

## Procedural Stages in An Anti-Dumping Investigation Emanating From the ADA.

It is emphasized that national implementing legislation often will be much more detailed.

**STEP 1:** Receipt of application from petitioners and initial examination.



**STEP 2:** Thorough review and evaluation of the information included in the application for anti-dumping relief: i) Assess the standing of the petitioner (Art. 5.4); ii) Determine whether application is properly documented (Art. 5.2) and iii) Examine accuracy and adequacy of the evidence provided and determine whether sufficient to justify initiation of investigation (Art. 5.3).



**STEP 3:** If Step 2 criteria met based on information in application - draft, issue and publishes notice required under Article 12.1: i) draft notice of initiation; ii) issue notice to exporting Member Governments; iii) publish official notice of initiation.



**STEP 4:** Clarification of products, parties and time periods to be included in the investigation



**STEP 5:** Identification of additional sources of information relevant to the injury and causation.



**STEP 6:** Identification of specific issues to be considered in the investigation.



**STEP 7:** Identification of the unique conditions of competition facing the particular industry.



**STEP 8:** Drafting and issuance of questionnaire to domestic producers, importers, foreign producers and exporter, purchasers, and any other relevant industry participants.



**STEP 9:** Receipt and processing of questionnaire responses, including review and verification of information provided.



**STEP 10:** Drafting the initial factual report.



**Step 11:** Conduct hearing as appropriate.



**Step 12:** Finalize the factual report.



**Step 13:** Conduct analysis on key issues relating to injury and causation.



**Step 14:** Drafting the final determination and report, and issuance of public notice.

## **Initiation of a Dispute under ADA in the WTO**

### **Identification of Measures in Request for Establishment**

Art. 17.4 of the ADA contains a special rule providing that a member may refer the matter to the DSB if final action has been taken by the administering authorities of the importing Member to levy definitive anti-dumping duties or to accept price undertakings. When a provisional measure has a significant impact and the Member that requested consultations considers that the measure was taken contrary to the provisions of paragraph 1 of Art. 17 of the ADA, the Member may also refer such matter to the DSB. Thus, Art. 17.4 of the ADA does not have a counterpart in other commercial defence agreements such as the Agreement on Subsidies and Countervailing Measures and the Agreement on Safeguards, explicitly identifies they types of measures.

### **Special Standard of Review**

Art. 17.6 of the ADA provides a special standard of review for Panels examining anti- dumping disputes. Art. 17.6(i) is designed to prevent de novo review by panels by placing limits on their examination of the evaluation of the facts by the authorities. Art. 17.6(ii) obliges panels to uphold permissible interpretations of ADA provisions by national authorities in cases where such provisions permit more than one permissible interpretation.

### **Specificity of Claims in Request for Establishment**

The claims must be specified with sufficient precision in the request for establishment of a Panel. While in some instances, it may be sufficient to mention the articles of the Agreements alleged to have been violated, in cases where articles contain multiple obligations, more detail will generally be necessary, unless the rights of defence of the respondent are not impeded by the failure to do so. The latter determination must be based on a case-by-case basis.

Such is determinative as multiple articles in ADA like Arts. 2, 3, 4, 5, 6, and 12 contain multiple obligations and may form the basis for numerous claims. It is therefore recommendable that an applicant not only refers to articles and paragraphs in an ADA dispute, but also shortly summarizes its claims in descriptive form. This is all the more so because disputes in this area tend to me multi-claim in nature.

### **New Claims**

The AB has confirmed that a government bringing an anti-dumping case is not necessarily confined to the claims made by its producers in the course of the national producers. There is, in other words, no principle of exhaustion of administrative remedies.

### **Standing**

WTO dispute settlement proceedings are between governments and consequently, only WTO Members can initiate such proceedings. Thus, even though anti-dumping disputes are driven by the private sector and target foreign competitors, as opposed to foreign governments, neither the domestic industry nor foreign exporters and producers can initiate or respond in WTO dispute

settlement proceedings or appear before Panels or the Appellate Body in their own right.

Indirectly, however, industry representatives may play a role in such proceedings in at least two manners. First, the AB has held that Members have the right to compose their own delegation. Thus, if a WTO Member decides to attach an industry representative to its delegation. This is allowed, it being understood that the representative will be subject to the same confidentiality requirements as governmental members of the delegation. Such happened, for example, in EC-Bed Linen in the panel phase and in Thailand-H-Beams in the AB phase.

### **Panel Recommendations and Suggestions**

The distinction between Panel recommendations and suggestions (those not legally binding) is made in Art. 19.1 DSU and is therefore not specific to the ADA. However, it is recalled that the main reason for this distinction is that a number of GATT panels in the AD/CVD area has recommended that, where investigations have been initiated illegally by the investigating authorities, AD/CVD measures imposed must be revoked and duties collected reimbursed. Such recommendations are no longer possible and only suggestions to that effect can now be made.