



FOREIGN TRADE ASSOCIATION

**Antidumping:
Priorities for the “After – Doha” Agenda**

Antidumping: Priorities for the “After – Doha” Agenda

Introduction	3
The FTA Proposals	3
• Application of alternative remedies	4
• Application of time-frames	4
• Prohibition of chain complaints	5
• Duration of measures	5
• Standing	6
• "De minimis" rule	6
• Injury: the “public interest” and the “lesser duty” principles	6
• Standardised procedures	6
• Dispute Settlement	7
Conclusions	7

Introduction

The FTA, after the publication of the positive results of the 4th WTO Ministerial Conference in Doha, and in preparation of the discussion which shall lead to substantive amendments to the current legislation, wishes hereby to convey the point of view of traders on such a sensitive topic as antidumping.

The success of the new Round will be determined by the positive attitude of all participants and by their readiness to take into account all voices. The FTA values, in this context, the major role that the EU must play.

The European International Traders solicit the European Commission to take into account the advice expressed in this paper, in order to make the long-expected Doha Round a real success.

The Trading Community is regrettably forced once again to draw the public attention to the undeniable fact that, in the last years, the number of anti-dumping cases has risen sharply. Unfortunately, and as already foreseen in the past by the FTA, the general drift towards a tariffs and quotas reduction, while playing a positive role on market trends, has brought forth the idea of antidumping as an acceptable means to protect domestic industry.

The FTA strongly rebuts the acceptability of antidumping as a tool "for all seasons. Moreover, the economic decline of the past years has confirmed that an increasing numbers of former targets of this policy – such as Mexico, India, Argentina or Egypt – have begun to implement antidumping measures as well. The U.S. and the EU are thus not alone anymore, in this blameworthy interpretation of such an instrument as a measure to fend off undesired imports.

We therefore consider it appropriate to recall to the legislator that the new Round is the suitable moment to finally stop the protectionist use of antidumping legislation within the WTO members.

In the path of all our previous papers on this subject, we call for a reform of the Anti-dumping Agreement that should result in a restriction of the use of anti-dumping measures.

The Ministerial Conference, in its Decision of 14 November 2001 on Implementation-related Issues and Concerns, puts forward several principles which shall serve as a blueprint for the discussions that will lead to a possible new chapter on antidumping.

The FTA Proposals

We would like hereby to state our position on these proposals and to highlight some other issues we consider of major concern for the European Trading Community.

- **Application of alternative remedies**

Article 15 of the Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (hereinafter also “The GATT Agreement”) states that when a developed Country is considering the application of antidumping measures against a developing Country, special regard must be given to the possibilities of application of constructive remedies before applying AD duties.

(The Ministerial Conference...) recognizes that, while Article 15 (...) is a mandatory provision, the modalities for its application would benefit from clarification. Accordingly, the Committee on Anti-Dumping Practices is instructed, through its working group on Implementation, to examine this issue and to draw up appropriate recommendations within twelve months on how to operationalize this provision.

The FTA welcomes this approach and suggests that in any case, regardless of the development situation of the target countries, the possible application of other remedies shall be looked upon before any final determination on antidumping duties.

- **Application of time-frames**

Article 5.8 of the GATT Agreement provides the references for the termination of an AD case in the event of lack of sufficient evidence or in cases of a negligible dumping or injury.

(The Ministerial Conference...) takes note that Article 5.8 of the Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 does not specify the time-frame to be used in determining the volume of dumped imports, and that this lack of specificity creates uncertainties in the implementation of the provision. The Committee on Anti-Dumping Practices is instructed, through its working group on Implementation, to study this issue and draw up recommendations within 12 months, with a view to ensuring the maximum possible predictability and objectivity in the application of time frames.

The FTA appreciates this first step towards a uniform application of time frames, and wishes hereby to stress that other time frames shall also be defined at WTO level.

As first, and in harmony with the purpose of creating “standardised procedures” in all Member States, all the time frames of the proceedings (opening, deadlines, investigation periods, ...) shall be calculated on the basis of the working days of the investigating country and the application of a uniform way to compute time frames¹ shall be ensured. The national AD authority shall either provide the interested parties with a reference-calendar, or notify to the WTO, on a yearly basis, the national holidays.

¹ Such as the principle of “*dies a quo non computatur in termino, dies a quem computatur in termino*”

Secondly², an investigation shall be concluded within one year and however (and only in *exceptional* and *motivated* circumstances) shall not be allowed to exceed 15 months.

A similar time-frame shall also be introduced for the reviews. Taken into account the specific characteristics of such a proceeding, a review shall be concluded within 12 months of initiation.

Provisional measures shall be imposed no earlier than 90 days from the initiation but not later than nine months from the initiation of the proceedings.

The period for the investigation on dumping should normally be limited to 12 months. For the investigation on injury, the same period plus the previous three years may apply.

- **Prohibition of chain complaints**

(The Ministerial Conference...) agrees that investigating authorities shall examine with special care any application for the initiation of an anti-dumping investigation where an investigation of the same product from the same Member resulted in a negative finding within the 365 days prior to the filing of the application and that, unless this pre-initiation examination indicates that circumstances have changed, the investigation shall not proceed.

In line with the proposal of the Ministerial Conference³, we would like to stress once again that if an investigation is terminated without the imposition of anti-dumping measures or if an application has been rejected or withdrawn, a new application concerning the same product and country should only be admissible after the lapse of a minimum period of one year.

- **Duration of measures**

Article 11 of the GATT Agreement states that an antidumping duty shall remain in force only as long as and to the extent necessary to counteract dumping which is causing injury. This measure shall have direct effect. Member States shall ensure any measure to be tailored on a case-by-case basis. The regulation imposing definitive duties shall contain a provision motivating the duration of the measures based on the results of the investigation and on the specific characteristics of the product concerned.

Moreover, definitive measures shall remain in force for a maximum of three years. The present maximum duration of five years is outdated and does not take into account the recent technological developments, which have shortened the life cycle of many consumer goods.

² As already foreseen in the EU Basic Regulation, Art. 6

³ And as always stated in all our previous documents and statements on this topic.

- **Standing**

An investigation shall not be initiated, if the domestic producers who expressly support the application, account for less than 50 % of total production of the like product produced by the domestic industry. The case shall anyway be terminated if this threshold is not constantly met all throughout the proceedings.

- **"De minimis" rule**

The minimum values for the volume of allegedly dumped imports and the margin of dumping shall be brought in line with the market developments.

The volume of dumped imports, actual or potential, shall be regarded as negligible if the imports concerned accounts for a total market share of less than 25 %, with the market share of each supplier country amounting to at least 5 %.

Likewise, the dumping margin shall be above a threshold of at least 5 % of the export price.

Shall these minimum values not being exceeded, the investigation should be terminated immediately or not be initiated in the first place.

- **Injury: the "public interest" and the "lesser duty" principles**

As included in the EU Basic Regulation under the provisions on "Community Interest", the GATT Agreement shall provide for an evaluation of the "public interests", taking due account of and evaluating objectively the interests of all parties concerned, e.g. also of importers, users and consumers.

Anti-dumping measures may only be imposed if "in the public interest" of the respective WTO Member.

Likewise, the so-called "lesser duty" rule shall be the general canon in all cases. The threshold shall be identified in *the measure sufficient to remove injury*. Shall this one be lower than the margin of dumping, this lower duty will apply.

- **Standardised procedures**

The GATT Agreement shall provide for a standardised questionnaire to be used in all WTO-Member States. The questionnaire shall be provided in the language of the anti-dumping authority of the country initiating the proceedings, as well as in one of the official languages of the WTO, i.e. French, Spanish and English. The parties may choose one

among these three/four languages to be used in the filling of the questionnaire and in all other acts of the proceedings.

Before introducing provisional or final measures, all interested parties should be consulted in a sufficient time for them to defend their interests. Notification of the provisional determinations shall also be compulsory.

- **Dispute Settlement**

Some proposals made known before the opening of the Doha Round seemed to suggest that in place of the actual system based on Panels, a permanent court division - with professional judges - should be created. The aim of this modification was said to be the desire to achieve a coherent jurisdiction.

The FTA strongly opposes these proposals, and draws the attention of the Trading Community to the fact that the creation of a body composed of "Professional judges" may result in an extremely dangerous exercise for the European trade.

While the current rules of procedure not only offer a warranty of independence to the authority, but also provide the traders with some possibilities to intervene before the Panel, the establishment of a professional chamber may result in a burdensome and heavy situation for traders. As an example we may easily quote the rules applicable before the CFI⁴, which practically forbid to unrelated importers to challenge AD duties. Shall this approach be adopted also at WTO level, the current possibility to intervene before a Panel risks to be dramatically put in danger⁵. Transform the Panel in Court Chambers will surely bring a stricter approach to procedural matters, thus risking to close the only door which is, at least for the moment, open to non related importers.

Conclusions

As a closing remark, the FTA would like to emphasize that, nowadays even more than in the past, the imposition of antidumping duties is a political decision.

The new WTO Anti-dumping Agreement should clarify that even if the necessary conditions are fulfilled, the imposition of any antidumping measure shall be made only after a codified political process. This process must include an evaluation of the interests of all parties concerned, including consumers, importers and users. This will make it clear that there is nothing mandatory about anti-dumping measures, and that any anti-dumping measure should only be imposed if it is in the public interest of the relevant WTO Member.

Brussels, 25 March 2002,/Gi

⁴ See, among others, the recent judgment BSC & Others v. Council of the European Communities, in case T598/97, 28 February 2002.

⁵ As an example of intervention, we may quote the FTA *Amicus curiae* letter in the bedlinen case. 7