

13 December 2000

Comments by UNICE on Commission note for the Information of the 133 Committee WTO Implementation Work Programme – anti-dumping section

(9 OCTOBER 2000 VERSION)

The Anti-dumping section of DG Trade's note to the 133 Committee on the *WTO implementation work programme* was reviewed by UNICE Trade Policy Instruments Working Group (TPI). The following reflects the views expressed by the Group and adopted by UNICE "WTO" Working Group.

Preliminary remark

Considering that the anti-dumping instrument is aimed at technically restoring fair trade conditions when these are destroyed or disrupted by dumping practices, and that it is by no means an instrument of development policy, the TPI Working Group wants to stress that discussions/negotiations on the Anti-Dumping Agreement with the developing countries in the context of the WTO Implementation Programme must be strictly kept within the scope of an overall objective of harmonisation of practices and interpretation across the WTO membership. They should not give way to the downrating of the provisions of the Anti-Dumping Agreement to the exclusive benefit of developing countries.

Item 1: No investigations initiated for a period of 365 days

Suggested EC Position

At Seattle, the Pettigrew/Moore text was acceptable. The Friends' text – which read "the competent authorities shall not re-open successive investigations against the same product under Article 5 of the AD Agreement within 365 days of the closure of the previous case unless the pre-initiation examination clearly shows that circumstances are different to those which applied in the previous case" was also acceptable (it can be accommodated within EC procedures). The current version – which makes the 365-day freeze compulsory – would demand a change to the Agreement and the EC's own legislation. Realistically this could only be achieved in the context of a Round. The Pettigrew/Moore or Friends' text could be supported in the interim.

UNICE Position

To make the 365-day freeze compulsory is not acceptable :

- in view of the time taken by an investigation (more or less one year and a half), it would mean that action against dumping would actually be frozen for at least two and a half year,
- yet, within one year market/business circumstances and reality may considerably change and fully justify renewed action.

~~the~~ the TPI Working Group opposes the Pettigrew/Moore text

~~the~~ the "text of the friends" is acceptable inasmuch as it leaves the door open to the re-opening of an investigation within 365 days (the difficulty with this text

remains with the interpretation of "clearly shows that circumstance are different")
✍️ the TPI Working Group should oppose an early and unilateral implementation of the "text of the friends" by the EU (either through shadow practice at EC level, or through the review of the EU Anti-Dumping Regulation).

Item 2: Lesser duty rule to be made mandatory

Suggested EC Position

The EC would support this in the context of a Round (but questions its acceptability to others).

UNICE Position

Full support from the TPI Working Group.

Item 3: Clarification of article 2.2. to make appropriate comparison with respect to the margin of dumping

Suggested EC Position

Open to looking at this in the context of a negotiation of the anti-dumping agreement

UNICE Position

Full support from the TPI Working Group.

Item 4: Provisions of the agreement to be revisited to include, *inter alia*, (i) the criteria, methodology....(v) the "cumulation" clause

Suggested EC Position

This comes close to a line-by-line renegotiation of the AD Agreement and as such, would need to be addressed in any revisiting of the AD Agreement in a Round.

Item 4 UNICE Position

The TPI Working Group supports the reservations of the EC.

Item 5: Revision of Article 15 to be operationalised and made mandatory

Suggested EC Position

This can be discussed. The EC is interested in making Article 15 (which deals with special treatment for developing countries) more meaningful.

UNICE Position

The EC should clarify its views in respect of the nature of "constructive remedies".

✍️ the TPI Working Group would oppose any proposal making price undertakings the *panacea* in this respect.

Item 6: Increase of the *de minimis* dumping for developing countries from 2% to 5%

Suggested EC Position

This proposal we consider to be unacceptable as it stands. In a negotiating context we may be open to consider compromise solutions.

UNICE Position

The TPI Working Group opposes the principle of a higher *de minimis* dumping margin for developing countries.

Item 7: De minimis dumping margin of 5% to be applied not only in new cases but also in review and refund cases

Suggested EC Position

This proposal we consider to be non-negotiable as regards review cases, since in reviews a *de minimis* dumping margin is not in itself a reason to repeal AD measures (the dumping margin could have decreased as a result of the AD measures, or due to a price undertaking from the exporters). However, EC already applied *de minimis* dumping margin in refund cases, so this aspect of the proposal would not be problematic in principle.

UNICE Position

The TPI Working Group supports the EC position.

Item 8: Increase of threshold of dumped imports from 3% to (5%) (7%) regarded as negligible for developing countries

Suggested EC Position

This could be discussed in a negotiation context, or possibly as an issue on which early action could be decided.

UNICE Position

The TPI Working Group opposes the principle of a higher threshold volume of dumped imports for imports from developing countries, all the more so that, in some markets such as commodity markets, a penetration of 3 % can already have a significant impact on prices.

Item 9: Article 5.8 to be clarified with regard the time-frame to be used in determining the volume of the dumped imports

Suggested EC Position

This could be discussed in a negotiation context, or possibly as an issue on which early action could be decided.

UNICE Position

Clarification and harmonisation "erga omnes" (i.e. no special treatment for the developing countries) should be the basis for discussion on time-frame.

Item 10: Substantial quantities test to be increased from 20% to 40%

Suggested EC Position

We recognise Members' rights to raise this in a negotiating context. But we do not support the proposal.

UNICE Position

The TPI Working Group supports the EC position.

Item 11: Article 2.4.1 to include details of dealing with foreign exchange rate fluctuations during the process of dumping

Suggested EC Position

This could be discussed in a negotiation context

UNICE Position

In respect of foreign exchange rate fluctuations and their taking into account in the assessment of dumping, the views of the EC itself should at first be identified.

Item 12: Article 3 to contain a detailed provision dealing with the determination of the material retardation of the establishment of a domestic industry

Suggested EC Position

This could be discussed in a negotiation context or supported as an issue on which to take early action.

UNICE Position

The TPI Working Group has its doubts as to whether it is actually feasible to specify clear criteria/methodologies for determining retardation of the establishment of a domestic industry.

Item 13: Provision to be included in the Agreement which provides presumption of dumping of imports from developed countries into developing countries, provided certain conditions are met

Suggested EC Position

This proposal we consider to be non-negotiable. Furthermore, it is not serious.

UNICE Position

The TPI Working Group supports the EC views.

Item 14: Article 17 to be modified to include application of the general standard of review laid down in the WTO dispute settlement mechanism

Suggested EC Position

We recognise Members' freedom to raise this issue in any future negotiations. However, we see no merit in reopening the debate over Article 17.

UNICE Position

The TPI Working Group supports the EC views.

Item 15: Article 18.6 to be amended to ensure that the annual reviews are meaningful and play a role in reducing the possible abuse of the AD Agreement

Suggested EC Position

This could be supported. Specific proposals could be developed by the WG on implementation of the Agreement.

UNICE Position

The TPI Working Group would support the EC position.

Furthermore, the TPI Group supports EURATEX position in respect of item 3 of the Textiles Section of DG Trade's note on WTO Implementation, i.e. that a moratorium, over a certain period of time, on any anti-dumping actions in the textile sector is totally unacceptable.