

Thursday, 30 April 2015

## **TECHNICAL GROUP: PUBLIC INTEREST AND LESSER DUTY**

### **Overview**

The ADA provides broad discretion to Members not to apply anti-dumping measures, or to impose lesser measures, in situations where the requirements for the imposition of an anti-dumping duty at the full margin of dumping have been fulfilled.

- 1. Does your government make use of this discretion?**
- 2. Is the exercise of this discretion limited to not imposing duties/imposing lower duties, or can you use this discretion to modify the measures in other ways?**
- 3. Is any such discretion bounded, i.e., are there objectives or guidelines for the exercise of such discretion? If so, do such objectives or guidelines relate to:**
  - o the public or national interest?
  - o the form, level and nature of the measure appropriate to remove the injury to the domestic industry?
  - o Other considerations? If so, which?
- 4. Who exercises any such discretion?**
- 5. Must the exercise of any such discretion be supported by a statement of reasons?**
- 6. Is the exercise of any such discretion subject to any form of administrative or judicial review?**

## **Public Interest**

### **a. Substantive elements**

**1. Do you apply some form of "public interest" test?**

**2. If so, do you apply the test automatically in all cases, or upon request, or otherwise in selected situation?**

**3. Do you need an affirmative determination that a measure *is* in the public interest to impose the measure? Or do you rather impose a measure unless you determine that to do so is *not* in the public interest?**

**4. If you apply a public interest test, are there criteria governing the interests to be taken into account?**

- o Are those criteria limited to the economic interests of domestic actors, e.g. domestic producers, industrial users, consumers, importers, upstream/downstream industries?
- o Or are non-economic public policy interests also taken into account, such as environmental protection, human life and health?
- o To what extent can foreign policy/development considerations be taken into account?

**5. Are your criteria set out by statute? By regulations and/or guidelines? Through practice?**

**6. Who makes the public interest determination?**

- o The investigating authorities?
- o A senior official within the Ministry or body hosting the authorities?
- o A distinct agency?
- o Some form of interagency committee or body?
- o An elected official?
- o The authorities of a customs union?
- o Legislative bodies?
- o Other?

**7. What types of actions can be taken on the basis of public interest considerations?**

- o Not impose duties where you could have?
- o Impose duties that are lower than the margin of dumping?
- o Change the form of duties, e.g. *ad valorem* to minimum import price, or impose measures other than normal duties (e.g., tariff quotas)?
- o Accept price undertakings?
- o Impose duties for a period of time shorter than five years?
- o Exclude particular exporters or product types from the scope of the measure?
- o Suspend duties?

**b. Process**

**8. At what stage do you make any public interest determination?**

- o At initiation phase?
- o Prior to final determination?
- o Prior to preliminary determination?
- o After imposition of the duty?
- o In subsequent review proceedings (e.g. sunset)?

**9. Are there formal proceedings associated with public interest determinations?**

- o How are such proceedings initiated?

**10. Who is allowed to participate in public interest proceedings?**

- o Domestic economic actors, including consumer groups?
- o Foreign exporters and governments?
- o NGOs and other policy advocates?
- o Other government agencies, e.g. competition authorities?

**11. Do you have any specific mechanisms for collecting information relevant to the public interest determination?**

- o Do you actively seek information or only receive information submitted by parties?
- o Do you ensure that you receive information from a representative share of interested parties?
- o How do you address non-cooperation in this context?

**12. Do you disclose to the interested parties the bases and factual considerations for any public interest decision?**

**13. Does any such determination need to be accompanied by a statement of reasons?**

**14. Is any public interest determination subject to review by an administrative or judicial body?**

- o If so, are there limits to the scope of the view, for example procedural as opposed to substantive requirements?
- o What standard of review is applicable to such review?
- o How often is such a review requested, and how often do appellants prevail?

### **Lesser Duty**

**1. Must your government impose a duty in the full margin of dumping, or can you impose a duty which is less than the margin of dumping where it is sufficient to remove the injury?**

**2. If you have a lesser duty mechanism, is its application mandatory?**

- o Does the mechanism apply in all situations? If not, in what circumstances does it not? Non-co-operation?

**3. Do you have statutory, regulatory or other criteria governing the application of your lesser duty mechanism?**

**4. At what stage(s) of a proceeding do you apply your lesser duty mechanism?**

- o During original investigations, in respect of definitive measures?
- o During original investigations, in respect of provisional measures?
- o In changed circumstances/interim reviews?
- o In the context of sunset/expiry reviews?
- o In the context of considering a price undertaking?

**5. May a party request a review of the level of the non-injurious price or injury margin?**

- o Do you have a mechanism for the periodic review of the non-injurious price?

**6. Who performs the lesser duty examination? Is it the same people/institution that makes the injury determination?**

**7. On what basis do you determine whether a duty less than the margin of dumping is sufficient to remove the injury, and what level that duty should be? Why did you choose the methodology you did?**

- o Cost plus amount for profit?
- o Price at which imports are available from undumped sources?
- o Price which prevailed before dumping began?
- o Extent of price undercutting or underselling?
- o Other?

**8. If you use a non-injurious price based on cost plus profit:**

- o Do you base costs on a specific /producer(s), or on an average of some or all producers?
- o How do you choose which producers' costs to use?
- o Where the proceeding involves multiple models, do you calculate a non-injurious price for each separate model?
- o What period of investigation do you use for determining costs?
- o Do you accept actual costs even in situations where they are inefficient or unreasonable? If not, on what basis might you determine costs to be inefficient or unreasonable.
- o What types of costs are included/excluded?
- o What issues do you confront with respect to the allocation of fixed costs/SG&A?
- o How do you determine the appropriate amount for profit?
- o Do you use the same rules for constructing a non-injurious price as for constructing a normal value? If not, in what ways does the methodology differ?

**9. If you use the prices of imports from undumped sources:**

- o How do you choose which source to use, or do you use an average of all sources?
- o Do you check the extent to which the prices of the undumped imports are affected by the dumping?

**10. Calculation of the injury margin for Members that use *ad valorem* rates**

- o Is your injury margin country-wide or exporter-specific?
- o What basis do you use for determining the export price that you compare against the non-injurious price? Is it calculated in the same way as for the purpose the calculating the dumping margin?
- o Do you include customs duties in the export price for the purpose of calculating the injury margin?
- o Do you perform the calculations on a model by model basis? What level of model matches do you require? What do you do with the non-matches?

- o How do you account for differences that affect price comparability when calculating the injury margin?
- o For example, how do you address situations where the domestic industry produces models that differ significantly from the imported products? For different levels of trade?
- o Do you calculate an injury margin for non-cooperating producers? If so, how?

**11. Procedural aspects**

- o Do you have a specific questionnaire, or parts of a questionnaire, which seeks information related to the lesser duty rule?
- o Do you face particular data issues in the lesser duty context that differ from those in other aspects of the proceeding?
- o To what extent, and when, do you disclose the information, including confidential information, used in the determination of the lesser duty to interested parties?

**12. Is any lesser duty determination subject to review by an administrative or judicial body?**

- o If so, are there limits to the scope of the view, for example procedural as opposed to substantive requirements?
- o What standard of review is applicable to such review?
- o How often is such a review requested, and how often do appellants prevail?