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PROPOSALS ON MODEL MATCHING

Communication from Brazil; Chile; Colombia; Costa Rica;
Hong Kong, China; Japan, Korea, Republic of; Norway; Switzerland;
the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu; and Thailand

The following communication, dated 13 September 2004, is being circulated at the request of the Delegations of Brazil; Chile; Colombia; Costa Rica; Hong Kong, China; Japan; Korea, Republic of; Norway; Switzerland; the Separate Customs Territory of Taiwan Penghu, Kinmen and Matsu; and Thailand.

The submitting delegations have requested that this paper, which was submitted to the Rules Negotiating Group as an informal document (JOB(04)/124), also be circulated as a formal document.

I. DESCRIPTION OF THE PROBLEMS

Article 2.4 of the ADA requires that authorities make a “fair comparison” between export price and the normal value of the product under consideration. Authorities must ensure that a fair comparison is made at the same level of trade, with due allowance being made for differences that affect price comparability. However, the language of the current ADA is very general, and lacks specific disciplines. As a result, authorities often fail to make a fair comparison. This paper addresses the issue of model matching which is one of the interrelated issues of fair comparison.

Article 2.1 of the ADA states that a product is to be considered as “dumped” if the export price of the product is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country. Article 2.6 defines the “like product” as “a product which is identical, i.e. alike in all respects to the product under consideration, or in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration”.

When calculating the dumping margin, the exported products and the like product in the home market will usually be further sub-divided into models, and the comparison between the normal values and export prices will first be performed between corresponding models, as an interim step, and then aggregated in order to arrive at a dumping margin for the product as a whole. This subdividing into models is done in order to minimize the problems relating to comparability between the normal values and export prices. The methodology to identify models of the like products to be used for comparison with models of the exported products often is crucial to the outcome of the dumping margin calculation, and the determination of dumping. Yet respondents often have little or no input regarding the methodology.

The ADA, however, provides no guidance for identifying each model or determining which models are “closely resembling” models to be compared. In the absence of the guidance, authorities are free to arbitrarily identify each model and decide which models for the normal value, if any, “closely resemble” the exported model when there are no models of like products that are “identical” to a particular model of the exported products. This excessive discretion causes uncertainty for exporters. It also exposes authorities to possible WTO challenges by respondents. Both respondents and authorities would therefore benefit from clearer rules regarding model matching.

II. ELEMENTS OF A SOLUTION

Proposals:

1. Impose disciplines on authorities’ selection of the characteristics to be used in identifying the “identical” and “most closely resembling” models; impose limits on products that may be deemed “Closely Resembling”

- Amend the ADA to require that, for purposes of identifying the “identical” and “most closely resembling” models (“model matching”), the authorities must use all characteristics that have a significant effect on the commercial value or the end use of the product. Moreover, the authorities must put priority on those characteristics which affect the product’s commercial value or its end use more than the others.
- The classification of each model must be based on product codes used by the respondents in the course of business, or alternatively, on industry product standards used in the country of exportation, to the extent that such codes or standards reflect the commercial value or the end use of the product.
- The FANs will further discuss possible ways of imposing outer boundaries on the selection of models for normal value that may be deemed to closely resemble the exported models. One useful way to accomplish this could be to examine the difference in the per-unit costs of manufacture of the models.

2. Calculation of allowances for differences in physical characteristics

- Amend the ADA to require that, where there are no models for determining normal value that are identical to an export model, allowances for differences in physical characteristics for purposes of Article 2.4 shall be made based on the difference in the per-unit cost of manufacture between the exported model and the model used as the basis for normal value.

3. Require authorities to permit responding parties to comment on model matching

- Amend the ADA to require that, where a product under consideration consists of more than one model, responding parties be given adequate opportunities to make proposals on model matching, including model classification, that determine identical and most resembling models, and to respond to those proposed by the petitioners and the authorities.

Explanations:

Model matching methodologies determine the universe of models that authorities will use to calculate the “normal value” for a particular exported model. This can significantly affect the result of an anti-dumping investigation.

As discussed above, some authorities define “models” based on “product codes” arbitrarily without taking into account of the effect on the commercial value and the end use of the product. The codes are used to identify products that are “identical” or, if there are no “identicals”, to establish which model among various models sold in home market (or third country) is most “closely resembling” the exported model under consideration. We believe, as discussed above, that the ADA should set forth rules both to guide authorities in the creation of the criteria for determining “identical” and most “closely resembling” products, but also to impose some objective limit on products that can be considered “closely resembling”.

First, it would be useful to specify that the model matching must be based on all characteristics that have a significant effect on the commercial value or the end use, including the technical specifications of the product, and that the identification of each model must be based on product codes used by the exporters in the regular course of business or, alternatively, on industry product standards of the exporting country. The ASTM and DIN standards for steel are examples of such industry product standards. This would provide an objective and verifiable basis for constructing product codes. It also would make model matching more predictable for exporters.

Second, it is important to ensure that models are similar enough to provide a meaningful comparison. Again, model matching is highly case-specific, and it is not possible to devise a comprehensive definition of “closely resembling” that could apply to all cases. However, it is important to define the “outer boundaries” of models that could be eligible for comparison. For example, because cost is an important factor in determining price, it does not seem appropriate for authorities to compare models that differ significantly in cost. A large-screen projection TV should not be compared with a portable small-screen model. The cost structures of these models would differ so much that no adjustment could adequately account for the resulting price differences. As discussed above, clearer rules regarding model matching would benefit responding parties as well as authorities.

We also are of the view that respondents should have opportunities to comment on model matching. First, as discussed, model matching is an issue of fundamental importance which can profoundly affect the dumping margin calculation. Second, respondents have expert knowledge of the products and product standards. Thus, respondents’ input could be invaluable to authorities. Yet authorities often create product codes without significant input from respondents. Typically, the petitioner will propose the codes. Authorities often use these codes in the questionnaire, without giving responding parties an adequate opportunity to comment. Respondents usually find it impossible to convince authorities to change product codes after the questionnaire has been issued.

Because product codes are very case-specific, we are of the view that, although general rules regarding product codes (such as those set forth above) would be useful to provide necessary guidance for authorities in this matter, it is equally important that responding parties be given reasonable opportunities to propose product codes, and to comment on those proposed by the petitioner and the authorities.
