

General Council

Original: English

PREPARATIONS FOR THE 1999 MINISTERIAL CONFERENCE

Proposals Regarding the Anti-Dumping Agreement in terms of
Paragraph 9(a)(i) of the Geneva Ministerial Declaration

Communication from India

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

Issues

1. Recent years have seen increasing resort to anti-dumping actions. In a number of cases investigations are started even in cases where the industry claiming injury has not been able to produce, before the investigating authorities, satisfactory evidence of dumping or injury. New investigations have often been started on the same products immediately after the termination of an investigation. This is particularly true of exports of developing countries which are being subject to more and more anti-dumping and countervailing measures. The frequent use of anti-dumping actions against exports from developing countries by major trading countries has become a matter of serious concern. The uncertainty and restrictiveness of these measures have created trade disruption affecting not only particular consignments but also longer-term trade in the targeted product. Benefits from trade liberalization have been considerably neutralized by the unfair use of anti-dumping measures, including back-to-back anti-dumping investigations on the same products which have frustrated the expectations created during the Uruguay Round.

2. The lack of clarity in certain provisions has compounded the problem, including the fact that Article 15 of the Agreement which provides the only reference to the special situation in developing countries is ambiguous and practically inoperative. Furthermore, in cases where there are no sales, or the sales in the domestic market are low, the investigating authorities rely on "constructed value" calculated on the basis of cost of production, even where data on price charged by the exporter to third-country markets may be readily available for price comparison purposes. Experience has shown that the determination of the constructed value is often not fair and results in harassment of exporting firms that are alleged to be dumping. Moreover, certain provisions, particularly those relating to *de minimis* dumping margin and the threshold volume of imports below which no anti-dumping duty shall be levied, need to be revised in view of the changed global trade and economic scenario, especially for exports from developing countries. The concerns arising out of increased susceptibility of developing countries to the incidence of dumping into their economy, as they liberalize their import regimes, also needs to be addressed.

3. The special provisions in the Agreement relating to settlement of disputes in the anti-dumping area which *inter alia* require panels not to challenge "the evaluation of facts" made by the investigating authorities, where "establishment of facts was proper and the evaluation was unbiased and objective" needs to be modified to provide that the common rules provided by the Dispute Settlement Understanding apply to disputes relating to anti-dumping actions. The following amendments are therefore necessary in order to ensure that developing countries receive the due benefits of global trade liberalization.

Proposals

4. Article 15 of the Agreement on Implementation of Article VI is only a best-endeavour clause. Consequently, Members have rarely, if at all, explored the possibility of constructive remedies before applying anti-dumping duties against exports from developing countries. Hence, the provisions of Article 15 need to be operationalized and made mandatory.

5. In order to restrict the initiation of back-to-back investigations, it should be provided that no investigation would be initiated for a period of 365 days from the date of finalization of a previous investigation for the same product resulting in non-imposition of duties. However, if for any exceptional reasons such an investigation has to be initiated it must have the support of at least 75 per cent of the domestic industry.

6. (i) The existing *de minimis* dumping margin of 2 per cent of export price below which no anti-dumping duty can be imposed (Article 5.8), needs to be raised to 5 per cent for developing countries, so as to reflect the inherent advantages that the industries in these countries enjoy *vis-à-vis* comparable production in developed countries.

(ii) The major users have so far applied this prescribed *de minimis* only in newly initiated cases, not in review and refund cases. It is imperative that the proposed *de minimis* dumping margin of 5 per cent is applied not only in new cases but also in refund and review cases.

7. The threshold volume of dumped imports which shall normally be regarded as negligible (Article 5.8) should be increased from the existing 3 per cent to 5 per cent for imports from developing countries. Moreover, the stipulation that anti-dumping action can still be taken even if the volume of imports is below this threshold level, provided countries which individually account for less than the threshold volume, collectively account for more than 7 per cent of the imports, should be deleted.

8. The lesser duty rule should be made mandatory while imposing an anti-dumping duty against a developing-country Member by any developed-country Member. Article 9.1 needs to be modified accordingly.

9. The definition of "substantial quantities" as provided for in Article 2.2.1 (footnote 5) is still very restrictive and permits unreasonable findings of dumping. The substantial quantities test should be increased from the present threshold of 20 per cent to at least 40 per cent.

10. In cases where there are no or low sales of like product in the domestic market, resort to constructed value on the basis of cost of production (Article 2.3) should only be made where the investigating authorities find that prices charged by the same exporter to third-country markets are not available or are not representative.

11. As developing countries liberalize, the incidence of dumping in to these countries is likely to increase. It is important to address this concern, since otherwise the momentum of import liberalization in developing countries may suffer. There should therefore be a provision in the

Agreement, which provides a presumption of dumping of imports from developed countries into developing countries, provided certain conditions are met.

12. Presently there is a different and more restrictive standard of review pertaining to adjudication in anti-dumping cases. There is no reason why there should be such a discrimination for anti-dumping investigations. Hence, Article 17 should be suitably modified so that the general standard of review laid down in the WTO Dispute Settlement Mechanism, applies equally and totally to disputes in the anti-dumping area.

13. The annual review provided under Article 18.6 has remained a proforma exercise and has not provided adequate opportunity for Members to address the issue of increasing anti-dumping measures and instances of abuse of the Agreement to accommodate protectionist pressures. This Article must be appropriately amended to ensure that the annual reviews are meaningful and play a role in reducing the possible abuse of the Anti-Dumping Agreement.
