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IN THE WORLD TRADE ORGANISATION

WT/DS397

European Communities – Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China

Oral Statement

by

Norway as a Third Party

Third Party session of the First Hearing of the Panel

Geneva

24 March 2010

Mr. Chairman, distinguished Members of the Panel,

A. Introduction

1. Norway would like to thank you for this opportunity to make a brief statement at this meeting.

2. In its written submission, Norway addressed a number of interpretative issues raised by China and the EU in this case. Norway focused on the determination of the domestic industry, the product scope, the impact of dumped imports in the injury determination, the volume of dumped imports and the fulfilment of certain procedural requirements. The arguments in respect of these issues are explained in our written submission and I shall here only refer you to the arguments presented therein.

3. Today, Norway would like to address two additional issues raised by China and the EU in their written submissions:

    - *First*, Norway would like to offer its views on China's claim that the EU violated Article 5.4 of the *Anti-Dumping Agreement* by initiating the investigation without ensuring that the application was supported by producers accounting for at least 25% of the total production of the like product produced by the domestic industry.

    - *Second*, Norway would like to address certain interpretative aspects related to China's claim that the EU violated Articles 3.1 and 3.5 of the *Anti-Dumping Agreement* in concluding that the alleged dumped imports caused material injury, without properly assessing the injurious effects of other known factors.

B. The threshold for initiation

4. As to the first question, China claims that the EU failed to properly examine whether the industry support thresholds were met before initiating the investigation, as required by Article 5.4 of the *Anti-Dumping Agreement*.[1]

5. To recall; Article 5.4 requires that the investigating authorities "determine" whether an application for the initiation of an investigation has been "made by or on behalf of the domestic industry". Support for the initiation of an investigation is measured by reference to the collective volume of production of the supporters, seen in relation to the "total production of the like product" by domestic producers.

6. Simply put; to initiate an examination the EU needs to determine the relationship between two production volumes: the volume of its total domestic production and the collective volume of production of the companies that supports initiation of the investigation. And this determination needs to be made, objectively and based on an examination of positive evidence, at the time of initiation.

7. Article 5.4 expressly sets out that this examination and determination has to take place *no later than* at the time of initiation of the investigation. Reference is made to the wording "an investigation shall not be initiated" and "no investigation shall be initiated". It follows from this that the investigating authority cannot put forward facts received or revealed *after* the initiation of the investigation as evidence for the existence of the requisite industry support at that earlier point in time. Consequently, lack of the requisite support *at the time of initiation* cannot be *repaired* by adding new supporters later on in the investigation.

8. Furthermore, this determination is subject to scrutiny by Panels and the Appellate Body. It must, thus, be set out in the relevant notices and reports with sufficient clarity for interested parties to become acquainted with its basis and be able to contest it. Determinations that are mere statements, without proper explanation, do not suffice.

9. Now, China claims that the EU

[1] First Written Submission of China, paras. 198-224.

(i) *for total domestic production,* simply relied on the figure of 1.430 KT given by the complainants, without further investigation[2]; and

(ii) *for the collective volume of production of the supporters* included volumes not just from the complainants and supporters as the situation stood at the date of initiation, but also the production volumes of those domestic producers that made themselves known *after* the initiation.[3]

10. Norway leaves aside the question of whether this issue is properly before this Panel, something that is contested by the EU, or the appropriateness of relying on Eurostat data.

11. Norway simply wishes to highlight a few factual points raised by China in its First Written Submission, and that do not seem to be contested by the EU.

12. Norway notes that the contested Notice of Initiation[4] simply states that the complainants (alone) represent more than 25 % of total community (EU) production. No figures are given for either total domestic production or for the collective production volume of the complainants.

13. Furthermore, the *identity* of the complaining companies was not disclosed to China or to the exporters or producers.[5] China thus had no possibility to double-check the reliability of the declaratory statement regarding the sufficient support figure given in the notice of initiation.

14. China also states, with reference to a letter sent by the European Commission to certain Chinese exporters, that the EU included 46 new companies as supporters of initiation *after* the determination referred to in the Notice of Initiation was made.[6]

15. And, finally, the Definitive Regulation provides that the collective production of all domestic producers supporting the investigation – including those that came forward after initiation – represented 27 per cent of total community production.[7]

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2 China, First Written Submission, para 207.
3 China, First Written Submission, para 216.
4 Notice of initiation of an anti-dumping proceeding concerning imports of certain iron or steel fasteners originating in the People's Republic of China; Official Journal of the European Union (2007/C 267/11)
5 China, First Written Submission, paras. 527 – 528.
6 China, First Written Submission, para. 211.

16. It seems credible, as argued by China[8], that the determination of the standing threshold *at the time of initiation* was flawed, in light of the later addition of these companies and their production volumes.

17. The Panel will have to assess, however, whether these points, together with other evidence and arguments presented by China, represents a *prima facie case* of a breach of Article 5.4. And, furthermore, whether the EU has been able to rebut.

C. Causation.

18. Norway would next like to address the second issue previously identified: whether the EU violated Articles 3.1 and 3.5 of the *Anti-Dumping Agreement* in concluding that the alleged dumped imports caused material injury, without properly assessing the injurious effects of other known factors. In particular, China argues that the EU failed to properly assess the effects of the increase in raw material prices, as well as the EU industry's exports to third countries.[9] Norway does not take a position on the issue of whether the EU has fulfilled its obligations according to Articles 3.1 and 3.5 in this case. Norway will only highlight certain arguments that may be of importance to the Panel when interpreting and applying the requirements of Articles 3.1 and 3.5.

19. According to Article 3.1 of the *Anti-Dumping Agreement*, the injury determination must be based on "positive evidence" and an "objective examination". Article 3.5 further requires a demonstration that "the dumped imports are, through the effects of dumping, ... causing injury". The investigating authority must "examine any known factors other than the dumped imports which at the same time are injuring the domestic industry" and must not attribute "the injuries caused by these other factors" to the dumped imports.

20. Both Parties recognise[10] the investigating authorities' obligation, as established by the Appellate Body, to "separate and distinguish" the injurious effect of the dumped imports from the injurious effects of other known factors.[11] The Appellate Body has furthermore found this process to require "a satisfactory explanation of the nature and

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7 China, First Written Submission para. 216, with reference to Recital 114 of the Definitive Regulation (Exhibit CHN-4).
8 China, First Written Submission, para. 216.
9 First Written Submission of China, paras. 478-493.
10 First Written Submission of China, para. 480 and First Written Submission of the EU, paras. 647 and 650.
11 Appellate Body Report, *US – Hot Rolled Steel*, para. 226.

extent of the injurious effects of the other factors, as distinguished from the injurious effects of the dumped imports".[12]

21. Norway attaches great importance to these principles, as they represent an important mechanism to ensure that the injury from dumped imports is isolated from the injurious effects of other factors, thus fulfilling the objective of Article 3.5. If not adhered to, an injury determination becomes more likely and the requirement of an "objective examination" in the words of Article 3.1 would not be fulfilled. Norway therefore respectfully asks the Panel to carefully review whether the EU in this case fulfilled its obligation to "separate and distinguish" the effects of the dumped imports from the injurious effects of the increase in raw material prices and exports to third countries by the EU industry, and, furthermore, whether the EU ensured that any injurious consequences from such other factors were not attributed to the dumped imports.

Mr. Chairman, distinguished Members of the Panel,

22. This concludes Norway's statement here today. Thank you for your attention.

[12] Appellate Body Report, *US - Hot Rolled Steel*, para. 226.