

PREPARATIONS FOR THE 1999 MINISTERIAL CONFERENCE

The Anti-Dumping Agreement

Communication from Brazil

The following communication, dated 20 July 1999, has been received from the Permanent Mission of Brazil.

Background

1. The Anti-Dumping Agreement negotiated in the Uruguay Round is an improvement over the previous situation, since it now ensures a certain degree of transparency and predictability in investigation procedures. It also provides interested parties with some provisions – although still inadequate – that allow them to defend their rights and interests.
2. However, the AD Agreement still has significant gaps in its text, which permit the improper use of the Agreement as an instrument of veiled protectionism. Such misuse is actually encouraged by the fact that the affected countries have insufficient legal resources to contest the legitimacy or legality of an AD measure. On the other hand, the country imposing the measure is protected by the Agreement's lack of clarity, especially with respect to the criteria for the imposition and collection of duties, the procedures for reviews, and the methodology of calculations. In addition, the importing country finds, in the language of Article 17, a safe haven from challenges raised by other Members in the context of the Dispute Settlement Understanding.
3. Therefore, Brazil believes that several provisions of the AD Agreement should be improved, with a view to reduce the ability of Members to arbitrarily apply anti-dumping measures, and to prevent the perpetuity of such measures or their widespread use as a means to protect inefficient sectors of the domestic industry.
4. With regard to special and differential treatment for developing-country Members, there is no evidence that, since the AD Agreement has come into force, developed-country Members have implemented, or even intend to implement, the provisions of Article 15. This is particularly unacceptable, since the AD Agreement has no significant S&D stipulations.
5. Therefore, Brazil submits the following proposals to the General Council and reserves its right to complement them with other proposals or to further specify their particulars.

Proposals

6. Provisions of the AD Agreement should be improved, with a view to prevent the imposition of arbitrary or primarily protectionist measures. The provisions to be revisited should include, *inter alia*, (i) the criteria, methodology, and procedures of the reviews specified in the Agreement (expeditious review for new exporters, final review, reviews upon request), (ii) the definition of the product motivating the investigation, (iii) the determination of the margin of dumping, (iv) the imposition and collection of duties, (v) the “cumulation” clauses.

7. The provisions of Article 15 shall be detailed in order to become more comprehensive, operational and mandatory.

8. When investigating dumping of imports from a developing country, the use of the “lesser duty” rule shall be made mandatory.

9. Article 17 of the Agreement shall be modified to allow Members to effectively challenge, under the Dispute Settlement Understanding, any aspect related to the implementation of the Agreement or to a specific anti-dumping measure. In particular, Panels shall be authorized (a) to fully assess whether or not the investigating authorities properly established and evaluated the facts of a specific case; and (b) to determine conformity of a measure based on the Panel's own interpretation of relevant provisions of the Agreement.
