

**COMMENTS BY VENEZUELA ON DOCUMENT TN/RL/W/111 SUBMITTED
BY KOREA CONCERNING ITS VIEW OF THE IMPROVEMENT
OF THE SUNSET SYSTEM**

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

Venezuela shares the concern expressed by Korea and other Members regarding the need to improve and clarify Article 11 of the Anti-Dumping Agreement in respect of reviews of anti-dumping duties, in particular five-year reviews, inasmuch as it fails to establish clear and unambiguous provisions on procedure in such cases, thereby allowing for different interpretations on a case-by-case and Member-by-Member basis. We consider that this undermines legal security and the necessary transparency which must prevail in any anti-dumping investigation.

Overall, and given that the proposal in question might make it impossible to extend duties already imposed, we feel that the alternative could prove a somewhat extreme solution to the problem as it stands to date. Although Korea's proposal could provide a simple and practical answer, other alternatives designed to clarify any grey areas of this Article might also be explored to ensure that the extension of anti-dumping duties, where granted, is not synonymous with indefinite protection.

- There seems to be a need for the number of reviews and extensions of duties to be restricted, considering the intensive use made by some Members of such provisions.
- Particular attention should be paid to the case of exporters who discontinue all sales to a country imposing anti-dumping measures whilst these remain in force.
- The following question also arises: during a review procedure, can the investigating authority modify the duty which was originally imposed? If so, what should be the criteria for modifying duties? Is the investigating authority free to select such criteria?
- Generally speaking, we believe that the rules applied during reviews should be those used in the initial investigation. It should, however, be noted that an investigating authority could be forced to apply rules different from those used in the initial investigation, which would be permissible upon good cause being shown for the change in methodology.
- It might be advisable to clarify for each kind of review (annual, five-year, changed-circumstance, *inter alia*) the way in which duties are collected. Given that this has not yet been established, Article 11.3 of the Anti-Dumping Agreement, which states that “[t]he duty may remain in force pending the outcome of such a review”, could be

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reconsidered. We *may*, therefore, ask ourselves - in the event of an authority actually collecting duties pending the outcome of a review (i.e. treating them as definitive) and of the review subsequently establishing that the conditions warranting an extension, as laid down in the Agreement, have not been met, the duties collected should be refunded?
