WORLD TRADE ORGANIZATION

RESTRICTED
WT/GC/W/205
14 June 1999

(99-2368)

General Council

Original: English

PREPARATIONS FOR THE 1999 MINISTERIAL CONFERENCE

Agreement on Implementation of Article VI of GATT 1994
Proposal under Paragraph 9(a)(i) of the Geneva Ministerial Declaration

Communication from Malaysia on behalf of ASEAN Members

The following communication, dated 7 June 1999, has been received from the Permanent Mission of Malaysia.

Background

1. The Agreement on the Implementation of Article VI of the GATT 1994 as negotiated during the Uruguay Round has been in effect for four years. However, the Anti-Dumping Agreement continues to contain weaknesses that, unless rectified, provide opportunities for abuse.

2. Among the weaknesses of the Agreement is the question of determination of dumping as stipulated in Article 2:4 of the Anti-Dumping Agreement. Article 2:4 of the Agreement requires that the comparison between export prices and the normal value should be fair. The provision requires that the dumping margins be established on a weighted-average basis or a transaction basis. It does however provide for exceptions whereby comparisons are permitted between individual export prices and weighted-average normal prices. Past experience clearly shows that the exceptions have virtually become the rule with the practice resulting in artificially high dumping margins, which would lead to abuse of the Agreement.

3. Another important weakness of the Agreement is the Standard of Review contained in Article 17 of the Anti-Dumping Agreement. Article 17 appears to unduly circumscribe the role of the WTO dispute panels to a mere determination of "whether the authorities' establishment of the facts was proper and whether their evaluation of those fact was unbiased and objective." This is in complete contrast to the powers extended to panels under Article 11 of the Dispute Settlement Understanding (DSU). The Anti-Dumping Agreement is an integral part of the WTO and there is, therefore, no logical reason why a different and more restrictive standard of review must pertain to adjudication of WTO disputes in the anti-dumping area. The scope for protectionist discretion is clearly obvious.

4. There have been cases where export products of interest to developing countries have been subjected to repeated anti-dumping investigations in respect of the same products. These repeated investigations have the impact of harassing trade and worse have tended to be abused for protectionist purposes.

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5. Article 5:8 of the Anti-Dumping Agreement does not stipulate the time-frame within which a determination has to be made on whether the volume of dumped imports are negligible or otherwise as provided for under the thresholds stipulated in Article 5:8. This has resulted in arbitrary and unilateral decisions as to what is the appropriate time-frame to be used.

Proposal

6. Article 2:4 of the Anti-Dumping Agreement should be reconsidered so as to avoid the frequent usage of the exceptions recognized therein.

7. Article 17 should be reconsidered so as to ensure that the same standards of review are applied as in disputes relating to other WTO Agreements, under the Dispute Settlement Understanding.

8. There is a need to reconsider Article 5:3 of the Anti-Dumping Agreement to limit the scope for repeated anti-dumping investigations on the same product.

9. Article 5:8 of the Anti-Dumping Agreement needs to be clarified with regard to the time-frame to be used in determining as to whether the volume of dumped imports are negligible under the thresholds stipulated in the Article.