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Negotiating Group on Rules

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NEW SHIPPER REVIEWS (ARTICLE 9.5 OF THE ANTI-DUMPING AGREEMENT)

Paper from Mexico

Revision

The following communication, dated 1 June 2006, is being circulated at the request of the delegation of Mexico.

The proposal contained in this document does not represent a final position and may be subject to additions and/or amendments in the course of the negotiations.

Object

To clarify and elaborate on the content of Article 9.5 of the Anti-Dumping Agreement (ADA) so as to provide investigating authorities with a practical guide for conducting "new shipper" proceedings, and clear guidelines to help firms make more effective use of this facility.

Problem with the current text of the Anti-Dumping Agreement

Time-frame for new shipper reviews

As is the case with many other provisions of the ADA, Article 9.5 establishes that a review shall be conducted promptly for the purpose of determining individual margins of dumping for exporters or producers in the exporting country that made no shipments, during the period of investigation, to the Member which imposed the anti-dumping duty. It likewise stipulates that such a review shall be initiated and carried out on an accelerated basis, compared to normal duty assessment and review proceedings.

This to our mind is perfectly justified. In addition to the obvious necessity of determining an individual margin of dumping for a new exporter, the administrative burden involved in new shipper reviews is plainly far lighter than in normal duty assessment and review proceedings. Moreover, it is preferable to establish a new exporter's individual margin of dumping as promptly as possible, so as to prevent a new exporter with a relationship to exporters subject to anti-dumping duties that has failed to apprise the investigating authority of the situation from becoming a means of conducting further exports through the mere provision of a guarantee.

Nonetheless, the terms "promptly" and "on an accelerated basis" are broad enough to allow vast discrepancies in terms of time-frames, which depend on the Member carrying out the review, to the detriment of the predictability that must govern any administrative procedure. Furthermore, the

obligation to conduct a review on an accelerated basis compared to normal duty assessment and review proceedings implies that it could ultimately be argued that a new shipper review that took a few weeks less to complete than normal proceedings is consistent with the ADA. By the same token, we believe that it does not suffice for Article 9.5 of the ADA to lay down the obligation to initiate a new shipper review on an accelerated basis. Mexico regards six to eight months as a reasonable time period for carrying out such a review. Since the administrative burden and administrative practice may vary from one authority to another, however, we have not included this aspect in our proposed amendments, leaving it aside for subsequent discussion.

Representativeness of new shipper exports

Although it is necessary in the interests of fairness and predictability to determine a new shipper's individual margin of dumping, it is no less imperative to prevent misuse of this kind of procedure. There is a fair likelihood that a new exporter will have a negligible volume of exports at a distorted export price and ask to be assigned an individual dumping margin on that basis – only to export in vastly increased quantities, with a higher margin of dumping than that which was calculated, once that individual margin has been assigned.

We therefore believe that the ADA should establish that in order to receive individual margins of dumping, new exporters should provide evidence, in the course of their respective reviews, of having made representative exports of the product subject to anti-dumping duties. Mexico is aware that the effectiveness and the fairness of a mechanism of this kind will depend on its mode of operation, scope and characteristics being defined as clearly as possible, and we encourage all Members to put forward any ideas and views they may have on the subject.

Verification of information submitted by applicants for new shipper review

Although the administrative burden for investigating authorities is far lighter in a new shipper review than it is in other types of proceeding, equity and the proper operation of anti-dumping systems throughout the Membership demand that investigating authorities be empowered to ascertain the veracity and accuracy of the information they have to evaluate in the course of new shipper reviews, and even to obtain further details. In particular, the fact that exporters or producers applying for new shipper review are required to show that they are not related to exporters or producers subject to anti-dumping duties, along with the point made earlier in regard to the representativeness of exports, amongst other things, constitute sufficient grounds to allow investigating authorities to carry out on-the-spot investigations.

It should be emphasized that the ADA contains no provisions as to the conduct of such investigations in the context of new shipper reviews. For the above reasons, Mexico believes it appropriate to amend the wording of Article 9.5 of the ADA and to state that investigating authorities possess such discretion, to be exercised in conformity with the provisions of Article 6.7 of the ADA (including, obviously, those of Annex I to the Agreement).

Proposed amendments

Proposed amendments to the Anti-Dumping Agreement (The new text is underlined and the text to be deleted is crossed out.)

9.5 If a product is subject to anti-dumping duties in an importing Member, the authorities shall promptly carry out a review for the purpose of determining individual margins of dumping for any exporters or producers in the exporting country in question who have not exported the product to the importing Member during the period of investigation, provided that these exporters or producers can show that they are not related to any of the exporters or producers in the exporting country who are

subject to the anti-dumping duties on the product, and that they have exported the product in commercially representative quantities, depending on the type of product or market concerned. The investigating authority's assessment of whether the quantities exported are commercially representative shall take into account: (a) whether the volumes can be considered as ordinary for the product concerned and for the importer's market; (b) whether the exports are subject to cyclical variations or seasonality; (c) whether the number of units corresponds to ordinary sales through normal marketing channels, and not samples; (d) whether such volumes are marketed normally in international markets. Such a review shall be initiated and carried out on an accelerated basis, compared to normal duty assessment and review proceedings in the importing Member may not extend over more than [XX months] following the date of the request from the exporter concerned. In this connection, and in conformity with the provisions of Article 6.7 and Annex I, the investigating authorities may carry out on-the-spot investigations in the territory of the country of the applicant for the review. No anti-dumping duties shall be levied on imports from such exporters or producers while the review is being carried out. The authorities may, however, withhold appraisement and/or request guarantees to ensure that, should such a review result in a determination of dumping in respect of such producers or exporters, anti-dumping duties can be levied retroactively to the date of the initiation of the review. Similarly, if the anti-dumping duty resulting from the review of the exporter is less than the duty paid by the exporter prior to the date of initiation of the review, the importing Member shall reimburse the difference to the exporter. In the contrary case, the importing Member may not charge the difference to the exporter.
