

CIRCUMVENTION

Paper from Chile and Hong Kong, China

Revision

The following communication, dated 20 April 2006, is being circulated at the request of the Delegations of Chile and Hong Kong, China.

A number of papers have been put forward in the Negotiating Group on Rules concerning the topic of circumvention¹. Supporters of “anti-circumvention rules” refer to the Ministerial Decision on Anti-circumvention² to support their argument of the need for specific rules in this area.

The Ministerial Decision refers to the desirability of uniform rules in this area, but does not prejudge the form of the rules. Above all, it does not presuppose the application of separate rules and procedures, other than those for original investigations, to deal with the so-called “circumvention” issue.

On the other hand, the Decision, by referring to the desirability of uniform rules, registers a problem arising from the lack of uniformity in Members’ current practices. In this regard, Hong Kong, China notes the statement made by the United States, that “most users of trade remedy instruments clearly have some practice for addressing what they perceive to be circumvention”, and that “some Members act against what they perceive to be circumvention without labeling or reporting their actions as such”³.

Hong Kong, China notes that certain problematic anti-dumping practices that may be related to a perceived problem of “circumvention” have been taken by some Members, for example:

- Defining the scope of the “product under consideration” broadly, in order to bring in a wide range of articles, including parts and components, or to bring in goods which, although having similar physical characteristics have very different market characteristics e.g. end uses, into the investigation, in order to pre-empt circumvention through “assembly”;

¹ Papers entitled “Submission on Circumvention” TN/RL/GEN/71 and “Circumvention” TN/RL/GEN/106 from the United States; paper entitled “Circumvention” TN/RL/W/200 from Brazil

² Decisions and Declarations relating to the Agreement on Implementation of Article VI of the Agreement on Tariffs and Trade 1994

³ Second paragraph, and Footnote 4, of TN/RL/GEN/71

- Including a number of exporting Member(s) in the investigation despite small trade volume, in order to pre-empt possible trade diversion after initiation or imposition of provisional or definitive duties;
- Describing the product scope of an anti-dumping order in general terms, and carrying out scope determinations after the imposition of an anti-dumping measure so that the measure can effectively be extended to cover products which should not come within the product under consideration;
- Adopting imprecise rules or rules which are different from the importing Member's normal rules of origin, in order to find that imports from a third country are used to "circumvent" an anti-dumping order against imports from another country.

If the Anti-dumping Agreement were to specifically address the issue of circumvention, then apart from the need to define "circumvention" narrowly and to devise rules that are clear, predictable and respond to normal business activities, Hong Kong, China also believes that any new provisions must specifically address the anomalous anti-dumping practices claimed or perceived to be tackling "circumvention", including those listed above, in order to eliminate these problematic practices. Otherwise, the disciplines and requirements laid down in the Anti-dumping Agreement for imposing or continuing with an anti-dumping measure, could be undermined and effectively "circumvented".
