

WORLD TRADE ORGANIZATION

TN/RL/W/20
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Negotiating Group on Rules

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QUESTIONS FROM THE EUROPEAN COMMUNITIES ON DOCUMENTS TN/RL/W/6 AND TN/RL/W/10

The following communication, dated 9 October 2002, has been received from the Permanent Delegation of the European Commission.

The EC considers the proposals made by a number of countries in TN/RL/W/6 and TN/RL/W/10 as a useful contribution to beginning a comprehensive discussion on anti-dumping in the Negotiating Group on Rules. The proponents of TN/RL/W/6 and TN/RL/W/10 list a total of 23 issues covering most of the operative articles of the Anti-Dumping Agreement (ADA) which they seek to clarify and improve. Many of the items identified in the submissions are listed in the form of questions mostly asking whether clearer definitions or the inclusion of additional criteria into the current text of the ADA would not be appropriate. Although illustrative examples are given for most of the items it would be useful to know the underlying rationale for raising a particular issue and the direction in which the proponents wish to go. The EC understands that the submissions are meant to be a contribution for identifying possible areas for negotiations. However, by means of the questions below the EC would like to invite the proponents of the two aforementioned submissions to expand on their proposals. The EC thinks that this would considerably contribute to having a meaningful and guided discussion on the two contributions.

TN/RL/W/6

Q1. Sales in the Ordinary Course of Trade

Do the proponents have any views on whether the "reasonable period of time" in Article 2.2.1. ADA should be identical with the "investigation period on dumping"?

Q2. Constructed Value

Would the issue raised also encompass the question as to whether there should be more than the 4 methods set out in Art. 2.2.2? Are there already any thoughts as to the introduction of a hierarchy of methods under Art. 2.2.2 and, if so, what hierarchy?

As far as each of the 4 methods set out in Article 2.2.2 is concerned, do the proponents envisage to add further criteria beyond the existing ones as interpreted by panel and AB reports?

Q3. Cyclical Markets

Could the proponents expand on which precise parameters should guide investigating authorities in setting the investigation period for perishable goods or goods in a rapidly growing manufacturing sector?

Q4. Prohibition of Zeroing

Does this proposal go beyond the ruling of the AB in *Bed linen* on zeroing? Should the prohibition of zeroing also cover the method set out in the last sentence of Article 2.4.2? If so, what would be the difference between the first method described in the first sentence of Article 2.4.2 and the method set out in this last sentence?

Q5. Cumulative assessment of Injury

The example given seems also to raise the question of the "product concerned". What is the view of the proponents on the relationship between the issue of cumulation and the issue of the product concerned?

Q6. Causal Relationship between Dumping and Injury

Could the proponents explain whether they have already any preliminary ideas as to the practical implementation of the AB doctrine of "separate and distinguish"? Should there be a quantitative analysis? How should such methodologies work in practice?

Q7. Threat of Material Injury

Which factors other than those contained in Article 3.4 and declared applicable by the AB should be listed for a finding of threat of material injury under Article 3.7 ADA?

Q8. Threshold under Article 5.8

Do the proponents already have a precise idea as to the appropriate levels for *de minimis* and negligibility margins?

Q9. Facts Available

Which precise clarifications beyond Annex II to the ADA and the panel/AB doctrine do the proponents have in mind?

Q11. Sunset of Anti-Dumping Orders

Which additional criteria can make sunset reviews more practical? Is the absence of imports in the proponents' view always a reason to automatically terminate measures in a sunset review?

Q12. Public Interest

What are the proponents' ideas as to how a public interest test should be tailored? Should it only be a procedural requirement to collect certain information or should it also encompass a test with substantive criteria to be taken into account by investigating authorities? If so, are there already any ideas as to possible substantive criteria?

TN/RL/W/10

Q1. Definition of product Under Investigation/Consideration and Like Product

Given the complexity of today's markets, what kind of "appropriate criteria" do the proponents have in mind in order to determine the product scope?

Q2. Definition of Domestic Industry

What would - in the view of the proponents - constitute a major proportion of the domestic industry?

Q4. Initiation Standards

What are the proponents' ideas on making the current initiation standards as interpreted by panels and the AB stricter short of requiring the same standards as for the imposition of measures?

Q5. Determination of Normal Value - Affiliated parties and Their Transactions

Are the proponents suggesting the inclusion of a single threshold for shareholding above which transactions between affiliated parties should be discarded? How could - in the proponents' view - "positive evidence showing that the transfer price between affiliated parties is unreliable" look like?

Q6. Injury Determination

What kind of additional guidance do the proponents envisage that can be given beyond the vast body of panel and AB decisions on this issue?

Q7. Price Undertakings

Given the complexity of today's business reality, how workable can precise criteria for rejecting undertakings be in the proponents' opinion? How do developing country interests come into play here other than through the link to Article 15 second sentence ADA?

Q8. Reviews

Do the proponents consider the recurrence analysis as carried out by many investigating authorities when it comes to reviews an appropriate methodology? If not, what other methodology would be more appropriate?

Q9. Constructed Export price; methodology for construction

Do the proponents disagree that the current rules on level of trade adjustments ensure in most cases a fair comparison between normal value and CEP?
