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TRADE AND DEVELOPMENT BOARD
Commission on Trade in Goods and Services,
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Expert Meeting on the Impact of Anti-Dumping
and Countervailing Actions
Geneva, 4-6 December 2000
Agenda items 3 & 4

**THE IMPACT OF ANTI-DUMPING AND COUNTERVAILING DUTY
ACTIONS ON THE TRADE OF MEMBER STATES, IN PARTICULAR
DEVELOPING COUNTRIES**

**MAIN ISSUES AND AREAS OF CONCERN THAT NEED TO BE
ADDRESSED IN THE LIGHT OF CONCRETE EXPERIENCES
PRESENTED BY NATIONAL EXPERTS**

Outcome of the Expert Meeting

1. The Expert Meeting on the Impact of Anti-Dumping and Countervailing Actions was held in Geneva from 4 to 6 December 2000. The decision to organize this Meeting was taken in accordance with paragraph 132 of the UNCTAD X Plan of Action (TD/386), which states that “UNCTAD’s work should relate first to analysis and, where appropriate, on the basis of the analysis, contribute to consensus-building on: impact of anti-dumping and countervailing duties actions”. The following is the outcome of the Expert Meeting. Pursuant to the Trade and Development Board’s decision taken at its twenty-fourth executive session, the outcome will be circulated by the secretariat to member States with a request for policy comments on the experts’ recommendations. The responses of member States will be taken into account in the preparation of the secretariat documentation for the fifth session of the Commission on Trade in Goods and Services, and Commodities, to be held from 19 to 23 February 2001.

2. Individual experts, on the basis of the concrete experiences presented at the Meeting, put forward their views on the possible ways and means of addressing the issues and areas of concern to developing countries so that the adverse effects of anti-dumping and countervailing duty actions on trade, particularly that of developing countries, could be reduced. The following text summarizes their suggestions. Not all of the views were shared by all experts; the text is intended to reflect fairly the richness and diversity of the views expressed, rather than agreement.

3. Several experts and the background note prepared by the secretariat emphasized that anti-dumping and countervailing duty actions are legitimate measures permitted under GATT/WTO rules, and considered that the proposed changes should be seen in the context of their impact on investigatory practices and the ability to ensure fair trade.

Main issues identified

4. On the basis of national experiences, presentations of resource persons and the background note prepared by the UNCTAD secretariat (TD/B/COM.1/EM.14/2), the experts identified issues relating to anti-dumping and countervailing measures which might be addressed, as appropriate, in (a) future multilateral trade negotiations; (b) the current activities of the WTO Committee on Anti-Dumping Practices and its organs; (c) the WTO dispute settlement mechanism; (d) national policies of member States; and (e) the future work of UNCTAD and other relevant international organizations in this area, including technical assistance activities. The following views were expressed in the debate.

A. DUMPING

Five per cent viability test

5. The 5 per cent viability test should be applied on a global basis for the like product. The investigating authorities should conduct a further review to determine whether the low domestic sales volume compared with the export volume was caused by the small size of the domestic market of the exporting country and might therefore serve as the basis for normal value. The per capita consumption of the product concerned should be taken into account.

Exclusion of sales below cost

6. The current 20 per cent threshold may not adequately reflect business realities. The practice of investigating authorities seems to suggest that where sales below cost represent more than 20 per cent of total domestic sales, such sales are systematically excluded and normal value is based on remaining sales above cost artificially and arbitrarily increasing normal values and dumping margins. To tackle this problem, the current 20 per cent cut-off could be increased, and authorities must respect the “reasonable period of time” as required by the Agreement on Anti-Dumping (AAD).

7. The weighted average normal value may not be less than the weighted average cost per unit.

Constructed normal value

8. Experience seems to suggest that manipulation of exporters' financial information may result in an increase in their dumping margins under certain circumstances. Article 2.2.2 of the AAD allows too much discretion and may lead to unreasonable selling, general and administrative expenses and profit calculations in certain cases. Therefore, the current provision should be clarified.

Fair and symmetrical comparison

9. In order to achieve a fair comparison, common rules must be established to obtain equal results based on the same set of data.

Credit cost

10. Actual credit costs should be accepted in normal value calculations even if they are not based on contractual arrangements.

Duty drawback

11. High standards of burden of proof are currently used in some jurisdictions to reject or minimize normal value adjustments based on valid duty drawback claims. Article 2.4 of the AAD should be clarified to ensure that drawback adjustments are based on prevailing business practices and realities.

Level of trade

12. Some countries define the difference in level of trade in a complicated manner, thereby imposing an unreasonable burden of proof on exporters. Also, countries do not provide proper information regarding the definition of level of trade. Rules on identification and quantification of level of trade adjustments are needed.

Exchange rate fluctuations

13. The absence of a definition of “sustained movement” in Article 2.4.1 is a matter of concern for countries with floating exchange rates. Short-term fluctuations and long-term trends in exchange rates should be clearly distinguished and the long-term trends should be defined as “sustained movement”, which would normally imply a period exceeding 60 days for adjustment of export prices.

Exchange gains or offsets

14. While exchange losses are usually taken into account, exchange gains are frequently ignored on narrow, technical grounds, thereby inflating costs and minimizing favourable adjustments. Article 2.2.1.1 should be clarified so as to exclude consideration of both exchange gains and losses, or to ensure that exchange gains are included in the calculation of costs of production.

Zeroing (exceptions)

15. The three exceptions contained in Article 2.4.2 (purchasers, regions and time periods) are too broad and disproportionately benefit large economies. The exceptions must be tightened. Zeroing should not be applied in investigations or reviews.

Non-market-economy treatment

16. Non-market-economy provisions should be applied only against countries which meet the criteria in GATT Article VI, i.e. those which have a “complete or substantially complete monopoly of [their] trade and when all domestic prices are fixed by the State”. Very few countries at present meet these criteria.

17. In cases where investigating authorities encounter difficulties in establishing normal value, for example for exports from countries in transition, they should ensure that the methodologies used are fair and predictable.

***De minimis* dumping**

18. The practical impact of an increased *de minimis* dumping margin should be empirically researched. UNCTAD could undertake a study on this issue.

Cyclical industries

19. Given the fact that some industries are cyclical, the current treatment of sales below costs of production as set out in the AAD can result in a finding of dumping during periods of low capacity utilization. Solutions should be sought to avoid massive imposition of measures during such periods.

B. INJURY

Basis of negligibility

20. Thresholds for excluding negligible imports from injury determinations should be based on market share rather than on share of total imports.

Negligible import volumes

21. The level of negligible imports should be increased to a level higher than the current 3 per cent on the basis of empirical research demonstrating a positive trade impact.

Cumulation

22. The cumulation of suppliers that individually meet the negligibility criteria, using the 7 per cent rule, should be revised or eliminated.

Captive production/definition of “industry”

23. The exclusion of captive production from injury analysis should not occur without proper justification.

Lesser duty rules

24. The lesser duty rule should be made mandatory and its application made subject to regular review. Some authorities have encountered difficulties in calculating the lesser duty.

C. PROCEDURE

Back-to-back complaints

25. The repeated recourse to anti-dumping actions against the same product has been identified as one of the problems relating to the implementation of the AAD. The disciplines in this regard should be strengthened to preclude the initiation of any investigation for a period of 365 days from the date of termination of a previous investigation of the same product from the same country.

26. Petitions brought before the investigating authorities within 365 days should be examined with the utmost care.

Standing

27. When challenging standing, the burden of proof should not be on the exporters; rather, the national investigating authorities of the importing country should demonstrate that they have correctly determined standing in accordance with Article 5.4 of the AAD.

Sunset reviews

28. Anti-dumping and countervailing duty actions should not normally continue after five years. An anti-dumping duty should remain in force only as long as and to the extent necessary to counteract dumping which is causing injury. The investigating authorities have been conducting sunset reviews in conformity with the spirit and legal requirements of the WTO Agreements.

Questionnaires

29. Replying to questionnaires, some of which extend to hundreds of pages, constitutes a major burden, particularly for small and medium-sized exporters from developing countries.

Questionnaires should be as simple as possible, focusing only on the necessary information. Consideration should be given to the preparation of a standard questionnaire.

Language

30. The difficulties in, and the cost of, translating documents required as evidence in investigations should be taken into account by investigating authorities with a view to minimizing the burden on respondents. Translation difficulties should be given special consideration as a justification for extending the normal 30-day period for responding to questionnaires.

Independent bodies

31. National anti-dumping/countervailing duty administering or investigating authorities should function autonomously with respect to technical decisions.

Price undertaking

32. To enable exporters to continue to have access to the market, price undertakings should be accepted, if offered by exporters on terms that would remedy dumping or its injurious effects, as an alternative to anti-dumping duties.

D. SPECIAL CONCERNS OF DEVELOPING COUNTRIES

33. Anti-dumping actions, including the initiation of investigations that are subsequently determined to be unfounded, may often have a devastating effect on the economies and societies of developing countries since they cut off trade in crucial export markets. They often frustrate those countries' efforts to diversify their exports into new sectors of production. Anti-dumping actions may result in a diversion of investment away from developing countries to the major market countries. Anti-circumvention measures could result in countries which have made no contribution to material injury in the importing country being caught up in anti-dumping actions. Developing countries are particularly concerned that, upon the expiry of the Agreement on

Textiles and Clothing, there could be a wave of anti-dumping actions against textile and clothing exports.

34. There is a need to make the best-endeavour provisions of Article 15 of the AAD operational. This could be accomplished by, *inter alia*, increasing the *de minimis* thresholds for dumping and injury to levels which would provide meaningful trade advantages for developing countries and eliminating cumulation of their exports. Increases of these thresholds to 5 per cent were suggested, but further empirical analysis should be undertaken to ensure that these levels are high enough to accord meaningful trade advantages to developing countries. Higher thresholds would also reduce the cost of defence against anti-dumping actions by developing countries as they would be automatically excluded in a greater number of cases. The possibility of recommending progressive duties in the case of developing countries should be explored in order to help the producers in those countries in realigning their production.

Cost of defence

35. Developing country exporters face serious difficulties in defending their interests against anti-dumping actions. They usually do not possess the necessary technical expertise, and lack the resources required for legal counsel in anti-dumping actions or in pursuing their rights under the WTO dispute settlement mechanism. These exporters require training in order to understand dumping issues so as to minimize the risk of anti-dumping actions against them.

Difficulties in application

36. Developing countries, which are the subject of dumping, face difficulties in applying anti-dumping actions. They lack the financial, technical and human resources to conduct investigations. As a result, many find themselves unable to defend their producers against dumped imports. They require technical and financial assistance to strengthen their administrations.

37. Dumped imports are a particular problem for African countries. They perceive that they are victims of increased dumping from outside the region; and they require assistance in addressing this problem. A solution should be sought for African countries.

Small economies

38. Technical assistance should take into consideration the specificities of small developing economies, such as a notable lack of financial, technical and human resources, and should provide for a practical approach to institution-building that could economize on investigation, administrative and other costs.

39. Given the size of the market and the strength of the local industries, the time taken by a local industry to lodge a complaint and for an anti-dumping investigation to be initiated may result in the death of the industry.

40. Small economies have few products for export and any anti-dumping actions against these products will destabilize the economy.

Countervailing duties

41. In assessing duty drawback systems in developing countries, aggregate evidence should be accepted when exporters are unable to identify individual inputs. Developing countries request that they be entitled to estimate the incidence of excise, sales and other internal taxes for refund without this being considered an export subsidy. The *de minimis* subsidy level for countervailing duty investigations should be increased from 2 per cent to 3.5 per cent for developing country exports.