WORLD TRADE ORGANIZATION

TN/RL/W/109
19 May 2003

(03-2656)

Negotiating Group on Rules Original: English

QUESTIONS FROM HONG KONG, CHINA ON PAPERS SUBMITTED TO THE NEGOTIATING GROUP ON RULES

The following communication, dated 14 May 2003, has been received from the Permanent Mission of Hong Kong, China.

Australia's Paper on "General Contribution to the Discussion of the Negotiating Group on Rules on the Anti-Dumping Agreement" [TN/RL/W/86]

1. We note Australia has made the point that "duty absorption arises where there appears to have been no or insufficient increase in export price in response to the imposition of measures". We should be grateful for Australia's comments and clarifications on the following questions -

- In Australia's experiences, how common does the problem of "duty absorption" take place?
- What does Australia consider as "insufficient" increase in export price?
- In our view, the imposition of AD duties already serves to remove the injurious effect of dumping. Given this, why does Australia see the need to address the issue of "duty absorption"?

Australia's Paper on "'Like Product' within the Meaning of the WTO Anti-Dumping Agreement" [TN/RL/W/91]

2. In this submission, Australia has raised the question as to whether there would be merits for developing separate criteria for consideration of like product under Articles 2, 3 and 4 of the Anti-Dumping Agreement. In this connection, we would like to seek Australia's comments and clarifications on the following questions -

- As we see it, the definition of like product should be applied uniformly throughout the proceedings in order to ensure consistency and predictability of the whole process. What does Australia see as the practical problems associated with the uniform application of the definition? Could Australia elaborate on the justifications for adopting separate criteria for consideration of like product for different stages of the proceedings?
- By adopting separate criteria for consideration of "like product" for dumping and injury determinations, is it possible that substantially different products would be covered under such determinations? Would it be fair and appropriate to consider substantially different products for the same proceeding?
- Australia has suggested replacing the word "identical" with "goods, which have essentially the same physical characteristics" in the definition of "like product" under Article 2.6. Why does Australia consider it appropriate to abandon totally the "identical" criterion in the definition of "like product"? How would the proposed change relate to the second part of the definition, which provides that in the absence of an identical product, like product shall be interpreted to mean

another product which has "characteristics closely resembling those of the product under consideration"?

The United States' Paper on "Identification of Additional Issues under the Anti-dumping and Subsidies Agreements" [TN/RL/W/98]

Cumulation

3. The United States has raised the issue as to whether cumulation of dumped import with subsidised imports should be allowed in order to assess the effects of the unfair imports on the domestic industry. We would be interested to hear the US' more detailed views on this issue, in particular -

- Could the United States elaborate further on why it considers it appropriate to cumulate the dumped and subsidised imports together for the purpose of considering two separate trade remedy measures?
- Would it be fair to take into account the effects of subsidised imports in considering AD measures (and vice versa)?

Exclusion of Companies

4. The United States has raised the idea of adding an explicit requirement to the Agreements to the effect that examined exporter or producer found not to be dumping or found not to have received a countervailable subsidy may not be covered by any measure resulted from the investigation. In our view, pursuant to Article 9.3 of the Anti-dumping Agreement and Article 19.4 of the Agreement on Subsidies and Countervailing Measures, no anti-dumping/countervailing measures should be levied on examined exporter or producer found not be to dumping or have received subsidy. We should be grateful to know whether the United States agrees with this interpretation. Has the United States come across actual cases which are contrary to such interpretation?