

CIRCUMVENTION

Communication from the United States

The following communication, dated 3 February 2003, has been received from the Permanent Mission of the United States.

Trade remedies form an integral part of the current rules-based international trading system.¹ In Doha, the Ministers stressed the importance of the trade remedy rules by stating that Members should improve and clarify the rules while “preserving the basic concepts, principles and effectiveness of the Agreements and their instruments and objectives, and taking into account the need of developing and least developed participants.”² The United States has used these principles to guide its submissions and participation in the Rules negotiating process.

In the United States’ view, the Rules Negotiating Group can advance the Ministers’ mandate through the negotiation of uniform procedures to address the circumvention of anti-dumping and countervailing duty measures. Circumvention is a serious concern for Members because it undermines the effectiveness of the trade remedy rules. Anti-dumping and countervailing duty measures are applied in order to offset injurious dumping or countervailable subsidized imports. However, if exporters are allowed to circumvent orders and avoid paying duties while continuing their unfair trade practices, such trade remedy measures are rendered meaningless. Clear procedures on the prevention of circumvention are needed to preserve the effectiveness of the Agreements and their instruments and objectives, while ensuring that exporters’ legitimate business decisions are not undermined.

Importantly, at the end of the Uruguay Round, Ministers identified circumvention as an area of unfinished work that must be addressed. The Ministerial Decision on Anti-Circumvention was adopted at Marrakesh and formed an integral part of the Final Act Embodying the Results of the Uruguay Round Multilateral Trade Negotiations. The Decision reads:

Ministers,

Noting that while the problem of circumvention of anti-dumping measures formed part of the negotiations which preceded the Agreement on Implementation of Article VI of GATT 1994, negotiators were unable to agree on specific text,

¹ See Communication from the United States, “Basic Concepts and Principles of the Trade Remedy Rules,” 22 October 2002 (TN/RL/W/27).

² WT/MIN(01)/DEC/W/1 (paragraph 28).

Mindful of the desirability of the applicability of uniform rules in this area as soon as possible,

Decide to refer this matter to the Committee on Anti-Dumping Practices established under the Agreement for resolution.

Thus, the Ministers acknowledged the problem of the evasion of anti-dumping measures through circumvention, and the need to address this problem “as soon as possible.”³ The Decision referred the matter to the Committee on Anti-Dumping Practices for resolution. To fulfill this mandate, the Committee established the Informal Group on Anti-Circumvention (the “Informal Group”) to address the problem of circumvention. Significant progress has been made in the Informal Group in understanding the nature of circumvention, and that work should continue.⁴ However, the United States believes that we should also address this issue in the context of the Rules negotiations in order to establish clear and uniform anti-circumvention procedures here.

The United States is presenting this paper to encourage the Rules Group to complete the work called for at the end of the Uruguay Round and to make addressing circumvention an important priority in these negotiations. The United States intends to submit a proposal at a future point in these negotiations, and would like to hear from other Members about their experiences and ideas for developing and implementing effective anti-dumping procedures.

³ While the Ministerial Declaration only addressed the circumvention of anti-dumping measures, and referred the topic to the Committee on Anti-Dumping Practices, there is no difference between circumvention of anti-dumping and countervailing duty measures. Actions an exporter may take to circumvent payment of duties are the same regardless of whether the duties were imposed in response to dumping or subsidization. Thus, while the topic is usually discussed in relation to anti-dumping measures, the discussion and resulting procedures to be negotiated by this group should apply, *mutatis mutandis*, to countervailing measures under the Agreement on Subsidies and Countervailing Measures.

⁴ As recognized by the Informal Group, circumvention can come in various forms. For example, one type of circumvention involves the simple assembly of imported parts or components in the importing Member’s country in order to avoid the imposition of the anti-dumping duty on the completed product. Another type involves minor alterations prior to exportation of a product covered by an anti-dumping measure, where the alterations are done to change slightly the physical characteristics of the product in order to fall outside some technical specification of a precisely described like product, and thus avoid imposition of anti-dumping duties.