

**CONTRIBUTION BY VENEZUELA ON VARIOUS ASPECTS OF THE
ANTI-DUMPING AGREEMENT AND THE AGREEMENT ON
SUBSIDIES AND COUNTERVAILING MEASURES WHICH
MAY REQUIRE CLARIFICATION AND IMPROVEMENT**

The following communication, dated 10 July 2003, has been received from the Permanent Mission of Venezuela.

The contents of this contribution do not fully reflect Venezuela's views and position on all the provisions of the Anti-Dumping (AD) and Subsidies and Countervailing Measures (SCM) Agreements which might require clarification and improvement. Although some of the topics and substantive provisions of the Agreements mentioned in this communication have been referred to in other contributions by Members, certain possibly new elements which should help to complete the identification of provisions requiring clarification and improvement are provided.

- 1. SUBJECT: CUMULATION CRITERIA IN ASSESSING THE SIGNIFICANCE OF IMPORTS.**

RELEVANT PROVISIONS: Article 5.8 ADA.

OTHER CONTRIBUTIONS RELATING TO THE SAME PROVISIONS: In the TN/RL/W series, documents numbered 4 India, 45 co-sponsors, 56 Egypt, 59 Australia, 64 Brazil, 83 co-sponsors and 122 Australia.

DESCRIPTION OF THE PROBLEM: In Article 5.8 of the ADA the investigating authority is permitted to assess imports cumulatively without the establishment of criteria applicable in those investigations in which both Member and non-Member countries are involved.

CLARIFICATION: In this latter case, can imports of all origins be cumulated whether or not they are from WTO Member countries? We consider it important to clarify this provision since the results of the investigation may vary depending on the interpretation made by the competent authority.

- 2. SUBJECT: DEFINITION OF DUMPED IMPORTS.**

RELEVANT PROVISIONS: Article 3.1 of the ADA.

OTHER CONTRIBUTIONS RELATING TO THE SAME PROVISIONS: In the TN/RL/W series, documents numbered 4 India, 56 Egypt, and 59 and 121 Australia.

DESCRIPTION OF THE PROBLEM: We consider that Article 3.1 clearly indicates that the imports which must be taken into account in determining injury are those which are being dumped, so that for the purpose of analysing the trend in dumped imports and their impact on prices in the domestic market for like products and on the variables of the domestic industry producing like products, an authority may not include imports not shown to have been dumped, since if there is no dumping the imports cannot cause injury.

CLARIFICATION: Although it seems to us that the Agreement is clear in this respect, to avoid situations such as those described in the example, it may be desirable to include a note to the Article explaining that dumped imports are those coming from or originating in a country or enterprise for which a positive, more than de minimis margin of dumping has been determined.

3. SUBJECT: TIMELY AVAILABILITY OF RELEVANT INFORMATION.

RELEVANT PROVISIONS: Articles 12.3 of the ASCM and 6.4 of the ADA.

OTHER CONTRIBUTIONS RELATING TO THE SAME PROVISIONS: In the TN/RL/W series, documents numbered 35 United States and 43 Australia.

DESCRIPTION OF THE PROBLEM: Article 12.3 of the ASCM and Article 6.4 of the ADA stipulate that the authorities must provide the parties with timely opportunities to examine non-confidential information for the purpose of preparing presentations.

CLARIFICATION: It would be helpful to give a definition of the term "timely", in order to clarify the period of time involved and establish a fixed interval, so as to guarantee due process for the parties involved and transparency throughout the proceeding, thereby avoiding different interpretations of the same provision by the competent authorities of each Member.

4. SUBJECT: LEVEL OF DETAIL IN DETERMINATIONS

RELEVANT PROVISIONS: Articles 22 of the ASCM and 12 of the ADA.

DESCRIPTION OF THE PROBLEM: Article 22 of the ASCM and Article 12 of the ADA stipulate that the authorities must include in their determinations sufficient details about the decisions adopted, without defining or specifying what may be regarded as "sufficient details".

CLARIFICATION: Laying down guidelines with respect to the level of detail required would certainly help to improve understanding of the determinations made by the competent authority.

5. SUBJECT: INITIATION AND PUBLICIZATION OF THE APPLICATION.

RELEVANT PROVISIONS: Articles 5.5 of the ADA and 11.5 of the SCMA.

DESCRIPTION OF THE PROBLEM: It would be helpful to clarify the way in which Articles 5.5 of the ADA and 11.5 of the ASCM are implemented. These Articles relate to the obligation upon the authority not to publicize the application of a domestic producer before having decided to initiate an investigation, together with the obligation to notify the Government of the exporting Member before proceeding to initiate an investigation. This conflict is even more obvious in the case of a subsidy investigation, since once an application has been accepted and before an investigation is initiated, an invitation for consultations must be issued.

CLARIFICATION: It should be made clear how the obligation to notify the Government of the exporting Member can be reconciled with the obligation to avoid publicizing the application concerned.

6. SUBJECT: INFORMING THE PARTIES OF THE ESSENTIAL FACTS.

RELEVANT PROVISIONS: Articles 6.9 of the ADA and 12.8 of the ASCM require that parties be informed of the essential facts that form the basis for the definitive decision.

CLARIFICATION: There is no indication of the period of time necessary for the parties to make their comments in defence of their interests nor is there an indicative list of the elements which the communication should contain. It may therefore be desirable to address these aspects with a view to standardizing the criteria and avoiding significant differences between one investigation and another, depending on the Member concerned.
