WORLD TRADE ORGANIZATION

TN/RL/W/81
23 April 2003

(03-2154)

Negotiating Group on Rules Original: Spanish

COMMUNICATION FROM ARGENTINA

The following communication, dated 15 April 2003, has been received from the Permanent Mission of Argentina.

I. INTRODUCTION

1. In the light of experience and the increasing application of trade defence instruments, the Doha Ministerial Declaration provided for negotiations aimed at clarifying and improving disciplines under the Agreement on Implementation of Article VI of the GATT 1994 (Anti-Dumping Agreement), while preserving the basic concepts, principles and effectiveness of the Agreement and its instruments and objectives, and taking into account the needs of developing and least-developed participants.

2. The Anti-Dumping Agreement constitutes an instrument of defence against "unfair" trading practices, but it can in fact be employed to provide additional protection, particularly - but not necessarily - in a context of tariff reduction.

3. The initiation of anti-dumping actions, or even the possibility of initiating them, discourages trade, since even applications which do not eventually give rise to the imposition of duties may have an inhibitive effect and produce price increases of the kind that would be engendered by the imposition of such duties.

4. At the same time, the increasing application of such instruments increases in turn the possibility that specific interests might influence their administration or implementation. Moreover, taking advantage of the discretion inherent in the current discipline, Members may use these instruments as mechanisms to evade or postpone the necessary structural adjustments.

5. Although the Anti-Dumping Agreement produced by the Uruguay Round represented an improvement over previous codes, given the fact that its provisions were refined and transformed into commitments of a compulsory nature for all WTO Members, the concepts on which its application is based need to be clarified, since they have not prevented disputes arising in this area. For this reason, we agree with the interpretation that the primary objective of the negotiating group must be to clarify and improve the disciplines of the Anti-Dumping Agreement in order to minimize the possibilities of their discretionary application.

6. During the first phase of negotiations, Members made a considerable number of contributions aimed at identifying those aspects of the Anti-Dumping Agreement which, in their view, would require improvement or clarification. In this connection, the purpose of this communication is to list a set of questions which - without being intended to be comprehensive - should in Argentina's view be tackled in the negotiations and which would contribute to that objective.

II. ILLUSTRATIVE LIST OF PROVISIONS REQUIRING CONSIDERATION[1]

(a) Sales between related parties (Article 2.3 of the Anti-Dumping Agreement)

Article 2.3 of the Anti-Dumping Agreement reads as follows:

"*In cases where there is no export price or where it appears to the authorities concerned that the export price is unreliable because of association or a compensatory arrangement between the exporter and the importer or a third party, the export price may be constructed on the basis of the price at which the imported products are first resold to an independent buyer, or if the products are not resold to an independent buyer, or not resold in the condition as imported, on such reasonable basis as the authorities may determine.*"

It would be desirable to establish criteria for the determination of association and the resale price.

(b) Normal value - sales between related parties in the domestic market of the exporting country

The sales relationship on the domestic market of the producer/exporter should be analysed and criteria established for such analysis, since the Anti-Dumping Agreement provides for this formula only in respect of the relationship between exporters and importers.

(c) Construction of the export price (Articles 2.3 and 2.4 of the Anti-Dumping Agreement)

The Anti-Dumping Agreement does not specify the factors that would determine the unreliability of an export price and justify construction of that price. The situations in which an export price could be considered to be unreliable should be identified.

(d) Like product (Article 2.6 of the Anti-Dumping Agreement)

Article 2.6 of the Anti-Dumping Agreement reads as follows:

"*Throughout this Agreement the term 'like product' ('produit similaire') shall be interpreted to mean a product which is identical, i.e. alike in all respects to the product under consideration, or in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration".*

It is proposed that criteria be established for determining the like product. The following criteria, among others, could be suggested as part of a non-exhaustive list: physical characteristics and uses, degree of substitutability, considerations of quality, function, technical specifications, tariff classification, users' perceptions, common distribution channels, overlapping geographical areas of the domestic market and price levels.

(e) Cumulative imports (Article 3.3 of the Anti-Dumping Agreement)

Article 3.3 of the Anti-Dumping Agreement reads as follows:

"*Where imports of a product from more than one country are simultaneously subject to anti-dumping investigations, the investigating authorities may cumulatively assess the effects of such imports only if they determine that (a) the margin of dumping established in relation to*

[1] This list is not claimed to be exhaustive, nor does it prejudge the particular position to be adopted by the Argentine Republic on each of the provisions concerned in the course of the negotiations.

the imports from each country is more than de minimis as defined in paragraph 8 of Article 5 and the volume of imports from each country is not negligible and (b) a cumulative assessment of the effects of the import is appropriate in light of the conditions of competition between the imported products and the conditions of competition between the imported products and the like domestic product".

It is proposed that criteria be established for considering the conditions of competition between the imported products of different origins and the conditions of competition between the imported products and the like domestic product.

The Agreement lays down no criterion and offers no guidelines concerning the conditions of competition that might be relevant for the purpose of determining whether a cumulative assessment of the effects of the imports is appropriate. However, it would be helpful to have guidelines on this question.

Similar criteria to those set out in the previous section are suggested.

(f) Ex officio initiation of an anti-dumping investigation (Article 5.6 of the Anti-Dumping Agreement)

Article 5.6 states that in "special circumstances" the authorities concerned may decide to initiate an investigation "without having received a written application by or on behalf of a domestic industry", and establishes as a requirement for that purpose the existence of "sufficient evidence of dumping, injury and a causal link, as described in paragraph 2, to justify the initiation of an investigation".

An analysis should be made of the appropriateness of establishing guidelines for the definition of a "special" situation justifying the ex officio initiation of an investigation.

(g) Confidential information (Article 6.5 of the Anti-Dumping Agreement)

Nature. Treatment. Domestic legislation of countries on the different types of information. Criteria for the preparation of non-confidential summaries.

(h) Price undertakings (Article 8 of the Anti-Dumping Agreement)

It is proposed that an outline be given of the procedure to be followed in cases where only some exporters submit price undertakings, and of the treatment applicable to the others.

(i) Reviews (Articles 9.5, 11.2 and 11.3 of the Anti-Dumping Agreement).

Elements, time-limits and procedures for the conduct of reviews. New exporter procedure.

Generally speaking, the procedures applicable to reviews have given rise to controversy, since they are not set out in any detail in the Agreement. It would be necessary to examine minimum standards of information for the initiation of reviews and elements of analysis in relation to the recurrence of dumping and injury. It would also be useful to explore the differences between reviews under Articles 11.2 and 11.3, going beyond the issue of the point in time at which such reviews may be conducted and the parties that may request them.

Under paragraph 3 of Article 11 ("Duration and review of anti-dumping duties and price undertakings"), the Anti-Dumping Agreement provides that " … any definitive anti-dumping duty shall be terminated on a date not later than five years from its imposition (or from the date of the most

recent review …), unless the authorities determine … that the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury".

In the context of the Group's discussions, a number of Members pointed out in their contributions that this general rule has in practice resulted in the possibility of applying an anti-dumping measure for excessively lengthy periods, given the non-existence of a maximum time-limit.

Regarding the new exporter review, detailed procedural guidelines on how to conduct such a review would be desirable, with particular emphasis on situations where export prices are not known because the company concerned has not yet effected exports but intends to sell to the country which imposed an anti-dumping measure.

(j) Best information available (Annex II to the Anti-Dumping Agreement)

Objective criteria should be established for determining when the implementing authority considers that the best information available should be used.