WORLD TRADE ORGANIZATION

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Negotiating Group on Rules Original: English

EGYPTIAN PAPER CONTAINING REPLIES TO QUESTIONS POSED BY AUSTRALIA IN DOCUMENT NUMBER TN/RL/W/73

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

Egypt thanks Australia for its comments and questions on Egypt's position paper on the Negotiations on the AD Agreement (document TN/RL/W/55 dated 10 February 2003), and takes this opportunity to reply to the questions set forth in Australia's paper (document TN/RL/W/73 dated 18 March 2003) which was tabled at the March session of the Rules Group.

- Egypt appreciates Australia's agreement with Egypt in its contention that the recent increase in the number of anti-dumping actions taken by new members is not a sign of over-use or misuse in the WTO AD Agreement and that all members, including developing countries, have the right to take legitimate trade remedies against injurious dumped imports into their market.

- Egypt agrees with Australia that excessively complex rules are resource intensive for all WTO members, and notes, as Australia does, the Doha mandate of clarifying and improving the anti-dumping rules, rather than making unnecessary changes to the actual substance and character of the AD Agreement through the introduction of excessively complex and stringent rules. The introduction of such rules will not permit all members, notably developing country members, to enforce their rights and obligations under the AD Agreement.

- While Egypt agrees with Australia that the work of the Working Group on Implementation is extremely useful, it does not agree that codification of guide lines could be useful to all Members and could, ultimately, facilitate the work of investigating authorities. Indeed, the complexity and factual nature of both anti-dumping and countervailing investigations requires investigating authorities to have a certain liberty in the enforcement of the rules which were agreed upon. Moreover, the AD and SCM Agreements are general agreements which set the basic rights and obligations of Members while preserving the flexibility of investigating authorities in the practice and conduct of their investigations. Egypt considers that the codification of guidelines would limit the autonomy of investigating authorities.

<u>Question</u>

- Australia asked that it would be interested in where and how Egypt considers the issue of resource constraints could be reduced in the current WTO Anti-Dumping Agreement?

Reply

- In order to answer this question, Egypt would like firstly to state that it does not consider that the WTO Anti-Dumping Agreement directly imposes constraints on investigating authorities. It is the use of the anti-dumping instrument by investigating authorities, which requires Members to make use of their resources.

- Egypt agrees with Australia that the WTO Anti-Dumping Agreement allows a certain margin of flexibility for investigating authorities in initiating and conducting anti-dumping investigations. This flexibility is one of the important features of the Agreement which is not intended to overly restrict investigating authorities in their operations but which sets the general principles which must be complied with in anti-dumping proceedings.

- In view of the above, Egypt considers that the WTO Anti-Dumping Agreement does not impose unduly burdensome or unnecessary constraints on investigating authorities. The constraints currently imposed on investigating authorities directly result from the use of the anti-dumping instrument. Also, Egypt believes that the balance between the rights and obligations of interested parties struck under the WTO Anti-Dumping Agreement is appropriate. Furthermore, Egypt is of the opinion that the flexibility which is inherent to the WTO Anti-Dumping Agreement is necessary in order to ensure that investigating authorities which operate in different legal systems and which may have very distinct resources at their disposal are able to use the anti-dumping instrument.

Question

- Could Egypt provide examples of proposals or recommendations within the mandate of the negotiations that would set an unreasonable or unnecessary burden on an investigating authority?

Reply

- To answer the first part of the Australian question, Egypt would first like to recall the mandate of the Negotiating Group as set forth in the Doha Ministerial Declaration:

> *" (…) we agree to negotiations aimed at clarifying and improving disciplines under the Agreements on Implementation of Article VI of the GATT 1994 and on Subsidies and Countervailing Measures, while preserving the basic concepts, principles and effectiveness of these Agreements and their instruments and objectives (…)"* (emphasis added)

- As clearly stated by Egypt in its position paper on the Doha Declaration concerning the negotiations on the Anti-Dumping Agreement (Document No TN/RL/W/55), the mandate of the Negotiating Group is to clarify and improve existing provisions of the Agreement. Proposals aimed at modifying the structure of the WTO Anti-Dumping Agreement or the rights and obligations of Members are outside of the scope of the current negotiations even though they may be considered by their proponents as necessary or beneficial.

- Egypt considers that all the proposals or recommendations, which fall within the scope of the negotiations, do not impose any unreasonable or unduly burdensome obligations on investigating authority.

Proposals or recommendations imposing additional unnecessary burdens on investigating authorities modify the structure and balance of the Agreement and, thus, fall outside the scope of the negotiations.

Egypt believes that any proposal or recommendations, directly or indirectly imposing substantial obligations on Members, cannot be considered as a mere clarification or improvement of the existing disciplines under the WTO Anti-Dumping Agreement.

- In order to provide answer to the second part of this question, Egypt would like to stress that its general submission (TN/RL/W/55) should be read in conjunction with the more detailed submissions (TN/RL/W/56, TN/RL/W/57, TN/RL/W/79) in which Egypt has already clarified its position on the different proposals submitted by others members. Having said that, Egypt would provide four examples including lesser duty provisions as follows.

1. Lesser duty provisions

In Egypt's view, the introduction of the mandatory lesser duty rule in the AD agreement would exceed the mandate of the Doha Ministerial Declaration. Indeed, mandating the lesser duty rule would increase the obligations imposed on Members and not clarify or improve existing provisions of the AD Agreement.

In addition, the introduction of a mandatory lesser duty rule would be more resource intensive for investigating authorities, especially for developing countries which are currently facing problems relating to resource constraints, since the application of such rule requires conducting a very sophisticated and exact analysis of the injury margin for each foreign exporter.

Furthermore, it may prove to be a huge burden on an investigating authority to source the necessary data i.e. competing prices at the right level of trade in the domestic market during the investigation period, where all data has to be related to the like product, and to make the necessary adjustments in the case where the products are not homogenous, and to define comparable segments, models, categories etc, in addition to making further possible adjustments for differences in physical characteristics. Such adjustments differ from case to case, and require very experienced investigating officers and data-gathering techniques. As such Egypt contends that the application of the lesser duty rule should be left to the discretion of each member.

2. Initiation Standards

Egypt believes that such amendments are not necessary. Firstly, the current provisions of the AD Agreement clearly require that investigating authorities initiate an investigation only where substantiated evidence of dumping, material injury and causal link has been provided to them. In addition, Egypt considers that Canada's proposal that investigating authorities should examine before initiation, information on factors other than dumping that may be contributing to the injury being alleged will result in increasing the obligations for investigating authorities at an early stage of an investigation. In that it will lead to an absurd situation in which the investigating authority will find itself conducting a resource-intensive factual investigation. This issue is being investigated in details after investigation.

3. Swift dispute settlement

Egypt does not believe that authorizing swift dispute settlement procedures in the event that a Member considers that an investigation has been initiated in violation of the initiation requirements set forth in the AD Agreement will ensure a better compliance with these requirements. Indeed, authorizing Members to initiate dispute settlement proceedings at an earlier stage will not guarantee

stricter compliance with the initiation requirements. Egypt believes that such a procedure would generally be used as a procedural impediment in order to obstruct duly initiated investigations. Finally, the proposed mechanism will require new users of Anti-dumping mechanism, especially developing countries, to hire foreign legal expertise to prepare and defend their cases before DSB, which will consequently constitute very heavy burden on their limited financial resources, in addition to the extra time which will be consumed in that context.

4. Public interest

Egypt considers that the current provisions of the Anti-Dumping Agreement regarding public interest are clear enough and gives the investigating authority the option to determine whether the public interest will benefit from the anti-dumping duties, or not. Egypt considers that the conduct of public interest test should remain a matter of domestic policy left to the discretion of each member because it is clear that conducting such a test would require a more complex and detailed analysis of many aspects and sectors of the economy, and will consume an unreasonable amount of time and resources, as elaborated earlier.