

**PROPOSED PROVISION OF ANTI-CIRCUMVENTION**

Statement of China; Hong Kong, China; Pakistan

The Delegations of China; Hong Kong, China; Pakistan jointly present this Statement on 22 January 2008 concerning the issue of Anti-circumvention in the Chair's first consolidated text in Anti-dumping Agreement. This is without prejudice to the views the Delegations may have regarding other parts of the text.

**Discussion**

1. The issue of anti-circumvention has always been one of the most contentious issues in the Uruguay Round and was not incorporated in the final result of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* (the Anti-dumping Agreement). It remains contentious and controversial until the Doha Round.
2. Since the kick-off of the Rules Negotiation under this Round, quite a few discussions and negotiations on circumvention and anti-circumvention have been held. So far big discrepancies still exist and convergence has not been reached among Members participating in these discussions and negotiations. Given the complexity of the issue and, in particular, integration into the existing Anti-dumping Agreement, the issue of anti-circumvention is currently still in great need of further discussion and clarification among Members.
3. The Chair's text fails in a number of accounts. First of all, it does not give a precise and clear definition of circumvention. Secondly, it only enumerates some circumstances that may cause circumvention to anti-dumping measures. Thirdly, it lays down some conditions which may or may not constitute circumvention. Given the gaps in the basic text, the proposed Article 9bis is unable to even constitute a precise and clear definition of circumvention. And because of this lack of a definition, further discussion on the issue becomes groundless and of little use.
4. Furthermore, the lack of a precise and clear definition of circumvention leaves a large amount of discretion for the investigating authorities to make anti-circumvention investigations and anti-dumping measures. They can easily be extended to the products which are not within the scope of the product under consideration, and to the countries (regions) that are not the origin of the product under consideration. In respect of the latter, the rights of the third parties (and Members) not involving in the original investigations may be seriously undermined. That will inevitably result in the abuse of the Anti-dumping Agreement, and is completely opposite to the aims of the DDA, whose aim is "clarifying rules and improving disciplines" of rules negotiations (especially, the Anti-dumping Agreement), not further weakening and obscuring.

5. The proposed provision of anti-circumvention in the text is contrary to the spirit and idea of the current anti-dumping rules, that is, measures should only be imposed if positive determinations on dumping, injury and causation are made. The provision may also cause conflicts with other relevant Agreements under the framework of WTO, such as the *Agreement on Rules of Origin*. The parallel application of such rules under different regimes within the existing WTO framework will be contradictory to each other, thus undermining the credibility and uniformity of the multilateral trade system.

6. The proposed anti-circumvention provision will result in more uncertainty and unpredictability to the environment of business community. It will pose a negative impact on the international investment, particularly to the Developing Members, who are in advantage of labour-intensive industries. Finally, the newly incorporated anti-circumvention provision will negatively influence the normal trade flow and its legitimate adjustments in response to changes in market conditions.

### **Conclusion**

7. Based upon the above discussions, we think it is inappropriate and premature for the anti-circumvention provision to be incorporated in the current Chair's Text. Therefore, we call upon the Chair to take serious account of concerns expressed by many Members on this issue during the meeting on 12-14 December 2007, and strongly recommend that the anti-circumvention provision be removed from the Chair's Text to reflect the spirit of DDA.

---