

**SPECIAL AND DIFFERENTIAL TREATMENT AND
TECHNICAL ASSISTANCE IN TRADE REMEDIES**

Submission by the ACP and African Groups

The following communication, dated 22 February 2008, is being circulated at the request of the ACP and African Groups.

1. Introduction

The ACP and African Groups submit the following proposal regarding Special and Differential Treatment and Technical Assistance for inclusion in the Chairman's revised text on the Anti-dumping Agreement.

This submission builds on the proposal tabled by the Delegation of Kenya on 27 June 2006 contained in TN/RL/GEN/143. The Proposal includes suggested texts for the modification of Article 15 of the Anti-dumping Agreement with the aim of ensuring that developing countries are able to take full advantage of the provision, particularly, as it relates to initiation and investigation of dumping under the Agreement and the application of anti-dumping measures against developing country Members.

2. Revised Legal Text of Article 15 suggested for inclusion in the ADP Agreement

Article 15: Special and Differential Treatment to Developing Country Members

"It is recognised that special regard must be given by developed country members to the special situations of developing country members when considering the application of anti-dumping measures under this Agreement. ~~Possibilities of Constructive remedies provided for in this Agreement shall be explored before applying anti-dumping duties measures where they would affect the essential interests of developing country Members. In this regard, developed country Members shall invite consultations, within a reasonable period of time, before the initiation of an investigation against goods originating in or exported from a developing country Member. Such consultations shall explore constructive remedies, with a view to arriving at a mutually agreed upon solution short of investigation or imposition of measures by the developed country against the developing country Member.~~"

Initiation of Investigation

15.1 Members further recognise that "special circumstances" referred to in Article 5.6, which permit authorities to initiate investigations without having received a written application by or on behalf of the domestic industry for the initiation of such investigation, exist in developing countries.

15.1.1 Due to these "special circumstances" prevailing in developing countries, the Governments of these countries may play an active role in:

- Assisting the domestic industry which is alleging that increased dumped imports are causing injury, in collecting information, *inter alia*, on volume of imports and on prices, both export prices and prices prevailing on the domestic market of the exporter for the like product;
- Assisting such industries in collecting evidence required by Article 5.4 on the degree of support or opposition to the application expressed by domestic producers in order to establish that the application has been made by or on behalf of the industry;
- Requesting the investigating authorities to initiate investigations where there are reasonable grounds to believe, on the basis of the information collected, that there is sufficient evidence to suggest that increased imports are causing injury to the domestic industry and the industry has no technical capacity to apply for investigations.

15.1.2 In the collection of evidence referred to in 15.1.1 above, the governments could exercise surveillance of trends in imports and the prices of products that are alleged to be injured by dumped products. Such surveillance could be exercised by:

- Requiring the customs administration to provide on transaction-by transaction basis, data on volume of imports and the prices of products put under surveillance;
- Adopting systems of automatic licensing of imports of such products.

15.1.3 Where a licensing system is adopted for the surveillance of the imports, the importers shall be required to submit in their application for licences, information on quantities to be imported, the import price and the price at which the like product is being sold in the domestic market of the exporting country.

15.1.4 Such licences shall be issued automatically and shall not be used for restrictive purposes. The provisions of the WTO Agreement on licensing procedures, which require that automatic licences should be issued within a period of 10 days, shall apply to such licensing systems.

15.1.5 The information collected under the surveillance mechanism shall be published and could be used as evidence in support of applications to the investigating authorities for initiation of investigations:

- By the affected domestic industry; or
- By governments, where application for initiation of investigations is made by them.

15.1.6 The governments of countries which use the services of Preshipment Inspection Companies may use the services of these companies to obtain information on prices, of the products put under surveillance in the domestic market of the exporting country.

Application of Anti-dumping Measures

15.2 Constructive remedies shall be explored. Such constructive remedies shall take the form of, *inter alia*:

- Application of lesser anti-dumping duty than the margin of dumping, if such lesser duty would be adequate to remove the injury to the domestic industry;

- Non-application, including suspension or termination, of provisional measures/or anti-dumping duties where any exporter from a developing country Member undertakes to review its prices or to cease exports to the area in question at dumped prices;
- Acceptance of price undertakings from any exporter from a developing country Member provided that the undertaking is sufficient to eliminate the margin of injury;
- Longer timeframes for receiving answers to questionnaires from exporters and producers of developing country Members.

Technical Assistance

15.3 Technical Assistance to developing country Members shall be provided on request by Members, and by the WTO Secretariat within its competence to enhance the capacities of these Member countries in the application of anti-dumping measures in accordance with the rules of the Agreement. The areas in which such assistance would be needed include among others;

- Establishment and strengthening of national legal and institutional frameworks for the application of anti-dumping measures to countries which have not been able to establish such framework and for training of personnel in undertaking investigations according to the procedures prescribed by the Agreement;
- Establishment and strengthening of regional investigating authority for investigations of complaints on dumping in countries belonging to a regional economic grouping;
- Building and enhancing the technical capacities of the officials of the investigating authorities for undertaking investigations;
- Establishment of mechanisms for surveillance of imports of products that are alleged to be causing injury to domestic industry with a view to assisting them in collecting relevant information on trends in imports and their prices;
- Training of lawyers, accountants and other professionals in the application of anti-dumping measures.

Review of the Operation of Article 15

15.4 The provisions of Article 15 shall be reviewed by the Committee on Anti-dumping Practices after three years with a view to examining whether any modifications and improvements would be necessary to make it responsive to the needs of developing countries.
