WORLD TRADE ORGANIZATION

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SUBMISSION FROM THE EUROPEAN COMMUNITIES CONCERNING THE AGREEMENT ON IMPLEMENTATION OF ARTICLE VI OF GATT 1994 (ANTI-DUMPING AGREEMENT)

The following communication, dated 5 July 2002, has been received from the Permanent Delegation of the European Commission.

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1. INTRODUCTION

1.1 The mandate

In Doha, Ministers decided that the Agreement on implementation of Article VI of GATT 1994 (the Anti-Dumping Agreement, hereinafter referred to as "the ADA") was in need of reform. Consequently, the 4th Ministerial Conference decided that:

> "28. In the light of experience and of the increasing application of these instruments by Members, we agree to negotiations aimed at clarifying and improving disciplines under the Agreement[s] on Implementation of Article VI of the GATT 1994 […], while preserving the basic concepts, principles and effectiveness of these Agreements and their instruments and objectives, and taking into account the needs of developing and least-developed participants. In the initial phase of the negotiations, participants will indicate the provisions, including disciplines on trade distorting practices, that they seek to clarify and improve in the subsequent phase. […]".

By this first paper, the EC intends to share its experience since the entry into force of the ADA in 1995. The EC hopes that this analysis can help to identify possible areas and subjects for negotiations. This paper is without prejudice to further submissions that may be put forward in the course of the negotiations.

1.2 Experience since 1995

The current ADA, negotiated in the Uruguay Round, represents a significant step forward as compared to the Tokyo Round Anti-Dumping Agreement. Overall, and in conjunction with the Dispute Settlement System, it has contributed considerably to clarifying and improving disciplines.

However, this should not detract from the fact that times have changed in the world of anti-dumping since the conclusion of the Uruguay Round:

- An ever increasing number of WTO Members, both developed and developing countries, have been resorting to the ADA: on the basis of recent WTO statistics, it can be concluded that at least 65 countries have incorporated anti-dumping provisions into their national law. The divide, which existed at the times of the Uruguay Round, between a few developed

country users and the rest of the world has faded. Anti-dumping is now a "global" instrument and every country is now both a potential user and a potential target of anti-dumping action.

- The upsurge of investigations and measures world-wide has highlighted considerable divergences between WTO Members in the interpretation and application of the current rules. This has also resulted in an increase in disputes under the WTO Dispute Settlement System: Although panels and the Appellate Body have contributed to greater clarity in the interpretation of the ADA, there are still areas which would benefit from clarification and improved enforcement.

- Successful co-operation in anti-dumping investigations binds considerable and increasing human and financial resources from the economic operators concerned. This is not satisfactory for anyone.

- Moreover, experience and dispute settlement reports have shown that procedural rights of economic operators are not always appropriately taken into account by investigating authorities. Improvements in transparency and rights of parties are desirable.

- The accelerating globalization of the economy calls for an examination of whether greater attention should be paid to securing enforcement of anti-dumping measures.

- Continuous rounds of trade negotiations have led to significant trade liberalization. The pace of liberalization is however not identical in all countries. Some of those WTO Members which have liberalized or are in the process of liberalizing their foreign trade regime seem to have chosen increased recourse to the anti-dumping instrument in order to be able to address unfair and injurious trade practices.

On the basis of the above, negotiations could usefully and constructively aim at the following, with consequent benefits to all Members, "users" and "targets" alike:

- To strengthen the current disciplines,

- To preserve the effectiveness of the anti-dumping instrument and its objectives,

- To simplify and clarify certain provisions,

- To take into account the needs of developing countries.

Changes in the above-mentioned areas would often result in improved transparency in investigations as well as increased predictability. Thus, economic operators could benefit from more legal certainty.

2. STRENGTHENING THE DISCIPLINES

By way of example, the EC illustrates in this first submission a number of areas which could be discussed under this heading and offers to share its experience on these issues with other Members. The EC would be ready to engage in discussions on the issues outlined below as well as other issues that may be presented by Members in this context.

- Disclosure and access to non-confidential documents are key procedural rights for interested parties, in particular exporters and domestic industries. Yet, disclosure is often insufficient, and

non-confidential summaries often do not allow for a proper understanding of the matter. A reflection on ways to improve this situation would be to the benefit of all Members.

- In the experience of the EC, a mandatory lesser duty rule leads to stronger disciplines. It significantly limits the level of the measures to what is strictly necessary for removing injury to the domestic industry.

- A public interest test (in terms of an examination of the impact on economic operators), even if discretionary in nature, provides for a wider and more complete analysis of the situation on the domestic importing market. Linked with appropriate substantive and procedural provisions the public interest test could be a useful additional condition before measures can be imposed.

- Provisions governing the settlement of disputes lead to long delays before disputes are settled and measures modified. The very initiation of an investigation can already put a heavy burden on exporters, importers and ultimately the domestic user industry. Consequently, a reflection could be made as to whether and under which conditions initiations of investigations could be made subject to a swift dispute settlement mechanism, taking into due account the relevant provisions and practice under the Understanding on the Settlement of Disputes.

- A strengthening of the disciplines could also, by definition, reduce the costs of investigations. Indeed, a major problem of today's anti-dumping practice, identified in particular by developing countries, is the cost which firms incur when they want to co-operate effectively in such proceedings. It could be explored whether a further and beneficial improvement could be achieved by screening all procedural aspects with a view to identifying those areas where changes can bring about a reduction in the cost of co-operation while at the same time maintaining the quality of the investigation. Areas such as simplifying and standardising information collection, particularly at the initial stages of the investigations, could be a further issue to be discussed under this heading.

3. PRESERVING THE EFFECTIVENESS OF THE INSTRUMENT

Anti-dumping measures are the result of complex, intensive and costly investigations. However, anti-dumping measures may be circumvented. Circumvention is now an easy option in a globalized economy and securing enforcement is sometimes difficult. It is also recalled that one of the Ministerial Decisions and Declarations attached to the Final Act of the Uruguay Round has identified circumvention as unfinished business of that round of multilateral trade negotiations. Consequently, the EC would be open to engage in meaningful discussions on appropriate ways to preserve the effectiveness of the anti-dumping instrument.

4. CLARIFYING AND SIMPLIFYING

Improvements to the ADA can be brought about by a clarification or simplification of certain provisions in the light of the findings set out in various Panel and Appellate Body reports. It is important that those Members who asked for the inclusion of this item on the agenda specify their objectives soon.

5. THE DEVELOPMENT DIMENSION

The “implementation” proposals made in the run-up to Doha will also be an important issue to be addressed. The EC is committed to engaging in meaningful discussions on these issues. It should also be noted that many of the parameters put forward in this paper have found their inspiration in the “implementation” topics proposed by developing countries.

A special and clearly defined developing country package should be prepared once clear, effective and updated rules for all WTO Members have been discussed. Only such a two-step approach will allow the identification of those areas where, on top of the general rules, the special needs of developing countries call for additional action. In this respect, it should be noted that many of the parameters and proposals supra 0 and 3 will serve the interests of developing countries because they will significantly reduce the possibility to abuse the anti-dumping instrument. In addition, other specific proposals could be discussed, on the basis of submissions by developing country Members.

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