

**POSITION PAPER TO BE PRESENTED BY THE ARAB REPUBLIC OF EGYPT  
ON THE DOHA DECLARATION CONCERNING THE NEGOTIATIONS  
ON THE ANTI-DUMPING AGREEMENT**

The following communication, dated 6 February 2003, has been received from the Permanent Mission of Egypt.

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Egypt wishes to express its views on the papers that have been presented by various WTO Members to the Negotiating Group on Rules with respect to the Agreement on Implementation of Article VI of the GATT 1994 (hereinafter referred to as the AD Agreement) further to the Doha Declaration.

Introduction

In the context of Doha Declaration concerning the negotiations on the AD Agreement, Egypt would firstly like to make the following points:

1. It appears to Egypt that a number of Members are proposing a large number of unnecessary changes to the actual substance and character of the AD Agreement. It appears to Egypt that these Members are proposing such changes because they consider that some Members are misusing the AD Agreement in its present form in order to restrict fair trade between WTO Members. In support of their argument, these Members have repeatedly pointed to the substantial recent increase of anti-dumping actions initiated by "new Members" and consider this as a sign that the AD Agreement is being overused and misused in order to overly protect domestic industries. These Members claim that the growing and unnecessary use of anti-dumping measures has created trade disruption affecting long-term international trade and has offset the benefits of trade liberalization.

In response to these claims, Egypt contends that there are many alternate explanations for the recent increase in anti-dumping actions, such as, increased trade or the elimination of less transparent trade barriers caused by the implementation of the Agreement on Customs Valuation. Egypt considers that trade disruption is a result of the practice of dumping itself and of its negative effect on a country's domestic economy. It is the dumping itself and not the measures taken by an Authority to prevent dumping that are trade disruptive. Egypt considers that the recent increase in the number of anti-dumping actions taken by new Members is not a sign of over-use or misuse of the AD Agreement but a clear indication that new Members (most of which are developing countries) are beginning to exercise their rights in order to prevent the entry of injurious dumped imports into their markets and ensure that fair trade results.

2. Egypt considers that any proposal to substantially alter or change the substance or character of the present AD Agreement through the use of more complex and stringent rules regarding the conduct of anti-dumping investigations will not prevent a Member from misusing the AD Agreement

if it truly wishes to do so. In this regard, Egypt considers that, unlike new users, traditional users of anti-dumping instruments, which have access to additional and more complete resources would not be negatively affected by overly complex rules.

3. The European Community in a submission on the AD Agreement (TN/RL/W/13) dated July 2002 stated that negotiations on paragraph 28 of the Doha Declaration should aim to simplify and clarify certain provisions of the AD Agreement to take into accounts the needs of developing countries. Egypt considers that anti-dumping investigations are already complex, resource-intensive, time-consuming and costly and that many of the proposals put forward by various WTO Members under paragraph 28 of the Doha Declaration are not “clarifications” or “improvements” of the disciplines under the AD Agreement. Rather, these proposals are unnecessarily complex modifications and amendments of the actual content and substance of the AD Agreement. One particular example of this tendency to reinforce the obligations imposed on WTO Members, is the proposal by certain WTO Members to render the application of the lesser duty rule mandatory. In the AD Agreement it is clearly stated that the application of the lesser duty rule in an anti-dumping investigation is discretionary. Egypt considers that many “new users” of anti-dumping action, such as Egypt, are developing countries and have limited resources and experience to carry out anti-dumping investigations. Expecting these “new users” to adhere to the excessively complex rules being put forward by certain WTO Members would impose an unreasonable and unnecessary burden on them in terms of resources and ability and would negatively affect their rights under the AD Agreement.

Furthermore, many developing country Members have not yet began exercising their rights under the AD Agreement and it is likely that these countries will also be unreasonably burdened if they are obliged to carry out investigations in compliance with the excessively complex rules being proposed by certain WTO Members.

4. Egypt considers that it is important for investigating authorities to be able to complete their tasks within the framework of the AD Agreement. The drafters of the AD Agreement have purposely left open several options in certain situations in order to enable investigating authorities to adapt to the specificity of the cases before them. Any proposal or recommendation by a Member under paragraph 28 of the Doha Declaration should not create a new obligation in setting an unreasonable or unnecessary burden on an investigating authority when conducting an anti-dumping investigation.

5. Egypt also notes that there is a very adequate mechanism for ensuring that Members do not misuse the AD Agreement. That mechanism is the Dispute Settlement Understanding and the Dispute Settlement Body (DSB). Under Article 17 of the AD Agreement, Members have the right to request consultations with respect to any matter affecting the operation of the AD Agreement and if the consultations fail to achieve a mutually agreed solution then the Member may refer the matter to the DSB, which will appoint a panel to examine the matter. Therefore, Egypt considers that further complex rules will not prevent the misuse of the AD Agreement. In the event that a Member considers that an anti-dumping proceeding is or has been conducted in violation of the AD Agreement, that Member is entitled to have recourse to the dispute settlement mechanism.

#### **Scope of the Negotiations to be Carried out on the AD Agreement as a result of the Doha Declaration**

After careful review of the above-mentioned papers, submitted by various WTO Members, Egypt finds it necessary to recall the scope of the negotiations to be carried out on the AD Agreement.

The relevant paragraph of the Doha Declaration reads as follows:

“28. *In the light of experience and of the increasing application of these instruments by Members, we agree to negotiations aimed at clarifying and improving 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 instruments and objectives, and taking into account the needs of developing and least-developed participants. In the initial phase of the negotiations, participants will indicate the provisions, including disciplines on trade distorting practices, that they seek to clarify and improve in the subsequent phase.(...).”(emphasis added)*

Egypt submits that the sole purpose of the negotiations is to take stock of the experience gathered by Members in the use of the AD Agreement and to identify those areas where “*clarification and improvement*” would be required.

Indeed, paragraph 28 of the Doha Declaration makes it clear that negotiations are not aimed at amending the current rules. Rather, the negotiations must strive after simplifying the current discipline in those areas where problems have been encountered by Investigating Authorities. Contrary to the position adopted by some Members, the terms “*clarifying and improving*” necessarily imply that the AD Agreement shall not be substantively changed either by the introduction of new rules or by an interpretation of the current rules which would alter the nature of the present rights and obligations.

As a matter of fact, Egypt considers that the introduction of new rules in the AD Agreement at this point in time would be counter-productive and would defeat the objective pursued in the Doha Declaration.

In Egypt’s view, it is of utmost importance to first achieve consolidation of and a common understanding on the current rules and discipline among Members before engaging into any substantial revision of the AD Agreement. It should be borne in mind that many Members, in particular developing countries, have only recently implemented the AD Agreement and are starting to develop a practice in compliance therewith. The efforts required by this process should not be underestimated nor compromised by the adoption of more complex discipline.

Egypt is concerned that some Members might have lost sight of the true nature of the negotiations that Members agreed to initiate in Doha. Indeed, many of the papers that have been circulated thus far contain proposals that go far beyond “*clarification and improvement*” but rather constitute proposals for more complex rules and discipline than those agreed upon during the Uruguay Round. An example of such a proposal for more complex rules is the mandatory application of the Lesser Duty Rule (TN/RL/W/7).

For the reasons spelled out above, Egypt considers that the proposals for amendments that have been circulated fall outside the scope of the Doha mandate and furthermore would hamper the establishment by developing countries of a solid practice in compliance with the Uruguay Round obligations. Quite clearly, the introduction of more complex rules and discipline at this point in time where consolidation among Members is not yet achieved would be counter-productive and would negatively affect their rights under the Agreement.

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