

WORLD TRADE ORGANIZATION

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Negotiating Group on Rules

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PUBLIC INTEREST

Paper from Canada

The following communication, dated 16 November 2005, is being circulated at the request of the Delegation of Canada.

The submitting delegation has requested that this paper, which was submitted to the Rules Negotiating Group as an informal document (JOB(05)/287), also be circulated as a formal document.

Members will recall that in TN/RL/W/1, and subsequently in TN/RL/W/47, Canada suggested that, among the areas that would benefit from clarification, are rules/disciplines pertaining to the consideration of the broader public interest in anti-dumping and countervail investigations. Indeed, the WTO already establishes a basis for progress on this front.¹

Canada has since had the benefit of TN/RL/W/174/Rev.1 and JOB(05)/136 and related discussions. In this regard, Canada shares much common ground with Hong Kong China and the other co-sponsors of those papers

Guiding Principles

In Canada's view, the crafting of more effective public interest provisions in the Anti-Dumping Agreement (ADA) and the Agreement on Subsidies and Countervailing Measures (ASCM) must reflect certain basic guiding principles, notably:

- (i) that any new obligations on public interest afford sufficient flexibility as to the method of their implementation so as to accommodate the different approaches of Members to this issue and the domestic legal systems of Members; and

¹ Paragraph 19.2 of the WTO ASCM provides, in part, as follows:

19.2 ...It is desirable that...procedures should be established which would allow the authorities concerned to take due account of representations made by domestic interested parties whose interests might be adversely affected by the imposition of a countervailing duty.

For the purposes of this paragraph, footnote 50 defines the term "domestic interested parties" to include consumers and industrial users of the imported product subject to investigation.

Article 6.12 of the WTO *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* also recognizes that there may be other domestic interested parties (i.e., industrial users and consumers) in an anti-dumping investigation.

- (ii) that domestic public interest decisions, as the sovereign prerogative of each Member, be recognised as falling outside the reach of WTO dispute settlement proceedings.²

In Canada's view, there are several ways in which a Member could implement a public interest mechanism into its domestic law. While JOB(05)/136 proposed one of these ways, which would require that relevant persons be afforded the opportunity to comment as soon as they are able to provide meaningful comments (including before details of definitive measures are known), we believe that a sequential process can be used just as effectively. Such a process, for example, would allow a separate and self-contained public interest inquiry to be conducted after a final determination has established the basis for the application of definitive anti-dumping/countervailing duties. In Canada's experience, a sequential inquiry, which focuses exclusively on public interest issues, lends itself to a thorough and informed consideration of the matter.

Thus, while Canada supports strengthened public interest provisions, it does not believe that it is necessary to prescribe the precise modalities for the implementation of these provisions into the domestic law of Members.

Text Proposal

1. Amend the ADA by adding the following to the end of Article 9.1:

9.1bis - Each Member shall establish appropriate procedures in its law to allow its authorities to inquire into whether the imposition of an anti-dumping duty or the imposition of such a duty in the full amount would not be in the public interest. These procedures shall require the authorities to take due account of representations made by any domestic party whose interests may be affected by the imposition of the anti-dumping duty, including, but not limited to, industrial users of the product under consideration, representative consumer organizations, and the domestic competition law authorities of the Member. In conducting such an inquiry, the authority concerned should consider all relevant information, including those factors set out in Annex III to this Agreement.³ As a result of any such inquiry, the authorities may decide to eliminate or reduce the level of duties that would otherwise be applied. For greater clarity, public interest decisions cannot give rise to claims of violation under the DSU.

2. Add an Annex III to the ADA as follows:

- Annex III -

For the purposes of Article 9:1bis, factors that should be considered include:

- (a) whether products like the product under consideration are readily available from sources to which the measure does not apply;
- (b) whether imposition of an anti-dumping duty in the full amount

² Canada agrees with the view expressed by Hong Kong, China and the other co-sponsors of JOB(05)/136 that any new provisions on public interest must not try to prescribe what is or is not in the importing Member's economic interest and that this decision must be left to the importing Member concerned.

³ Like the proponents in JOB(05)/136, Canada considers that information pertaining to public interest decisions should be disclosed under Article 12 of the ADA and Article 22 of the ASCM and that this could be taken up in the context of other improvements to these Articles.

- (i) has eliminated or substantially lessened or is likely to eliminate or substantially lessen competition in the domestic market in respect of products,
 - (ii) has caused or is likely to cause significant damage to domestic producers that use the products as inputs in the production of other products and in the provision of services,
 - (iii) has significantly impaired or is likely to significantly impair competitiveness by
 - (A) limiting access to products that are used as inputs in the production of other products and in the provision of services, or
 - (B) limiting access to technology, or
 - (iv) has significantly restricted or is likely to significantly restrict the choice or availability of products at competitive prices for consumers or has otherwise caused or is otherwise likely to cause them significant harm;
- (c) whether non-imposition of an anti-dumping duty or the non-imposition of such a duty in the full amount is likely to cause significant damage to domestic producers of inputs, including primary commodities, used in the domestic manufacture or production of like products; and
- (d) any other factors that are relevant in the circumstances.
3. Amend Article 19.2 of the ASCM in the same manner.

* * *

Canada reserves its right to make further submissions on this issue.
