

**IMPLEMENTATION-RELATED ISSUES**

Paper by Brazil

The following communication, dated 26 April 2002, has been received from the Permanent Mission of Brazil.

Paragraph 12 of the Ministerial Declaration recognized the “utmost importance” of the implementation-related issues and concerns by stressing the determination of Members to “find appropriate solutions” to those issues. It also determines that the issues be addressed under the specific negotiating mandates of the Declaration.

We present in this paper some of the implementation tires related to the rules area that refer to provisions we seek to address, with a brief description of their “rationale”. This document should be regarded as a first contribution to the deliberations of the Negotiating Group on Rules concerning the anti-dumping and subsidies implementation issues. Further contributions relating to other issues and/or elaboration of those indicated in this paper will be presented for future sessions of the Negotiating Group.

Tiret 42 - When investigating dumping of imports from a developing country, the use of the “lesser duty” rule shall be made mandatory

The purpose of an anti-dumping measure is to remove injury caused by dumped imports, the logical consequence of such a purpose being the convenience of a lesser duty, if the latter is adequate to remove injury. Nevertheless, some Members calculate the anti-dumping duty without assessing if a lower duty could be sufficient to offset injury. In these cases, the objective of an anti-dumping duty may be gravely distorted.

For developing countries, this situation has even more serious consequences. As the trade restrictive effects of an anti-dumping duty are enhanced when the “lesser duty” rule is not applied, developing countries face an additional burden.

In order to reduce these trade restrictive effects, the use of the “lesser duty” rule shall be made mandatory.

Tiret 44 - Provisions of the AD Agreement should be improved, with a view to prevent the imposition of arbitrary or primarily protectionist measures. The provisions to be revisited include, inter alia, (i) the criteria, methodology, and procedures of the reviews specified in the Agreement (expeditious review for new exporters, final review, reviews upon request); (ii) the definition of the product motivating the investigation; (iii) the determination of the margin of dumping; (iv) the imposition and collection of duties; and the (v) the “cumulation” clauses

As for tire 44, we provide separate comments for each of the elements contained therein.

### Reviews

Several aspects of review procedures could be addressed:

The absence of clear guidelines for the expeditious review of new exporters has made this provision very difficult to apply and has created difficulties for requests by the exporters that could benefit therefrom. This situation is especially prejudicial to developing countries, since potential exporters will hesitate to explore trade opportunities in a market where access is hampered by an anti-dumping duty and no assurances are provided for in the Agreement that the review will adequately consider the exporters' views and needs.

As for final reviews and reviews upon request, the absence of clear criteria and procedures for the initiation of such reviews and for the determinations resulting therefrom allow for the maintenance of the duty even if it is no longer warranted.

The frequency with which reviews are conducted and concluded with the renewal of duties does signal the importance of tackling this issue and arriving at solutions that are fully consistent with what Brazil regards as the original intention of the drafters of the AD Agreement in this particular matter: to avoid the unwarranted permanence of trade restrictions under the disguise of AD duties.

### Definition of Product Under Investigation

The AD Agreement does not contain any provision related to the definition of product under investigation. This allows the investigating authorities to adopt a broad definition of the product under investigation that could lead to arbitrary positive determinations of dumping and injury.

Given the implications of this particular issue for the entire investigation and, therefore, the very appropriateness in the use of trade remedies, it is of utmost importance that this issue be properly dealt with by the Group.

### Determination of the Margin of Dumping

The calculation of the margin of dumping involves many steps: determination of the normal value, of the export price, adjustments to be effected and the calculation of the margin, itself.

Several key aspects of those steps need to be clarified and improved, such as the use of product categories and tests for sales in the ordinary course of trade, with a view to guaranteeing the proper utilization of trade remedies.

### Imposition and Collection of Duties

The AD Agreement determines that anti-dumping duties shall not be applied when the margin of dumping is "*de minimis*". However, this does not prevent Member countries from imposing and collecting duties when a "*de minimis*" margin is determined for the collection of the duty, since there is no provision in the Agreement that explicitly rules out this possibility.

This situation should not be overlooked when Member countries are faced with a unique opportunity to clarify and improve such relevant aspects of the Anti-dumping Agreement.

“Cumulation” Clause

The AD Agreement recognizes the general principle of cumulatively assessing injury, if the authorities determine, among other conditions, that a cumulative assessment of the effects of imports is appropriate in light of the conditions of competition between the imported products and the conditions of competition between the imported products and the like domestic product.

Nevertheless, the Agreement does not establish what factors shall be analyzed in that determination. As a result, inappropriate determinations related to the “conditions of competition” can be made, possibly leading to a pattern of AD application that is more restrictive and discretionary than it was intended to be by the drafters of the Agreement

This possibility should motivate the Group to give serious consideration to the matter.

Tiret 81 - The language of Annex I of the SCM Agreement, particularly item (k), shall be reviewed to permit developing countries to provide competitive export financing vis-à-vis the conditions found in the international market or those offered by the credit agencies of developed countries (controlled by and/or acting under the authority of the governments)

The topic export credits was discussed in a separate document submitted to the Group.

---