agreement, "interested parties" shall include:

(i) an exporter or foreign producer or the importer of a product subject to investigation, or a trade or business association a majority of the members of which are producers, exporters or importers of such product;

(ii) the government of the exporting Member; and

(iii) a producer of the like product in the importing Member or a trade and business association a majority of the members of which produce the like product in the territory of the importing Member. This list shall not preclude Members from allowing domestic or foreign parties other than those mentioned above to be included as interested parties.

6.12 The authorities shall provide opportunities for industrial users of the product under investigation, and for representative consumer organizations in cases where the product is commonly sold at the retail level, to provide information which is relevant to the investigation regarding dumping, injury and causality.

6.13 The authorities shall take due account of any difficulties experienced by interested parties, in particular small companies, in supplying information requested, and shall provide any assistance practicable.

6.14 The procedures set out above are not intended to prevent the authorities of a Member from proceeding expeditiously with regard to initiating an investigation, reaching preliminary or final determinations, whether affirmative or negative, or from applying provisional or final measures, in accordance with relevant provisions of this Agreement.

Article 7: Provisional Measures

7.1 Provisional measures may be applied only if:

(i) an investigation has been initiated in accordance with the provisions of Article 5, a public notice has been given to that effect and interested parties have been given adequate opportunities to submit information and make comments;

(ii) a preliminary affirmative determination has been made of dumping and consequent injury to a domestic industry; and

(iii) the authorities concerned judge such measures necessary to prevent injury being caused during the investigation.

7.2 Provisional measures may take the form of a provisional duty or, preferably, a security - by cash deposit or bond - equal to the amount of the anti-dumping duty provisionally estimated, being not greater than the provisionally estimated margin of dumping. Withholding of appraisement is an appropriate provisional measure, provided that the normal duty and the estimated amount of the anti-dumping duty be indicated and as long as the withholding of appraisement is subject to the same conditions as other provisional measures.

7.3 Provisional measures shall not be applied sooner than 60 days from the date of initiation of the investigation.

7.4 The application of provisional measures shall be limited to as short a period as possible, not exceeding four months or, on decision of the authorities concerned, upon request by exporters representing a significant percentage of the trade involved, to a period not exceeding six months. When authorities, in the course of an investigation, examine whether a duty lower than the margin of dumping would be sufficient to remove injury, these periods may be six and nine months, respectively.

7.5 The relevant provisions of Article 9 shall be followed in the application of provisional measures.

Article 8: Price Undertakings

8.1 Proceedings may[19] be suspended or terminated without the imposition of provisional measures or anti-dumping duties upon receipt of satisfactory voluntary undertakings from any exporter to revise its prices or to cease exports to the area in question at dumped prices so that the authorities are satisfied that the injurious effect of the dumping is eliminated. Price increases under such undertakings shall not be higher than necessary to eliminate the margin of dumping. It is desirable that the price increases be less than the margin of dumping if such increases would be adequate to remove the injury to the domestic industry.

8.2 Price undertakings shall not be sought or accepted from exporters unless the authorities of the importing Member have made a preliminary affirmative determination of dumping and injury caused by such dumping.

8.3 Undertakings offered need not be accepted if the authorities consider their acceptance impractical, for example, if the number of actual or potential exporters is too great, or for other reasons, including reasons of general policy. Should the case arise and where practicable, the authorities shall provide to the exporter the reasons which have led them to consider acceptance of an undertaking as inappropriate, and shall, to the extent possible, give the exporter an opportunity to make comments thereon.

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[19] The word "may" shall not be interpreted to allow the simultaneous continuation of proceedings with the implementation of price undertakings except as provided in paragraph 4.

8.4 If an undertaking is accepted, the investigation of dumping and injury shall nevertheless be completed if the exporter so desires or the authorities so decide. In such a case, if a negative determination of dumping or injury is made, the undertaking shall automatically lapse, except in cases where such a determination is due in large part to the existence of a price undertaking. In such cases, the authorities may require that an undertaking be maintained for a reasonable period consistent with the provisions of this Agreement. In the event that an affirmative determination of dumping and injury is made, the undertaking shall continue consistent with its terms and the provisions of this Agreement.

8.5 Price undertakings may be suggested by the authorities of the importing Member, but no exporter shall be forced to enter into such undertakings. The fact that exporters do not offer such undertakings, or do not accept an invitation to do so, shall in no way prejudice the consideration of the case. However, the authorities are free to determine that a threat of injury is more likely to be realized if the dumped imports continue.

8.6 Authorities of an importing Member may require any exporter from whom an undertaking has been accepted to provide periodically information relevant to the fulfilment of such an undertaking and to permit verification of pertinent data. In case of violation of an undertaking, the authorities of the importing Member may take, under this Agreement in conformity with its provisions, expeditious actions which may constitute immediate application of provisional measures using the best information available. In such cases, definitive duties may be levied in accordance with this Agreement on products entered for consumption not more than 90 days before the application of such provisional measures, except that any such retroactive assessment shall not apply to imports entered before the violation of the undertaking.

Article 9: Imposition and Collection of Anti-Dumping Duties

9.1 The decision whether or not to impose an anti-dumping duty in cases where all requirements for the imposition have been fulfilled, and the decision whether the amount of the anti-dumping duty to be imposed shall be the full margin of dumping or

less, are decisions to be made by the authorities of the importing Member. It is desirable that the imposition be permissive in the territory of all Members, and that the duty be less than the margin if such lesser duty would be adequate to remove the injury to the domestic industry.

9.2 When an anti-dumping duty is imposed in respect of any product, such anti-dumping duty shall be collected in the appropriate amounts in each case, on a non-discriminatory basis on imports of such product from all sources found to be dumped and causing injury, except as to imports from those sources from which price undertakings under the terms of this Agreement have been accepted. The authorities shall name the supplier or suppliers of the product concerned. If, however, several suppliers from the same country are involved, and it is impracticable to name all these suppliers, the authorities may name the supplying country concerned. If several suppliers from more than one country are involved, the authorities may name either all the suppliers involved, or, if this is impracticable, all the supplying countries involved.

9.3 The amount of the anti-dumping duty shall not exceed the margin of dumping as established under Article 2.

9.3.1 When the amount of the anti-dumping duty is assessed on a retrospective basis, the determination of the final liability for payment of anti-dumping duties shall take place as soon as possible, normally within 12 months, and in no case more than 18 months, after the date on which a request for a final assessment of the amount of the anti-dumping duty has been made.[20] Any refund shall be made promptly and normally in not more than 90 days following the determination of final liability made pursuant to this sub-paragraph. In any case, where a refund is not made within 90 days, the authorities shall provide an explanation if so requested.

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[20] It is understood that the observance of the time-limits mentioned in this subparagraph and in subparagraph 3.2 may not be possible where the product in question is subject to judicial review proceedings.

9.3.2 When the amount of the anti-dumping duty is assessed on a prospective basis, provision shall be made for a prompt refund, upon request, of any duty paid in excess of the margin of dumping. A refund of any such duty paid in excess of the actual margin of dumping shall normally take place within 12 months, and in no case more than 18 months, after the date on which a request for a refund, duly supported by evidence, has been made by an importer of the product subject to the anti-dumping duty. The refund authorized should normally be made within 90 days of the above-noted decision.

9.3.3 In determining whether and to what extent a reimbursement should be made when the export price is constructed in accordance with paragraph 3 of Article 2, authorities should take account of any change in normal value, any change in costs incurred between importation and resale, and any movement in the resale price which is duly reflected in subsequent selling prices, and should calculate the export price with no deduction for the amount of anti-dumping duties paid when conclusive evidence of the above is provided.

9.4 When the authorities have limited their examination in accordance with the second sentence of paragraph 10 of Article 6, any anti-dumping duty applied to imports from exporters or producers not included in the examination shall not exceed:

(i) the weighted average margin of dumping established with respect to the selected exporters or producers or,

(ii) where the liability for payment of anti-dumping duties is calculated on the basis of a prospective normal value, the difference between the weighted average normal value of the selected exporters or producers and the export prices of exporters or producers not individually examined, provided that the authorities shall disregard for the purpose of this paragraph any zero and *de minimis* margins and margins established under the circumstances referred to in paragraph 8 of Article 6. The authorities shall apply individual duties or normal values to imports from any exporter or producer not

included in the examination who has provided the necessary information during the course of the investigation, as provided for in subparagraph 10.2 of Article 6.

9.5 If a product is subject to anti-dumping duties in an importing Member, the authorities shall promptly carry out a review for the purpose of determining individual margins of dumping for any exporters or producers in the exporting country in question who have not exported the product to the importing Member during the period of investigation, provided that these exporters or producers can show that they are not related to any of the exporters or producers in the exporting country who are subject to the anti-dumping duties on the product. Such a review shall be initiated and carried out on an accelerated basis, compared to normal duty assessment and review proceedings in the importing Member. No anti-dumping duties shall be levied on imports from such exporters or producers while the review is being carried out. The authorities may, however, withhold appraisement and/or request guarantees to ensure that, should such a review result in a determination of dumping in respect of such producers or exporters, anti-dumping duties can be levied retroactively to the date of the initiation of the review.

Article 10: Retroactivity

10.1 Provisional measures and anti-dumping duties shall only be applied to products which enter for consumption after the time when the decision taken under paragraph 1 of Article 7 and paragraph 1 of Article 9, respectively, enters into force, subject to the exceptions set out in this Article.

10.2 Where a final determination of injury (but not of a threat thereof or of a material retardation of the establishment of an industry) is made or, in the case of a final determination of a threat of injury, where the effect of the dumped imports would, in the absence of the provisional measures, have led to a determination of injury, anti-dumping duties may be levied retroactively for the period for which provisional measures, if any, have been applied.

10.3 If the definitive anti-dumping duty is higher than the provisional duty paid or payable, or the amount estimated for the purpose of the security, the difference shall not be collected. If the definitive duty is lower than the provisional duty paid or payable, or the amount estimated for the purpose of the security, the difference shall be reimbursed or the duty recalculated, as the case may be.

10.4 Except as provided in paragraph 2, where a determination of threat of injury or material retardation is made (but no injury has yet occurred) a definitive anti-dumping duty may be imposed only from the date of the determination of threat of injury or material retardation, and any cash deposit made during the period of the application of provisional measures shall be refunded and any bonds released in an expeditious manner.

10.5 Where a final determination is negative, any cash deposit made during the period of the application of provisional measures shall be refunded and any bonds released in an expeditious manner.

10.6 A definitive anti-dumping duty may be levied on products which were entered for consumption not more than 90 days prior to the date of application of provisional measures, when the authorities determine for the dumped product in question that:

(i) there is a history of dumping which caused injury or that the importer was, or should have been, aware that the exporter practises dumping and that such dumping would cause injury, and

(ii) 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 and other circumstances (such as a rapid build-up of inventories of the imported product) is likely to seriously undermine the remedial effect of the definitive anti-dumping duty to be applied, provided that the importers concerned have been given an opportunity to comment.

10.7 The authorities may, after initiating an investigation, take such measures as the withholding of appraisement or assessment as may be necessary to collect anti-dumping duties retroactively, as provided for in paragraph 6, once they have sufficient evidence that the conditions set forth in that paragraph are satisfied.

10.8 No duties shall be levied retroactively pursuant to paragraph 6 on products entered for consumption prior to the date of initiation of the investigation.

Article 11: Duration and Review of Anti-Dumping Duties and Price Undertakings

11.1 An anti-dumping duty shall remain in force only as long as and to the extent necessary to counteract dumping which is causing injury.

11.2 The authorities shall review the need for the continued imposition of the duty, where warranted, on their own initiative or, provided that a reasonable period of time has elapsed since the imposition of the definitive anti-dumping duty, upon request by any interested party which submits positive information substantiating the need for a review.[21] Interested parties shall have the right to request the authorities to examine whether the continued imposition of the duty is necessary to offset dumping, whether the injury would be likely to continue or recur if the duty were removed or varied, or both. If, as a result of the review under this paragraph, the authorities determine that the anti-dumping duty is no longer warranted, it shall be terminated immediately.

11.3 Notwithstanding the provisions of paragraphs 1 and 2, any definitive anti-dumping duty shall be terminated on a date not later than five years from its imposition (or from the date of the most recent review under paragraph 2 if that review has covered both dumping and injury, or under this paragraph), unless the authorities determine, in a review initiated before that date on their own initiative or upon a duly substantiated

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[21] A determination of final liability for payment of anti-dumping duties, as provided for in paragraph 3 of Article 9, does not by itself constitute a review within the meaning of this Article.

request made by or on behalf of the domestic industry within a reasonable period of time prior to that date, that the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury.[22] The duty may remain in force pending the outcome of such a review.

11.4 The provisions of Article 6 regarding evidence and procedure shall apply to any review carried out under this Article. Any such review shall be carried out expeditiously and shall normally be concluded within 12 months of the date of initiation of the review.

11.5 The provisions of this Article shall apply *mutatis mutandis* to price undertakings accepted under Article 8.

Article 12: Public Notice and Explanation of Determinations

12.1 When the authorities are satisfied that there is sufficient evidence to justify the initiation of an anti-dumping investigation pursuant to Article 5, the Member or Members the products of which are subject to such investigation and other interested parties known to the investigating authorities to have an interest therein shall be notified and a public notice shall be given.

12.1.1 A public notice of the initiation of an investigation shall contain, or otherwise make available through a separate report, adequate information on the following:

(i) the name of the exporting country or countries and the product involved;

(ii) the date of initiation of the investigation;

(iii) the basis on which dumping is alleged in the application;

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[22] When the amount of the anti-dumping duty is assessed on a retrospective basis, a finding in the most recent assessment proceeding under subparagraph 3.1 of Article 9 that no duty is to be levied shall not by itself require the authorities to terminate the definitive duty.

(iv) a summary of the factors on which the allegation of injury is based;

(v) the address to which representations by interested parties should be directed;

(vi) the time-limits allowed to interested parties for making their views known.

12.2 Public notice shall be given of any preliminary or final determination, whether affirmative or negative, of any decision to accept an undertaking pursuant to Article 8, of the termination of such an undertaking, and of the termination of a definitive anti-dumping duty. Each such notice shall set forth, or otherwise make available through a separate report, in sufficient detail the findings and conclusions reached on all issues of fact and law considered material by the investigating authorities. All such notices and reports shall be forwarded to the Member or Members the products of which are subject to such determination or undertaking and to other interested parties known to have an interest therein.

12.2.1 A public notice of the imposition of provisional measures shall set forth, or otherwise make available through a separate report, sufficiently detailed explanations for the preliminary determinations on dumping and injury and shall refer to the matters of fact and law which have led to arguments being accepted or rejected. Such a notice or report shall, due regard being paid to the requirement for the protection of confidential information, contain in particular:

(i) the names of the suppliers, or when this is impracticable, the supplying countries involved;

(ii) a description of the product which is sufficient for customs purposes;

(iii) the margins of dumping established and a full explanation of the reasons for the methodology used in the establishment and comparison of the export price and the normal value under Article 2;

(iv) considerations relevant to the injury determination as set out in Article 3;

(v) the main reasons leading to the determination.

12.2.2 A public notice of conclusion or suspension of an investigation in the case of an affirmative determination providing for the imposition of a definitive duty or

the acceptance of a price undertaking shall contain, or otherwise make available through a separate report, all relevant information on the matters of fact and law and reasons which have led to the imposition of final measures or the acceptance of a price undertaking, due regard being paid to the requirement for the protection of confidential information. In particular, the notice or report shall contain the information described in subparagraph 2.1, as well as the reasons for the acceptance or rejection of relevant arguments or claims made by the exporters and importers, and the basis for any decision made under subparagraph 10.2 of Article 6.

12.2.3 A public notice of the termination or suspension of an investigation following the acceptance of an undertaking pursuant to Article 8 shall include, or otherwise make available through a separate report, the non-confidential part of this undertaking.

12.3 The provisions of this Article shall apply *mutatis mutandis* to the initiation and completion of reviews pursuant to Article 11 and to decisions under Article 10 to apply duties retroactively.

Article 13: Judicial Review

Each Member whose national legislation contains provisions on anti-dumping measures shall maintain judicial, arbitral or administrative tribunals or procedures for the purpose, *inter alia*, of the prompt review of administrative actions relating to final determinations and reviews of determinations within the meaning of Article 11. Such tribunals or procedures shall be independent of the authorities responsible for the determination or review in question.

Article 14: Anti-Dumping Action on Behalf of a Third Country

14.1 An application for anti-dumping action on behalf of a third country shall be made by the authorities of the third country requesting action.

14.2 Such an application shall be supported by price information to show that the imports are being dumped and by detailed information to show that the alleged dumping is causing injury to the domestic industry concerned in the third country. The government of the third country shall afford all assistance to the authorities of the importing country to obtain any further information which the latter may require.

14.3 In considering such an application, the authorities of the importing country shall consider the effects of the alleged dumping on the industry concerned as a whole in the third country; that is to say, the injury shall not be assessed in relation only to the effect of the alleged dumping on the industry's exports to the importing country or even on the industry's total exports.

14.4 The decision whether or not to proceed with a case shall rest with the importing country. If the importing country decides that it is prepared to take action, the initiation of the approach to the Council for Trade in Goods seeking its approval for such action shall rest with the importing country.

Article 15: Developing Country Members

It is recognized that special regard must be given by developed country Members to the special situation of developing country Members when considering the application of anti-dumping measures under this Agreement. Possibilities of constructive remedies provided for by this Agreement shall be explored before applying anti-dumping duties where they would affect the essential interests of developing country Members.

PART II

Article 16: Committee on Anti-Dumping Practices

16.1 There is hereby established a Committee on Anti-Dumping Practices (referred to in this Agreement as the "Committee") composed of representatives from each of the Members. The Committee shall elect its own Chairman and shall meet not less than twice a year and otherwise as envisaged by relevant provisions of this Agreement at the request of any Member. The Committee shall carry out responsibilities as assigned to it

under this Agreement or by the Members and it shall afford Members the opportunity of consulting on any matters relating to the operation of the Agreement or the furtherance of its objectives. The WTO Secretariat shall act as the secretariat to the Committee.

16.2 The Committee may set up subsidiary bodies as appropriate.

16.3 In carrying out their functions, the Committee and any subsidiary bodies may consult with and seek information from any source they deem appropriate. However, before the Committee or a subsidiary body seeks such information from a source within the jurisdiction of a Member, it shall inform the Member involved. It shall obtain the consent of the Member and any firm to be consulted.

16.4 Members shall report without delay to the Committee all preliminary or final anti-dumping actions taken. Such reports shall be available in the Secretariat for inspection by other Members.
Members shall also submit, on a semi-annual basis, reports of any anti-dumping actions taken within the preceding six months. The semi-annual reports shall be submitted on an agreed standard form.

16.5 Each Member shall notify the Committee *(a)* which of its authorities are competent to initiate and conduct investigations referred to in Article 5 and *(b)* its domestic procedures governing the initiation and conduct of such investigations.

Article 17: Consultation and Dispute Settlement

17.1 Except as otherwise provided herein, the Dispute Settlement Understanding is applicable to consultations and the settlement of disputes under this Agreement.

17.2 Each Member shall afford sympathetic consideration to, and shall afford adequate opportunity for consultation regarding, representations made by another Member with respect to any matter affecting the operation of this Agreement.

17.3 If any Member considers that any benefit accruing to it, directly or indirectly, under this Agreement is being nullified or impaired, or that the achievement of any objective is being impeded, by another Member or Members, it may, with a view to reaching a mutually satisfactory resolution of the matter, request in writing consultations with the Member or Members in question. Each Member shall afford sympathetic consideration to any request from another Member for consultation.

17.4 If the Member that requested consultations considers that the consultations pursuant to paragraph 3 have failed to achieve a mutually agreed solution, and if final action has been taken by the administering authorities of the importing Member to levy definitive anti-dumping duties or to accept price undertakings, it may refer the matter to the Dispute Settlement Body ("DSB"). When a provisional measure has a significant impact and the Member that requested consultations considers that the measure was taken contrary to the provisions of paragraph 1 of Article 7, that Member may also refer such matter to the DSB.

17.5 The DSB shall, at the request of the complaining party, establish a panel to examine the matter based upon:

(i) a written statement of the Member making the request indicating how a benefit accruing to it, directly or indirectly, under this Agreement has been nullified or impaired, or that the achieving of the objectives of the Agreement is being impeded, and

(ii) the facts made available in conformity with appropriate domestic procedures to the authorities of the importing Member.

17.6 In examining the matter referred to in paragraph 5:

(i) in its assessment of the facts of the matter, the panel shall determine whether the authorities' establishment of the facts was proper and whether their evaluation of those facts was unbiased and objective. If the establishment of the facts was proper and the evaluation was unbiased and objective, even though the panel might have reached a different conclusion, the evaluation shall not be overturned;

(ii) the panel shall interpret the relevant provisions of the Agreement in accordance with customary rules of interpretation of public international law. Where the panel finds that a relevant provision of the Agreement admits of more than one permissible interpretation, the panel shall find the authorities' measure to be in conformity with the Agreement if it rests upon one of those permissible interpretations.

17.7 Confidential information provided to the panel shall not be disclosed without formal authorization from the person, body or authority providing such information. Where such information is requested from the panel but release of such information by the panel is not authorized, a non-confidential summary of the information, authorized by the person, body or authority providing the information, shall be provided.

PART III

Article 18: Final Provisions

18.1 No specific action against dumping of exports from another Member can be taken except in accordance with the provisions of GATT 1994, as interpreted by this Agreement.[23]

18.2 Reservations may not be entered in respect of any of the provisions of this Agreement without the consent of the other Members.

18.3 Subject to subparagraphs 3.1 and 3.2, the provisions of this Agreement shall apply to investigations, and reviews of existing measures, initiated pursuant to applications which have been made on or after the date of entry into force for a Member of the WTO Agreement.

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[23] This is not intended to preclude action under other relevant provisions of GATT 1994, as appropriate.

18.3.1 With respect to the calculation of margins of dumping in refund procedures under paragraph 3 of Article 9, the rules used in the most recent determination or review of dumping shall apply.

18.3.2 For the purposes of paragraph 3 of Article 11, existing anti-dumping measures shall be deemed to be imposed on a date not later than the date of entry into force for a Member of the WTO Agreement, except in cases in which the domestic legislation of a Member in force on that date already included a clause of the type provided for in that paragraph.

18.4 Each Member shall take all necessary steps, of a general or particular character, to ensure, not later than the date of entry into force of the WTO Agreement for it, the conformity of its laws, regulations and administrative procedures with the provisions of this Agreement as they may apply for the Member in question.

18.5 Each Member shall inform the Committee of any changes in its laws and regulations relevant to this Agreement and in the administration of such laws and regulations.

18.6 The Committee shall review annually the implementation and operation of this Agreement taking into account the objectives thereof. The Committee shall inform annually the Council for Trade in Goods of developments during the period covered by such reviews.

18.7 The Annexes to this Agreement constitute an integral part thereof.

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