

**INDEPENDENT GROUP OF EXPERTS FOR THE ENFORCEMENT
OF INITIATION STANDARDS**

Submission from the European Communities

The following communication, dated 19 April 2006, is being circulated at the request of the Delegation of the European Commission.

The submitting delegation has requested that this paper, which was submitted to the Rules Negotiation Group as an informal document (JOB(06)/90) also be circulated as a formal document.

Background

In March 2003, the EC submitted a reflection paper on a swift control mechanism to address unjustified initiations (TN/RL/W/67), given that current dispute settlement procedures do not offer an appropriate reply to this type of breaches. This submission put forward three possible solutions to solve disputes with regard to initiations: (1) fast track initiation panels; (2) arbitration; or (3) a standing advisory body or permanent group of experts.

Discussions have shown that Members recognise unjustified initiations to be a problem that needs to be addressed. However, the two first solutions were generally considered as difficult to apply. It was argued that fast track initiation panels would create an imbalance in panel procedures for AD with regard to other areas. Arbitration would also be impractical as the Member initiating the investigation could, by definition, refuse it.

Nevertheless, the possibility of appointing an independent group of experts to examine the evidence which led an authority to initiate, and release an opinion with regard to its appropriateness, was considered by many as a workable option.

Proposed solution

- We believe that it is worth pursuing the option of the creation of a group of independent experts, and to examine in particular, the way such a group would work in practice. Thus, we are considering proposing that:

- Any Member subject to an investigation which considers that the evidence contained in the complaint does not fulfil the requirements of Articles 5.1, and 5.2 of the ADA or that the authorities of the importing country have not acted in accordance with Articles 5.3, 5.4, 5.6 and 5.8 of the ADA, could call upon the group of experts in order to obtain an independent assessment of the facts.

- The Member carrying out the investigation would be required to provide the necessary assistance, in particular by providing to the group the facts on which the decision to initiate was based. It could be discussed whether third parties should be allowed to participate in this process.
- The group of experts should be composed of highly experienced officials in AD.
- There should be only one hearing of the parties before the group of experts, in order to limit the costs of such a process, and the opinion would be issued within a specified deadline. Members could discuss the appropriateness of specifying a fixed deadline for the group to release its opinion.
- Although the opinion issued would not be binding (i.e. the investigating authority could proceed with the investigation or decide to terminate it and tackle the problems found before initiating a new investigation), the opinion of the group of experts could be presented as additional evidence before DSU proceedings. Even if not legally binding, successive negative opinions on a Member's initiation standards would highlight unsustainable systemic breaches of the ADA.

Legal text

The EC propose the following text:

Article x

Group of Independent Experts

x.1 The Committee on Anti-dumping Practices shall establish a group of experts composed of five investigating authorities' officials from different Members, highly qualified in anti-dumping matters. These experts shall serve in their individual capacities and not as government representatives, nor as representatives of any organization. Members shall therefore not give them instructions, nor seek to influence them as individuals with regard to matters before the group of experts. The composition of the group shall be established following a proposal of the Secretariat. The Secretariat shall act as the secretariat to the group of independent experts.

x.2 If a Member considers that the evidence on the basis of which an investigation has been initiated against its exports does not fulfil the requirements of paragraphs 1 and 2 of Article 5, or that the investigating authorities have not acted in accordance with paragraphs 3, 4, 6 and 8 of the same Article, such Member may request the opinion of the group of independent experts. The request shall be made in writing and shall clearly identify the specific issues and alleged violations.

x.3 The authorities of the Member which initiated such investigation, and those of the exporting Member, shall co-operate to the best of their ability with the work of such group.

x.4 Any information which is confidential, within the meaning of paragraph 5 of Article 6, shall be treated as such by the group of independent experts and shall not be disclosed, even after the group or any of its elements is discharged of its functions.

x.5 The group of independent experts shall hold one hearing with the parties and issue its opinion within a specified deadline [or within Z days/months]. Such opinion may be presented before a panel established according to Article 17 of the ADA, although the panel may arrive at a different assessment.
