WORLD TRADE ORGANIZATION

TN/RL/W/141
22 July 2003

(03-3923)

Negotiating Group on Rules Original: English

COMMENTS OF THE ARAB REPUBLIC OF EGYPT ON FURTHER CONTRIBUTIONS SUBMITTED IN THE FRAMEWORK OF THE DOHA ROUND NEGOTIATIONS ON THE AGREEMENTS ON ANTI-DUMPING AND SUBSIDIES AND COUNTERVAILING MEASURES

The following communication, dated 18 July 2003, has been received from the Permanent Mission of Egypt.

I. INTRODUCTION

Egypt would like to contribute further to the debate on how to clarify and improve the Anti-Dumping Agreement (referred to hereunder as the "ADA") and the Agreement on Subsidies and Countervailing Measures (referred to hereunder as "ASCM") as mandated by the Doha Ministerial Declaration.

As already recalled by Egypt in its previous submissions and comments on other Members' contributions, the scope of the negotiations to be carried out on the ADA and ASCM as a result of the Doha Declaration must be limited to areas where "*clarification and improvement*" would be required. In addition, as a developing country Member and as a recent anti-dumping user, Egypt believes that it is premature to expose developing countries to increased disciplines and, thus greater scrutiny under the ADA and ASCM.

In the current submission, Egypt is providing comments on the contributions submitted by the "Friends of the AD Negotiations", the United States, Korea, Hong Kong, China and Australia in the framework of the negotiations conducted by the Negotiating Group on Rules on the ADA and on the ASCM in documents TN/RL/W/111, TN/RL/W/113, TN/RL/W/118, TN/RL/W/119, TN/RL/W/121, TN/RL/W/122, TN/RL/W/124, TN/RL/W/129, TN/RL/W/130.

II. SPECIFIC COMMENTS

1. Lesser duty rule (TN/RL/W/119, proposal by the Friends- TN/RL/W/121, communication by Australia)

Egypt considers that the mandatory application of the lesser duty rule proposed by the Friends of the AD Negotiations (TN/RL/W/119) goes beyond the scope of the Doha mandate as it can not be considered as a mere clarification or improvement of the ADA. Moreover, as underlined in Egypt's previous submissions, the introduction of a mandatory lesser duty rule would be too burdensome and resource intensive for investigating authorities of developing countries. In that respect, the distinction suggested by Australia between making mandatory the application of the lesser duty rule and making mandatory the consideration of its application is not relevant. Both, the mandatory consideration and the mandatory application of the lesser duty rule entail additional obligations that investigating

authorities from developing countries cannot be required to meet. Indeed, the mandatory lesser duty rule would require investigating authorities to conduct more thorough analysis which entail resources not available to developing countries.

Instead of requiring all Members to apply a lesser duty rule, Egypt proposes that its application be made mandatory for developed countries only. If Article 9.1 needs to be clarified, it should be to the benefit of less developed Members exclusively.

2. Prohibition of zeroing (TN/RL/W/113, proposal by the Friends)

The proposal submitted by the Friends of the AD Negotiations aims at prohibiting the practice of zeroing from Article 2.4.2 of the ADA. In other words, it is suggested that, regardless of the dumping determination methodology used, it should be specified in that provision that all positive and negative margins of dumping found on imports should be added up.

This proposal addresses the question of the interpretation of Article 2.4.2 which has been, to a great extent, tackled by the Appellate Body in *EC – Bed linen from India.* As detailed by the Friends of Anti-Dumping negotiations, it is generally agreed that the practice of zeroing is inconsistent with Article VI of GATT 1994 and the provisions of the ADA. Considering the provisions of the ADA and the findings of the Appellate Body, Egypt considers that it is superfluous to insert in the ADA a provision prohibiting the practice of zeroing. Egypt believes that the provisions of the ADA and the dispute settlement mechanism provide sufficient protection to WTO Members against unwarranted actions under the ADA.

The Friends of AD Negotiations also seek to amend Article 2.4 to specify that if different margins of dumping are determined for different portions of the entire period of investigation, a single margin of dumping must be established for all imports during the entire period of investigation. While Egypt shares the concerns and understanding of the Friends of AD Negotiations, it does not believe, for the reasons stated above, that it is necessary to amend the ADA to prohibit "*zeroing over time periods*". Egypt considers that the provisions of the ADA must not be clarified in this respect since they prohibit the determination of different and independent margins for a given period within the period of investigation.

3. Price-undertakings (TN/RL/W/118, proposal by the Friends)

The paper submitted by the Friends of AD Negotiations wishes to promote the use of price-undertakings as they appear to be less trade-disruptive than anti-dumping duties. To that end, it proposes to strengthen the obligations arising for investigating authorities under Article 8 of the ADA.

As a general observation, Egypt takes the view that Member States should keep the necessary discretion in the application of the ADA, and more specifically, with respect to the determination of the appropriateness of a price undertaking in a specific set of circumstances. Authorities should remain free to determine, on a case-by-case basis, whether the conditions warrant the acceptance of a price undertaking. Also, they should not be obliged to apply the "lesser duty rule" including in the framework of Article 8 (3rd element of solution).

In addition, Egypt does not support the position of the Friends of AD Negotiations that authorities must be required to publish the reasons for non-acceptance of a price-undertaking offer and to provide the exporters necessary time to comment on this justification (2nd element of solution) since the decision to acceptor not a proposed undertaking must be left at the discretion of the investigating authorities. Egypt also does not see the value-added of the specification in Article 8 that price-undertakings must be implemented in good faith and in a predictable manner as this is inherent to the general requirements of the Agreement (6th element of solution).

However, Egypt supports the proposal (5th element of solution) that exporters should have the right to request an adjustment of the price undertaking if there are changes in circumstances. In that respect, Egypt notes that the provisions of the ADA concerning reviews currently refer to the term "duty" and not to the term "measures", which could cover both duties and price undertakings.

Moreover, considering the nature of price undertakings, Egypt is of the opinion that these measures which are contemplated by Article 15, should be promoted in anti-dumping proceedings initiated by developed countries against developing Members.

4. Sunset Reviews (TN/RL/W/111, submission by Korea)

Egypt agrees with Korea that the sunset review provision contained in Article 11.3 of the ADA did not guarantee the intended balance between the necessity of terminating measures which are provisional by nature and the need to protect domestic industries against continuous or recurring injurious dumping. In practice, most sunset reviews have led to a mechanical continuation of existing anti-dumping measures. In order to address that problem, Korea suggests the application of an "*automatic sunset*", i.e., the elimination of the exceptions provided for in Article 11.3. According to Korea, if a domestic industry is confident that the cause of its injury is continuous or recurring dumping, it may request more protection, but only through a new and full investigation.

Egypt considers that the solution proposed by Korea is too radical and goes beyond the balance of interests which must be kept between the limitation of anti-dumping measures and the need to prevent the continuation of injurious dumping. Egypt submits that any clarification of Article 11.3 should be limited to prevent the abuse of sunset review investigations, not to prohibit sunset review investigations. In order to achieve that goal and compel investigating authorities to terminate their investigations in a reasonable time, Egypt proposes to limit sunset review investigations to 12 months (TN/RL/W/110). Moreover, Egypt believes that WTO Members should have the opportunity, in the framework of sunset reviews, not only to continue or terminate existing anti-dumping measures but also to amend them if necessary (TN/RL/W/110). Indeed, the "*adequate*" character which the anti-dumping measures must have under Article 9.1 can only be guaranteed if authorities are authorized to amend the level of the measures imposed following sunset reviews which concluded that injurious dumping was likely to continue or recur.

5. Reviews (TN/RL/W/122, communication from Australia)

Egypt agrees with WTO Members which suggest that there is a need to clarify the provisions, methods and procedures in relation to reviews under the ADA.

6. Like product (TN/RL/W/121, communication from Australia)

Australia states that in its view the word "*identical*" included in the definition of the "*like product*" in Article 2.6 should be replaced by "*having the essential physical characteristics*" in order to reflect the actual interpretation and practice in that regard.

Egypt does not believes that the definition of the term "*like product*" which is provided in Article 2.6 of the ADA requires to be clarified. Moreover Egypt is of the view that the definition of "*like product*" is sufficiently clarified by decisions of the Dispute Settlement Body such as *Japan – Alcoholic Beverages*. The *Japan – Alcoholic Beverages* panel recalled that previous panels had used different criteria such as the product's properties, nature and quality, and its end-uses, consumers' tastes and habits, and the product's classification in tariff nomenclatures to determine whether products may be considered as like products within the meaning of Article 2.6.

In its proposal, Australia has also noted that the term "like product" appears to have different meanings in different contexts. Does Australia suggest to give a different definition to the term "like products" depending on whether it relates to the exporter's home market or import market? Egypt considers that nothing justifies such a distinction.

7. Trade distorting practices (TN/RL/W/129, communication by Hong Kong, China)

The submission of Hong-Kong addresses the concept of "*trade distorting practices*". In its paper, Hong Kong seems to imply that the ADA should be amended so as to introduce the requirement of trade distorting character in anti-dumping investigations. The paper also refers to a distinction between normal price discrimination and unjustified price discrimination.

Such distinctions are highly subjective. Egypt would like to warn against the inclusion of such kinds of subjective elements in the ADA. Moreover, Egypt considers that the insertion of considerations which are not specifically referred to in the ADA falls outside of the scope of the Doha mandate.

8. Facts available (TN/RL/W/124, communication by Australia)

Egypt considers that Article 6.8 and Annex II of the ADA provide sufficient guidance on the use of facts available and that the imposition of stricter requirements would go beyond the scope of the Doha mandate since it would impose stricter obligations on investigating authorities. In addition, Egypt believes that investigating authorities should keep a necessary discretion in the appreciation of the use of facts available. Moreover, some guidelines have already been provided in *US – Hot Rolled Steel* and the abuse by investigating authorities of the use of facts available can be sanctioned by the Dispute Settlement Body if inconsistent with the provisions of the ADA.

9. Disclosure and publication requirements (TN/RL/W/130, communication by the United States)

In the light of its submission (TN/RL/W/35), the US again stresses that the ADA would benefit from a reinforcement of the obligations imposed on investigating authorities regarding the disclosure of information under Articles 6 and 12 of the ADA. Elements suggested by the US include a disclosure meeting to review the way the dumping margins are calculated and a mandatory preliminary determination. Egypt is of the opinion that, if praiseworthy, the US suggestion, however, could reveal difficult for investigating authorities from developing country Members to implement, considering the tight deadline within which findings must be reached under the AD Agreement.

10. Injury determination (TN/RL/W/130, communication by the United States)

(a) Market segmentation

The Appellate Body has clarified in *Japan – Hot Rolled Steel* that an analysis of particular parts, segments or sectors is authorized to the extent that it complies with the fundamental requirements that the examination is objective as required by Article 3.1. Egypt considers that no further clarification is needed.

(b) Definition of "dumped imports"

Unlike the US, Egypt considers it unnecessary to clarify the methods which investigating authorities can use for the determination of the volume of dumped imports. Indeed, the Appellate Body has clarified in *EC – Bed Linen* that if there may be several possible ways to calculate the volume of dumped imports, the method used must always comply with the fundamental requirements

of Articles 3.2 and 3.1 of the ADA. For Egypt, the elements and criteria imposed by those provisions are sufficient to prevent any abuses in the selection and application of the method of calculation.

(c) Impact examination

With respect to the analysis of the impact of dumped imports, Egypt reasserts its view that Articles 3.2 and 3.4 have been interpreted in numerous panels and Appellate Body's reports since the entry into force of the Agreement. Egypt considers that these reports have provided sufficient guidance on the obligations imposed on investigating authorities in injury determinations and that the case-specific analysis of injury factors should be left to the discretion of investigating authorities.

(d) Threat of material injury

Egypt agrees with the US that Article 3.7 should be clarified and refers for further details to its recent submission on the issues (TN/RL/W/110).