EUROPEAN COMMUNITIES - ANTI-DUMPING MEASURE ON FARMED SALMON FROM NORWAY

(WT/DS337)

Oral Statement of the United States at the Third Party Session of the First Substantive Meeting of the Panel with the Parties

December 13, 2006

Mr. Chairman, members of the Panel:

1. It is a pleasure to appear before you to present the views of the United States concerning certain issues in this dispute. Today, we would like to make a few brief points on two issues discussed in our written submission: (1) transparency and (2) the definition of the product under consideration.

Transparency

2. First, regarding Norway's claim relating to the proper interpretation and application of Articles 6.2 and 6.4 of the AD Agreement, the United States agrees with Norway that transparency and procedural fairness are key principles reflected in the AD Agreement.[1] Consistent with these principles, Article 6.2 provides that "all interested parties shall have a full opportunity for defence of their interests," and Article 6.4 provides in relevant part that "authorities shall whenever practicable provide timely opportunities to see all information that is relevant to the presentation of their cases, that is not confidential . . ., and that is used by the authorities in an anti-dumping investigation."

3. In connection with Article 6.4, referring to the language on "relevance" contained in that provision, the EC makes two assertions on which the United States would like to comment. First

[1] First Written Submission of Norway, paras. 687, 698.

the EC asserts that "the investigating authority may decide on which information access should be granted or not."[2] With respect to this statement, as the EC concedes, relevance must be assessed from the perspective of the interested party presenting its case.[3] As the panel observed in *EC-Cast Iron Fittings*, "whether or not the investigating authorities regarded...information...to be relevant does not determine whether the information would in fact have been 'relevant' for the purposes of Article 6.4."[4]

4. The EC further asserts that "the investigating authority may not disclose information it has received from one interested party to another interested party, unless it is relevant for the preparation of the latter's case."[5] With respect to this assertion, the EC's statement is unsupported by the text of Article 6.4, which contains an affirmative obligation to disclose information in certain circumstances, not a prohibition against such disclosure.

5. Like Article 6.4, other provisions of Article 6 contain affirmative obligations to provide opportunities to interested parties to see certain non-confidential information. For example, Article 6.1.2 requires that non-confidential "evidence presented in writing by one interested party shall be made available promptly to other interested parties participating in the investigation." Article 6.9 requires that investigating authorities "inform all interested parties of the essential facts under consideration that form the basis for the decision whether to apply definitive measures" and that such disclosure should take place "in sufficient time for the parties to defend

---

[2] First Written Submission of the EC, paras. 531.

[3] First Written Submission of the EC, para. 531.

[4] Appellate Body Report, *European Communities – Anti-Dumping Duties on Malleable Cast Iron Tube or Pipe Fittings from Brazil*, WT/DS219/AB/R, adopted 18 August 2003, para. 145.

[5] First Written Submission of the EC, paras. 531.

their interests."

6. These provisions of Article 6 promote the ability of interested parties to be fully in control of their own defense. They do not contain prohibitions on the types of information that may be provided to interested parties. The very language of Article 6.4 makes clear that it establishes a rule regarding when an authority must disclose information, and not when it must withhold information.

Product under Consideration

7. We turn next to Norway's claim that the EC's definition of the "product under consideration" was inconsistent with Articles 2.1 and 2.6 of the AD Agreement. On this issue, Norway, as well as Korea in its third party submission, reasons backwards from the definition of "like product" contained in Article 2.6 in an attempt to create an obligation on Members regarding how to define the product under consideration. No such obligation exists in the AD Agreement.[6] The United States agrees with the EC and the panel in *US - Softwood Lumber V* that the product under consideration is the starting point for defining the "like product," and not the reverse.[7] Neither Article 2.1 nor Article 2.6 contain rules on how the product under consideration should be determined. Norway's assertion otherwise does not accord with the text and would be unworkable, given that the "like product" cannot be determined until the product under consideration has been specified by the investigating authority.[8]

---

[6] First Written Submission of Norway, paras. 84-98; Third Party Submission of the Republic of Korea, paras. 5-12.

[7] First Written Submission of the EC, paras. 19-21; *United States – Final Dumping Determination on Softwood Lumber from Canada*, WT/DS264/R, adopted 31 August 2004, modified by Appellate Body Report, adopted 19 May 2003, paras. 7.153, 7.156-7.158 ("*US – Softwood Lumber V (Panel)*").

[8] *US – Softwood Lumber V (Panel)*, paras. 7.153, 7.156-7.158; Panel Report, *Korea – Anti-Dumping Duties on Imports of Certain Paper from Indonesia*, WT/DS312/R, adopted 28 November 2005, paras. 7.219-7.221.

8. Finally, the determinations by U.S. investigating authorities cited by Norway and Korea do not support the conclusion that Articles 2.1 and 2.6 impose obligations with respect to how an investigating authority defines the product under consideration. As an initial matter, Norway as the complaining party must demonstrate that the actions of the EC are inconsistent with specific obligations contained in the AD Agreement. The fact that one WTO Member's investigating authority made particular determinations in certain cases does not support the conclusion that such actions are *required* by the AD Agreement. The AD Agreement does not prescribe rules for all aspects of an antidumping determination; where no such rules exist, those aspects of the determination may be left to the investigating authority's discretion or otherwise governed solely by a Member's domestic law. Insofar as it is relevant, U.S. investigating authorities determine the product under consideration on a case-by-case basis, taking into consideration the particular facts of each case. The two cases cited by Norway and Korea do not stand for the proposition that the EC was required to conduct two separate investigations, as Korea and Norway claim, or that the U.S. investigating authorities would necessarily have done so had the facts of this case been before them.