

**REPLIES TO THE QUESTIONS POSED BY AUSTRALIA¹
CONCERNING THE DOCUMENT SUBMITTED
BY MOROCCO²**

Communication from Morocco

The following communication, dated 29 April 2003, has been received from the Permanent Mission of Morocco.

Morocco wishes to thank Australia for its interest in the Moroccan communication on the negotiations on the rules and disciplines of the Agreement on Implementation of Article VI of the GATT 1994 and the Agreement on Subsidies and Countervailing Measures (TN/RL/W/36) and for the comments and observations it made at the meeting of the Negotiating Group on Rules held on 6 and 7 February 2003, which are reproduced in document TN/RL/W/60.

This communication provides answers to the questions raised by Australia.

Question 1

Morocco considers that the negotiations should be confined to clarifying and improving the rules so as to limit any abuse in using trade remedies. In order to better understand Morocco's interpretation of the negotiating mandate, could Morocco provide examples of issues which it would consider being within the mandate and of issues which would be outside the mandate?

Reply

As was emphasized by Morocco in document TN/RL/W/36, the Doha mandate on negotiations on the disciplines and rules for implementation of anti-dumping measures and countervailing measures clearly establishes that the objectives of the negotiations should be confined to clarification and enhancement of the rules and disciplines governing trade remedies for injurious unfair competition, while preserving the basic concepts, principles and effectiveness of the Anti-Dumping Agreement and the Agreement on Subsidies and Countervailing Measures and their instruments and objectives.

Morocco considers, therefore, that the proposals to modify the rules or to add other rules involving the weakening of the mechanism to combat injurious unfair trade practices and limiting the

¹ TN/RL/W/60.

² TN/RL/W/36.

ability to implement the remedies provided for in the relevant agreements, go beyond the scope of the mandate.

On the other hand, the proposals aimed at better defining or clarifying a concept or a calculation methodology, or again at improving implementation of a procedure or establishing guidelines for the application of provisions subject to divergent interpretations among Members, respond to the objectives decided by the Doha Ministerial Declaration.

By way of example, some country Members³ have proposed modifying the rule governing calculation of the "all others rate" provided for in Article 9.4 of the Anti-Dumping Agreement, which stipulates that, when determining the anti-dumping duty to be applied to imports consigned by exporters or producers not covered by the examination, no account need be taken of zero or *de minimis* margins or of margins established under the circumstances referred to in Article 6, paragraph 8, of the Anti-Dumping Agreement (margins established on the basis of the facts available). In the context of the Negotiating Group on Rules, it is proposed quite simply to take account of zero or *de minimis* margins when determining the "all others rate".

In Morocco's opinion, this proposal is intended as a direct amendment of the rule, resulting in the lowering of the "all others rate", which is inconsistent with Morocco's understanding of what is meant by clarification and improvement of the rules.

Moreover, the proposal⁴ aimed at raising the *de minimis* level and the level of negligible imports is highly illustrative in this regard. Indeed, the proposal is designed to raise the level of the *de minimis* margin from a specified percentage (set at 2 per cent under Article 5.8 of the Anti-Dumping Agreement) to a higher percentage level. The same applies to the raising of the level of negligible imports, which currently stands at 3 per cent.

Morocco considers that the proposal to modify these percentage levels is inconsistent with the guidelines of the Doha Declaration, since any increase in the percentages in question would have the effect of impairing the effectiveness of the anti-dumping instrument as a measure to combat injurious unfair trade practices, without responding to a concern to clarify the rule governing *de minimis* margins or negligible imports.

On the other hand, a proposal aimed at defining the basis on which the level of negligible imports is to be calculated may be perfectly consistent with the Doha mandate, inasmuch as the clarifications to be made to the period and the data to be used in determining the level of negligible imports would serve to limit divergences of interpretation that might arise from the use of this rule, and thereby to reduce the arbitrary element and improve the use of the rule.

Question 2

Given Morocco's concerns over the constraints placed on small economies, particularly with regard to time-frames, does Morocco consider that there is a need to accord special and differential treatment to small economies? If so, how would small economies be defined?

- Is Morocco suggesting expedited time-frames for anti-dumping investigations in small economies or where the domestic market is small?

³ Document TN/RL/W/10 of 28 June 2002.

⁴ Document TN/RL/W/6 of 26 April 2002.

- Does Morocco consider that small economies may have pockets of well-developed industry sectors? In such situations, should special and differential treatment be accorded?

Reply

Morocco bases itself on the principle that the rules and disciplines governing implementation of import trade remedies, apart from the differential arrangements applied to developing countries in the context of special and differential treatment, are applicable across the board by all country Members, whatever the size of their economies. Accordingly, in negotiations for the improvement and clarification of the rules, Morocco considers that account should be taken of the fact that the effects of these practices are not felt in the same way on the domestic markets of Members, and that country Members do not have the same capacity to deal with unfair trade practices.

A negotiating process based on a consensual approach can only achieve results when the rules to which it gives rise are acceptable to all Members, including countries characterized by the small size of their domestic market. This can only be feasible if the rules in question take account of the situation of those countries.

At this stage, Morocco is proposing neither the establishment of arrangements specific to economies with a small domestic market nor the incorporation of the notion of small economies in the provisions of the Anti-Dumping Agreement and the Agreement on Subsidies and Countervailing Measures. What is requested is that account be taken of the situation and constraints affecting all Members in the negotiations on a rule which, in the final analysis, will be applied uniformly.

Question 3

Morocco considers that special and differential treatment should be limited to action between developed and developing countries and that the scope of ADA Article 15 should not be broadened to "curtail the legitimate right of developing countries to resort to anti-dumping measures to offset injury caused by dumped exports from developing countries". In Morocco's view, should this notion also apply to Article 27 of the Subsidies Agreement and, if so, how could this be done?

Reply

Although the Anti-Dumping Agreement and the Agreement on Subsidies and Countervailing Measures exhibit a number of similarities regarding the application of remedies, an important difference should be emphasized with regard to what may be considered an unfair trade practice.

Indeed, dumping is considered an unfair trade practice, whereas in the case of subsidies a nuance is introduced by the criteria of development, inasmuch as subsidies are also considered as a means of development and the resort to subsidies by developing countries was, in a sense, justified by the special and differential treatment provisions of Article 27 of the Agreement on Subsidies and Countervailing Measures, which authorized developing countries to evade certain obligations, including in particular the prohibition on the granting of export subsidies.

The debate about developing countries having recourse to subsidies because they may play an important role in development programmes and in the extension of the time-limits established by the special and differential treatment provisions of the Agreement on Subsidies and Countervailing Measures, remains on the agenda of this Negotiating Group and of the Committee on Subsidies and Countervailing Measures.

At the current stage of the negotiations, Morocco cannot prejudge what action may be taken on special and differential treatment under the Agreement on Subsidies and Countervailing Measures, and on the rules and disciplines that will be established to govern relations between developed and developing countries and among the developing countries.

Question 4

We note that the focus of Morocco's paper is on trade remedies. Given Morocco's underlying concerns over the competition-distorting effects of subsidies, Australia would be interested in Morocco's views on areas where it considers that there is scope for clarifying and improving the subsidy disciplines in the Subsidies Agreement.

Reply

It is true that Morocco's document TN/RL/W/36 focussed on the rules and disciplines applicable to implementation of anti-dumping and countervailing measures, and Morocco emphasized in passing that subsidization, like dumping, has trade-distorting effects. However, the mitigating factor is that subsidies are also recognized, in the case of developing countries, as being capable of playing an important role in the development programmes of those countries.

Consequently, in the negotiations on rules and disciplines in the field of subsidies, Members should adopt a highly creative approach in order to reconcile the need to remedy any distortions created by subsidies with development needs.
