

SPECIAL AND DIFFERENTIAL TREATMENT PROVISIONS

African Group Responses to Questions Raised by Switzerland on the Agreement on Subsidies and Countervailing Measures and the Agreement on Implementation of Article VI of the GATT 1994

The following communication has been received from the African Group on 6 November 2002.

I. QUESTION REGARDING THE PROPOSAL ON ARTICLE 15 OF THE ANTI-DUMPING AGREEMENT CONTAINED IN TN/CTD/W/3/REV.2, PARAGRAPH 61(b)(i).

Question

1. Switzerland would appreciate further precision on what the proponents refer to when speaking of "mutually agreed solutions (...) other than anti-dumping duties, price undertakings, or any action prohibited by the Agreement on Safeguards".

Answer

The mutually agreed solutions to be sought in the framework of Article 15 of the Agreement on Dumping should primarily be based on the imperative of improving living standards in developing and least-developed country Members through increasing their share in world trade rather than resorting to measures that would have the effect of restricting it.

The proposal in paragraph 61(b)(i) on mutually agreed solutions should be read together with the proposal in paragraph 61(a), as indicated. The result of reading these proposals together should be that mutually agreed solutions should explore alternatives, on a case-by-case basis, that do not result in restriction of market access for developing and least-developed country exports. This over a period of time should lead to practice that can be followed in seeking constructive remedies.

II. QUESTION REGARDING THE PROPOSAL ON ARTICLE 27.9 OF THE SUBSIDIES AGREEMENT CONTAINED IN TN/CTD/W/3/REV.2, PARAGRAPH 72.

Question

2. Switzerland has difficulty in understanding the implications of this proposal and would appreciate further clarification as to its rationale and scope.

Answer

The proposal is that to determine whether there has been nullification or impairment, evidence is necessary to prove the displacement or impediment of imports into the subsidising developing country Member as a result of the actionable subsidy.

As this proposal is very closely modelled along the language and idea in Article 27.9, questions about its implications as well as the rationale and scope, should go to the root of the provisions themselves rather than the proposal. The proposal would have no implications beyond those in the provision.

It would seem to be clear, however, that this provision is meant to accord developing country Members some specific form of special and differential treatment, by limiting the criteria for determining nullification or impairment in cases where developing country Members give actionable subsidies. The rationale is to accord special and differential treatment to developing country Members, and the scope is that it would be applicable to actionable subsidies given by developing country Members where nullification and impairment is alleged.
