

TRANSPARENCY OF ANTI-DUMPING ACTIVITY

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)/91) also be circulated as a formal document.

1. The problem

Over the last decade, there has been an upsurge in the number of Members which resort to the anti-dumping (AD) instrument. Often, such increase in AD activity is not accompanied by sufficient transparency with regard to the procedures and practices followed.

This has caused situations where exporters are faced with uncertainty as to what they can expect during an anti-dumping proceeding (e.g. in terms of information required, verification visits, or language to be used) and how the authority of an importing country will normally react to certain situations (e.g. absence of domestic sales, or method of dumping margin calculation).

Often, such uncertainty has caused exporters not to co-operate in anti-dumping proceedings. This has an unfortunate side-effect since, in the absence of co-operation, no party can highlight authorities' possible breaches of the ADA Agreement. As a result, Members may apply lower standards when conducting AD investigations simply because their activity is not monitored. This situation jeopardises the overall credibility of the AD instrument. In addition, it reduces the value of negotiating increased disciplines since they are likely to be treated with the same disregard.

Although it could be argued that such shortcomings could be addressed through the Dispute Settlement Mechanism (DSM), in practice this may be difficult. Resort to DSM consumes a lot of resources, and since an increasing number of anti-dumping cases and possible violations of current rules are between developing countries, this "solution of last resort" is often not followed.

2. Proposed solution

The EC believe that there are merits in streamlining the activity of the Committee on Anti-dumping Practices with regard to the monitoring of Members' actual AD policies and practices. In particular, it seems appropriate to establish a factual review system of each Member's AD practices. Such review, made on the basis of a factual report under the responsibility of an independent entity as the WTO Secretariat, would include a description of actual policies and practices and organizational aspects of the Member subject to review.

Therefore, the EC propose:

- The setting-up of a review of anti-dumping activity, aiming at enhancing transparency of Members' actual anti-dumping policy and practice with a view to increasing applied standards.
- This review would be conducted by the Committee on Anti-dumping Practices, on the basis of a report submitted by the Member under review and would lead to a detailed report prepared by the WTO Secretariat (Rules Division).
- In preparing its report, the Secretariat would seek the cooperation of the Member under review and would produce an assessment of the facts and statistics presented.
- Frequency of review would depend on the Member's share of world initiations of anti-dumping investigations, for example, every three years for the most active Members, six years for the next Members. Less active Members could be reviewed each eight years. It could be discussed whether to limit the review to Members which have a minimum number of initiations.
- The new system should operate in sufficient detail. By way of illustration, the EC believe that such review should address, in detail, issues such as: statistics on proceedings carried out; determination of export price and normal value (e.g. use of third country sales vs constructed normal value); details of comparison methods (adjustments); calculation of dumping margin (methodologies under Article 2.4.2); details and methodology of injury calculations (price undercutting, underselling, depression or suppression); application of a lesser duty; application of public interest considerations; level of co-operation; use of facts available; procedural requirements; treatment of confidential information; practice with regard to on-spot verifications; duty collection system (prospective vs retrospective); acceptance of undertakings; review investigations (under Articles 9 and 11); anti-circumvention procedures etc.

3. Proposed text

The EC propose the following text:

"16.6 The Committee shall review each Members' anti-dumping practices as laid down in annex x.

Annex x

Review of Anti-Dumping Activity

Objectives

The purpose of the Review of Anti-Dumping Activity is to contribute to the transparency of the Members' actual practices in applying the rules under the Anti-dumping Agreement. Such review enables the regular monitoring of individual Members' anti-dumping policies and practices.

Procedures

(i) The Committee on Anti-Dumping Practices (referred to herein as the "ADC") is responsible for the carrying out of the anti-dumping review.

(ii) The anti-dumping policies and practices of all Members shall be subject to a periodic review. The number of investigations initiated by a Member as compared to the total number of investigations initiated by all Members, in a recent representative period, will be the determining factor in deciding on the order and frequency of reviews. The first [*number to be specified* (e.g. 6)] investigating authorities so identified shall be subject to a review every [*number to be specified* (e.g. 3)] years. The next [*number to be specified* (e.g. 8)] shall be reviewed every [*number to be specified* (e.g. 6)] years. Other Members shall be reviewed every [*number to be specified* (e.g. 8)] years, except that a longer period may be fixed for least-developed country Members.

(iii) The ADC will carry-out the review on the basis of the following documentation:

- (a) a factual report supplied by the Member under review;
- (b) a factual report, to be drawn up by the Secretariat on its own responsibility, based on the information available to it and that provided by the Member under review. The Secretariat should seek clarification from such Member regarding its anti-dumping policies and practices on the basis of a checklist reflecting the issues listed under (v).

(iv) The report by the Member under review and by the Secretariat, together with the minutes of the respective meeting of the ADC, shall be circulated to Members.

(v) The review should cover, as appropriate, a detailed examination of the Member's practices covering *inter alia* issues such as:

- statistics on proceedings carried-out;
- determination of export price and normal value (e.g. use of third country sales vs constructed normal value)
- details of comparison methods (adjustments)
- calculation of dumping margin (methodologies under Article 2.4.2)
- details and methodology of injury calculations (price undercutting, underselling, depression or suppression)
- application of a lesser duty
- application of public interest considerations
- level of co-operation
- use of facts available
- procedural requirements
- treatment of confidential information
- practice with regard to on-spot verifications
- duty collection system (prospective vs retrospective)
- acceptance of undertakings
- review investigations (under Articles 9 and 11)
- anti-circumvention procedures

Reporting

The reports shall describe the anti-dumping policies and practices pursued by the Member under review, based on an agreed format to be decided upon by the ADC, and including the items referred to under (v) above. The Secretariat shall make available technical assistance on request to developing country Members, and in particular to the least-developed country Members. Information contained in reports should, to the greatest extent possible, be coordinated with notifications made under paragraphs 4 and 5 of Article 16 of the Anti-Dumping Agreement. ”
