

NEW SHIPPER REVIEWS (ADA Article 9.5)

Paper from the United States

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

The submitting delegation has requested that this paper, which was submitted to the Rules Negotiating Group as an informal document (JOB(05)/294), also be circulated as a formal document.

The United States and other Members have previously suggested that the Rules Negotiating Group discuss clarifications and improvements to Article 9.5 of the Anti-Dumping Agreement (ADA) to ensure correct use and application of the "new shipper" procedure in anti-dumping proceedings.¹ In our view, Article 9.5 was designed to strike a balance between the needs of legitimate new shippers and the needs of injured domestic industries seeking to ensure that anti-dumping orders remain effective, also taking into account the need for effective administration of this procedure. However, it has been our experience that the provision is increasingly being exploited by exporters who have no legitimate claim to be new shippers.

As we previously noted in TN/RL/W/72 and TN/RL/GEN/11, the United States has experienced a number of cases in which parties requested reviews under Article 9.5 without revealing their relationship to firms already subject to a measure. In this way, parties have managed to delay levying of anti-dumping duties to which they should be subject.

It is not in the interest of any Member to allow such practices to continue. They not only undermine the effectiveness of the ADA, they also prejudice the interests of legitimate new shippers by diverting the authority's resources. In the view of the United States, the best way to avoid such abuses is to require parties to establish that they are not related to any of the parties currently subject to duties and that they have engaged in bona fide sales to the importing Member. Legitimate new shippers with little legal or operational connection to their competitors should have little trouble meeting this requirement based on publicly available information.

As suggested in TN/RL/GEN/11, the United States is also proposing to eliminate the requirement that new shipper reviews be initiated and carried out on an accelerated basis compared to normal duty assessment and review proceedings. First, the meaning of this requirement is unclear as applied to Members that conduct reviews only on an intermittent basis. Further, for the United States, this requirement has produced a series of "off cycle" reviews that impose significant administrative burdens. The purpose of this change is not to delay reviews, but to allow more orderly conduct of reviews. In this regard, the United States is ready to discuss proposals to require conduct of new shipper reviews on the same cycle as other reviews, as well as proposals to establish appropriate deadlines for completion of reviews.

¹ TN/RL/W/72, 19 March 2003; TN/RL/W/110, 22 May 2003; *see also* TN/RL/W/81, 23 April 2003.

Proposed amendments:

9.5 *If a product is subject to anti-dumping duties in an importing Member, the authorities shall promptly carry out a review for the purpose of determining individual margins of dumping for any exporters or producers in the exporting country in question who have not exported the product to the importing Member during the period of investigation, provided that these exporters or producers can show that they are not related to any of the exporters or producers in the exporting country who are subject to the anti-dumping duties on the product. ~~Such a review shall be initiated and carried out on an accelerated basis, compared to normal duty assessment and review proceedings in the importing Member.~~ Within [X] months after the initiation of such a review, the authority shall make a threshold determination whether the exporter or producer has shown that it is not related to any of the exporters or producers in the exporting country who are subject to the anti- dumping duties on the product, and has shown that it has engaged in bona fide commercial sales to the importing Member (examining such factors as normal commercial quantities, channels and methods of distribution, and the timing, pricing, terms and process of sales). If the authority determines that the exporters or producers have so shown, no anti-dumping duties shall be levied on imports from such exporters or producers for the remainder of the review. ~~while the review is being carried out.~~ The authorities may, however, withhold appraisalment and/or request guarantees to ensure that, should such a review result in a determination of dumping in respect of such producers or exporters, anti-dumping duties can be levied retroactively to the date of the initiation of the review.*
