Anti-dumping: Major Issues for Rules Negotiations

APJ-SLG
LAW OFFICES

A Presentation
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BASIC DIMENSIONS TO ANTI-DUMPING ISSUES

- Procedural & Due Process Issues
- Substantive Issues
- Economic Perspective
- Strategic Angle

FAIR COMPARISON

2.4.3 When there are differences within the product under consideration, such as different models, types, grades or technical specifications, the authorities shall provide exporters and foreign producers with timely opportunities to express their views regarding possible categorization and matching for purposes of comparison. This shall not prevent the authorities from proceeding expeditiously with the investigation.

CAUSATION

[CAUSATION OF INJURY: Delegations maintain a wide range of views on such questions as whether it should be mandatory to separate and distinguish the effects of dumped imports and other factors, the extent to which authorities should be required to conduct a quantitative (as opposed to qualitative) analysis of non-attribution, and the extent to which authorities should be required to weigh the injurious effects of dumped imports against the effects of other factors.]

DEFINITION OF DOMESTIC INDUSTRY

[EXCLUSION OF PRODUCERS WHO ARE RELATED TO EXPORTERS OR IMPORTERS OR WHO ARE THEMSELVES IMPORTERS: There are widely varying views about the need for criteria governing this exclusion, and about the nature of any possible criteria. In particular, some delegations consider that the rules should be precise, reflecting numerical criteria, and directive in nature. Other delegations believe that any criteria should not be too prescriptive, as the assessment must be case by case.]

ADVANCE INTIMATION

5.5 The authorities shall avoid, unless a decision has been made to initiate an investigation, any publicizing of the application for the initiation of an investigation. However, after receipt of a properly documented application and no later than 15 days before initiating ~~before proceeding to initiate~~ an investigation, the authorities shall notify the government of the exporting Member concerned and shall provide it with the full text of the written application, paying due regard to the requirement for the protection of confidential information as provided for in paragraph 5 of Article 6.

PRODUCT UNDER CONSIDERATION

[PRODUCT UNDER CONSIDERATION: While many delegations consider that a provision on this issue would be useful, concerns have been expressed that such a provision might be unnecessary, could create more problems than it purports to solve, and could have "vertical" as well as "horizontal" implications (e.g., with respect to the inclusion of parts), as well as implications in respect of subsequent proceedings. There are also differences of view regarding, inter alia, how broadly the product under consideration should be defined, the role of physical and market characteristics in determining the product under consideration, and when and how product under consideration should be determined.]

CHAIN INVESTIGATIONS

5.10*bis* Except where circumstances have changed, the authorities shall not initiate an investigation where a previous investigation of the same product from the same Member initiated pursuant to this Article resulted in a negative final determination within one year prior to the filing of the application. If an investigation is initiated in such a case, the authorities shall explain the change in circumstances which warrants initiation in the notice of initiation or separate report provided for in Article 12.1.

UNDUE BURDEN

Footnote 20

It is desirable that the authorities not require certification of translations by official translators. Where such certification is required, exporters or foreign producers shall be given an additional seven days for reply.

FAIR OPPORTUNITY

6.1.1*bis* Within a reasonable period of time after the receipt of the response to a questionnaire, the authorities shall make a preliminary analysis of that response. Any requests for clarification or additional information shall be directed to the interested party concerned in writing and in sufficient time for the authorities to consider timely responses thereto.

PUBLIC FILE & TRANSPARENCY

- 6.4*bis* The authorities shall maintain a file containing all non-confidential documents submitted to or obtained by the authorities in an anti-dumping proceeding, including non-confidential summaries of confidential documents and any explanations provided pursuant to Article 6.5.1 as to why summarization is not possible, and shall allow interested parties to review and copy the documents in that file upon request. Access to this file shall be provided promptly, and, where .....

DISCLOSURE PROCEDURE

- 6.9 The authorities shall, before a final determination is made, ~~inform~~ provide all interested parties with a written report of the essential facts under consideration which they intend will form the basis for the decision whether to apply definitive measures. Interested parties shall have 20 days to respond to this report and the authorities shall address such responses in their final determination. ~~Such disclosure should take place in sufficient time for the parties to defend their interests.~~
- This disclosure shall be made within sufficient time to allow an exporter to offer an undertaking in response.

POST-DETERMINATION DISCLOSURE

6.9*bis* The authorities shall, normally within seven days after giving public notice of a final determination under Article 12.2, disclose to each exporter or producer for whom an individual rate of duty has been determined the calculations used to determine the margin of dumping for that exporter or producer.

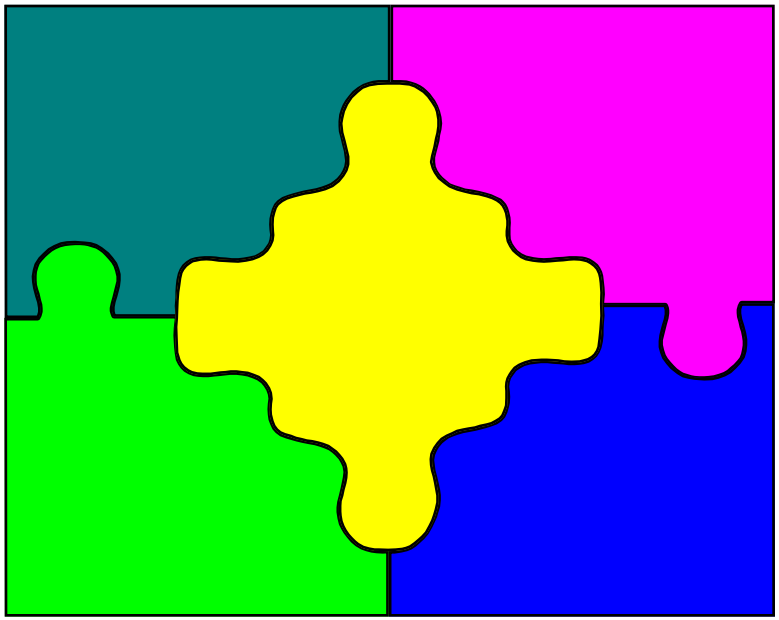
NEW SHIPPER REVIEW

Addition:

(b) they have engaged in one or more *bona fide* sales in commercial quantities into the importing Member (as evidenced by shipments of the product or by a contract for sale pursuant to which such shipments will occur within six months of the date upon which the contract was concluded).

OTHER ISSUES

- **“Lesser Duty Rule” put under square bracket**
- **Judicial Review – need for imposition of time limit**
- **No change in de minimus limits for developing countries**
- 18.6 ..... In addition, the Committee shall review the anti-dumping policy and practices of individual Members according to the schedule and procedures set forth in Annex III.



Thank you