UNICE
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DOHA DEVELOPMENT AGENDA
WTO NEGOTIATIONS CONCERNING THE ANTI-DUMPING AGREEMENT

1. In its preliminary position on Anti-Dumping dated 16 February 2001, UNICE asserted the need for the Doha Development Agenda (DDA) to engage in formal clarifications of the Agreement on Implementation of Article VI of the GATT. With reference to the high standards of EU AD practices, it specified the aspects which it believes are of prime importance in order to achieve the objective of harmonised interpretation and implementation of the Anti-Dumping Agreement (ADA) that would ensure the effective, non-discriminatory and impartial operation of a legitimate trade discipline instrument.

   UNICE believes that Anti-Dumping is one area where the Doha Development Agenda can bring direct, tangible and substantial improvements for business.

   In paragraph 28[1], the Doha Ministerial Declaration cleared the way for the desired negotiations, and a large number of WTO Members have contributed to the initial phase of these negotiations by indicating their views and interests.

2. Considering the wide scope of issues covered by the many submissions, and as the Ministerial Conference in Cancun will trigger the actual discussion on substance, UNICE wishes to confirm its position regarding these negotiations and its commitment to all of the objectives stated in its 16 February 2001 paper.

   - It is absolutely vital to have transparent proceedings and independence from politics at all stages in the assessment of the situation and the decision-making process. To achieve these critical objectives, Members should improve and reinforce existing rules guaranteeing due process for affected parties. In particular, improved access to the information on which determinations are based, including strengthening the requirements for non-confidential summaries and more detailed non-confidential explanations of the reasoning and evidence on which provisional and final determination are based, must be secured.

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[1] DDA, Para. 28: In the light of experience and of the increasing application of these instruments by members, we agree to negotiations aimed at clarifying and improving disciplines under the Agreements on Implementation of Article VI of the GATT 1994 and on Subsidies and Countervailing Measures, 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. In the initial phase of the negotiations, participants will indicate the provisions, including disciplines on trade distorting practices that they seek to clarify and improve in the subsequent phase. In the context of these negotiations, participants shall also aim to clarify and improve WTO disciplines on fisheries subsidies, taking into account the importance of this sector to developing countries. We note that fisheries subsidies are also referred to in paragraph 31.

- A number of aspects of a procedural, methodological and conceptual nature need to be addressed as a priority.

  As regards *procedural aspects*, UNICE insists on:
  - common "WTO" reference canvasses for both complainant submissions and the investigation questionnaire,
  - clarifications of Art. 6.8 and Annex II of the Agreement in respect of the use of facts available and "arm's length" tests, with a view in particular to formally adopting the principle that all facts made available within the set time limits by the co-operating respondents must be used on their own merits and that none of these facts can be disregarded unless properly justified,
  - the specification of fair, expeditious and compulsory time constraints for all types of proceedings, in particular final determination should be made within 13 months in the case of new and review proceedings,
  - clear guidelines concerning the criteria for the temporary suspension of measures or for triggering interim reviews, as well as guidelines for review proceedings.

  As regards *methodological aspects*, UNICE considers it to be of the utmost importance to agree on:
  - common methodologies for assessing key parameters, such as dumping and injury margins, undercutting, free market vs. captive production, etc.
  - clarifications to Art. 2.2.1.1 of the Agreement in order to avoid the discretionary assessment of costs and factors of economic relevance,
  - clear and uniform provisions governing recourse to, and implementation of, price undertakings the recourse to which should remain the exception on the condition that they are compatible with normal market operating conditions and that proper monitoring can guarantee their effectiveness.

  As regards *conceptual aspects*, UNICE requests that:
  - the "lesser duty rule" be mandatory,
  - the nullifying impact of "circumvention" be better acknowledged, circumvention practices be better characterised, and criteria for the proper assessment and condemnation of the latter be specified,
  - a "users' interest test" be mandatory, and criteria for the users' interest assessment be specified.

3. UNICE believes that, among all the improvements that clarifications and harmonisation on the above-mentioned aspects can bring about, the generalised adoption of the "lesser duty rule" would trigger the most significant progress towards implementation on a level playing-field, and would at the same time better reflect the Agreement's spirit, which is to put an end to the injury caused by dumping and not to impose a penalty on the exporter.

4. In another respect, UNICE considers that it is urgent to act against flawed submissions and resulting flawed initiations: these have considerable negative side-effects on companies and markets and undermine the credibility and legitimacy of the anti-dumping agreement by turning it into a discretionary protectionist instrument.

   UNICE therefore insists that the negotiators on Rules specify the criteria that absolutely need to be fulfilled in order to consider a complaint receivable and initiate an investigation. Similarly, they should expand the requirements under Art. 12.1.1 of the ADA to include in the notice of initiation a sufficiently detailed explanation of the reasoning and evidence on which the initiation decision is based.

Essential requirements relating to the demonstration of dumping, injury and the causal link must be clearly identified along reasonable but uncompromising lines. UNICE will submit views in this respect .

The swift control mechanism for initiations proposed by the EC appears to be a very valid and complementary concept, provided that it is operated in a swift and effective manner. The “arbitration” formula would best meet this requirement. However, UNICE considers that antidumping proceedings should be suspended during arbitration.

5. The development of industrial and trade practices since the Uruguay Round has increased the number of possible ways and means of circumventing anti-dumping measures. Circumvention remains, however, unequivocally identifiable in that it has no, or insufficient, cause or economic justification other than the imposition of an anti-dumping measure. UNICE therefore urges the EC negotiators to actively push for the “circumvention” issue to be included on the agenda, along the lines of Art. 13 of the EU Anti-Dumping Regulation.

6. Finally, UNICE considers that the Anti-Dumping Agreement must be operated in the same way and along the same criteria *erga omnes*. It is a trade discipline instrument aimed at redressing injurious trade practices. In that respect, the degree of development of the countries involved does not justify a two-tier system.

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