

WORLD TRADE ORGANIZATION

TN/RL/W/54
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Negotiating Group on Rules

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THIRD SET OF QUESTIONS FROM THE UNITED STATES ON PAPERS SUBMITTED TO THE RULES NEGOTIATING GROUP

The following communication, dated 5 February 2003, has been received from the Permanent Mission of the United States.

Introduction

As mandated by the Ministers in Doha, negotiations on WTO Rules are 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. Consistent with this mandate, we believe it is essential that these negotiations be designed to maintain the strength and effectiveness of the trade remedy laws.

The United States submits the following questions, which we hope will help to ensure that the Ministers' mandate will be fulfilled. The United States reserves the right to submit additional questions at a later date on these papers and on additional papers submitted to the Group.

TN/RL/W/6

1. With respect to the issue of cyclical markets, the submission argues that "rapidly growing manufacturing sectors" face problems similar to those of perishable goods. How do the proponents define "rapidly growing manufacturing sector"? How specifically is their situation similar to perishable agricultural goods? Are the proponents suggesting different antidumping disciplines for these two types of products?
2. On the subject of facts available, the submission asks whether more "stringent rules" should be developed for determining when "facts available" should be used in an investigation. Is the submission referring to the general use of "facts available" or only when "adverse inferences" are used? How might an administering authority create incentives for cooperation by responding parties if adverse "facts available" is not an option? What sources of information should be used by Members when exporters do not cooperate?
3. The submission suggests that a provision should be introduced requiring consideration of the "public interest" in conducting anti-dumping investigations. Would all Members be required to use the same "public interest" criteria? How much flexibility should a Member have in defining its own public's interests?

TN/RL/W/28/Rev.1

1. Proponents state that one of their objectives is to “avoid excessive burdens on respondents”. What is the proponents’ definition of “respondents”? Should avoiding excessive burdens on members of the domestic industry be considered in assessing whether this objective is satisfied with respect to discussion of information-gathering activities pertaining to the application and to the determination of material injury?
2. Under the objective of enhancing transparency, predictability and fairness, the proponents discuss arbitrary interpretations and applications and their effect on predictability and fairness, but do not mention transparency. Do proponents agree that improving transparency in antidumping and countervailing duty proceedings will reduce arbitrary interpretations and applications?

TN/RL/W/29

1. The United States requests clarification with respect to the issue of the definition of “dumped imports”. Is it the purpose of this proposal to suggest that the Agreement be clarified to ensure that the term “dumped imports” is defined on a company-specific basis, rather than in terms of the total imports subject to the investigation? Do the proponents contend that if a *de minimis* dumping margin is calculated for imports from a particular producer, then those imports should not be considered to be dumped imports for purposes of the injury determination?
2. Proponents raise the issue of sufficient quantity of sales for determining normal value, and whether such quantities should be measured with respect to the product under investigation as a whole, or “categories” of such product. Proponents state that a goal of the negotiations should be to avoid methodologies which decrease the use of home market sales or increase the use of constructed value. For clarification, is it proponents’ view that application of this test to all home market sales during the period of investigation under consideration (sometimes referred to as “the foreign like product”), rather than to sub-categories of such merchandise, would be less likely to result in use of constructed value? What is the basis for this view?
3. In proposing discussion of a definition of “association or compensatory arrangement” under Article 2.3, to what extent do proponents believe that the definition of “related parties” in Article 4.1 could serve as a useful basis for this new definition? In proponents’ view, would any changes be required?
4. With respect to the so-called “lesser-price” provision of Article 8.1, in proponents’ view is there a technical distinction between this provision and the “lesser duty” provision of Article 9.1?
5. In the view of proponents, what standard should be applied in determining the sufficiency of public notices and determinations? Would the proponents agree that Article 12 addresses the content of public notices, and that issues concerning how an investigating authority is to conduct its substantive analysis (e.g., determination of dumping and injury) are addressed in other articles of the Agreement?
6. While the United States concurs that the same general standards of transparency should apply to public notices and explanations of initiations as for preliminary and final determinations, do proponents agree that the sufficiency of such public notices and explanations must be weighed with a view to the limited information available to investigating authorities at such an early stage in the investigation?
7. The Committee on Implementation of Article VI of GATT 1994 has adopted a recommendation on the period of data collection for anti dumping investigations which appears to

parallel the proposal on that topic advanced by the proponents (See, G/ADP/6 (May 16, 2000)). Does the proponents' suggestion differ from this recommendation?
