

EXPLANATIONS OF DETERMINATIONS AND DECISIONS

Communication from Canada

The following communication, dated 18 October 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)/149), also be circulated as a formal document.

Background

1. In its earlier paper, TN/RL/W/47, Canada identified the importance of the related concepts of transparency and procedural fairness to the proper functioning of the Agreements. Other members have also highlighted transparency and procedural fairness as important issues.
2. The ability of a party to effectively defend its interests throughout an anti-dumping or countervail investigation depends largely on the sufficiency of explanations issued by the investigating authority in respect of the legal and factual basis of determinations and decisions made at each stage of the process. Article 12 of the ADA and Article 22 of the ASCM currently provide some guidance on the information to be provided at the initiation, preliminary determination and final determination stages of an investigation. That said, Canada believes that there is scope for the further elaboration of these provisions with the aim of providing greater transparency in regard to the decisions being made. The following proposal builds upon the useful work of the Committee on Anti-Dumping Practices with respect to this question in the late 1990s and the early years of this decade.

Proposed Amendments to the Agreements

(A) In regard to the initiation of an investigation:

While retaining the current requirements and the chapeau to the current text of ADA Article 12.1.1, add to the Article by replacing (i) through (vi) with the following:

- (i) a description of the product under investigation to which the initiation applies, including its tariff classification for Customs purposes, the name of the exporting country or countries, and the names of the known exporters and foreign producers of the product under investigation;

- (ii) information concerning the domestic like product and domestic industry, including the names of the domestic producers of the like product submitting and supporting the application, the names of other domestic producers of the like product insofar as they are known to the investigating authorities and, if relevant, information regarding any exclusion of producers for the purposes of defining the domestic industry;
- (iii) information concerning the procedural background of the investigation, including the date on which the application was received, the date on which the application was found to be in compliance with the requirements of Article 5 as to the allegations of dumping and injury and the determination of industry support, and the date of initiation of the investigation;
- (iv) the basis on which dumping is alleged in the application;
- (v) a summary of the factors on which the allegation of injury is based, and;
- (vi) information relevant to the continuation of the investigation, including next steps in the process, and related time frames, and information concerning a contact to whom representations by interested parties should be directed.

(B) In regard to the imposition of a provisional measure:

While retaining the current requirements and the chapeau to the current text of ADA Article 12.2.1, add to the Article by replacing (i) through (v) with the following:

- (i) a description of the product under investigation, including its tariff classification for Customs purposes, the name of the exporting country or countries, and the names of the known exporters and foreign producers of the product under investigation;
- (ii) the periods of data collection for both the preliminary dumping and preliminary injury analysis, and an explanation of the rationale for the selection of such periods;
- (iii) the margins of dumping established and information concerning the calculation of the dumping margin, including information regarding: normal values, including whether normal values were based on sales in the home market, sales to a third market or constructed normal value; export prices, including, if appropriate, the adjustments related to the construction of export price; the methodology of comparisons including adjustments, and, if appropriate, information on any application of sampling;
- (iv) information concerning any situation where the determination of dumping was made on the basis of full or partial facts available, including information as to why resort was had to facts available, and what information the authorities used to determine the dumping margin. The information provided should include, if applicable, the reasons why information submitted by a party was rejected in favour of recourse to facts available;
- (v) information concerning the domestic like product and domestic industry, including the names of all known domestic producers of the like product and, if relevant, information regarding any exclusion of producers for the purposes of defining the domestic industry;
- (vi) information, as is reasonably available, relevant to the injury determination as set out in Article 3, including information concerning the domestic market for the subject imports and the like product, the volume and the price effects of the subject imports, the

consequent impact of the subject imports on the domestic industry and, if relevant, the factors leading to a conclusion of threat of material injury;

- (vii) information concerning the verification of information used by the authorities, if undertaken;
- (viii) information on the provisional measures being imposed, including the form, level, and duration of such measures;
- (ix) information relevant to the continuation of the investigation, including next steps in the process, and related time frames, and information concerning a contact to whom representations by interested parties should be directed; and
- (x) information concerning the possibility for exporters to offer price undertakings.

3. While the above proposals have focused on ADA Article 12, they would for the most part, with appropriate adaptations, also be applicable to ASCM Articles 22.2 and 22.4. However for Article 22.4(iii) of the ASCM, which is specific to that Agreement, Canada proposes the following amendments:

- (iii) information concerning the establishment of the existence of a subsidy and the calculation of its amount, including, but not limited to, explanations concerning: the existence of a financial contribution, how the financial contribution confers a benefit to the recipient, including explanations concerning the selection of appropriate market benchmarks, how the subsidy is specific to certain enterprises (whether *de jure* or *de facto*), including if applicable, an explanation of how this determination was established by reference to the factors enumerated in Article 2.1 (c), how the amount of subsidy was calculated in terms of subsidization per unit, including explanations as to whether the subsidy amount was expensed in the year of receipt or allocated over time, and, where applicable, how the subsidy falls under the provisions of Article 3;

4. This paper does not purport to represent Canada's final views on this matter and Canada reserves the right to make further proposals.
