

**ACCRUAL OF INTEREST (ADA ARTICLES 9.3.1 & 9.3.2)**

Communication from the United States

The following communication, dated 9 December 2004, is being circulated at the request of the Delegation of the United States.

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The United States raised in an earlier paper (TN/RL/W/98) the need for clarifications and improvements to the Agreements with regard to the payment of interest upon refund of excess anti-dumping duties collected. Articles 9.3.1 and 9.3.2 of the Anti-Dumping Agreement (ADA) provide for refunds of duties paid in excess of the final assessment or margin of dumping, depending on whether Members assess duties on a retrospective or prospective basis. However, there is nothing in the Agreement that requires payment of interest on any excess monies collected and held by the importing Member. As a result, importers may, in effect, be making an interest-free loan to the importing Member. If monies paid or deposited exceed final liabilities, the excess monies refunded should include a reasonable amount of interest to help alleviate the burden imposed on the importer by the excess collection.<sup>1</sup>

When it presented this topic in its earlier paper, the United States suggested that Members should consider whether changes to the ADA may be necessary to address this situation and that this Group should consider clarifying the provisions of the Agreement on Subsidies and Countervailing Measures (ASCM) with respect to the same issue. Regardless of whether a system is established on a retrospective or prospective basis, there is a certain period of time in which parties are able to seek a review or a refund determination to find out whether excess duties were paid. Further, such review or refund determinations will take a certain amount of time to complete. Failure to pay interest on excess duties held during this period imposes a cost on importers participating in anti-dumping proceedings.<sup>2</sup>

In order to help alleviate the burden of such costs on importers that have paid duties in excess of the final duty liability (in the case of a retrospective system) or the actual margin of dumping (in the case of a prospective system), and to avoid an unjustified financial gain to the importing Member, the Agreements should contain a provision that requires the payment of a reasonable amount of interest on all refunded duties. Interest would be calculated based on the number of days from when the duties were deposited to the day when the refund is made.

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<sup>1</sup> The United States would welcome a discussion on how a reasonable amount of interest should be calculated, but in any event this amount should account for the time value of money to the importer.

<sup>2</sup> In some instances, it may also be relevant to determine whether insufficient duties were paid, and, if so, whether a reasonable amount of interest should also be assessed.