

## **DRAFT - Report to Plurilateral Meeting on March 24, 2011**

### **Contact Group: SUNSET REVIEWS**

1. The Group is composed of delegates from Australia, Brazil, Canada, China, EU, Japan and the United States.
2. The Group met internally on February 22<sup>nd</sup> and 24<sup>th</sup>, as well as on March 14<sup>th</sup>, 17<sup>th</sup> and 18<sup>th</sup>, to discuss various elements relating to sunset reviews, as elaborated below.
3. The Group also met with the following delegations on March 15th: Friends of Anti-dumping Negotiations (with participation by Costa Rica; Colombia; Hong Kong, China; Japan; Korea; Norway; Chinese Taipei and Thailand), as well as the delegations of New Zealand and Turkey. A number of other Members also submitted written submissions to the Group, which are annexed to this report.
4. In general, the range of views expressed could be characterized as follows:
  - Anti-dumping measures should automatically expire after a certain period of time, either because they are intended to be temporary in nature or because there is skepticism about the objectivity of sunset reviews.
  - Review procedures can be strengthened and/or clarified to ensure that measures are only extended where there is a demonstrable likelihood of continued or resumed dumping and related injury.
  - No changes are required to the Agreement, which provides that measures may remain in force where there is evidence that the expiry of the duty would be likely to lead to the continuation or recurrence of dumping and injury.
5. The Group discussed the issue of automatic termination. Delegations maintained opposing views, with some Members seeking automatic terminations with a maximum duration of 5, 8 or 10 years. Others believe that measures should be extended where warranted.
6. Apart from the unresolved questions of automatic termination and whether changes to the status quo in the Agreement are warranted, the Group entered into a technical discussion on issues relating to strengthening and/or clarifying the guidance relating to sunset reviews. The following elements were considered, although this does not purport to be an exhaustive list:
  - a) Timing of Review & Reference Point for Extension
    - the Group generally agreed that the timing of reviews could be clarified
    - some Members thought that the 2007 Chair's text was a good basis, with reviews initiated not later than 6 months before and ending not later than 6 months after the five-year expiration date of measures.
    - other Members thought that a review should be completed before the expiration date of the measure
    - some Members noted that more relevant consideration is how long a review might take, not necessarily when it should begin; it was observed that the focus should be on quality, rather than speed, in conducting reviews

- the Group examined the question of whether the reference point for extension should be the expiration date of the measures or the conclusion date of a review. Factors that were discussed included whether the latter could: provide a disincentive for the timely completion of reviews; make notification requirements more complicated; or, create uncertainty for parties as to the status of measures. Some Members indicated that refunds should be required if a review carries on beyond the end of the five-year period and measures are subsequently terminated.

#### b) Criteria for Likelihood Analysis

- some Members expressed skepticism that review standards could be such that likelihood could be established fairly and objectively. Others argued that providing additional guidance as to the factors to be examined in conducting such reviews could improve the threshold for such determinations.

- the Group considered whether reviews should be conducted using "fresh" information. There was debate about what this would mean in practice, taking account of the impact of the measure, and whether there should be prescription as to the period upon which likelihood examinations should be based; others questioned what inferences can and/or should be drawn from non-cooperation during a review or where there had been a lack of imports during the review period

- the Group also touched on the fact that dumping and injury should both be considered in conducting reviews; some Members thought that causal link should also be explicitly considered, while others consider this aspect to be implicit in a likelihood determination

- the Group discussed the nature and extent of differences between the various likelihood factors and analytical elements that have been tabled in previous papers; some Members thought an analytical framework along these lines could provide illustrative guidance in conducting reviews, while others thought there should be a greater degree of prescription in such an approach. Certain Members suggested that factors related to continuation should be distinguished from those related to recurrence

#### c) Initiation Procedures

- the Group discussed the issue of ex-officio initiations and observed that there are different ways authorities approach the matter of notifying domestic producers of the opportunity for and subsequent initiation of a review

- some Members observed that it would be onerous to expect domestic industry to present a fully substantiated case and for authorities to conduct a full standing analysis before a review could be initiated.

- others suggested that an independent standing test would not be necessary because a lack of domestic industry support would become apparent in conducting a likelihood of injury inquiry

- others indicated that standing requirements for sunset reviews should not be different from those applying in the original investigation.

7. In meetings held with other delegations and submissions made in writing, the Group was presented with comments covering the following points:

- the Agreement should prevent automatic extension of measures based on inherently subjective likelihood determinations
- anti-dumping measures should not remain in place for an inordinately long period of time, and should automatically expire after a certain period (e.g. 5, 8, or 10 years)
- review procedures should be tightened to ensure fairness and objectivity; an adequate standard of review may be difficult to achieve
- after an expiry, there should be no restrictions on imports for at least 1 year before a new investigation can be requested
- reviews can be made more robust and thorough through the introduction of an illustrative list of factors to consider
- reviews should be based on positive evidence
- factors put forward in papers to date are a good basis for discussion
- could clarify what elements relate to continuation and which to recurrence
- likelihood analysis similar in nature to other existing provisions (e.g. threat of injury)
- domestic industry should have to demonstrate an interest before review can be conducted
- both dumping and injury should be looked at in a review
- illustrative guidance would assist developing countries and new users in conducting sunset reviews
- Members should be allowed to extend measures, where warranted, to counteract injurious dumping over time
- procedural guarantees should apply to both original investigations and reviews
- ex-officio initiations of sunset reviews should be allowed in some circumstances