

PRODUCT UNDER CONSIDERATION

Paper from Canada

The following communication, dated 13 October 2005, is being circulated at the request of the Delegation of Canada.

The submitting delegation has requested that this paper, which was submitted to the Rules Negotiating Group as an informal document (JOB(05)/245), also be circulated as a formal document.

Issue

1. In a previous submission to the Group¹, Canada noted that the selection of the product under consideration is fundamental to determining the scope of both anti-dumping and countervailing investigations and of any resulting measures. Yet, the Agreements do not appear to provide any real guidance on this question. This lack of guidance in the Agreements creates systemic problems, such as Members capturing, in a single investigation, determination and remedy, products that can be completely different in terms of their physical characteristics, end uses, and channels of distribution.

Proposal

2. Taking into account the useful discussion the Group has had on Canada's submission, as well as the additional discussion on the submission from Brazil, Chile, Israel, Korea, Singapore, Switzerland, and Thailand on the same issue², Canada proposes the following addition to Article 5 of the ADA:

5.x An investigation can only be initiated and subsequently conducted with a proper determination of the scope of the product under consideration. Where, on the basis of the evidence available at initiation, authorities determine that there is more than one distinct product under consideration, they shall initiate a separate investigation for each such distinct product. Subsequent to the initiation of an investigation, if the further evidence obtained indicates to authorities that the investigation is with respect to more than one distinct product under consideration, an anti-dumping duty shall not be imposed on any distinct product unless a separate determination of dumping and a separate determination of injury are made with respect to that product.

¹ TN/RL/GEN/26

² TN/RL/GEN/50

5.x.1A determination of whether there is more than one distinct product under consideration shall be based on an objective examination of the physical characteristics of the imports, including technical specifications and quality, and their market characteristics, including end uses, substitutability, pricing levels and distribution channels. This list is not exhaustive, nor can one or several of these factors necessarily give decisive guidance.

3. The ASCM should be amended in a similar manner.
4. This paper does not purport to represent Canada's final views on this matter and Canada reserves the right to make further proposals.
