WORLD TRADE ORGANIZATION

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DUTY ASSESSMENT METHODOLOGIES

Communication from Canada

The following communication, dated 7 April 2004, 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(04)/42), also be circulated as a formal document.

Issue

In its first detailed submission to the Negotiating Group on Rules[1], Canada indicated that, in these negotiations, the Group should seek to improve predictability in duty enforcement systems so that importers and exporters can operate in a more certain environment, while providing the requisite protection from material injury to domestic industries. In Canada's view, such improvement would help to reduce uncertainties in the market and more readily allow for the resumption of non-injurious trade.

Description of the Problem

The *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* (ADA) provides little guidance to WTO Members on methods of duty imposition. Articles 9.3.1 and 9.3.2 recognize that Members may apply widely different types of duty assessment systems, based on either a *prospective* approach or on a *retrospective* approach. Like many WTO Members, Canada maintains a prospective duty assessment system, while other Members assess duties on a retrospective basis.

Canada is of the view that uncertainty about anti-dumping duty liability at the time of importation has an effect on trade that goes beyond the intended purpose of the anti-dumping measure. Under a retrospective system, at the time of importation, the importer does not have any certainty with respect to the maximum amount of final antidumping duties that will eventually be levied. When the final amount of duties owed is known, i.e., sometimes more than two years after importation, and the final assessment is higher, the importer is no longer able to pass any additional cost on to the customer. This leads to an uncertain business environment and adds to the level of protection intended by the measure.

By contrast, under a prospective system, importers generally know at the time of importation the amount of anti-dumping duties, if any, that they are required to pay. At the time of importation, the importer is either required to pay an "*ad valorem*" duty or, in a system based on "prospective normal values" such as in Canada, the difference, if any, between the export price and the normal

[1] TN/RL/W/47, page 7.

value for the imports in question. In either case, the likelihood that importers will face additional duty liability in the future is significantly lower than under a retrospective system, thus creating a more stable business environment.

Possible clarifications and improvements

Given the important objective of achieving greater predictability in international trade, it is Canada's view that efforts to clarify and improve the provisions of the Agreements on duty imposition methodologies should be undertaken, in order to minimize the cost of the uncertainty associated with any duty assessment system.

In trying to achieve this objective, Canada does not exclude that the Group work towards one uniform duty assessment methodology that would ensure predictability. However, if both retrospective and prospective methodologies are to be retained, the question that arises is how to improve and clarify the current Agreements. Canada proposes to explore the following in this regard:

1. Tighter timeframes for ADA Article 9.3 reviews or refunds

Canada believes that final anti-dumping liabilities should be determined at a time as close as possible to the time of importation of the product subject to an anti-dumping measure. Consequently, Articles 9.3.1 and 9.3.2 of the ADA could be amended to reduce the time afforded to authorities to complete assessments of duty liability (retrospective system) or to complete refund of duties paid in excess (prospective system). These would normally take place within 9 months, and in no case more than 12 months, after the date of a request.

In Canada's view, tighter timeframes are perfectly consistent with disciplines already imposed on Members' authorities, considering that the ADA provides that investigations of dumping **and** injury shall normally be completed within 12 months, and in no case within more than 18 months.[2] In contrast, reviews under Article 9.3 deal solely with the issue of dumping and could therefore be concluded more expeditiously.

2. Clarify the right of parties to seek reviews immediately after importation

Article 9.3.1 of the ADA provides that a determination of final duty liability "shall take place as soon as possible, normally within 12 months, and in no case more than 18 months after the date on which a request for a final assessment of the amount of the anti-dumping duty has been made". Thus, the duration of the period of uncertainty regarding the final amount of duty payable can be limited by the filing of a request for a final assessment. However, some Members only allow requests for reviews at specific points in time. Therefore, these Members impose an additional delay of as much as one year before a request for a final assessment of duty liability will be considered, thereby delaying a final decision and prolonging the uncertainty about the final duty liability for a period of up to two and one half years. This delay would be reduced by our previous suggestion, but could be further reduced if Article 9.3.1 of the ADA is clarified by establishing that a request for a final assessment may be made immediately after entry. In Canada's view, this proposal for clarification is justified by the language of Article 9.3.1, which imposes on Members a mandatory timeline for making final duty assessments; this mandatory timeline would appear to be devoid of any real significance if Members can choose, at their convenience, the time at which a request for final assessment may be made.

[2] Article 5.10 of the ADA.

3. Introduce in the ASCM similar disciplines with respect to duty assessment methodologies

The Agreement on Subsidies and Countervailing Measures does not incorporate disciplines similar to those of Articles 9.3.1 and 9.3.2 of the ADA. Given that predictability in international trade is an important objective whether countervailing measures or anti-dumping measures are imposed, it is Canada's view that this lacuna should be corrected. Canada would therefore propose that the duty assessment disciplines of the ADA, as it may be modified by these negotiations, be incorporated into the ASCM, with any adjustment that would be necessary in the context of the imposition of countervailing duties.

Related issue

Like the United States[3] and Egypt[4], Canada believes that Members should consider whether the question of interest on refunds should be clarified in the ADA and ASCM. More precisely, they could be clarified to require that interest be paid on monies collected in excess.

[3] TN/RL/W/98, page 4.
[4] TN/RL/W/110, page 5.