WORLD TRADE ORGANIZATION

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EGYPTIAN PAPER CONTAINING REPLIES TO QUESTIONS ORALLY POSED BY CANADA DURING THE NINTH MEETING OF THE NEGOTIATING GROUP ON RULES ON 18-19 JUNE 2003

The following communication, dated 18 July 2003, has been received from the Permanent Mission of Egypt.

Egypt welcomes the comments and questions put forward by Canada at the ninth meeting of the Negotiating Group on Rules on 18-19 June 2003. These comments and questions, which refer to provisions concerning material retardation, sunset reviews and the lesser duty rule, are aimed at clarifying the positions expressed by Egypt in the submission and comments it recently presented to the Negotiating Group on Rules.

In its responses to the questions of Canada, Egypt further specifies why it considers that it is necessary to clarify the concepts of material retardation and threat of material injury, to amend the provisions governing sunset reviews and to introduce a specific lesser duty rule obligation for developed country Members.

1. Material retardation

Question:

With respect to material retardation (TN/RL/W/105), could Egypt explain why the provisions relating to material injury or threat of material injury are not adequate to deal with the situations that may be faced by "*embryonic, restructuring or recently privatized industries*"? In Canada's view, material retardation is quite well defined in footnote 9 of the AD Agreement as referring to situations where dumping is preventing or slowing the establishment of a domestic industry.

Answer:

The state of development of industries in developing and least-developed countries is normally very different from that of industries in developed countries. While industries in developed countries are generally characterized by their relatively important size, their entrenchment in the industrial landscape and the number of companies of which they are composed, industries in developing countries are, on the contrary, composed of a very limited number of small organized companies and are generally very limited in size. In addition, in recent years, industries in developing countries have been subject to privatisation and important restructuring as a result of important global economic reforms.

Egypt does not dispute that the concepts of material injury and threat thereof as defined under Article 3 of the AD Agreement may, in certain cases, be resorted to by investigating authorities of developing countries in the framework of anti-dumping investigations. The number of anti-dumping proceedings conducted by developing country Members in recent years evidences that these concepts are applicable by both developing and developed countries. However, despite the increase in the number of anti-dumping proceedings conducted by developing countries, in a significant number of cases, the examination of the criteria set forth in Articles 3.2, 3.4 and 3.7 of the AD Agreement does not provide sufficient guidance on the level of injury suffered by domestic industries in developing countries. For example, the examination of the evolution of the output or productivity of embryonic industries does not necessarily give any useful indication on their economic state.

In order to ensure the protection of all industries, regardless of their state of development, against injurious dumped imports, Egypt proposes that the concept of the material retardation be further defined. Unlike Canada, Egypt considers that the notion of establishment of a domestic industry which is defined in footnote 9 of the AD Agreement is vague and requires to be clarified. Is an industry which recently started producing but still in its start-up phase considered as established under footnote 9? Can a restructuring or recently privatized industry be considered as in the process of establishment?

In Egypt's view, the arguments supporting the clarification of the concept of material retardation are twofold. First, it is important that imprecise provisions of the AD Agreement, such as the one referring to material retardation, be clarified. As evidenced by past anti-dumping proceedings, unless clarified, the concept of material retardation is difficult for domestic industries in the process of establishment to invoke and for investigating authorities to examine. Secondly, the concept of material retardation can be specified to ensure that the injury caused by dumped imports to recently established industries and industries in the process of being restructured is properly examined. As agreed by all Members in Doha, it is essential that the interests and concerns of developing countries be placed at the heart of the negotiations and that these countries be provided with the instruments to protect their industries against injurious dumped imports.

2. Sunset reviews

Question:

With respect to its proposal concerning sunset reviews in TN/RL/W/110, could Egypt clarify whether it is of the opinion that the provisions of the AD Agreement prevent the adjustment of the level of anti-dumping duties once a measure is in place and that specific authorisation in the sunset review provisions is required to rectify this situation.

Answer:

In its second submission (TN/RL/W/110), as duly noted by Canada, Egypt supports the improvement of Article 11.3 of the AD Agreement because it considers that this Article only provides for the termination or confirmation of the anti-dumping duties in place after a five-year imposition period and not for the revision of the level of the applicable anti-dumping duties.

Egypt's interpretation is based on the wording of Article 11.3 which provides that "*Notwithstanding the provisions of paragraphs 1 and 2, any anti-dumping duty shall be terminated on a date not later than its imposition […], unless the authorities determine, in a review initiated before that date on their own initiative or upon a duly substantiated request made by or on behalf of the domestic industry within a reasonable period of time prior to that date, that the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury"* (emphasis added). Egypt's interpretation is supported by the difference of wording of Articles 11.2 and 11.3. While

Article 11.2, which governs interim reviews, refers to the removal or variation of anti-dumping duties, Article 11.3 only refers to their termination.

On the basis of its interpretation of Article 11.3, Egypt considers that it is necessary to amend this Article to introduce the possibility for Members to adjust the level of anti-dumping duties at the outcome of an expiry review, if required. Egypt is of the opinion that the opportunity provided to Members to amend the level of anti-dumping duties in force, where warranted, should not be limited to interim reviews. Egypt believes that the option provided to Members to re-determine the adequate level of anti-dumping in expiry reviews, will reduce the confirmation of anti-dumping duties at levels determined years earlier and will be more consistent with other provisions of the AD Agreement such as Article 9.3.

3. Lesser duty rule

Question:

On the lesser duty rule, could the Egyptian delegation elaborate on the statement in TN/RL/W/110 *"If a mandatory lesser duty rule were inserted in the AD Agreement, the effectiveness of this Agreement for developing Members would be significantly affected"*. Furthermore, under the Egyptian proposal, why should the principle underlying the lesser duty rule of imposing a duty sufficient to eliminate the injury only apply to measures taken by developed countries? Finally, how does the proposal for the mandatory application of the rule for developed countries square with the statement in Egypt's paper W/101 that a mandatory lesser duty rule would be outside the ministerial mandate?

Answer:

Since the initiation of the negotiations on the AD Agreement, Egypt has repeatedly stated (see TN/RL/W/55-56-79-101-110) that it considers that discussions on the introduction of a mandatory lesser duty rule in the AD Agreement do not fall within the scope of the negotiating mandate as agreed in Doha. Article 28 of the Doha Ministerial Declaration provides in part that Members "*agree to negotiations, aimed at clarifying and 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 objectives, and taking into account the needs of developing and least-developed Members*".

Egypt considers that a mandatory lesser duty rule would significantly affect the right of developing country Members under the AD Agreement because it would require investigating authorities in these countries to conduct more thorough analysis than normally possible in the strict time-limits set forth in the Agreement. The limited resources and expertise of investigating authorities in developing country Members would not allow them to comply with the more stringent rules which may result from the amendment of the AD Agreement. Consequently, in order to safeguard the effectiveness of the AD Agreement for all Members, regardless of their level of development, it is essential that the provisions such as the lesser duty rule, the application of which is discretionary under the AD Agreement, are not imposed on all Members. If new burdensome requirements were imposed on investigating authorities, Egypt fears that the anti-dumping instrument which still remains unapplied by a certain number of developing and least-developed countries could become restricted to a limited of Members.

The proposal made by Egypt to amend Article 9.1 to require developed country Members to apply the lesser duty rule in proceedings concerning developing country Members, is not inconsistent with Egypt's view that the introduction of a mandatory lesser duty rule provision for all Members falls outside the Doha negotiating mandate. As stated above, Egypt considers that the right of

developing countries would be significantly impaired under the AD Agreement if the lesser duty rule was made mandatory. This position does not preclude Egypt from considering that the application of the lesser duty rule by developed country Members in proceedings concerning developing countries would take into account the special situation of the latter as required by the Doha Ministerial Declaration. As stated by Egypt in its second submission (TN/RL/W/110), the mandatory application of the lesser duty rule by developed countries is one of the improvements that could be brought to the AD Agreement to render effective the provisions of Article 15 and to guarantee developing and least-developed countries a special and differential treatment in anti-dumping proceedings.

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