

CAUSATION (ADA ARTICLE 3.5; ASCM ARTICLE 15.5)

Communication from the United States

The following communication, dated 20 April 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 Negotiating Group as an informal document (JOB(06)/111), also be circulated as a formal document.

Issue

The United States has submitted two previous papers proposing that Members consider clarifying the provisions of Article 3.5 of the Anti-Dumping Agreement (ADA) and Article 15.5 of the Agreement on Subsidies and Countervailing Measures (ASCM) concerning the obligation of investigating authorities to demonstrate that there is a causal relationship between the dumped or subsidized imports under investigation and injury to the domestic industry. In the first paper, the United States proposed that any clarification should ensure "that any affirmative obligations are clearly set forth in the Agreement and are workable for authorities to implement".¹ In the second paper, which was submitted in July 2005 and discussed at the September 2005 session of the Negotiating Group on Rules (NGR), the United States provided a further explanation of why clarification of the causation obligation established by Article 3.5 of the ADA and Article 15.5 of the ASCM would be useful, and described several specific ways in which the obligation should be clarified.²

In this paper, the United States presents for the first time proposed textual amendments to the ADA and the ASCM reflecting its proposed clarifications. The central objective of this paper is the same as that of the July 2005 paper – to clarify the existing causation obligation in a manner that is consistent with Members' current understandings and practice. The proposed text indicates several refinements of the concepts identified in the July 2005 paper. These refinements reflect our consideration of the discussions at the September 2005 NGR meetings and of other comments provided by Members. In particular, the proposed textual amendments attempt to specify affirmatively how investigating authorities can undertake the non-attribution analysis contemplated by Article 3.5 of the ADA and Article 15.5 of the ASCM. These affirmative obligations represent, in our view, a synthesis of numerous Members' views on this topic. Additionally, in several other instances, the United States has responded to concerns of other Members by using more focused language to specify the nature of the additional clarifications it is proposing.

¹ Communication from the United States, "Identification of Additional Issues Under the Anti-Dumping and Subsidies Agreements," TN/RL/W/98 (6 May 2003).

² Communication from the United States, "Causation (ADA Article 3.5; ASCM Article 15.5)," TN/RL/GEN/59 (13 July 2005).

Proposed Text:

Anti-Dumping Agreement

3.5 It must be demonstrated that the dumped imports are, through the effects of dumping, as set forth in paragraphs 2 and 4, causing injury within the meaning of this Agreement. The demonstration of a causal relationship between the dumped imports and the injury to the domestic industry shall be based on an examination of all relevant evidence before the authorities. The authorities shall also examine any known factors other than the dumped imports which at the same time are injuring the domestic industry;³ As described in subparagraph 5.1, the authorities must not attribute to the dumped imports and the injuries caused by these other factors—must not be attributed to the dumped imports . Factors which may be relevant in this respect include, *inter alia*, the volume and prices of imports not sold at dumping prices, contraction in demand or changes in the patterns of consumption, trade-restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry.

3.5.1 To make an affirmative determination that dumped imports are causing injury, the authorities must determine that the effects of the dumped imports are injurious notwithstanding the effects of the other known factors. The authorities need not isolate or quantify the effects of either the dumped imports or the other known factors, either individually or collectively. They also need not evaluate whether the effects of the dumped imports are more important than the effects of the other known factors, either individually or collectively.

Agreement on Subsidies and Countervailing Measures

15.5 It must be demonstrated that the subsidized imports are, through the effects [footnote] of subsidies, causing injury within the meaning of this Agreement. The demonstration of a causal relationship between the subsidized imports and the injury to the domestic industry shall be based on an examination of all relevant evidence before the authorities. The authorities shall also examine any known factors other than the subsidized imports which at the same time are injuring the domestic industry;³ As described in subparagraph 5.1, the authorities must not attribute to the subsidized imports and the injuries caused by these other factors—must not be attributed to the subsidized imports. Factors which may be relevant in this respect include, *inter alia*, the volume and prices of non-subsidized imports of the product in question, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry.

15.5.1 To make an affirmative determination that subsidized imports are causing injury, the authorities must determine that the effects of the subsidized imports are injurious notwithstanding the effects of the other known factors. The authorities need not isolate or quantify the effects of either the subsidized imports or the other known factors, either individually or collectively. They also need not evaluate whether the effects of the subsidized imports are more important than the effects of the other known factors, either individually or collectively.
