

WORLD TRADE ORGANIZATION

RESTRICTED

TN/RL/M/22
7 February 2005

(05-0483)

Negotiating Group on Rules

SUMMARY REPORT OF THE MEETING HELD ON 16 DECEMBER 2004

Note by the Secretariat

1. The Negotiating Group on Rules ("the Group") held a formal meeting on 16 December 2004.

- A. ADOPTION OF THE AGENDA

2. The Group adopted the following agenda:

- A. ADOPTION OF THE AGENDA

- B. ANTI-DUMPING

- C. SUBSIDIES AND COUNTERVAILING MEASURES, INCLUDING FISHERIES
SUBSIDIES

- D. SPECIAL AND DIFFERENTIAL TREATMENT PROPOSALS REFERRED TO
THE GROUP BY THE CHAIRMAN OF THE GENERAL COUNCIL

- E. OTHER BUSINESS

- Date of future meetings of the Group for the first semester of 2005.

- B. ANTI-DUMPING

3. The Group discussed a submission entitled "Accrual of Interest (ADA Articles 9.3.1 & 9.3.2)" (TN/RL/W/168). The sponsor explained that the theme of the paper was previously discussed in its earlier submission (TN/RL/W/98) and in the context of a submission by other Participants on reviews (TN/RL/GEN/10). It explained that the Agreement on Anti-Dumping (ADA) called for the refund of duties in excess, both in retrospective and prospective systems, but did not require the payment of interest on the excess duties collected. The paper suggested that when authorities refund duties, a reasonable amount of interest should be paid on those duties to alleviate the burden on the importer.

4. Some Participants welcomed the clarifications sought in the submission, agreed that the time value of money was an important principle to recognize, and submitted that lost interest often constituted a burden on exporters in addition to the amount of dumping or subsidies found to exist. They saw merit in further discussing the issues raised in the two footnotes of the submission. They asked whether the submission suggested the payment of interest in the context of provisional measures, as well as similar provisions of the Agreement on Subsidies and Countervailing Measures (ASCM).

5. Other Participants cautioned against the difficulties of implementing such a proposal in view of differences between retrospective and prospective duty collection systems and enquired whether the sponsor had considered such differences. It was estimated that in a prospective system no more than 1 per cent of duties would be subject to refund applications, while in retrospective systems, there was always a chance that a cash deposit would be refunded or not finally collected. Therefore the amount of money which potentially could be paid back was far bigger in the retrospective duty collection system.

6. It was recalled that an earlier submission on reviews had encouraged the authorities to pay interest at a reasonable rate if duties were not refunded within 90 days following the completion of a review under Articles 9.3 or 11.2. Interest would only be applied after the final duty was assessed. Regarding footnote 2, the view was expressed that if authorities assessed an incorrect or insufficient amount of duty, an importer should not be required to pay interest as it would impose an unreasonable burden on him. It was enquired whether in making a refund interest should be paid even if no interest had been earned by the authorities on the excess monies deposited. A discussion on how countries collect and reimbursement duties was suggested.

7. The sponsor explained that it had considered the distinctions between prospective and retrospective systems. The discussions had clarified that some countries with prospective systems allowed for payment of interest where excess duties were refunded, which proved that even in a prospective system this was a relevant issue. Although the paper focused on Articles 9.3.1 and 9.3.2, if provisional duties were followed by final measures of a lesser amount, the additional monies collected should be returned with interest. The sponsor noted that in both prospective and retrospective systems a customs service might improperly assess duties and then refunds should be provided with interest. The sponsor also envisaged scenarios where its proposal might also be applicable to prospective systems. In re-determinations, for instance, situations might occur where an authority re-evaluated whether or not a party had been fulfilling its obligations and sought to collect additional amounts because of an impropriety. The sponsor observed that in its system over-collected duties were refunded with interest and similarly, where a party had underpaid, additional duties were collected and interest assessed. It wished to ensure that basis for interest rates was open, transparent, and consistent.

C. SUBSIDIES AND COUNTERVAILING MEASURES, INCLUDING FISHERIES SUBSIDIES

8. The Group discussed a submission entitled "Additional Views on the Structure of the Fisheries Subsidies Negotiations" (TN/RL/W/169). The sponsor observed that the fisheries subsidies negotiations had made good progress and had benefited from a wide-ranging discussion concerning an appropriate structure for the negotiations. It believed that the top-down approach proposed in TN/RL/W/166 offered a way forward in a flexible and realistic manner. In contrast, a bottom-up approach could lead to disciplines that were weaker than current rules. It emphasised that the primary focus of the negotiations should be to strengthen disciplines on subsidies that contributed directly to over-capacity and over-fishing, and that the fundamental discipline applicable to such subsidies should be a prohibition. However, there could be various ways to make such a prohibition operational, including the broader prohibition discussed in TN/RL/W/166, and the exact scope of the prohibition would need to be negotiated.

9. The sponsor believed that the top-down approach was sufficiently flexible to allow programmes that did not generally contribute to over-capacity and over-fishing through the negotiation of appropriate exceptions. It referred to a paper it had submitted to the Committee on Trade and Environment (WT/CTE/W/154) which identified several types of programmes that did not generally contribute to over-capacity and over-fishing and were similar conceptually to the candidates suggested for consideration as exceptions under the top-down approach reflected in TN/RL/W/166. A

top-down approach could also allow for a reasonable transition period for Members to reconsider and adapt their programmes.

10. As for the negotiation of exceptions, the sponsor saw merit in basing such negotiations on the consideration of Members' particular current fisheries programmes rather than on a discussion of broad categories of fisheries subsidies. It was not always easy to determine what programmes are included in a given category; discussion of specific programmes would avoid this problem and would alleviate concern that the exceptions could be open-ended and lead to circumvention. It believed that exceptions to a prohibition under a top-down approach should be actionable under other provisions of the ASCM. Members might want to consider clarifying the serious prejudice provisions of Article 6 of the ASCM to make them more operational in the specific context of fisheries subsidies.

11. Some Participants agreed that the way forward should be based on a sound, transparent and enforceable framework of a broad ban prohibition of fisheries subsidies within the context of which Members could negotiate their programmes affected by such prohibition. Discussions should not focus on broad categories of fisheries subsidies, but rather on the details of the Member's actual programmes. This would ensure a common understanding of what subsidies fall within different categories and would serve as an important exercise in transparency. The idea of placing conditions on certain exceptions, for example vessel decommissioning, was also referred to in order to ensure that exempted programmes meet the desired environmental objectives. Concerns were however expressed that trying to write new rules based on environmental or management concepts would take the WTO outside its traditional area of competency and expertise. They also echoed the need to render any exceptions to the prohibition actionable and to analyse further how to assess serious prejudice in the context of fisheries subsidies. The importance of strengthening the notification obligation was also called for.

12. Other Participants were of the view that a top-down approach was not in line with the existing ASCM, which prohibited only two types of severe trade distorting subsidies. A top-down approach would prohibit fishery subsidies without any consideration of adverse effects and would treat the sector differently than other sectors which are disciplined on the basis of trade distortion. Further, a top-down approach would not allow flexibility for future policy needs, which would be especially detrimental for developing countries. The exceptions and/or transitional periods might not be enough to reflect diverse policy needs of countries with different fishery environments. Further, Members would not be able to avoid the race for exceptions. A broad prohibition was an extreme inappropriate approach; Members should develop together a balanced and practicable prohibition. The scope of permitted subsidies should be wider and should be made non-actionable, while the reintroduction of a dark amber box in the context of fisheries subsidies was not desirable. If enhanced transparency was sought, Members should implement the existing notification requirements in the ASCM. It was enquired whether the sponsor would consider including certain subsidies mentioned in its own paper, such as "buybacks" and "hatcheries programmes" into a non-actionable category.

13. On the issue of Special and Differential Treatment (S&D), although one Participant saw merit in reflecting the significant differences among developing countries in the final disciplines, other Participants considered that any disciplines should not differentiate between developing countries. They emphasised that whether a top-down or bottom-up approach was used, resulting disciplines should not displace employment in the fisheries sector or cause adverse social and economic consequences for fishing communities. They cautioned against an outright prohibition that could inhibit the use of fisheries subsidies for legitimate and sustainable development; fisheries subsidies for developmental purposes should not be actionable. It was emphasized that discussions should not focus solely on current programmes, but should also encompass potential future programmes to develop fisheries. The sponsor and other Participants were invited to provide the Group with information on the amount of subsidies given under various categories and programmes listed in footnote 7 of the submission.

14. The sponsor welcomed the support for a prohibition focussed on over-capacity/over-fishing, a prohibition that identified the most harmful subsidies. It emphasised the importance of retaining actionability for exceptions to the prohibition and discouraged any carve-outs from the ASCM that could be subject to circumvention and abuse. Regarding the dark amber category, it would be hard to be specific about exactly what changes would be needed until the membership had a better sense of what the prohibition would be. It was of the view that the top-down approach was sufficiently flexible to address the legitimate interests of Members at all levels of development.

D. SPECIAL AND DIFFERENTIAL TREATMENT PROPOSALS REFERRED TO THE GROUP BY THE CHAIRMAN OF THE GENERAL COUNCIL

15. The Chairman of the Group referred to the General Council's Decision of 1 August 2004 stipulating that the bodies to which S&D proposals have been referred should expeditiously complete their consideration of the proposals and report to the General Council, with clear recommendations for decision, no later than July 2005. Rules-related proposals (AD/SCM) were contained in documents TN/CTD/W/1, TN/CTD/W/3/Rev.2 and TN/CTD/W/4/Add.1 and related to Articles 15 of the ADA, 3.1, 27.3, 27.1, 27.4, 27.8, 27.9, 27.13 and 27.15 of the ASCM. Since the referral of these proposals to the Group in May 2003, they had been considered at two formal meetings and, except in respect of one of these proposals, the sponsors were either unable to attend the meetings or were not in a position to introduce their proposals. The Chairman invited the sponsors to introduce their proposals, but no Participant was in a position to do so. At the suggestion of a Participant, the Chairman undertook to enter into contact with the sponsors of the proposals.

E. OTHER BUSINESS

16. The Group agreed that the first two meetings in 2005 would be held on 21-25 February and 11-13 April 2005. The Chairman informed Participants that he had reserved rooms for possible meetings of the Group in the weeks of 6-10 June and 11-15 July 2005 and proposed to take a final decision as to these meetings in April 2005.

17. The next meeting of the Group relating to AD/SCM including fisheries subsidies will be held on 21-25 February 2005. The deadline for any informal elaborated proposals for consideration in informal mode at that meeting is Monday, 7 February 2005, close of business.
