WORLD TRADE ORGANIZATION

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EGYPTIAN PAPER CONTAINING COMMENTS ON THE CONTRIBUTIONS SUBMITTED IN THE FRAMEWORK OF THE DOHA NEGOTIATIONS ON THE ANTI-DUMPING AGREEMENT

The following communication, dated 5 February 2003, has been received from the Permanent Mission of Egypt.

I. INTRODUCTION

In the current paper, we are providing preliminary comments on the contributions submitted by the "Friends of AD negotiations" and the US in November and December 2002 in the framework of the negotiations conducted by the Negotiating Group on Rules on Anti-Dumping Measures.

As already mentioned in our comments on previous contributions, the scope of the negotiations to be carried out on the Agreement on Implementation of Article VI of the GATT 1994 (hereinafter referred to as the "AD Agreement") as a result of the Doha Declaration is to be limited to areas where "*clarification and improvement*" would be required. Also, as a recent anti-dumping user, we believe that it is premature to expose Egypt and other such countries to increased disciplines and, thus, greater scrutiny under the AD Agreement.

II. SPECIFIC COMMENTS

We will present below comments on the following contributions submitted with regard to the negotiations on the AD Agreement: (TN/RL/W/28-29-31-35).

1. Contributions submitted by the "Friends of AD negotiations"

(a) General contribution to the discussion of the Negotiating Group on Rules on Anti-Dumping Measures: Document TN/RL/W/28

(i) The "Friends of AD negotiations" first outline the general concerns that they consider need to be addressed when negotiating the modifications of the AD Agreement. These Members consider that current anti-dumping rules are abused and misused and that active use of anti-dumping remedies has lead to considerable divergences in the application of AD rules.

The "Friends of AD negotiations" claim that the following objectives must be at the centre of the negotiations on the AD rules:

- the prevention of the abusive and excessive use of AD rules;

- the avoidance of placing excessive burden on respondents and the reduction of costs for interested parties; and

- the enhancement of transparency, predictability and fairness.

(ii) The point of view of the "Friends of AD negotiations" with regard to *"the abusive and excessive use of anti-dumping"* is not supported by any evidence. As previously explained by Egypt in the first paper submitted in the context of the negotiations on the AD Agreement, the recent increase in anti-dumping actions is a mere result of the increase of world trade and trade remedy users. It is simplistic and improper to draw a conclusion on the excessive use of AD measures from the increase of anti-dumping measures imposed.

Also, the point of view of the "Friends of AD negotiations" concerning the abusive and arbitrary imposition of anti-dumping measures is not corroborated by any evidence. Of the 1,059 anti-dumping measures imposed by Members between the entry into force of the AD Agreement in 1995 and 2001, less than 10 were found inconsistent with the AD Agreement by the Dispute Settlement Body. Contrary to what is implied, the existing provisions of the AD Agreement already provide that anti-dumping proceedings can only be initiated where warranted and that discretionary and abusive anti-dumping measures cannot be imposed.

The proposals made by the "Friends of AD negotiations" in previous contributions in order *"to prevent abusive and excessive anti-dumping measures"* do not fall within the scope of the negotiations carried out under the Doha Declaration. Indeed, these proposals would create substantial new obligations for Members and can therefore not be considered as clarifying or improving existing AD rules.

(iii) The active participation of all the parties concerned, including the respondents, in an AD proceeding is essential in order to ensure the transparency and fairness of the system. The imposition of lesser requirements on respondents would, most certainly, lead to less objective determinations to the detriment of the respondents. It must also be emphasized that a balance must be maintained between the obligations imposed on interested parties and investigating authorities. Rules placing an excessive burden on investigating authorities should also be avoided.

(iv) It would be unrealistic and overly cumbersome to have a very detailed AD Agreement. The AD Agreement is applicable to all Members and, as such, cannot foresee all the aspects of anti-dumping proceedings. The purpose of the AD Agreement is to set forth the basic principles all Members must comply with in anti-dumping proceedings and not to specify all the rules which should uniformly be applied by investigating authorities.

(b) Third contribution to discussion of the Negotiating Group on Rules on Anti-Dumping Measures: Documents TN/RL/W/29

(i) Dumped Imports

A definition of the term "dumped imports" of Article 3.1 of the AD Agreement is proposed in order to avoid the alleged misunderstanding of certain investigating authorities. It is submitted that such definition is unnecessary since a definition of the volume of imports considered to be dumped under Articles 3.1 and 3.2 of the AD Agreement was given in the reports adopted in the context of the *EC – Bed Linen* dispute.

(ii) Sufficient quantity of sales of the like product in the domestic market for the determination of the normal value

It is suggested that a clarification of the second footnote of Article 2.2 of the AD Agreement is necessary for cases where the product concerned has been classified into different categories. Contrary to what is implied, the classification of the product concerned into different categories does not require a clarification of the second footnote of Article 2.2. Pursuant to the text of the second footnote of Article 2.2, it is clear that in cases where the product concerned has been classified into different categories, a two-step representativity test needs to be substituted to the one-step test which is applicable when the product concerned has not been classified into different categories. As mentioned in the example given by the "Friends of AD negotiations", investigating authorities are first required to determine whether the total domestic sales of the product under consideration are sufficient. In the event that this first test is negative, the investigating authorities may consider that the domestic sales as a whole are insufficient for the determination of dumping. In the alternative, investigating authorities must, then, conduct the second step of the test in order to determine whether the domestic sales of each of the categories defined are representative. Again, if the second step of the test is negative for a category, the domestic sales of this category may be disregarded for the determination of dumping.

(iii) Constructed Export Price – Association/Compensatory Agreement

It is proposed to define the terms "association" and "compensatory agreement" of Article 2.3 of the AD Agreement. We do not believe this is necessary in view of the experience of most Members. The terms "association" and "compensatory agreement" are interpreted similarly by most investigating authorities. The lack of confusion is also evidenced by the absence of claims in this respect before the Dispute Settlement Body.

The "Friends of AD negotiations" suggest the insertion in Article 2.3 of a provision requiring investigating authorities to explain in their determination the reasons for considering an export price as unreliable. It is submitted that such provision would be redundant with the general notification and explanation obligations imposed on investigating authorities under Article 12 of the AD Agreement.

(iv) Cumulative assessment of imports

As correctly noted by the "Friends of AD negotiations", Article 3.1 of the AD Agreement does not define the term "negligible imports". Article 3.1 does not set the threshold to be used in order to determine whether the volume of imports from countries concerned is to be considered as negligible when determining if the effects of these imports must be cumulatively assessed. However, we consider such a definition would be superfluous since a precise definition of the volume of imports which is to be regarded as negligible is provided for in Article 5.8.

(v) Price undertakings - Lesser price rule

The lesser duty and lesser price rules are both an application of the same principle to the different types of anti-dumping measures provided for in the AD Agreement. Consequently, as for the lesser duty rule, we are of the opinion that the lesser price rule should be left to the discretion of Members.

(vi) Public notice and explanation of the determinations

Articles 6 and 12 of the AD Agreement already provide ample opportunities for interested parties to defend their interest throughout anti-dumping proceedings. It is submitted that the

imposition of further information, notification and consultation requirements on investigating authorities would only reinforce the burden imposed on all interested parties and would, thus, be contradictory to other proposals formulated by the "Friends of AD negotiations". We believe that the balance between the efficiency and the openness of the system which is struck by the AD Agreement should remain unmodified.

(vii) Periods of data collection for anti-dumping investigations

The "Friends of AD negotiations" directly refer to the introductory paragraph of the *Recommendation Concerning the Periods of Data Collection for Anti-Dumping Investigations (*paper by the AD Committee on 5 May 2000) in order to support the insertion in the AD Agreement of guidelines for determining what periods of data collection may be appropriate for examination of dumping and injury. We believe that it would be unrealistic to insert into the AD Agreement a detailed set of rules taking into account the different specific circumstances which investigating authorities are often confronted to.

(viii) Treatment in case of a large number of exporters, producers, importers or types of products

The "Friends of AD negotiations" propose that the terms "reasonable number" and "largest percentage" be defined in order to ensure that sampling is properly conducted under Article 6.10 of the AD Agreement. It is submitted that a definition of the terms of Article 6.10 may not lead to the improvement sought by the "Friends of AD negotiations". Instead, the introduction of new mandatory tests to determine when and how investigating authorities could resort to the use of samples would further complicate and lengthen anti-dumping investigations. Also, the drafting of clear definitions could prove itself difficult considering that the cases where sampling is required are very different depending on the number of exporting countries concerned, companies involved in each country and characteristics of the product concerned. For these reasons, we believe that the flexibility provided for in the AD Agreement should remain.

(c) Replies to additional questions to our second contribution: Document TN/RL/W31

This document lists the questions of Members concerning the contribution of the "Friends of AD negotiations" dated 28 June 2002 (TN/RL/W/10) and provides answers to these questions.

(i) Domestic industry

It is suggested to specifically mention in the AD Agreement that the primary definition of domestic industry is the *"domestic producers as a whole of the like product"* and that the terms *"major proportion"* should be understood as representing more than 50 per cent of the producers. We continue to consider that such definitions would be contrary to the intention of the drafters of the AD Agreement for whom an investigation could be initiated even if it was filed with the support of those domestic producers only representing a minority, as long as those producers represented over 50 per cent of the producers expressing either support or opposition to the petition.

(ii) Initiation standards

It is suggested that in some cases an investigation can be initiated solely on the basis on the facts alleged in the petition and that it is, therefore, necessary to improve the initiation standards. We are of the opinion that a clarification of the terms of Article 5.2 of the AD Agreement is not necessary. Indeed, as confirmed by adopted dispute settlement reports, the AD Agreement clearly requires investigating authorities only to initiate an investigation on the condition that substantiated evidence of dumping, material injury and causal link has been provided to them.

(iii) Injury determination

The "Friends of AD negotiations" consider that Article 3.4 of AD Agreement fails to provide sufficient guidance on how the injury factors listed therein must be evaluated by investigating authorities. We believe that the panel and Appellate Body reports have provided sufficient guidance on the obligations imposed on investigating authorities in injury determinations and that the case-specific analysis of the injury factors should be left to the discretion of the investigating authorities.

(iv) Price undertaking

The "Friends of AD negotiations" propose to clarify the criteria for the acceptance and/or rejection of price undertakings. We are of the opinion that since price undertakings constitute an alternative to the imposition of duties, investigating authorities should have some discretion in determining whether or not to accept a price undertaking and the conditions for such acceptance.

2. Investigatory procedures under the Anti-Dumping and Subsidies Agreements: Document TN/RL/W/35

The contribution of the US focuses on procedural issues and establishes a parallel between the AD Agreement and the Agreement on Subsidies and Countervailing Measures (hereinafter referred to as the "Subsidies Agreement"). The advocated intent of the US is only to improve transparency and procedural fairness. Indeed, for the rest, the US is of the opinion that the AD Agreement should not be amended.

(i) Timely access for interested parties to non-confidential information

The US proposes that access to non-confidential information be made available as soon as the information is received by an investigating authority, regardless of whether it will ultimately be used in making a determination. The US considers that this modification would be to the interest of the parties concerned and the investigating authorities who would have complete and accurate information on which to base their determination. Although we agree with the US that interested parties should be granted timely access to the non-confidential file, we do not share the view that the investigating authorities should not conduct a prior examination of the information and data submitted to them before disclosing it to interested parties. Indeed, we consider that investigating authorities can constitute a beneficial "filter" of the information submitted to them to the benefit of all interested parties. Moreover, the immediate communication of non-confidential information submitted to them to all interested parties may be reveal technically difficult for investigating authorities, in particular from developing Members.

(ii) Public Record

We believe that the issue of access to the non-confidential file is to be addressed by each Member at a domestic level. Also, we do not consider it necessary to request each investigating authority to maintain a public record of all the non-confidential information submitted and of all the determination issued as this would create a particularly burdensome obligation for investigating authorities.

(iii) Explanations and determinations

The US suggests that investigating authorities consider providing interested parties with more detailed determinations and explanations. The suggestion of the US is praiseworthy but could reveal difficult for investigating authorities from developing Members to implement considering the tight deadline within which findings must be reached under the AD Agreement.

(iv) Conduct of verifications

In view of their very limited resources, most investigating authorities are not in a position to provide much support to interested parties throughout an investigation. In particular, investigating authorities cannot issue too detailed guidelines to interested parties prior to on-the-spot verifications.

(v) Protection and disclosure of confidential information

We agree with the US that it is essential for interested parties to be certain that the confidential information submitted to investigating parties in the course of an investigation will not be disclosed. It is indispensable for all Members, in order to guarantee the cooperation of interested parties and the proper functioning of the system to guarantee the confidentiality of the information submitted. However, we believe that the question of confidentiality is to be addressed by each Member at a domestic level.