

**CIRCUMVENTION**

Paper from the United States

The following communication, dated 2 March 2006, 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 Negotiation Group as an informal document (JOB(06)/46), also be circulated as a formal document.

Introduction:

In October, 2005, the United States presented a proposal on Circumvention reflecting its concerns about enforcement of measures taken under the Anti-Dumping Agreement (ADA) and the Agreement on Subsidies and Countervailing Measures (ASCM).<sup>1</sup> During the plenary session of the WTO Negotiating Group on Rules, which took place on October 24, 2005, Members shared with the United States many constructive suggestions for improvement of the proposal. While the United States does not agree with every comment made, it has attempted, in this paper, to revise its proposal to reflect many of the views expressed by Members. In summary, the United States has made the following three improvements to its proposal.

- First, many Members asked for clarification regarding the terms “supplanted”, “same general characteristics and uses”, and “minor or insignificant process of finishing or assembly”. These Members were concerned that, without further guidance, these terms could lead to uncertainty among administrators and interested parties. In the revised proposal below, the United States has set forth non-exhaustive criteria which it envisions authorities taking into account in applying each of these three terms to the facts before them in a particular proceeding in which circumvention has been alleged.
- Second, a number of Members expressed confusion about the fact that the provision was expressed in terms of its applicability to exports, rather than imports. In the view of these Members, the provision could have been misinterpreted to allow Members to take trade remedy action against merchandise which it never imported. In light of these concerns, we have redrafted the proposal to make clear that it only applies to merchandise which is ultimately imported by the Member taking the trade remedy measure.
- Third, some Members expressed confusion about the fact that the United States had grouped, under a single provision, circumvention through importation of parts destined for completion or reassembly, and circumvention through completion or reassembly of parts in a third country prior to importation. In light of this confusion, the United States has redrafted its proposal to distinguish between these two forms of circumvention.

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<sup>1</sup> Submission on Circumvention, TN/RL/GEN/71 (14 October 2005).

Proposed Text:

[9.6 - ADA] [19.5 - ASCM] Notwithstanding any other provision of this Agreement or of Article VI of the GATT 1994, the authorities may impose [an anti-dumping duty] [a countervailing duty] with respect to a product that was not within the product under consideration in an investigation that resulted in imposition of a duty, if the authorities determine, pursuant to a review carried out in accordance with this paragraph, that subsequent to the initiation of the investigation, imports of the product under consideration have been supplanted, in whole or in part,

(a) by imports from the country subject to the duty of another product that has the same general characteristics and uses as the product under consideration,

(b) by imports of parts or unfinished forms of the product under consideration produced in the country subject to the duty, where only a minor or insignificant process of completion or assembly is necessary to convert the parts or unfinished forms into the product under consideration, and the cost of the parts or unfinished forms makes up a significant portion of the total cost of production of the completed product, or

(c) by imports of the product under consideration from a third country that have been completed or assembled from parts or unfinished forms produced in the country subject to the duty if only a minor or insignificant process of completion or assembly is necessary to convert the parts or unfinished forms into the product under consideration, and the cost of the parts or unfinished forms makes up a significant portion of the total cost of production of the completed product.

The provisions of [Article 6 of the ADA][Article 12 of the ASCM] regarding evidence and procedure shall apply to any review carried out under this paragraph.

[9.6.1 - ADA] [19.5.1 - ASCM] Factors pertinent to a consideration of whether imports of the product under consideration have been supplanted by imports of another product, by imports of parts or unfinished forms, or by imports of the product completed or assembled in a third country for purposes of this paragraph may include the pattern of trade, the timing of any changes in such patterns, and any association or compensatory arrangement between the exporter and the importer or a third party. No one or several of these factors can necessarily give decisive guidance.

[9.6.2 - ADA] [19.5.2 - ASCM] Factors pertinent to a consideration of whether a product has the same general characteristics and uses as the product under consideration for purposes of this paragraph may include general physical characteristics, purchaser expectations, end uses, channels of trade, the interchangeability of the products, the processes, facilities and employees used in production of the products, and the manner in which the products are advertised and displayed. No one or several of these factors can necessarily give decisive guidance.

[9.6.3 - ADA] [19.5.3 - ASCM] Factors pertinent to a consideration of whether a process of completion or assembly is minor or insignificant for purposes of this paragraph may include the level of investment, research and development related to the completion or assembly, the nature and cost of the production process and the extent of the facilities used for completion or assembly. No one or several of these factors can necessarily give decisive guidance.

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