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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 INDIA¹
to Questions posed by CANADA² and the UNITED STATES³

The following communication, dated 22 April 1997, has been received from the Permanent Mission of India.

Replies to questions from Canada

Q.1. Could India define the terms "judicial member" and "technical member" for purposes of the Procedure of Appellate Tribunals as set out in document G/ADP/N/1/IND/2/Suppl.1-G/SCM/N/1/IND/2/Suppl.1, dated 23 December 1996? Could India indicate the legal basis by which such "members" would be bound to protect the confidentiality of confidential information that may be brought before an Appellate Tribunal?

In asking these questions, Canada would note that both "judicial member" and "technical member" were defined in document G/ADP/N/1/IND/2/Suppl.1 dated 5 July 1996 (section 129(2)) which was cancelled and replaced by the current document with the same numerical reference dated 23 December 1996.

Reply

The terms "judicial member" and "technical member" mentioned in Section 129C (3) are defined in Section 129(2) and (2A) as reproduced below:

- (2) A judicial member shall be a person who has for at least ten years held a judicial office in the territory of India or who has been a member of the Central Legal Service and has held a post in Grade I of that service or any equivalent or higher post for at least three years, or who has been an advocate for at least ten years.

¹G/ADP/N/1/IND/2+ Suppl.1-G/SCM/N/1/IND/2+ Suppl.1.

²G/ADP/Q1/IND/3-G/SCM/Q1/IND/3, ³G/ADP/Q1/IND/4-G/SCM/Q1/IND/4.

Explanation - For the purpose of this subsection:

- (i) in computing the period during which a person has held judicial office in the territory of India, there shall be included any period, after he has held any judicial office, during which the person has been an advocate or has held the office of a member of a tribunal or any post, under the Union or a State, requiring special knowledge of law;
 - (ii) in computing the period during which a person has been an advocate, there shall be included any period during which the person has held a judicial office, or the office of a member of a tribunal or any post, under the Union or a State, requiring special knowledge of law after he became an advocate.
- (2A) A technical member shall be a person who has been a member of the Indian Customs and Central Excise Service, Group A, and has held the post of Commissioner of Customs or Central Excise or any equivalent or higher post for at least three years.

Q.2. Could India indicate what legal standard will be used by the Tribunal and whether the Tribunal procedure and the procedure of Benches, both of which are to be regulated by the Appellate Tribunal, will follow the principles of due process and fairness? Will the Tribunal's procedures allow for prompt decisions in these cases where a delay could have significant implications for the parties involved?

Reply

Any proceeding before the Appellate Tribunal is deemed to be a judicial proceeding. The Tribunal, therefore, follows the principles of natural justice including the principles of due process and fairness. The concerned parties can request for an early hearing and prompt decisions in cases where a delay could have significant implications for the parties involved.

Q.3. Could India provide an explanation of the various laws/legal provisions noted in paragraph 129C(8) of their relationship to an Appellate Tribunal?

Reply

The objective of Section 129(8) of the Customs Act 1962 is to clarify that proceedings before the Appellate Tribunal are judicial proceedings and that the Appellate Tribunal has the powers of a Civil Court i.e. a Court of Justice. The Indian Penal Code, 1860, and The Code of Criminal Procedures 1973 are public documents.

Replies to questions from the United States

Q.1. Please describe whether and how the Appellate Tribunal is independent from the authorities responsible for the antidumping or countervailing duty determination or review that is subject to appeal.

Reply

The Appellate Tribunal is independent from the authorities responsible for the anti-dumping or countervailing duty determination or review that is subject to appeal. The former is constituted under the Customs Act 1962 while the latter is appointed under the Rules made under the Customs Tariff Act 1975.

Q.2. Subsection 6 of Section 129C states that the Appellate Tribunal shall have power to regulate its own procedures and the procedure of the Benches. Will such procedures be published and available to all interested parties?

Reply

Yes. The procedure has been prescribed under the Customs Excise and Gold (Control) Appellate Tribunal (Procedure) Rules 1982, which is a public document.

Q.3. Will all interested parties who participated in the administrative proceeding subject to appeal have access to review by the Appellate Tribunal? What procedures must an interested party follow in order to bring an appeal before the Appellate Tribunal?

Reply

Under Section 9C of the Customs Tariff Act 1975, an appeal against the order of determination or review thereof regarding the existence, degree and effect of any subsidy or dumping in relation to import of any article shall lie to the Appellate Tribunal. The procedures are laid down in the Rules referred in answer to question 2 above.

Q.4. Are there any limitations on what can be appealed? For example, can questions concerning both injury and dumping/subsidization be appealed, and can questions of both law and fact be appealed?

Reply

The order of determination or review thereof regarding the existence, degree and effect of any subsidy or dumping in relation to import of any article can be appealed. It is implied that questions of both law and fact can be appealed.

Q.5. Is the Appellate Tribunal the final level of review or can an interested party appeal the decision of the Appellate Tribunal to a higher level tribunal?

Reply

An Appeal against an order passed by the Appellate Tribunal lies to the Supreme Court of India.

Q.6. Could you please clarify the meaning of subsections 4(a) and (b) of Section 129C concerning the circumstances under which a single member of the Appellate Tribunal may decide an appeal. In circumstances where a single member of the Appellate Tribunal may dispose of an appeal, is en banc review available?

Reply

Provisions of subsection (4) of Section 129C are not relevant for cases of appeal against orders concerning anti-dumping/countervailing duties.

Q.7. What is the standard of review of the Appellate Tribunal and does it vary depending on the nature of the issue on appeal?

Reply

The question is not clear. However, the Appellate Tribunal is a judicial body following principles of legal jurisprudence and natural justice.