

**COLLECTION OF ANTI-DUMPING DUTIES
UNDER ARTICLE 9.3**

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)/114), also be circulated as a formal document.

Article 9.3 of the Anti-Dumping Agreement (ADA) sets forth a fundamental obligation that anti-dumping (AD) duties shall not exceed the margin of dumping. The United States believes that the ADA should be revised to clarify the means by which parties may ensure that AD duties assessed on imports after an AD duty has been imposed do not exceed the margin of dumping.

Members are not entitled to assess or retain excess AD duties. It is therefore essential to ensure that parties have the ability to address and remedy the assessment of excessive AD duties. Discussions on this topic in the Rules negotiations, however, indicate that very few Members regularly conduct refund proceedings pursuant to Article 9.3 to ensure that the duties assessed do not exceed the margin of dumping.¹

Article 9.3 could also be clarified so that in any assessment or refund proceeding, it is clear that the authority must examine normal value information that is contemporaneous with the export transaction to determine the appropriate AD duty. Additionally, to the extent that the results of the assessment or refund proceeding establish that the AD duty rate being applied does not reflect the current rate of dumping, there is no reason for the Member to continue to apply that rate, rather than one based on the more current information.

For these reasons, to provide further clarity and to ensure that Members do not assess duties in excess of the margin of dumping, the United States proposes amending Article 9.3 of the ADA, as follows:

9.3 The amount of the anti-dumping duty shall not exceed the margin of dumping as established under Article 2. **Upon request, the authorities shall establish the margin of dumping based upon normal values contemporaneous with the export transaction(s). In cases where the number of**

¹ As the United States has proposed in prior submissions (e.g., TN/RL/W/168), Article 9.3 should also be clarified and improved to require that if monies paid or deposited exceed final liabilities, the excess monies refunded should include interest.

exporters, producers, importers, or transactions involved is so large as to make such a determination impracticable, the authorities may limit their examination in accordance with paragraph 10 of Article 6.

9.3.1 When the amount of the anti-dumping duty is assessed on a retrospective basis, the determination of the final liability for payment of anti-dumping duties shall take place as soon as possible, normally within 12 months, and in no case more than 18 months, after the date on which a request for a final assessment of the amount of the anti-dumping duty has been made. Any refund shall be made promptly and normally in not more than 90 days following the determination of final liability made pursuant to this subparagraph. In any case, where a refund is not made within 90 days, the authorities shall provide an explanation if so requested. **The results of any refund proceeding pursuant to this provision shall provide the basis for the anti-dumping duty rate imposed on imports following the completion of such proceeding.**

9.3.2 When the amount of the anti-dumping duty is assessed on a prospective basis, provision shall be made for a prompt refund, ~~upon request,~~ of any duty paid in excess of the margin of dumping **determined in accordance with Article 9.3.** A refund of any such duty paid in excess of the ~~actual~~ margin of dumping **determined in accordance with Article 9.3** shall normally take place within 12 months, and in no case more than 18 months, after the date on which a request ~~for a refund, duly supported by evidence,~~ **pursuant to this provision** has been made ~~by an importer of the product subject to the anti-dumping duty.~~ The refund authorized should normally be made within 90 days of the above-noted decision. **The results of any refund proceeding pursuant to this provision shall provide the basis for the anti-dumping duty rate imposed on imports following the completion of such proceeding.**

To better ensure transparency and procedural fairness in such reviews, Members also should incorporate by reference in Article 9.3 the rules on evidence and procedure in Article 6 and the public notice and explanation requirements in Article 12.

Finally, we suggest that the Agreement on Subsidies and Countervailing Measures (ASCM) be similarly clarified and improved with respect to assessment and refund provisions. Further, any consideration of incorporating the assessment and refund provisions of Article 9.3 of the ADA into the ASCM should include application, where appropriate, of the requirements of ASCM Articles 12 and 22 to such proceedings.
