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Negotiating Group on Rules

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GENERAL CONTRIBUTION TO THE DISCUSSION OF THE NEGOTIATING GROUP ON RULES ON ANTI-DUMPING MEASURES

Paper from Brazil; Chile; Colombia; Costa Rica; Hong Kong, China; Israel;
Japan; Korea; Norway; Separate Customs Territory of Taiwan, Penghu,
Kinmen and Matsu; Singapore; Switzerland; Thailand; and Turkey

The following communication has been received on 14 November 2002 from the Permanent Missions of Brazil; Chile; Colombia; Costa Rica; Hong Kong, China; Israel; Japan; Korea; Norway; Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu; Singapore; Switzerland; Thailand and Turkey.

Two prior communications to the Negotiating Group on Rules relating to anti-dumping measures, TN/RL/W/6 and TN/RL/W/10, indicated provisions and issues in the Agreement on the Implementation of Article VI of the GATT 1994 ("ADA") which we seek to clarify and improve in line with the Doha Declaration. Furthermore, a third document with specific issues is being presented. We have also provided further explanation on some of these issues in our prior communication TN/RL/W/18. This paper is intended to address those and other specific issues in a broader context.

This paper is also intended to be read together with these papers and to help Members further focus on the objectives of the negotiation. Additional papers, either on a general level or indicating specific issues, that will be submitted during the course of the negotiation, will also serve as integral parts of our overall contribution to the discussion of the Negotiating Group on Rules.

I. GENERAL CONCERNS TO BE ADDRESSED

Anti-dumping measures have proliferated as a mechanism to provide often unduly excessive protection for domestic industries from international competition rather than to counteract injurious dumping, notwithstanding the efforts during the Uruguay Round to improve disciplines on the imposition of such measures. It is our concern that anti-dumping measures, when abused and misused, significantly undermine sincere and serious efforts that Members have been making and will make in various WTO agreements for trade liberalization, including tariff concessions.

We are also concerned that, as more Members actively use anti-dumping measures, there have been considerable divergences among Members in the interpretation and application of the current rules in the ADA, resulting in inconsistent and unpredictable application of anti-dumping measures. Through providing more precise and clearly defined rules imposing disciplines on each Member's application of anti-dumping measures, the ADA should ensure that all Members apply a common standard throughout the procedures under the ADA, which will provide greater transparency and predictability.

The negotiating mandate of the Doha Declaration is to clarify and improve disciplines under the ADA, while preserving the basic concepts, principles and effectiveness of the Agreement and its instruments and objectives. This mandate reflects the concerns of the Members about the present disciplines on the application of anti-dumping measures. As such, clarification and improvement of the disciplines in order to prevent their abuse and misuse as well as to prevent divergent methods of application is the central purpose of this negotiation based on the mandate of the Doha Declaration. One of the most important principles of the ADA is to ensure that anti-dumping measures are limited to achieving the objective of counteracting injurious dumping. Changing present provisions and filling out serious lacunae with that goal in mind are practical and effective ways to improve and clarify existing disciplines.

We see the adoption of stronger and more clearly defined disciplines governing the imposition of anti-dumping measures as an important objective of the Doha Development Agenda negotiation. The ADA must be further clarified and improved in order to achieve this objective. We believe that achieving this objective is not only essential to maintaining and realizing the benefits of trade liberalization that have been achieved in trade negotiations in the past, but it is also indispensable for meaningful trade liberalization through the negotiations to come.

II. ACHIEVING THE OBJECTIVES

The concerns mentioned above lead, in turn, to a series of objectives that need to be pursued in clarifying and improving the disciplines on application of anti-dumping measures in this negotiation. We should note that addressing the needs of developing countries also constitutes an aspect of this negotiation.

We hereby provide explanation on these objectives, including examples of specific items. Please note that the examples provided are not exhaustive and each example may not necessarily be relevant for only one particular objective.

1. Clarify and improve rules to prevent abusive and excessive anti-dumping measures

Reducing the abuses of anti-dumping measures through providing more precise rules is an important area to be addressed. Any “injurious dumping” should not be artificially created nor enhanced through the manipulation of dumping margin calculations, arbitrary injury determinations, or arbitrary causation analyses. It is our common understanding that anti-dumping measures should be applied to the extent necessary to counteract injurious dumping. However, increasingly, anti-dumping measures are imposed in excess of what is required to address the injurious dumping. A way to achieve the purpose of strengthening disciplines on the application of anti-dumping measures is to provide for clearer rules, thereby limiting the room available to authorities for abuse of those rules.

A number of our proposals seek to pursue this objective, including, *inter alia*, definition of ordinary course of trade, zeroing, constructed value, mandatory lesser duty rule, injury analysis, causation analysis, and conduct of reviews.

2. Clarify and improve rules to avoid excessive burdens on respondents

Anti-dumping investigations must not be overly burdensome so as not to obstruct daily business activities. Some anti-dumping investigations go into too minute or irrelevant items in light of current business realities and common-sense, and consequently impose increased and onerous costs and burdens on respondents in anti-dumping investigations and reviews. The economic costs and burdens for companies seeking to cooperate in investigations or reviews are often so substantial that the costs of cooperation outweigh any possible benefits to be gained from such cooperation. It is a

reality that companies are increasingly declining to cooperate because of the costs and burdens. In order to reduce the costs and burdens on responding parties, we should address the issues in line with following two approaches.

One approach that should be taken is to seek the balance between the requirements for investigation and the reality of business. Members should explore ways to reduce the costs and burdens on responding parties by taking into account current business realities, while maintaining the effectiveness of investigations and reviews. Issues such as, *inter alia*, treatment of affiliated party transactions, and use of cost data should be addressed to find solution in line with this objective.

Another approach is to seek the balance between the requirements for initiation standards and subsequent investigation with the trade restrictive effects of these actions. Members should recognize that not only the imposition of anti-dumping measures, but also the mere initiation of a proceeding, has serious chilling effects on international trade. National authorities are apt to apply inadequate evidentiary standards and arbitrary procedures in the initiation determination and subsequent investigation. Undisciplined standards for initiation and subsequent investigation invite frivolous and unwarranted anti-dumping proceedings, which both impede international trade and undermine the credibility of the ADA.

A number of our proposals seek to pursue this objective, including, *inter alia*, initiation standards, definition of product under investigation, standing requirements, definition of domestic industry, *de minimis* threshold, definition of dumped imports, and sampling.

3. Clarify and improve rules to enhance the transparency, the predictability and fairness of the system

Ambiguities in the current ADA allows for arbitrary interpretations and applications by national authorities, thus undermining the predictability of the anti-dumping regime. Narrowing or eliminating divergences among Members in the interpretation and application of the rules would indeed enhance the predictability of the ADA. In addition, in terms of enhancing fairness of whole anti-dumping proceeding, authorities shall take broader perspective into account.

There is substantial room for clarification and improvement of existing rules and a number of issues, including those already mentioned above, are related to this objective. Issues such as, *inter alia*, the conduct of reviews, use of price undertakings, initiation standards, consideration of public interest are also based on this objective.

In discussing particular issues and provisions, these objectives and concerns should be kept in mind and inform the discussions and subsequent negotiations.

Again we note that examples as provided above are not exhaustive and may be related to other objectives. We may indicate other issues that we should discuss in the Negotiating Group on Rules in order to adequately address the above-mentioned objectives.
