

# WORLD TRADE ORGANIZATION

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**G/ADP/AHG/W/101**

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**Committee on Anti-Dumping Practices  
Ad Hoc Group on Implementation**

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## **PRACTICAL ISSUES AND EXPERIENCE IN PROVIDING OPPORTUNITIES FOR INDUSTRIAL USERS AND CONSUMER ORGANIZATIONS TO PROVIDE INFORMATION UNDER ARTICLE 6.12**

### Paper from Israel

The following communication, dated 23 October 2000, has been received from the Permanent Mission of Israel.

In order to shed further light on this topic, we would like to note that at the last meeting in May 2000 a comment was made concerning the correlation between the public interest issue and the "lesser duty rule".

The Israeli Authorities believe that there is a connection between the "lesser duty rule" as expressed in Article 9.1 and the public interest issue which is echoed in Article 6.12 of the Agreement. (The incorporation of a public interest clause was not agreed upon in the legal text of the Agreement.) The public interest standard recognizes that, on the one hand, measures are required in order to protect the domestic industry in the face of injurious dumping, yet on the other hand, there may be other interests at stake when considering the imposition of a duty, i.e. consumers and downstream users, who may be harmed if measures are imposed in full or in part. The "lesser duty rule" as stated in Article 9.1 of the Agreement recognizes that it would be desirable for the amount of the duty to be less than the full margin of dumping "if such lesser duty would be adequate to remove the injury to the domestic industry". The "lesser duty rule" caps the anti-dumping duty at the level which is required to remedy the injury caused by the dumping and not beyond such a level. The beneficiary of the rule are those parties who have a significant opposing interest to the measure, including the consumers and downstream users. The rule comes to give a tangible expression to those parties who are affected negatively by the measure as they may be forced to absorb the price increases caused by the duty. Nonetheless, the rule enables the imposition of a measure that ensures the domestic industry its duly warranted protection.

The rule essentially prevents the domestic industry from being "over protected" or overly compensated and reflects an attempt to compromise between conflicting interests.

To sum up this point, the public interest standard and the "lesser duty rule", both come to ensure that a better balance be achieved between the domestic producer's interests on the one hand and consumers and downstream users on the other hand.

As we have learned from previous papers submitted to this Group concerning the "lesser duty rule", the Members who employ the rule use varying methodologies. (See for example

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G/ADP/AHG/W/12 of Venezuela, G/ADP/AHG/W/19 of Brazil, G/ADP/AHG/W/21 of the European Communities, G/ADP/AHG/W/23 of Japan, G/ADP/AHG/W/24 of Israel, G/ADP/AHG/W/29 of Australia, and G/ADP/AHG/W/34 of Colombia.)

That differing methodologies are used in order to ascertain the amount of the "lesser duty" and that there is not one consistent calculation used amongst the Members, is not a reason to negate such an approach. It has been argued that because of the varying methodologies used, there is a sense of non-transparency when employing the "lesser duty rule", but considering the positive goal sought by the "lesser duty rule", it should not be criticized but rather a consensus should be worked out as to the most effective methodologies for determining the "lesser duty". Such an exercise would seem helpful in refuting those who view the anti-dumping regime as an overly protectionist tool.

We are aware that this suggestion goes beyond the topic we had originally proposed and may need to be brought up as a separate topic in the future.

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