WORLD TRADE ORGANIZATION

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CLARIFICATIONS SOUGHT BY INDIA ON THE SUBMISSIONS BY THE UNITED STATES (TN/RL/W/35) AND CANADA (TN/RL/W/47)

The following communication, dated 9 April 2003, has been received from the Permanent Mission of India.

CLARIFICATIONS SOUGHT BY INDIA ON THE SUBMISSION BY THE UNITED STATES (TN/RL/W/35)

India thanks the United States for its submission TN/RL/W/35 which contains some useful elements for further work by the Rules Group. For a better understanding of some of the proposals made in this submission India seeks the following clarifications from the United States.

The US has sought a specific mechanism for providing access to all memoranda adopted or approved by the pertinent authority that explain the factual or legal bases for its determination or provide pertinent findings and conclusions in support of that determination. It is not clear what this means. Could the United States elaborate further on "access to all memoranda adopted"? What is sought to be covered by "all memoranda adopted"?

India has noted with interest the suggestion for making the verification procedure clearer. However care needs to be exercised so that the detailed outline suggested by the United States does not become yet another reason for resorting to facts available. Certain procedural safeguards would need to be built in to ensure that the investigating authorities do not at some stage take a view that all the information detailed in the pre-verification outline was not furnished by the exporters and hence facts available may be resorted to. The detailed outline should be for purposes of making the verification clearer and not for imposing more obligations on the exporter.

The suggestion for sharing of confidential information needs to be carefully considered. India requests the United States to provide details of the Administrative Protective Order (APO) system prevalent in that country. Is the APO system generic in nature being applicable to the domestic judicial process and not confined merely to anti-dumping/countervailing duty/safeguard investigations? India would also like to know why in view of the United States such procedures can easily be administered and how the United States authorities enforce obligations regarding protecting the confidentiality of information shared.

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CLARIFICATIONS SOUGHT BY INDIA ON THE SUBMISSION BY CANADA (TN/RL/W/47)

In order to have a better understanding on some aspects of the proposals by Canada contained in document TN/RL/W/47 India requests Canada to clarify the following:

According to Canada, in order to more closely parallel the scope of the injury investigation, consideration should be given to amending Article 5 to require that, when examining an application for the initiation of an investigation, authorities also consider information on factors other than dumping that may be contributing to the injury being alleged. It is not dear how an investigating authority can be reasonably expected to know these "other factors" which are normally brought to the knowledge of various interested parties during the course of an investigation and not at the time of initiation of an investigation. Is Canada suggesting that the petition itself contain information on "other factors" or is it the suggestion that the investigating authority should undertake a detailed analysis of "other factors" prior to initiation of an investigation?

According to Canada the investigating authorities could also be explicitly required to conduct an "objective" assessment of the degree of industry support for an application and to refrain from taking any action that would have a foreseeable effect on the outcome of such a determination. Could Canada indicate the specific change it desires in Article 5 of the Anti-Dumping Agreement? It is also not clear as to what specific action Canada is referring to that could have a foreseeable effect on the out- come of a standing determination. Could Canada elaborate further on this aspect?

Could Canada clarify why the existing provision of the Article 6.2 of the Anti-Dumping Agreement is considered an inadequate procedure as far as public hearings is concerned?

According to Canada there are numerous divergences between similar provisions of the ADA and the ASCM. Consideration should be given to addressing these divergences in these negotiations so that, where appropriate, differences in similar provisions of the two agreements are eliminated. Could Canada clarify whether any harmonisation between Anti-Dumping Agreement and ASCM should, in its view, be limited to the investigation procedure or it should extend to other issues?

Canada has suggested that consideration be given to whether, and under what conditions, initiations of investigations could be made subject to a swift dispute settlement procedure under the DSU. Could Canada clarify whether its proposal would require an investigation to be suspended during the course of DSU proceedings if the exporting country resorts to the such proceedings?

While discussing the problem of repeated dumping Canada has suggested that the underlying trade distorting practices that cause trade remedy responses need to be examined. Could Canada explain how any "underlying policy or practice" in the exporting country can be addressed in the Anti-Dumping Agreement framework? Anti-Dumping Agreement provides for specific action against dumping and not against any other underlying practice or policy that may be the cause of dumping. Is Canada seeking to expand the scope of the Anti-Dumping Agreement to provide for action to counter practices and policies apart from dumping?