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Committee on Anti-Dumping Practices
Committee on Subsidies and Countervailing Measures

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NOTIFICATION OF LAWS AND REGULATIONS UNDER ARTICLES 18.5 AND 32.6 OF THE AGREEMENTS

Replies of CANADA¹ to Follow-up Questions from HONG KONG²

The following communication, dated 11 April 1997, has been received from the Permanent Mission of Canada.

Follow-up to Hong Kong Question 13(b)

Question

According to Canada, when the overall margin of dumping is being established for the exporter, product groupings that have negative margins will be set equal to zero to ensure that negative margins on specific product categories are not used to offset positive margins on "non-like" goods.

Would Canada explain whether in an AD investigation goods under consideration are all like products and whether it would categorise such goods under consideration into product groupings for determination of individual dumping margins? If so, what are the criteria for categorizing like goods into 'specific' product groupings? Would Canada explain the rationale behind and the multilateral basis?

Would Canada explain whether section 30.2(1) is meant to establish the overall dumping margin of all like goods under consideration for an exporter or to establish the individual dumping margin of each specific category of goods under consideration for an exporter?

In the former case, what is the justification for the zeroing down of the negative overall dumping margin for an exporter and what is the multilateral basis? Would this not inflate the overall dumping margin in relation to goods from a particular country as determined by section 30.1?

In the latter case, if a positive overall dumping margin is established for an exporter (which is primarily due to positive dumping margins established for certain product categories), would specific product categories of "non-like" goods with negative margins be also subject to AD duties? If yes,

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does Canada find this a fair method? Would Canada explain further how Article 2.4.2 of the AD Agreement provides for calculation of the dumping margin at a "product category level"?

Answer

1. The definition of "like goods" in subsection 2(1) of the *Special Import Measures Act* (SIMA) is Canada's legislative expression of, and is consistent with, the definition of "like product" in Article 2.6 of the Anti-Dumping Agreement (ADA).

The goods under consideration in a dumping investigation are considered to be "like goods" in relation to goods produced in Canada. However, the goods under investigation may or may not be "like goods" to each other in so far as the definition of like goods means goods which are identical to each other. This second point may be illustrated through two scenarios:

- (i) Where all of the goods subject to a dumping investigation are the same (i.e., have the same dimensions/grade/style/etc.), each good subject to the investigation is an identical "like good" in respect of each other good subject to the investigation.
- (ii) A dumping investigation normally involves a range of products which are not identical "like goods" in relation to each other (e.g., steel plate of different grades, electric motors of different types/horsepower, carpets of different styles, etc.). In such cases, "product groupings" or "categories of like goods" are established; each containing domestic sales in the exporter's home market and export sales to Canada. Sales in the exporter's domestic market are then compared to comparable export sales to Canada in order to determine a margin of dumping for each product grouping or category of like goods.

This use of product groupings or categories of like goods ensures the "apples-to-apples" comparison contemplated by the fair comparison requirements in Article 2 of the ADA.

Article 2.4.2 of the ADA does not define the word "comparable". Accordingly, the investigating authorities may use any reasonable basis for establishing "comparable" transactions for purposes of comparing normal values to export prices. The determination whether goods subject to a dumping investigation make-up one homogeneous group of like goods or various categories of like goods and, as required, the criteria for establishing the category groupings themselves, is a question of fact in each individual investigation.

2. Subsection 30.2(1) of SIMA provides the statutory basis for establishing the margin of dumping of any goods at the exporter level. Where the goods subject to an investigation constitute one homogeneous grouping of goods (i.e., where all subject goods are "like goods" to each other), the margin of dumping established under SIMA subsection 30.2(1) would be the same as a margin of dumping established for the exporter. However, where the subject goods from an exporter are divided into two or more "categories of like goods" for purposes of determining a proper comparison (i.e., to ensure comparable export transactions when comparing normal values and export prices consistent with Article 2.4.2 of the ADA), the margins of dumping generated under subsection 30.2(1) would have to be combined to establish a *weighted average* margin of dumping for the exporter in question.

3. Anti-dumping duties apply to subject goods following the final determinations of dumping and injury. Under the Canadian prospective system of anti-dumping duty assessment, goods for which specific normal values have been calculated are not assessed anti-dumping duties when the export prices are equal to or above those normal values.

4. As explained in our previous response to Hong Kong's question 13(b) and the points noted above, the zeroing of negative dumping margins *for specific categories of like goods* is intended to ensure that negative margins *in respect of a particular category of like goods* are not used to offset positive margins in respect of *another* category of like goods. This methodology is consistent with Article 2.4.2 of the ADA since the margins of dumping are calculated for each category of like goods by a direct comparison between normal value and the export price.

Follow-up to Question 19(c)

Question

Would Canada explain why it prefers the methodologies stipulated in paragraph 11(c) to those set out in Article 2.2.2(i) and (ii) of the Agreement?

Answer

5. Paragraph 11(c) of the *Special Import Measures Regulations* respecting the calculation of an amount for administrative, selling and all other costs, reflects a preference for the use, as far as possible, of actual data for the exporter in question. This is consistent with the reference to any other reasonable method in Article 2.2.2(iii) of the ADA.