

PREPARATIONS FOR THE 1999 MINISTERIAL CONFERENCE

Proposal on Anti-Dumping Measures

Communication from Chile

The following communication, dated 5 October 1999, has been received from the Permanent Mission of Chile.

Proposal

1. At the forthcoming WTO Ministerial Conference, a broad negotiating mandate should be adopted to allow a thorough revision of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Anti-Dumping Agreement) in order to strengthen its disciplines, making them less discretionary and clearer as regards interpretation. This will ensure both that an exceptional system is applied more meticulously and at the same time that the ensuing measures are not used as restrictions on legitimate trade. The aim is to remedy a situation in which anti-dumping measures have in most cases become a protectionist instrument that has nothing to do with anti-competitive behaviour.

Background

2. The imposition of an anti-dumping measure should be exceptional and designed to remedy the injury produced by supposedly unfair competition. Since it is an exceptional measure, the legal framework in which it may be applied must be sufficiently precise and clear so as to ensure that it does not become an obstacle to trade.

3. Like other WTO Members, both developed and developing, Chile considers that there are a number of ambiguities in the provisions of the Anti-Dumping Agreement: this allows a broad range of interpretations, giving rise to abuses and the consequent imposition of anti-dumping measures.

4. A number of provisions of the Anti-Dumping Agreement should be amended so as to contain stricter disciplines. Chile has pinpointed a large number of issues and articles in the Anti-Dumping Agreement which we consider should be negotiated. Most of these were raised by various delegations during the so-called second preparatory stage for the 1999 Ministerial Conference.

5. There are various aspects that should be revised. These include the provision whereby it is possible not to consider the domestic price as the normal value of a product when sales are made in the ordinary course of trade; the need to establish a ranking of priorities for determining the normal value of goods; the form in which anti-dumping duties are calculated for enterprises that are not investigated; the possibility of applying measures retroactively; the determination of causality; the cumulation of imports from different origins; the duration of measures; and the use of the margin of injury to repair the injury to the domestic industry, *inter alia*.

6. Notwithstanding the study of the aspects mentioned in the preceding paragraph with a view to improving the actual implementation of the Agreement, Chile proposes that a study be made of provisions aimed at ensuring that anti-dumping measures may only be applied when the objective conditions in a market make anti-competitive behaviour practicable.

7. Chile considers that predatory dumping is especially possible when specific external producers have extraordinary advantages in their home markets as a result of tariff and non-tariff protection and other measures which distort competition, and which create big enough profit margins for them to maintain a low pricing policy in one or more foreign markets. Otherwise, in open economies competition and arbitrage will undo attempts at predatory dumping.

8. Accordingly, an investigation should be initiated only where there is objective information (facts) to demonstrate that the exporter has a dominant position or power in its home market. The negotiations should establish the nature of the necessary objective information as well as the procedures for establishing or substantiating it.
