

**MOROCCO'S VIEWS ON THE NEGOTIATIONS ON THE RULES AND
DISCIPLINES OF THE AGREEMENT ON IMPLEMENTATION OF
ARTICLE VI OF THE GATT 1994 AND THE AGREEMENT ON
SUBSIDIES AND COUNTERVAILING MEASURES**

Communication from the Kingdom of Morocco

The following communication, dated 25 November 2002, has been received from the Permanent Mission of the Kingdom of Morocco.

1. INTRODUCTION

When it adopted the Doha Ministerial Declaration, Morocco undertook to work towards a successful outcome to the programme of negotiations in a number of fields, including more particularly those on anti-dumping measures and subsidies and countervailing measures. In this regard, under paragraph 28 of the Doha Declaration, the Ministers give instructions to engage in "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".¹

As can be seen from a perusal of the Ministers' guidelines on negotiations on the Anti-Dumping Agreement and the Subsidies and Countervailing Measures Agreement, the negotiations mandate clearly establishes that the objectives of the negotiations should be confined to clarification and enhancement of the rules/disciplines governing trade remedies for unfair competition "while preserving the basic concepts, principles and effectiveness of these Agreements and their instruments and objectives".

Accordingly, in observance of the Ministers' guidelines, the rules negotiations should not diminish the effectiveness of the Anti-Dumping Agreement and the Subsidies and Countervailing Measures Agreement in guaranteeing the right of Members to implement measures to combat unfair trade practices (dumping and subsidies). Trade remedies are a fundamental part of the equilibrium of the multilateral trading system inasmuch as they are the last resort in curbing the injurious effects of unfair trade practices. Breaking that equilibrium would mean weakening the multilateral trading system.

Admittedly, resort to trade remedies should be consistent with the rules and those rules should be clear, so as to limit any abuse in using such measures. The negotiations to clarify and improve the

¹ See the Doha Ministerial Declaration adopted on 14 November 2001, paragraph 28 (WT/MIN(01)/DEC/W/1).

rules should be confined to meeting that objective, more particularly by devising guidelines that make for transparency in the application of the rules, in accordance with interpretations and practices to be agreed on jointly by the Members. This exercise, however, must not prejudice the effectiveness of the relevant agreements or their instruments and objectives; otherwise it will not be consistent with the mandate issued by the Ministers.

2. RIGHTS AND OBLIGATIONS OF MEMBERS

In joining the WTO, Morocco confirmed its commitment to and trust in the liberal development model and the rule-based multilateral trading system that all countries in the system are required to adhere to. It is through the rules that the WTO system seeks to foster free trade and contribute to the economic growth of all Members while preventing the undesirable effects of liberalization or at least permitting remedies against injurious unfair trade practices.

The current rules of the Anti-Dumping and Subsidies and Countervailing Measures Agreements stem from successive multilateral negotiating rounds, establish the rights and obligations of Members under those Agreements in keeping with a balance jointly accepted by the Members at the end of the Uruguay Round. The present negotiations on rules seek, under the terms of the mandate issued by the Ministers, to clarify and improve the rules/disciplines of the Anti-Dumping Agreement and the Subsidies and Countervailing Duties Agreement, while preserving the basic concepts and principles and effectiveness of those agreements and their instruments and objectives.

In our view, the Ministers' instructions set out clear guidelines for preserving the present balance between Members' rights and obligations under the Anti-Dumping Agreement and the Subsidies and Countervailing Duties Agreement and the work of clarification and improvement of the rules should not jeopardize that balance, either by:

- Curtailing the right of Members to legitimate resort to the application of trade remedies; or
- increasing the obligations of a Member wishing to resort to trade remedies *vis-à-vis* other Members.

3. LIBERALIZATION AND TRADE REMEDIES

Believing in a multilateral trading system capable of producing effective market functioning based on the principle of real (and not artificial) product competitiveness, in an equitable distribution of the costs and benefits of growth and in the creation of an environment favourable to development and improving the level of living, Morocco embarked on foreign trade liberalization programmes involving substantial reductions in tariff duty levels, the elimination of non-tariff measures, a notable simplification of trade procedures and full implementation of the Customs Valuation Agreement that led to the discontinuance of the minimum taxable base system that would protect domestic production from unfair import practices (underinvoicing, dumping and subsidies).

However, efforts at liberalism should not be crushed by unfair market-distorting trade practices that assign additional market shares to companies selling products at artificially low prices. This distorts optimum allocation of resources, which is the essence of the multilateral trading system.

Morocco therefore considers that trade remedies form a "safety net" against possible slippage as a result of unfair trade practices in the context of a liberalized trading system. In a system based on high customs duties, minimum import prices or other protectionist practices, the impact of dumped or subsidized imports is still very weak because it is curbed by classic protection.

On the other hand, for countries, like Morocco, with a very moderate and transparent protection system, the only tools available to offset injury caused by unfair competition are anti-dumping measures, and countervailing measures, which must be scrupulously applied in observance of the very complex and quite restrictive rules established by the relevant WTO Agreements. Preserving the effectiveness and applicability of these agreements can only build up Member's confidence in a rule-based multilateral trading system and, as a result, will initiate a more thorough trade liberalization process that is a common objective shared by WTO Member countries.

4. TRADE REMEDIES AND INVESTMENT SECURITY

Investment, a vector of economic growth, is of crucial importance to development policies and, more particularly, those adopted by the developing countries. To this end, an array of measures has been applied in most countries to improve the investment environment and conditions.

The success of investment projects nonetheless depends to a large extent on the ability to market the products obtained from the investments. Consequently, if the domestic market is distorted because of unfair competition in imports, this can or does seriously jeopardize investments when the products are intended for the domestic market. In this context, trade remedies against unfair trade practices have to be set in motion.

Morocco takes the view that the right to resort to trade remedies should be maintained, so as to guarantee some security and safeguard investment against the detrimental effects of dumped or subsidized imports. Otherwise, the consequences for the investment promotion policies that countries have introduced will not meet expectations owing to a less secure trade environment.

5. TRADE REMEDIES IN THE CONTEXT OF SMALL ECONOMIES

Generally speaking, the feature of small economies is a domestic market of very limited size in terms of absorption and more vulnerable to distortions caused by unfair trade practices. Indeed, the degree of harm caused by dumped or subsidized imports is much greater than in the case of large markets.

In the context small economies, particularly developing countries with a poor purchasing power, issues relating to unfair trade practices and trade remedies are much more acute because of:

- The vulnerability of industries producing for the domestic market in a situation of unfair import competition that might, in a very short time, take over a substantial share of the market and endanger the industry making a domestic product like the imported product that is involved in unfair trade practices.
- The complexity of the process of implementing trade remedies provided for in the Anti-Dumping and the Subsidies and Countervailing Measures Agreements, along with the necessary time-frames for the importing country's authorities to be able to react to unfair trade practices.

For example, the harm may sometimes be irreparable in the case of one or a small number of dumping or subsidized transactions, which can in some instances be equivalent to all of the market's needs and can completely destabilize the domestic market without any prompt reaction against those imports. In view of the time-frames necessary to prepare and examine an application and the decision to initiate an investigation, along with the period for applying a provisional measure, the effect of the remedial measures in this case proves to be very limited.

On the other hand, in the case of a large domestic market, it would be difficult, if not impossible, to take over a substantial share of the market in a very short period with just a few transactions. Accordingly, the time-frames for applying trade remedies do not constitute major constraints for the domestic industries concerned.

Consequently, as a small economy, Morocco deems it important to take account of these concerns in the process of the negotiations on rules, which will enable all Member countries to benefit fully from the multilateral trading system.

6. SPECIAL AND DIFFERENTIAL TREATMENT

Morocco fully supports the work being done in the Committee on Anti-Dumping Practices' Working Group on Implementation on how to give effect to Article 15 of the Anti-Dumping Agreement, pursuant to the instructions given by the Ministers at Doha on implementation-related issues and concerns.² By stipulating that special regard must be given by developed country Members to the special situation of developing country Members when considering the application of anti-dumping measures, Article 15 establishes that differential treatment is considered only in the case of dumped exports from a developing country to a developed country. The treatment for developing countries as between themselves is not covered by Article 15.

In fact, the provisions of Article 15 reflect the idea that differential treatment is warranted because of the asymmetrical relations between developed and developing countries. In the context of the present negotiations on rules, proposals to extend to developing countries the obligation to accord differential treatment are not justified. In the case in point, trade relations between two developing countries are involved and hence in a relatively balanced economic situation, which does not warrant resort to unbalanced treatment.

Moreover, Morocco considers that broadening the scope of Article 15 of the Anti-Dumping Agreement would curtail the legitimate right of developing countries to resort to anti-dumping measures to offset injury caused by dumped exports from developing countries, something that would affect the effectiveness of the Anti-Dumping Agreement. Hence, the Doha Ministerial Declaration would not be complied with.

7. CONCLUSION

Morocco considers dumping and subsidies to be unfair trade practices that distort market competition and remedying them by anti-dumping measures under the provisions of the Anti-Dumping Agreement does not constitute a protectionist act; rather it means applying remedies to make good injury caused by dumping or subsidies. Accordingly, anti-dumping and subsidy mechanisms must be effectively set in motion to offset the injury sustained, more particularly in countries where the domestic market is small and where unfair trade practices can cause irreparable injury to industries supplying the domestic market.

However, while Morocco considers that it is necessary in the rules negotiations to preserve the balance between Members' rights and obligations in the implementation of the Anti-Dumping Agreement and the Subsidies and Countervailing Measures Agreement, which would build up trust in the rule-based multilateral trading system and thus make for speedier trade liberalization, especially through tariff reduction, it is appropriate to take account in the course of the negotiations of the situation of small economies more vulnerable to the harm caused by unfair trade practices, as well as the situation of developing country Members, bearing in mind that the scope of special and

² Decision of 14 November 2001 on Implementation-Related Issues and Concerns (WT/MIN(01)/17).

differential treatment should be confined to operations between developed countries and developing countries.
