

# WORLD TRADE ORGANIZATION

WT/COMTD/SE/W/7  
4 November 2002

(02-6055)

Committee on Trade and Development  
Dedicated Session

Original: English

## QUESTIONS FROM THE UNITED STATES AND INITIAL RESPONSES IN REGARD TO PROPOSALS CONTAINED IN WTO DOCUMENT WT/COMTD/SE/W/3

### Questions of the United States on Proposals Related to Small Economies

#### I. RULES ANTI-DUMPING (AD) AND COUNTERVAILING DUTIES (CVD)

**Proposal 1:** The rules and procedures of the relevant Agreements should address the circumstances of the small economies. Some rules of concern to many small economies include reporting requirements; standards for the application of anti-dumping and countervailing measures; investigation procedures and assessments, including calculations of the dumping margin and of the benefit derived from the subsidy, the causation principles and the definition of domestic industry. It should also be explicitly recognised that if small economies do not have the resources to maintain a "competent authority", they can designate a regional body as their competent authority.

#### **Response/Request for Information:**

- We would appreciate clarification of what is intended by the phrase "addressing the circumstances of small economies." We are sensitive to suggestions that would lower requirements for vigorous enforcement.
- Although the regional aspect raises some institutional issues, we would be interested in exploring this idea further. Would the regional authority be responsible for all WTO rules issues? Does this mean a centralized authority doing AD proceedings for the region as a whole, or doing analysis with respect to a specific country?
  - This is an issue that should be reflected upon by administrators of the trade rules. We would suggest that this be raised in the discussions in the rules group.

#### II. SIMPLIFY ARTICLE XIX (SAFEGUARDS)

Some rules of concern to many small economies include the provisions dealing with the definition of domestic industry; serious injury; investigations; reporting requirements; causation and non-attribution principle; the right of compensation and/or retaliation.

#### **Response/Request for Information**

- Article XIX already recognizes developing country concerns when safeguard actions are taken. We wonder whether, as in the AD suggestions, if revising the rules is the best way to proceed.
- It would be helpful if Members could clarify the precise nature of the actual problem being experienced here.

### **III. TRADE BARRIERS TO TRADE (TBT)& SANITARY AND PHYTOSANITARY MEASURES (SPS)**

**Proposal 1:** Assistance in compliance with technical regulations, including technology transfer and financial assistance.

#### **Response/Request for Information**

- It is very positive that an exporting small economy realizes it needs to identify where it may/will face specific problems complying with the technical regulations of another Member. (However, we believe this issue is just applicable to developed countries. What about people who want to ship to Brazil or India?).
- To be practical, we wonder if there isn't another way to address this problem. Namely, it would be highly preferable for small economies to focus on **notifications** of proposed TBT/SPS measures and to find ways to provide comments about their potential problems during the comment period. This may induce regulatory authorities to consider alternative approaches to facilitate SE compliance. It is far more difficult to change a regulation once finalized.

**Proposal 2:** Flexibility in timeframes and notification requirements.

#### **Response/Request for Information**

- It would be helpful to know, more specifically, which "time frames" and which "notification" requirements are problematic and not already addressed by current flexibilities. There is already some flexibility built into both Agreements.
- We're interested in practical solutions where there may have been problems in the past.

**Proposal 3:** Regional bodies can be designated as the competent authority.

#### **Response/Request for Information**

- The notion of "designating" a regional body to represent a small economy as the competent authority for the implementation of the provisions of the SPS and TBT Agreements is interesting. More information is needed, however, to understand, in practice, what this might mean. We would be interested in better understanding these ideas.
  - Does this foresee, for example, the pooling of resources to perform the operation of the inquiry points and notification procedures?
  - What about participation in international standards bodies?
  - What about domestic oversight of compliance by authorities establishing TBT and SPS measures? How would a regional body be able to have authority over these domestic bodies? Further information would be helpful to clarify some of these questions.

#### **IV. DISPUTE SETTLEMENT**

NB: We think all of these issues are better addressed in the DSU negotiations, or elsewhere, as noted below.

**Proposal 1:** Clarify the meaning of substantial interest

##### **Response/Request for Information**

- This is also an issue that is under discussion in the Market Access Committee, as required by the implementation discussion.

**Proposal 2:** Facilitate 3<sup>rd</sup> party rights.

##### **Response/Request for Information**

- We note that this is already an issue under discussion in the DSU negotiations. We are interested in working on this issue further in those negotiations.

#### **V. TECHNICAL ASSISTANCE & CAPACITY BUILDING: FUNDS TO ESTABLISH MISSIONS IN GENEVA, INCLUDING THE IDEA OF POOLING RESOURCES.**

##### **Response/Request for Information**

- We would be open to discussing ways to make technical assistance more effective including ideas for shared resources.

#### **VI. GRADUATION OF SMALL ECONOMICS WHICH ARE LEAST-DEVELOPED COUNTRIES (LDCS):**

Some small economies are also least-developed countries that may one day graduate from LDC status. Because of the inherent problems that they face, small economies would be particularly affected by the sudden withdrawal of benefits that WTO accords to LDCs.

**Proposal:** Provisions ensuring a smooth transition in WTO for small economies graduating from LDC status should be worked out and agreed.

##### **Response/Request for Information**

- We are interested in exploring this idea further.
- Does the proposal envision a transition that includes benchmarks for phased adoption of normal WTO obligations? In our view, the transition should involve such a phase-in, to make it optimally effective for the LDC.

Initial Responses to Questions posed by the United States  
in Dedicated Session, Committee on Trade and Development (CTD)  
on 1 July 2002

**Rules Anti-dumping (AD) and Countervailing Duties (CVD)**

**Q1 We would appreciate clarification of what is intended by the phrase "addressing the circumstances of small economies"**

Reply

The circumstances of the Small Economies with small administrations are outlined in the first submission to COMTD (SE/W/I-Rev.1-para. 12). Our Countries small administrations with extremely limited capacity to formulate, administer and implement trade policies. In the context of AD and CVD, some Small Economies with small administrations have established trade remedy capacity in their administrations; others have not been able to establish such administrations. These limits their ability to impose AD and CVD and also to respond effectively to situations where their own experts are subjected to contingency actions in overseas markets. Where countries have established such units they have been extremely limited in their capacity to avail themselves of the remedies available under current WTO rules. The skills and ability to manage these complex issues by larger WTO Members stems from the comparative advantage derived by them from handling a very large number of such cases in any given year. While TA and training play an important role in developing institutional capacity the overwhelming administrative challenges posed by the smallness of administration in many Small Economies requires a greater degree of flexibility from the multilateral trading system.

Moreover, some very small economies have such small administrations that they would not be able to use these instruments.

**Q2 Would the regional authority be responsible for all WTO rules issues?**

Reply

The extent of the remit of the regional authority would also depend upon the mandate granted to it by its members.

**Q3 Does this mean a centralized authority doing AD proceedings for the region as a whole, or doing analysis with respect to a specific country?**

Reply

The centralized or competent authority would undertake proceedings at the request of a member with respect to its country.

**Safeguards Article XIX**

**Q4 Article XIX already recognizes developing country concerns when safeguard actions are taken. We wonder whether, as in AD suggestions, if revising the rules is the best way to proceed.**

## Reply

The rules governing safeguard action in the context of Article XIX as well as anti-dumping and countervailing duty measures foresee an internal domestic examination process. The set of rules, negotiated among larger countries to fit their own needs, involve cumbersome procedures, sophisticated assessments and a commitment to a huge administrative infrastructure. The primary procedural hurdles to the application of safeguard measures concern the extent of investigative procedures and reporting; onerous notification requirements; and obligations for consultations which may extend to dispute settlement proceedings.

On the basis of the experience with the safeguard provisions and these cumbersome and onerous obligations required in their implementation, the Small Economies consider that a revision of existing rules and procedures is essential to assure that these members have effective access to safeguard provisions available to larger WTO Members.

The significant features of any revision of Article XIX provisions should aim at:

- Minimal notification and consultation requirements and procedures on the basis of those available under Article VIII: Section B – on terms similar to those offered to LDCs;
- Simplified investigation procedures appropriate to the circumstances of Small Economies i.e. without excessive detail in reporting, requirements in terms of demonstrating the conditions, which must be met for the application of contingency protection measures;
- Less exacting standards for the application of contingency measures: requiring a finding of "material", as opposed to "serious" injury without the need to demonstrate "unforeseen development"; greater latitude in applying causation and non-attribution principles taking into account the particular circumstances of administering authorities; providing a measure of flexibility in defining the concept of "domestic industry" to include input and upstream producers in Small Economies; simplifying, if not dispensing with, dumping and subsidy determinations;
- A differential standard of review in dispute settlement proceedings; viz there should be no *de novo* review of the evidence, nor may panels substitute their own conclusions or those of the IMF - given a strict interpretation of Article XV of the GATT 1994 - for the views of the competent authorities;
- Provisional measures permitting recourse to quantitative restrictions depending on the immediacy of the swift remedial action. Small Economies should not be required to provide clear justification as to why price-based measures are not adequate;
- Duration and review of the measure should be tied to achievement of the objectives for which the measure is imposed as opposed to an absolute number of years;
- The right to compensation and/or retaliation should not be exercised for a minimum period-at least the first three years that the measure is in effect.

**Trade Barriers to Trade (TBT) & Sanitary and Phytosanitary Measures (SPS)**

**Q5** It is very positive that an exporting small economy realizes it needs to identify where it may/will face specific problem complying with technical regulations of another Member. However we believe this issue is just as applicable to developed countries. What about people who want to ship to Brazil or India? (Proposal 1 of the Small Economies on the issue).

Reply

Small Economies face continual technical and financial constraints in complying with technical regulations and standards of other countries. These constraints are not the same as those faced by exporters from developed countries. Moreover Article 11 of the TBT calls on Members to provide technical assistance to developing countries on mutually agreed terms.

**Q6** "It would be preferable for small economies to focus on notifications of proposed TBT/SPS measures and to find ways to provide comment about their potential problems during the current period."

Reply

In accordance with Annex III of TBT, Members are given 60 days under to comment on draft regulations. Small Economies do not have the capacity to analyse the large volume of regulations despatched to small or often non-existent TBT bodies. Moreover many Small Economies have no resident mission in Geneva and even those, which do have such missions, do not have adequate resources to cover TBT meetings.

**Q7** It would be helpful to know, more specifically, which times frames and which "notification" requirements are problematic and not already addressed by current flexibilities. There is already some flexibility built into both Agreements (Proposal 2 of the Small Economies on this issue).

Reply

Small Economies, with limited administration, face difficulties with all notifications and time frames.

**Q8** Does this foresee, for example, the pooling of resources to perform the operation of the inquiry points and notification procedures? (Proposal 3 of Small Economies on this issue: Regional Bodies can be designated as the component authority)?

Reply

One of the benefits of such an approach would be the pooling of resources; but funding assistance would be required to develop the capacity of such regional bodies.

**Q9** What about participation in International Standards Bodies?

Reply

This would depend upon the mandate granted to the regional body. However financial resources for participation in international standards bodies would be needed.

**Q10** What about domestic oversight of compliance by authorities establishing TBT and SPS measures? How would a regional body be able to have authority over then domestic bodies?

Reply

While the competent regional body could be responsible for certain specific actions, individual WTO Members who are accountable for domestic oversight and implementation and obligations. There exists the possibility for regional bodies to interface with whatever capacity exists at national level.

**Dispute Settlement**

**Q11** Clarify the meaning of substantial interest (Proposal 1 of the Small Economies on this issue).

**This is also an issue that is under discussion in the Market Access Committee, as required by the implementation discussion. (Proposal 2 Facilitate 3<sup>rd</sup> party rights).**

**We note that this is already an issue under discussion in the DSU negotiations. We are interested in working on this issue further in those negotiations.**

Reply

Small Economies take note that interesting proposals have been submitted on 3<sup>rd</sup> party rights in the DSU negotiations. Small Economies do also intend to participate in these negotiations. We consider that the real issue of concern with respect to 3<sup>rd</sup> party rights is the need for S&D measures for Small Economies participating as 3<sup>rd</sup> parties in a dispute settlement proceedings. The Small Economies should be given the opportunity to participate as 3<sup>rd</sup> parties in consultations and in dispute settlement proceedings.

**Technical Assistance & Capacity Building: Funds to establish missions in Geneva. including the idea of pooling resources.**

**Q12** We would be open to discussing ways to make technical assistance more effective including ideas for shared resources?

Reply

Small Economies note the extensive submission of the African group on technical assistance and capacity building to CTD and Small Economies intend to participate in these discussions.

Small Economies will present proposals and participate in discussions on shared representation and resources. Small Economies welcome the response of the US on shared resources.

**Graduation**

**Q13** Does the proposal envision a transition that includes benchmarks for the phased adoption of normal WTO obligations? In our view, the transition should involve such a phase-in, to make it optimally effective for the LDC. (Proposal-Provisions ensuring a smooth transition in WTO for small economies graduating from LDC status be worked out and agreed)?

**Reply**

Yes, commensurate with their situation and their level of development.

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