

**THREE ISSUES IDENTIFIED FOR DISCUSSION BY
THE NEGOTIATING GROUP ON RULES**

Communication from the United States

Trade remedies form an integral part of the current rules-based international trading system.¹ In Doha, the Ministers stressed the importance of the trade remedy rules by mandating that Members should clarify and improve the rules while "preserving the basic concepts, principles and effectiveness of these Agreements and their instruments and objectives, and taking into account the needs of developing and least-developed participants."² The United States is using these principles to guide its participation in the Rules negotiating process.

The United States believes that the Rules Negotiating Group may usefully explore clarification and improvement of the rules with respect to the following issues under the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the "ADA") and the Agreement on Subsidies and Countervailing Measures (the "ASCM"). We reserve the right to identify additional areas for clarification and improvement in the future.

1. Small Economies – Regional Authorities

In previous submissions to the Rules Negotiating Group³ the United States raised the issue of establishing regional trade remedy authorities in order to take into account the needs of developing and least-developed Members. The United States noted that a proposal was raised within the Work Programme on Small Economies of the Committee on Trade and Development, recognizing that small economies that do not have the resources to maintain a "competent authority" can designate a regional body as their competent authority⁴

In identifying this issue, the United States suggested that the Group consider how such a regional authority might function, and discuss any changes to the ADA and the ASCM that may be necessary. The idea of explicitly authorizing Members to designate regional authorities to help reduce the costs involved in investigations, and assist developing and least-developed Members, is an issue

¹ See TN/RL/W/27, Communication from the United States, *Basic Concepts and Principles of the Trade Remedy Rules*, 22 October 2002.

² WT/MIN(01)/DEC//1 (paragraph 28).

³ See TN/RL/W/35, *Investigatory Procedures Under the Anti-Dumping and Subsidies Agreements*, 3 December 2002; see also, TN/RL/W/72, *Identification of Certain Major Issues Under the Anti-Dumping and Subsidies Agreements*, 19 March 2003.

⁴ See, *Concrete proposals to address certain specific concerns and problems affecting the Trade of Small Economies*, Communication from Barbados, Belize, Bolivia, Dominican Republic, Guatemala, Honduras, Mauritius and Sri Lanka, WT/COMTD/SE/W/3 (28 June 2002). At the formal sessions of the Dedicated Work Programme on Small Economies, Cuba, El Salvador, Fiji, Nicaragua and Paraguay added their delegations to the list of Members co-sponsoring the paper. See WT/COMTD/44 (9 December 2003), at Paragraph 29. At that time, the United States suggested that this would be an important issue to be addressed by the Rules Group. WT/COMTD/SE/W/7 (4 November 2002).

that deserves further consideration. The United States believes this Group can benefit from a greater understanding of how regional authorities might function and would look to other Members' experience to help provide that understanding.

The United States offers some initial questions to the Group in hopes of gaining a greater understanding of how a regional authority might function. Would the regional authorities conduct all aspects of trade remedy proceedings on behalf of individual Members? Do regional trade authorities collect the duties for all Members or are the national authorities responsible for collection? Would investigations filed with such an authority examine imports and the domestic industry with respect to a single Member or with respect to all regional Members? If measures are taken, do they apply to imports into a single Member or into all regional Members? These are just a few questions that may help to prompt constructive discussions as to how regional authorities should function and what changes to the ADA and ASCM, if any, would be required.

2. Distribution of Monies Collected From Antidumping and Countervailing Duties

Another important issue that this Group should address is the right of WTO Members to distribute monies collected from antidumping and countervailing duties. This has been a concern of both developed and developing countries⁵ It has been addressed in WTO dispute settlement⁶ and in the reviews of Members' legislation in the WTO Anti-Dumping and Subsidies Committees, in which some Members indicated uncertainty as to the applicability of WTO rules on this issue⁷

While it is beyond question that countries have the sovereign right to distribute government revenues as they deem appropriate, various WTO agreements impose certain disciplines as to the manner in which such revenues are distributed. The nature and extent of such disciplines is in large measure the subject of the Agreement on Subsidies and Countervailing Measures. One important question is whether, as indicated by the Appellate Body, monies collected from antidumping and countervailing duties should be subject to special constraints that are not applicable to government revenues collected from other sources. In light of the foregoing, the United States believes that this Group should discuss the recognition of the right of Members to distribute monies collected from antidumping and countervailing duties.

3. Facts Available

Article 6.8 of the ADA provides that determinations may be made on the basis of facts available if any interested party significantly impedes an investigation or refuses access to, or otherwise does not provide, necessary information within a reasonable period of time. Annex II of the ADA provides further guidance as to when best information available should be applied. The United States believes that the best source of information for any determination is the actual data of responding parties; however, those data are within the control of those parties, who may choose whether and to what extent to participate in a dumping investigation. Thus, the ADA contains a delicate balance of rights and obligations between importing and exporting Members that encourages responding parties of an exporting Member to provide all necessary information for the importing Member to conduct the investigation, and determine the rate of dumping, in the manner called for by the Agreement.

⁵ See G/ADP/N/1/DOM/3, G/SCM/N/1/DOM/2 (22 May 2002) (Article 56).

⁶ *United States – Continued Dumping and Subsidy Offset Act of 2000*, WT/DS217/AB/R, WT/DS234/AB/R (16 January 2003). The United States expressed its disagreement with some of the findings in the Appellate Body report concerning funds disbursed under the CDSOA at the meeting of the Dispute Settlement Body at which the report was adopted, and continues to disagree with these findings. The United States intends to comply fully with its WTO obligations.

⁷ See G/ADP/Q1/DOM/3, G/SCM/Q1/DOM/3 (6 May 2003) (response to question 19).

Maintenance of this balance between the rights of responding parties and the informational needs of administering authorities is important to the preservation of the effectiveness of the ADA. The text is clear that when a responding party submits the necessary information in a timely manner and in a verifiable form, such information is to be used by the administering authorities. On the other hand, the text may be less clear as to whether an administering authority must use timely provided, verifiable information that is only selectively provided.

In particular, the balance of rights and obligations would be upset if a respondent party can pick and choose the pieces of information it submits, depending on whether or not it perceives the actual information to be beneficial to its interests.

Members should consider whether the ADA provisions governing the use of facts available need to be clarified to ensure that responding parties have an incentive to provide all necessary information, and not to do so selectively or to misrepresent the significance of information. As has been raised by other Members⁸ consideration should also be given to the harmonization of the rules in this area between the ADA and the ASCM.

⁸ See TN/RL/W/19, *Countervailing Measures: Illustrative Major Issues*, 7 October 2002.