

WORLD TRADE ORGANIZATION

TN/RL/W/171
15 February 2005

(05-0616)

Negotiating Group on Rules

Original: English

SENIOR OFFICIALS' STATEMENT

Communication from Brazil; Chile; Colombia; Costa Rica; Hong Kong, China; Israel; Japan; Korea, Rep. of; Mexico; Norway; Singapore; Switzerland; the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu; Thailand; and Turkey

The following communication, dated 11 February 2005, is being circulated at the request of the Delegations of Brazil; Chile; Colombia; Costa Rica; Hong Kong, China; Israel; Japan; Korea, Rep. of; Mexico; Norway; Singapore; Switzerland; the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu; Thailand; and Turkey.

We, the Senior Officials responsible for trade of Brazil; Chile; Colombia; Costa Rica; Hong Kong, China; Israel; Japan; Korea, Rep. of; Mexico; Norway; Singapore; Switzerland; the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu; Thailand; and Turkey, met on 11 February 2005 in Geneva to take stock of the negotiations on anti-dumping. We acknowledge the good work done and we urge Members to reinforce their impetus in the Rules Negotiating Group.

WTO Members attach great importance to AD negotiations

Nearly 100 proposals –around 30 from the FANs—have been tabled. The numbers show great interest; the substance demonstrates that our goals are shared by many Members. Most of the issues of interest to FANs have been considered in the Rules Negotiating Group.

AD investigations and measures often used as handy tool for protectionism

The underlying situation has not improved as anti-dumping investigations and measures continue to be used for protectionist purposes in many cases. The proliferation of abusive anti-dumping measures serves as a substitute for the trade barriers that have been eliminated through painstaking negotiations. In addition, non-compliance with the Dispute Settlement Body (DSB) rulings has, in several cases, become a serious problem. Ensuring that legitimate economic interests are not undermined by protectionism should be a priority for all WTO Members.

Export interests of developing countries particularly at risk

This is especially true for developing countries whose economic growth and diversification of exports are particularly at risk of being hampered by AD measures. The Doha Development Agenda (DDA) negotiations are about improving rules that will nurture economic development throughout the globe. Substantial results in anti-dumping negotiations are essential to ensure that the benefits gained from overall market access liberalization, especially for developing countries, would not be taken away through the backdoor.

Parallel and substantial progress in AD negotiations needed in Hong Kong

The July package in 2004 was an important step forward in some areas. The Hong Kong Ministerial Conference in December 2005 provides an opportunity to bring the Round closer to its conclusion in all areas. We reaffirm that parallel and substantial progress in the anti-dumping negotiations is essential for the achievements to be made in Hong Kong.

Six broad objectives to accelerate and focus our work

In order to accelerate and focus future work by Members, the FANs have reflected the essence of their proposals in six broad objectives, which will serve as policy guidelines for our initiatives. Most of these objectives are, in fact, widely shared by Members.

Gather momentum in our work for text-based negotiation

- The process is very close to achieving a good basis for negotiations. Work should be expedited, and soon we should start a text-based negotiation to clarify and improve the disciplines.
- We re-affirm our strong support for the serious efforts by many WTO Members to attain reforms on anti-dumping rules. We further commit ourselves to accelerate and intensify our work towards a substantial outcome in the Hong Kong Ministerial meeting and beyond.
- By listing these six objectives, as elaborated in the FANs' proposals, we encourage Members to quickly seize the opportunity to share their idea with us and act together in our work for the text-based negotiation. We especially welcome the participation of developing countries to pursue our common goal.
- Finally, we recall that at the informal Ministerial gathering in Davos on 29 January this year, Ministers underlined the need for parallel progress in agriculture, NAMA, services, rules and trade facilitation and on the development dimension in order to achieve a balanced outcome for the DDA negotiations. We stand ready to work with the Chairman for the Rules Negotiating Group and all interested Members in conducting the necessary work to achieve this aim.
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Six Broad Objectives

1. Mitigating the Excessive Effects of AD Measures

The purpose of AD measures is to eliminate the injurious effects of dumped imports on the domestic industry in the importing country. The purpose is not to eliminate imports altogether, but only the injurious effects caused by such imports. To the extent that AD measures exceed what is necessary to counteract the injurious effects of the dumping, such measures are not justified and should not be allowed under the AD Agreement. Excessive measures over-burden exporters and also limit access to imports by consumers and industries, adversely affecting economic welfare and competitiveness in both markets. The substantial number of countries that have raised the issues of “mandatory lesser duty” and “public interest” shows the importance attached to the need to ensure that AD measures are not applied beyond what is strictly necessary to protect domestic industries from injurious dumping.

2. Preventing AD Measures from Becoming “Permanent”

The AD Agreement provides several mechanisms to modify or terminate AD measures. These so-called “reviews” enable the AD measures to adjust to market changes. It is crucial that efforts made by exporters who eliminate dumping in response to AD measures are duly recognized. This is also the best way to eliminate the injurious effects of dumping on the importing country. However, the application of these rules by some Members has made it difficult to change or terminate the measures irrespective of the efforts made by exporters to eliminate dumping. Current disciplines on reviews are unclear and deficient and have often led to disputes. In a large number of cases, measures are “rolled over” after “sunset” reviews despite the revocation of the measures after five years foreseen in the AD Agreement. Thus, at present an AD measure, once applied, can continue to be applied for decades even though the underlying cause has disappeared, thereby serving as a *de facto* permanent protection of the domestic industry. Such practices not only harm the exporters who, more than anyone, want to eliminate dumping, but also reduce consumer welfare as well as the competitiveness of the downstream industries in the importing country.

3. Strengthening Due Process and Enhancing the Transparency of Proceedings

Anti-dumping investigations involve complex processes where competing interests interact. Due process and transparency must be guaranteed to ensure that the facts are established in a fair and objective manner, thus providing a sound basis for decisions. Due process and transparency are essential to ensure adequate opportunity for all interested parties to present their facts and views to the authorities and to rebut the allegations of the other parties. Transparency furthers accountability since it allows for public scrutiny of the measure’s consistency with the AD Agreement and its impact on the economy and the society as a whole.

4. Reducing Costs for Authorities and Respondents

Due to increased complexities, AD investigations have become very costly for importers, exporters, governments and other parties. Moreover, the costs do not vary much according to the volume of trade; consequently, small exporters have the same burden as the larger ones. Thus the costs of investigations and reviews can act as additional trade barriers independent of the AD measures themselves. In fact, foreign small-and medium-sized (SME) respondents find it increasingly difficult to participate in investigations and are simply forced to give up exporting. Excessively detailed investigations may also be too burdensome for authorities with limited resources. This may ultimately undermine the credibility of the measures. It is therefore important to streamline and standardize the basic tools and procedures of the investigations.

5. Terminating Unwarranted and Unnecessary Investigations at an Early Stage

The mere initiation of an investigation has a chilling effect on trade, since exporters and importers have to suffer from the uncertainty of the outcome of the investigation. Indeed, even the threat of filing a petition can effectively be used as a means to harass competitors, stifling trade and competition. The enormous cost and resource requirements are yet another burden that an unwarranted initiation can impose on exporters. Furthermore, once provisional measures are imposed, even in cases where the investigation results in no measures in the final determination, the irreparable damage to the exporters will have been done. Unnecessary investigations are also burdensome for authorities, who are forced to spend substantial resources. By improving the disciplines for initiations we can prevent and terminate frivolous petitions and investigations at an early stage in the proceeding, which in turn will reduce costs, curtail harassment, and reduce the burden on authorities.

6. Providing Disciplines to Improve and Clarify Substantive Rules for Dumping and Injury

After a decade of experience with the application of the current AD Agreement, it is now evident that many of the rules are unclear and need improvement. This is particularly the case in procedures and methodologies for dumping margin calculations and the practice of “zeroing” as well as in the various aspects of injury determinations. It is as if Members were at times applying different agreements! This undermines predictability as well as the uniform application of the rules by WTO Members. The absence of clear rules also increases the burden on authorities, particularly those with fewer resources and experience. It is unfortunate that the challenges in the WTO dispute settlement system have become almost a routine. This in turn adds another layer of uncertainty as well as erodes the credibility and legitimacy of the system, resulting in continued abuse and serious economic consequences in the form of increased transaction costs, discouragement of trade and investment and adverse impact in the development of new products and markets. Clarifications and improvements of the substantive rules are therefore key to reducing the burdens on authorities, interested parties and society as a whole by ensuring uniform application and interpretation of anti-dumping rules.
