WORLD TRADE ORGANIZATION

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Negotiating Group on Rules Original: English

REPLIES TO THE QUESTIONS AND COMMENTS OF WTO MEMBERS CONCERNING THE PROPOSAL OF CHINA (TN/RL/W/66)

Submission from the People's Republic of China

The following communication, dated 1 May 2003, has been received from the Permanent Mission of the People's Republic of China.

China would like to express its appreciation to Australia, Switzerland, Canada and the European Communities for their questions and comments on China's anti-dumping proposal. China hereby would like to provide the following reply.

AUSTRALIA

1. Causality between dumping and injury

Q. China states that Article 3.5 should be clarified to ensure that a causal link could only be established when the dumped import is the "substantial reason" for the injury of the domestic industry. Does China consider that this would undermine the causation principle which is at the heart of Article VI of GATT 1994 and the WTO Anti-Dumping Agreement? What does China mean by "substantial reason" and how does this relate to findings of a causal link to injurious dumping?

Reply

Article 3.5 of the AD Agreement provides that in addition to the causal relationship between the dumped imports and the injury, the investigating authorities shall also examine any known factors other than the dumped imports which at the same time are injuring the domestic industry, and the injuries caused by these other factors must not be attributed to the dumped imports. However, this Article fails to provide the methodology of defining the causal relationship between dumping and injury, which leads to the fact that the investigating authorities in practice always take measures when other factors other than the dumped imports are the main reason for the injuries suffered.

China hopes that Members could distinguish the injury caused by dumped imports from the injury caused by other factors so as to ensure that anti-dumping measures could be taken only when the dumped imports are the major cause of the injury. China does not believe that this will impair the principle of causal relationship which is the core of Article 6 of GATT 1994 and the AD Agreement.

2. "All others" rate

Q. China seeks an improvement to ADA Article 9.4 through the consideration of *de minimis* margins when determining the "all others" rate. Australia would be interested in China's views

on how *de minimis* margins would be considered for the determination of the "all others" rate for exporters/producers which are not sampled under ADA Article 9.4.

Reply

China believes that Article 9.4 of the AD Agreement should be improved so that the dumping margins of all involved companies, including those with zero and *de minimis* margins, should be taken into consideration on an equal basis in determining "all others" rate by sampling. That is, "all others" rate shall be calculated based on the weighted average of the dumping margins of all companies involved.

3. "Non market economy" clauses

Q. China refers to Article 2.7 and the second Supplementary Provision to Paragraph 1 of Article VI of GATT 1994. Does China consider ADA Article 2.2 to be relevant?

Reply

When a proper comparison is impossible because of the "particular market situation" in the domestic market of the exporting country, Article 2.2 of the AD Agreement allows the investigating authorities to turn to two other methods of comparison. However, the AD Agreement fails to provide what constitutes a "particular market situation" and thus leaves the investigating authorities with wide discretion to treat many situations as "particular market situation" and refuse to use domestic market price as the basis of determining the normal value. China's viewpoint has been reflected in Section 1.4 of its proposal in TN/RL/W/66.

4. Lesser duty rule

Q. China states that the lesser duty rule should be mandatory in the application of anti-dumping measures by developed country Members on the imports from developing country Members. Does China consider that ADA Article 9.1 should be mandatory for anti-dumping measures applied by developing countries on imports from developing country Members?

Reply

The Doha Ministerial Declaration clearly states that Members should take into account the needs of developing and least-developed participants in anti-dumping negotiations. China believes that the Negotiating Group should conscientiously implement such mandate and consider the ways to reflect S&D treatment in the negotiations process as well as in the final results.

For such purpose, China proposes that the Group should improve the existing Agreement through negotiations so that lesser duty rule shall be applied in a mandatory manner regards measures against developing country Members.

As for whether this proposal applies to measures taken by a developing country Member against another developing country Member, China would like to listen to the views of other Members.

5. Increase of negligible import volume and *de minimis* dumping margin

Q. Does China consider that the deletion of the collective negligible volume of 7 per cent should apply to imports from both developed and developing countries, or only developing countries?

Reply

The Doha Ministerial Declaration clearly states that Members should take into account the needs of developing and least-developed participants in anti-dumping negotiations. China believes that the Negotiating Group should conscientiously implement such mandate and consider the ways to reflect S&D treatment in the negotiations process as well as in the final results.

For such purpose, China proposes that higher level of negligible volume of dumped imports and *de minimis* margin should be applied and the provision of 7 per cent collective negligible volume should be deleted as for investigations against developing country Members.

6. Automatic sunset of anti-dumping measures

Q. China proposes that measures cease against developing country members after five years. Does China consider that even if injury is caused after the five year period, that the measure should still be sunsetted? If there is no certainty of the fundamental principle of causal link in the application of anti-dumping measures, including for reviews of anti-dumping measures, on what basis does China consider anti-dumping measures should be imposed?

Reply

Article 11.1 of the AD Agreement provides that an anti-dumping duty shall remain in force only as long as and to the extent necessary to counteract injurious dumping. However, past experiences show that many measures against developing country Members remained in force for several decades and have exceeded the period and extent necessary to counteract injurious dumping.

China believes that the Negotiating Group should take effective measures to correct this practice of making use of reviews to repeatedly extend anti-dumping measures against developing country Members and thus provide excessive protection for domestic industries. Therefore, the Group is invited to pay attention and consider China's proposal of automatic sunset of measures against developing country Members after 5 years.

As for the causality between dumping and injury, please refer to China's reply to the first question of Australia.

SWITZERLAND

S&D Treatme nt

Q. Is it a real difference if Chinese exporters are prevented from entering developed country market, or they are prevented from entering similarly large developing country market. What is the difference if the Chinese products can not enter New Zealand due to prohibitive anti-dumping measures, or it can not enter, for instance, Brazilian or Indian market. China seems to allude that damage from unjustified anti-dumping measures is greater with regard to developed country market than the same unjustified measures is taken by developing countries. What is the rational of this proposal?

Reply

When discussing S&D treatment to developing country Members, the Negotiating Group should seriously consider the tremendous obstacle that anti-dumping measures pose to the exports of

developing country Members. According to the statistics of the WTO Secretariat, 65 per cent of the 1,979 investigations and 67 per cent of the 1,161 measures are against developing country Members from January 1995 to June 2002.

Meanwhile, developing country Members have limited human and material resources comparing with developed country Members. Therefore, their ability to respond to investigations and measures of other Members is relatively weak. Such disadvantageous situation should be taken into consideration by the Group.

CANADA

Back-to-back investigation

Q. Is China proposing to go beyond the provision of Paragraph 7.1 of Declaration on Implementation Related Issues which recognizes that where circumstances have changed, a new investigation may be warranted within one year period.

Reply

Many Members have pointed out that simply the initiation itself could cause "chilling effect" to the importation of products in question. Past experiences show that negative finding of investigating authorities is sometimes followed by another application for investigation against the same product of the same Members. This practice not only impedes the exports of the targeted Member, but also forces the exporters to devote a great amount of human and material resources to respond to the investigation which has already been terminated as a result of negative finding.

For such purpose, Paragraph 7.1 of the Decision of Implementation-related Issues and Concerns provides that investigating authorities shall examine with special care any application for the initiation of an anti-dumping investigation where an investigation of the same product from the same Member resulted in a negative finding within the 365 days prior to the filing of the application and that, unless this pre-initiation examination indicates that circumstances have changed, the investigation shall not proceed. However, the definition of "special care" and "changed circumstances" are not clear and thus difficult to put into practice. Therefore, the possibility of setting barriers to normal trade through back to back investigations by domestic industry seeking trade protectionism still remain.

Therefore, the Negotiating Group should seriously consider how to solve this problem so as to reflect the essence Paragraph 7.1 in the negotiations. It is on this basis that China puts forward its proposal on back to back investigation.

THE EUROPEAN COMMUNITIES

1. Causal link

Q. How does China envisage that these criteria of substantial reason can be made operational? Quantitative or qualitative assessment or should be even both examining causal link, and what should be done in practicable terms?

Reply

As a common practice now, the causal relationship may be established if the investigating authorities determine that the dumped imports constitute one cause to the injury of the domestic industry in an antidumping investigation. Such loose provision leaves room for investigating authorities to discretionarily take measures to a great extent.

The purpose of the AD Agreement is to punish unfair trade practices, i.e. those measures which cause injury to the domestic industries of other Members through dumping. Article 3.5 of the AD Agreement provides that the investigating authorities shall also examine any known factors other than the dumped imports which at the same time are injuring the domestic industry, and the injuries caused by those other factors must not be attributed to the dumped imports. However, this Article fails to provide the methodology of defining the causal relationship between dumping and injury, which leads to the fact that, the investigating authorities in practice always neglect those other factors and take it for granted that the injuries are attributed to the dumping. China holds that in order to determine the causal relationship in a correct manner, the Agreement should provide that the investigating authorities shall separate and distinguish the injuries caused by other factors not attributed to the dumped imports from all the injuries, and should specify the method to separate and distinguish such injuries.

As for the standard of assessment as well as the way of operation in practice, China is willing to discuss with other Members in a bid to establish an objective and operative standard.

2. Lesser duty rule

Q. The rational of lesser duty rule is to remove the injury for the domestic industry. Is this only applicable in the investigation conducted by investigating authorities in developed country concerning imports also from developing country.

Reply

Please refer to China's reply to the fourth question of Australia.