WORLD TRADE ORGANIZATION

TN/RL/W/34
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Negotiating Group on Rules Original: English

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

Communication from the United States

The following communication, dated 25 November 2002, 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.

Questions relating to TN/RL/W/10

1. Product Under Investigation: The submission asserts that the lack of a definition of a product under investigation has allowed authorities to define a group of products destined for different market segments to be a single "product under investigation."

(a) The second paragraph of the discussion states that "the scope of the product under investigation/consideration defines the scope of 'like product.'" Does this mean that proponents contend that the definition of the domestically produced "like product" must correspond exactly to the definition of the scope of those imported articles subject to investigation? If so, what is the basis for this contention?

(b) To what extent could the proponents' concerns be addressed by ensuring that the antidumping authorities determine the definition of the like product separately from the definition of the scope of the product under investigation?

(c) The proponents express concern that "radically different" later developed products could be included in the coverage of an anti-dumping measure. How do the proponents define "radically different" in this context? Do the proponents contend

that slight updates of or minor alterations to existing products should not be included in the coverage of an anti-dumping measure?

(d) Some Members have developed a practice, in certain cases, of defining the "product under investigation" in terms of specific producers, as well as physical characteristics. In such cases the "product" may be defined as "widgets produced by Company A" even though companies B and C, located in the same country as A, also produce and export identical widgets to the investigating Member. The investigation is then conducted solely with reference to imports from Company A, and any eventual measures are applied in a discriminatory manner solely against Company A. In the view of proponents, should such a definition of product under investigation be permissible?

2. Standing Rules: The submission suggests that the proportion of domestic producers required to expressly support the petition be raised to 50 per cent (from the current 25 per cent) in order to permit the initiation of an investigation.

(a) How would the proponents address situations of large and highly fragmented industries?

(b) In the illustrative example, the proponents question whether the authorities can "determine injury by data from the minority of the total domestic production," in a case where only the supporters of the petition respond to the authorities' questionnaire, and the majority of the domestic industry does not. In doing so, the proponents seem to relate the level of domestic support necessary for the initiation of an investigation with the level of domestic industry participation throughout the course of an investigation. Do the proponents suggest that there should be such a relationship? If so, why?

3. Initiation Standards: The submission proposes a clarification of the current requirement to examine the "accuracy and adequacy" of a petition before initiating an investigation.

(a) Most of the relevant information to establish dumping is in the hands of exporting companies (e.g. their home market and export prices, customers, etc.). Are the proponents suggesting a procedure for the investigating authority to gather such information before the initiation decision? If so, how would such a procedure differ from the investigation itself?

(b) To what extent would a more extensive analysis before initiation require a longer time period between filing of the application and initiation?

4. Affiliated Parties: The submission proposes clarification of the circumstances under which parties are found to be affiliated and adjustments are made to their prices to account for differences between affiliated prices, and prices between non-affiliated parties. The submission gives an example of a transaction between two parties, one of which owns 6 per cent of the stock of the other, in which the price set for the transaction, although 10 per cent lower than commodity market prices, is still profitable.

Knowing nothing else about the transaction or parties, where Company B is selling to Company A at a price 10 per cent lower than the commodity market price, should the authority investigate further the relationship between the two companies, and its possible effect on the price charged?

5. Price Undertakings: The submission gives an example of a price undertaking proposed by an exporter which accounts for 40 per cent of exports from the exporting country, and which would completely eliminate the "margin of underselling," and the injurious effects of dumping. In the example, the authority rejects the proposal because it has a policy against accepting undertakings from a single exporter which does not represent a majority of imports from that country.

In the example given, what is a "margin of underselling?" What is the basis for the assertion that elimination of this would remove all injury?

6. Use of Cost Data: The submission notes that the Agreement requires that costs normally be calculated on the basis of a producer's own records. The submission suggests that if the books are audited by a duly qualified person or agency those records should be used.

Although records may be certified by a duly qualified person or agency to be in accordance with the generally accepted accounting principles (GAAP) of the exporting country, there may be unusual situations where the use of a particular local GAAP rule for the product in question distorts the true costs. Under such circumstances, should the investigating authorities be permitted to disregard such distortive cost allocations, so long as they provide a full explanation?

Questions relating to TN/RL/W/13

1. Section 2 of the EC's paper states that "[i]n the experience of the EC, a mandatory lesser duty rule leads to stronger disciplines. It significantly limits the level of the measures to what is strictly necessary for removing injury to the domestic industry."

(a) Would the EC please provide a full description of the methodology it uses to calculate such a "lesser duty"? Has any "lesser duty" determination by the EC been subject to judicial review, and if so, what were the results of such review?

(b) Does the EC believe that its lesser duty rule *should succeed* in effectively limiting the level of the measures available to industries to that "necessary for removing injury," or does it maintain that its rule actually *has succeeded* in that objective? If its position is the latter, could the EC state the basis for this position, and any empirical evidence to support it?

2. Is there any reason why the definition of "injury" in the context of Article 9.1 of the AD Agreement should not be the same as that for "injury" in the context of Article 3? If the definitions are the same, can the EC describe how the numerous injury criteria articulated in Article 3 are susceptible of quantification into a single measure of injury for purposes of Article 9.1?

3. The EC proposes a "swift dispute settlement mechanism" to review initiations of investigations. Is the EC suggesting special procedures be followed by Panels in these cases in order to provide a swifter resolution? Is the EC proposing that the issues that Members would be permitted to raise in such cases be limited? Under the EC's proposal, would the anti-dumping investigation be suspended pending outcome of the challenge to the initiation? Would such a proposal require an amendment to the Dispute Settlement Understanding? If so, does the EC plan to make such a proposal in the context of the DSU negotiations?

4. The EC suggests that a public interest test, where the impact of a measure on economic operators is examined, would be "useful" prior to the imposition of a measure. Under such a test, would a Member country be free to determine what criteria it will consider in determining the public interest and where its public interest lies in a particular matter? Does the EC currently conduct a public interest test before it imposes a measure? If so, would the EC please provide a full description

of the methodology it uses in applying its public interest test? Has the EC's application of a public interest test been subject to judicial review in any case, and, if so, what were the results of such review?

Questions relating to TN/RL/W/26

1. India proposes that the options for identifying profit under Article 2.2.2 should be considered a hierarchy. What order of those options does India propose, and what is the rationale for that order?

2. India proposes deliberation on certain questions relating to the calculation of "injury margins." What is an "injury margin" ? India states that Article 3.4 lists 15 "injury parameters." Would India please clarify its view of the connection between such "parameters" and the "injury margin"?

3. India proposes more specific provisions on price undertakings, including establishing rules for identifying an appropriate price for an undertaking, defining " satisfactory" undertakings, and clarifying conditions as to when non-acceptance of price undertakings is permissible. Would such provisions change the essential nature of price undertakings as mutually agreeable settlements between exporters and the investigating Member? Is India proposing that there should be conditions under which exporters would be required to accept undertakings proposed by the Member? Should there be conditions under which exporters would be required to provide reasons when rejecting undertakings offered by a Member?