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In This Issue

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THE APPLICATION OF WTO LAW IN TRADE REMEDY DISPUTES IN CARICOM

*Delroy Beckford**

INTRODUCTION

The WTO Anti-dumping Agreement (ADA), the Agreement on Subsidies and Countervailing Measures (SCM) Agreement, and the Safeguards Agreement (SGA) permit the application of anti-dumping duties, countervailing duties and safeguards, respectively. These remedies are commonly known as trade remedies or contingent protection. The trade remedy regime under the Revised Treaty of Chaguaramas (Revised Treaty) contains provisions that are similar to the corresponding WTO Agreements. There are however, some noteworthy differences that raise the interesting issue of the extent to which WTO law will be applicable to the resolution of disputes that might arise under the Revised Treaty regime.

The similarities between the regimes may suggest that raising the issue is counter-intuitive. However, trade remedy provisions in some Free Trade Agreements (FTAs), which in practice differ from that of the WTO, do not replicate WTO provisions in all respects, and do not provide for direct effect of WTO jurisprudence.

In this brief article I attempt to outline some of the differences between the CARICOM and the WTO trade remedy regime, and the implications for the applicable law in dispute settlement.

Differences Between The ADA and AD Provisions in the Revised Treaty

The anti-dumping (AD) provisions in the Revised Treaty are for the most part consistent with the ADA. One important difference is that the investigation of a domestic investigating authority may be short-circuited, due to the existence of dual jurisdiction for the conduct of investigations.

Firstly, under the Revised Treaty, the Council for Trade and Economic Development (COTED) has jurisdiction to take over, and proceed to a definitive ruling, an investigation that began at the domestic level, if one of the parties refers the matter to it. Secondly, remedies for provisional measures imposed by or pursuant to the recommendation of a domestic investigating authority, which are inconsistent with the AD provisions, as determined by COTED, include compensation for materially retarded exports of the CARICOM Member against whom the complaint was brought.[1] Compensation

The Staff of the Anti-dumping and Subsidies Commission with visiting International Trade Remedy Experts, Riaan de Lange (second row left) and Gustav Brink (second row third from left).

may, apparently, involve more than the refund of the provisional duties. This is evidenced by discretionary language of the provision to the effect that the nature and extent of the compensation is to be determined by COTED.[2]

Differences Between The SCM Agreement And Subsidy Provisions In The Revised Treaty

As with anti-dumping, the subsidy provisions in the Revised Treaty generally mirror those in the SCM Agreement. Again, however, there are some noteworthy differences. For example, subsidies are regarded as being for the benefit of a product in the Revised Treaty, as opposed to benefiting a legal or natural person as is the case in the SCM. Thus, one of the conditions to be met for a Member to take action against subsidised products is that 'the products have benefited from a prohibited subsidy'.[3] In the SCM, the standard is that the subsidy must confer a benefit on the recipient, not limited to prohibited subsides, for action to be taken. The scope of the WTO provision therefore seems to be broader than that in the Revised Treaty.

Like the AD provisions in the Revised Treaty, compensation may also involve more than the refund of provisional duties, if the effect of the provisional measure materially retards the exports of the alleged subsidising Member.[4] By contrast, the remedy under the SCM Agreement is limited to the prompt withdrawal of the measure and the refund of provisional duties.

There are also differences in the conditions to be met for the availability of a definitive remedy. Under

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EDITOR'S NOTE

TRADE GATEWAY *has now made it into its third year of publication. We owe this to the dedication of the entire Staff of the Commission as well as our colleagues outside the Commission who have been contributors.*

This issue of TRADE GATEWAY, *the first for 2007, touches on a number of subjects that demonstrate the complexity of the future we face with respect to our trading relations with the rest of the world. It has happened by default, rather than by design, that the majority of the articles focus on issues arising from the general trend emerging in international trade towards integration, at both bilateral and regional levels.*

One of the problems that is emerging is that of overlapping membership in different Regional Trading Arrangements (RTAs), the so called "spaghetti bowl," and the dual and potentially conflicting processes that could arise. Whereas, some of our ACP partners in Africa have been confronted by this dilemma for some time, we in CARICOM are relative newcomers to it.

In the article, "The Application of WTO Law in Trade Remedy Disputes in CARICOM," a former Legal Counsel of the Commission elaborates on some conflicts that may arise, especially in respect of Dispute Settlement. In "Focus on Future Jamaica" we look at the planned "Conference on the Caribbean," touching on the realities that the region faces in respect of the decline of preferential trading arrangements, an occurrence that necessitates the formation of reciprocal trading relationships with, in some instances developed country partners, such as the US. Dialogue with the US is critical at this time given the pressures to revamp US Trade Policy, in particular, calls for more vigorous enforcement of trade remedies and the forging of trading relationships with "commercially viable" partners.

In "Trade Remedies Corner", we explore one of the more obscure provisions in anti-dumping law. We illustrate how this provision is useful because of its applicability to situations created by changes in the world economy, not explicitly dealt with in the Rules. However, its imprecise definition also makes it susceptible to abuse by protectionist interests. This provision may become increasingly relied upon in a world where it is increasingly recognised that old labels such as "non-market economy" for some countries no longer fit precisely. Integration into the multilateral trading system of such countries, in some instances, accounting for significant shares of global exports, makes it imperative that the rules also apply to them. This provision therefore acts as an important interface between the rules and this current reality.

In "Special Projects (PSDP) Update", we share the focussed efforts of the Commission to raise awareness of trade remedies and related issues, facilitated by grant funding support of the Governments of Jamaica and the European Union. These endeavours are increasingly important in a context where Jamaican businesses must compete with our developed country partners, which, arguably, presupposes the same level of sophistication in discourse on trade.

As part of our efforts to increase knowledge of the international trade fora and trade remedies, we continue to present our regular features, providing summaries of some relevant news items. In "Trade Talk for Dummies," we examine a concept that is particularly relevant as Regional Trade Agreements (RTAs) are increasingly being formed between unequal partners.

We hope that you find something interesting and useful in this issue, as we believe you have, in previous issues of TRADE GATEWAY.

Best wishes,

KEISHA-ANN.

"Developing countries are playing a growing role in the WTO"

THE WTO IN BRIEF

Althea Woolcock

WTO's 2006 Annual Report Highlights Developing Countries Growing Role in World Trade

Developing countries are playing a growing role in the WTO, not only in the Doha negotiations but also in the Dispute Settlement process and in all facets of WTO activity, says Director General Pascal Lamy in his foreword to the Annual Report of the World Trade Organisation.

Today the real dynamism in trade is to be found in the developing world, where Brazil, China, India, Malaysia, Mexico and Thailand all posted double digit growth in exports. Not only have these emerging markets flexed their growing muscles in the global marketplace, but Africa too has staked its claim to a bigger share of the pie, posting export growth in excess of 25% in each of the past three years, says the Director General.

Concerning the role of developing countries, Lamy mentions the formation of powerful negotiating groups like the G-90, the G-33 and the G-20 that illustrate that the WTO is an organisation in which all Members can not only state their case, but can achieve meaningful objectives on their path towards development.

The new edition of the Annual Report presents an overview of the activities of the WTO. This includes the current work of the different committees and bodies on the Doha Round, as well as facts and figures to illustrate the functioning of the Organisation.

WTO Publishes First Edition of "WTO Dispute Settlement: One-Page Case Summaries"

The WTO published on 16 January 2007, the first edition of "WTO Dispute Settlement One-Page Case Summaries." Prepared by the Legal Affairs Division, the publication summarises on a single page the core facts and findings of Panels and, where applicable, Appellate Body reports for each of the 103 cases that have been adopted by the Dispute Settlement Body from 1995 to 1 September, 2006.

U.S. Fails To Comply With Offshore Internet Gambling Ruling

The United States has failed to comply with a ruling that it illegally restricts Internet gambling sites based overseas, according to the World Trade Organisation (WTO). This opens the door to possible commercial sanctions by the affected Member, unless Washington changes its laws governing online betting. A three-member WTO compliance panel sided with Antigua and Barbuda in ruling that Washington had failed to change legislation that unfairly targets offshore casinos. The Panel said that Washington can maintain restrictions on online gambling, as long as its laws are equally applied to American operators offering remote betting on horse racing.

Antigua filed its case in 2003 contending that U.S. restrictions on Internet gambling violated trade commitments the

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FOCUS ON FUTURE JAMAICA: CARICOM – US TRADE RELATIONS

*Calvin Manduna**

Focus On Future Jamaica/CARICOM – US Trade Relations

Today, after an era of trading under non-reciprocal preferential arrangements, CARICOM-US trade relations are at a crossroads. Various factors have contributed to this, for example, the non-renewal at the World Trade Organisation (WTO) of the waiver for the US Caribbean Basin Initiative[1] (CBI), which has resulted in uncertainty with respect to the available legal cover for Caribbean exports under the CBI preferences. Several exports from the region continue to receive preferential status in the US. However, the benefit accruing from such preferences are likely to be eroded by competing Free Trade Agreements (FTAs) entered into by the US with third countries.

The Free Trade Area of the Americas (FTAA) – which would have expanded NAFTA to 34 countries of the Western Hemisphere (excluding Bolivia, Cuba, Nicaragua and Venezuela, which developed the Bolivarian Alternative for the Americas in response) was meant to serve as a successor and more permanent arrangement to the CBI. The FTAA talks failed to meet the January 2005 deadline for conclusion and appear to be in a state of indefinite suspension largely due to differences between major players such as Brazil and the US over tariff cuts and the treatment of subsidies.

Various countries in the Hemisphere have, therefore, begun to consider their future bilateral trade arrangements with the US outside of the FTAA context.[2] The US, Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua (and later the Dominican Republic) concluded the US - Central America Free Trade Agreement (CAFTA) in December 2003 (now known as the US – DR – CAFTA). Towards the end of March, 2007, President George W. Bush notified Congress that he plans to sign an FTA with Panama.[3]

To avoid being marginalized in the US market, it has become necessary for CARICOM to develop a new bilateral framework for trade and economic cooperation with the US. This would lock-in permanent trade benefits with the US, and create long-term certainty for traders and investors. Details on the exact nature of the future trade arrangement and its specific development principles are still the subject of debate within CARICOM.

Furthermore, a recent World Bank report 4 contends that the Caribbean region will only be able to thrive if Member States seek to improve productivity, competitiveness and growth in the face of increasing global competition. Without taking action to reposition the region strategically as an emerging trading bloc for goods and services, the Caribbean risks growing economic marginalization and the erosion of many of the social gains of the last three decades.

Conference on the Caribbean

A Conference on the Caribbean is to be convened in Washington D.C. from 19-21 June, 2007 to discuss bilateral issues between the US and CARICOM. It is being organised by CARICOM Member States, the US State Department and various international financial institutions. The Conference will involve bilateral exchanges at the highest political levels, discussions with technical experts, and meetings with the US Congress and private sector. The objectives of the Conference are *inter alia* to:

- "Lobby" for a changed attitude in the United States government and civil society towards the Caribbean – i.e. to focus on broader economic, trade and development issues beyond security, immigration and narcotics issues;
- Broaden and deepen the dialogue between CARICOM and the US;
- Identify priority areas for growth and development of the CARICOM region over the next two decades;
- Identify ways of addressing these priority needs in a manner which is mutually beneficial to the peoples of CARICOM and the US; and
- Promote the CARICOM region as an investment destination for US firms.

The June Conference will be preceded by two seminars, convened by the Ministry of Foreign Affairs & Foreign Trade (MFAFT), on the "Future of Jamaica – US Trade." The seminars aim to *inter alia*:

- Integrate Jamaican stakeholders in the process of developing the focus for the Conference;
- Obtain buy-in from stakeholders and generate publicity about the Conference;
- Facilitate discussion on the possible options for a future bilateral framework for CARICOM – US trade relations (based also on what is legally permissible in terms of the parties' multilateral and regional obligations);
- Obtain input and generate debate among stakeholders as to the objectives and areas of interest in a future CARICOM – US bilateral trade arrangement; and
- Develop recommendations to inform Jamaica's participation in the June Conference.

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Trade Talk For "Dummies"

Pamela Morgan and Keisha-Ann Thompson

The tendency of everyone involved in International Trade is to use words, abbreviations and acronyms and assume that the audience knows precisely what is being referred to. Those who hear them often formulate an understanding of what is being referred to without a full working definition or explanation. If you don't do it yet, you will soon find yourself doing it. In this corner, we will enlighten our readers about words, abbreviations and acronyms used in "trade speak" which you often hear and of which you want to know the precise meaning.

VARIABLE GEOMETRY

With the move towards greater integration of economies and the resulting proliferation of Regional Trade Agreements (RTAs) between countries at different levels of economic development, terms such as **variable geometry** have become increasingly pertinent. This is especially true in the Caribbean with our diverse economies. This concept has been stressed in the Economic Partnership Agreement (EPAs) negotiations, in which the region and the European Union are engaged.

What then is variable geometry? Though the nomenclature conveys notions of complicated mathematical formulas, this is misleading. Variable geometry simply refers to the idea that not every country need take part in every policy but can agree on some as well as cooperate more closely, if they wish. The result is that countries are able to make choices that are relevant to their particular economic circumstances, without having to accept wholesale, policies that may not fit or that they may not be ready for. The end result is that countries wishing to pursue deeper integration may do so, while others who do not need not do so.

There are examples where countries though being part of a broader agreement, were not party to every aspect of it, such as; the UK's and Ireland exemptions from the Schengen Agreement and Denmark's opt out on the Danish referendum on Economic Monetary Union as one of the reasons for agreeing to ratify the treaty on the European Union .

This approach to negotiations greatly minimises hostility and may actually secure broader agreement on integration than would otherwise be the case. After the sudden halt of the Doha talks in Cancun, the EU proposed that adopting the variable geometry approach may be one way to get around the impasse. However, this would diverge from the approach to the negotiations adopted in the 2001 Doha Ministerial Declaration.

The Ministerial Declaration, at paragraph 47 states, "With the exception of the improvements and clarifications of the Dispute Settlement Understanding, the conduct, conclusion and entry into force of the outcome of the negotiations shall be treated as parts of a single undertaking. However, agreements reached at an early stage may be implemented on a provisional or definitive basis. Early agreements shall be taken into account in assessing the overall balance of the negotiations." It worth noting that Agreements in the WTO are arrived at by consensus, which simply means that no Member present must object formally when a decision is being made. Given the mandate set forth in the Declaration and the decision-making process of the WTO, the variable geometry approach would not resolve the major disagreements regarding tariffs and subsidies. The approach therefore has limitations.

Trade Remedies Corner

Keisha-Ann Thompson

PARTICULAR MARKET SITUATION: HOW USEFUL IS THIS PROVISION?

Particular Market Situation is a term taken from the WTO Anti-dumping Agreement (ADA: Article 2.2) and one for which, as with so many others, there is no precise definition. The problem with utilising these vague provisions is that users or analysts may not know whether their interpretation is "WTO compliant" until there is a Dispute Settlement ruling on the matter, and hopefully one in which they were not the offending party! Given that there have been no Dispute Settlement cases on the issue of Particular Market Situation, the practice of other Members provides the best guidance available.

The relevance of this provision is that it can serve as a trigger for the use of an alternative basis for your Normal Value, one half of your dumping margin calculation. Normal Value is the domestic transaction price of the allegedly dumped product when destined for consumption in the country of export. This price is compared to the export price to arrive at the dumping margin. That is,

Dumping Margin= Normal Value — Export Price

The alternatives to the use of the actual transaction price are:

1. The price of the product to a third country (third country price), or
2. A notional price constructed from cost and profit information (constructed value)

Particular market situation is just one instance in which such alternatives may be used. Others, which are found in more detail in the ADA, are where the market may not be viable (that is, there are not sufficient sales) or there are no sales in the ordinary course of trade. Unlike particular market situation, some specific tests and methodologies are given in the ADA to determine if these criteria are met.

The practice of other jurisdictions and relevant jurisprudence suggest that the following situations could be regarded as evidence of a particular market situation:

- different grades of the product being sold in the domestic market vs. the market of the exporting country
- the existence of government control over pricing to such an extent that the home market prices cannot be considered to be competitively set
- the home market industry is export oriented
- the home market is incidental to the industry
- perfunctory marketing and distribution mechanisms
- the quality of the product produced for domestic sale is significantly different from that exported
- a difference in the pattern of demand between the domestic market and the foreign market
- market conditions that may exist after a natural disaster, or drought conditions
- evidence of an unstable economy, such as a wide spread financial crisis, that throws off the normal pricing mechanism
- civil war

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SPECIAL PROJECTS (PSDP) UPDATE

Keisha-Ann Thompson

The Anti-dumping and Subsidies Commission (the Commission) was the recipient in 2006 of two grants for implementing projects under the Private Sector Development Programme (PSDP). The PSDP is a five-year technical assistance programme funded jointly by the European Union (EU), under the 9th European Development Fund (EDF) and the Government of Jamaica (GoJ). As its name suggests, the programme is geared toward strengthening the private sector in order to generate socio-economic development in Jamaica. To achieve this, the focus is on improving the competitiveness of Micro, Small and Medium Sized Enterprises (MSMEs).

One of the two grants was awarded under the Capacity Building Scheme (CBS) and the other under the Consortia Business Development Services (BDS) facility. These grants made it possible for the Commission to build on its past efforts to establish itself as a Centre of Trade Excellence (COTE), providing world class expertise to the Jamaican private sector in order to help them successfully navigate the increasingly complex global trading environment, and building a base for its services to be readily distributed to businesses and governments in the region. The project was directed towards activities that would improve the capacity of MSMEs.

The most visible activities under the projects were a series of training seminars by which the Commission expanded its public education programme. Through these seminars, a broad range of participants were exposed to issues in International Trade and Trade Remedies. Additionally, some seminars were designed to give deeper understanding to industry about Trade Remedies.

The Consortia BDS facility was used to host a series of seminars under different themes. For these seminars, specialised training material was developed in addition to information packages. The first and most ambitious in the series was held under the theme: International Trade Remedies Training for Business: "The Nuts and Bolts of Anti-dumping, Subsidies and Safeguards." Four, three-day workshops were held in different locations across the Island, Mandeville, Montego Bay, Portland and Kingston. Invitations were extended to individuals and businesses from the surrounding parishes so that industry and others from all over the island were encouraged to attend a group of seminars. The workshops focused on giving a comprehensive view of international trade, Jamaica's trade policy, and the strategic role that trade remedies plays. The Commission hoped to increase awareness and address the specific concerns of businesses.

The next in the series of seminars was directed towards training members of the news media in an afternoon session entitled, "Another Look at the Anti-dumping and Subsidies Commission." The focus was on trade remedies as a vital part of Jamaica's trade policy. Media personnel were introduced to the role of the Commission, its decision making process, and important differences between each type of trade remedy.

Finally, two one-day seminars, held in March 2007, and targeted manufacturing industry concerns which might benefit from deeper knowledge of trade remedy disciplines. Business, legal, financial and economic practitioners attended these seminars. The aim was to not only teach participants the fundamentals of trade remedies, but also the mechanics of how to apply to the Commission for a trade remedy. Participants were introduced to the roles and functions of the Commission, the importance to business of understanding trade remedies as well as necessary evidentiary requirements to lodge a successful application. In the afternoon session, participants were divided into groups and given a hypothetical case from which they were challenged to draft an application for submission to the Commission. This required them to analyse the relevant trends revealed from the hypothetical data, and to work through practical issues that raised fundamental legal questions.

The Staff of the Commission, Executive Director, Andrea Marie Brown, Senior Economist, Keisha-Ann Thompson, and Projects Manager, Nichole Superville-Hall prepared the bulk of the training materials and delivered the majority of lectures. Other practitioners in Trade Policy Analysis and International Trade Remedies, some of whom were previous employees to the Commission, joined current staff members to prepare and present the materials. The fact that the Commission was able to draw a cadre of local colleagues attests to growing availability of expertise in trade remedies in Jamaica.

The Commission was assisted by Delroy Beckford, who previously worked as Senior Legal Counsel to the Commission, he presented on the legal requirements of all three trade remedies as well as the implications of dispute settlement rulings. Another past Legal Counsel to the Commission, Audel J. Cunningham, currently Legal Counsel to the Caribbean Regional Negotiating Machinery, also assisted with the training. He highlighted important legal standards that need to be met even before the Initiation of an investigation. On the quantitative front, the team was joined for some seminars by William Brown, who was formerly Financial and Forensic Analyst at the Commission. He is a Chartered Accountant with over 10 years experience in accounting and management in the manufacturing sector. On the policy front, Calvin Manduna of the Ministry of Foreign Affairs and Foreign Trade presented well the context of international trade trends as they affect Jamaica and elaborated on the strategic role of trade remedies in Jamaica's trade policy.

As International Cricket proceeded here in Jamaica with assistance from our international partners, the Commission also found itself the beneficiary of international cooperation for the seminars. The last seminar to be staged under the project coincided with the visit of two trade remedy experts from South Africa (see picture on page 1), Gustav Brink and Riaan de Lange. Mr. Brink and Mr. DeLange were contracted under the Capacity Building project to study and make recommendations on the Commission's structure and design. The final seminar turned out to be an appropriate setting to permit our visitors to address members of Jamaican industry on the importance of Trade Remedies to their business and the fundamental standards that have to be met.

The feedback regarding the seminars was extremely positive. The general sentiment expressed was that knowledge of trade remedies was critical for Jamaican businesses. While participation was laudable, the level of attendance could have been higher. The Commission recognises the difficulty many business people face in attending a seminar within a specific block of time. Aided by the PSDP funding, the Commission was able to hone its processes and refine materials used to present the fifteen seminars accomplished under the projects. The Commission will continue to hold seminars more frequently that will afford industry players greater convenience to apprise themselves of this necessary knowledge. The goal of the Commission is to penetrate to a large number of business persons and advisors, with the hope of building a critical core of individuals, especially those employed to organisations, who understand trade remedies and can help the organizations to prepare and to take action when imports harm or threaten to harm them.

The CBS facility enabled the Commission to acquire material resources to help it to successfully execute the seminars, provide

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OUTSIDE THE WTO

Ermine Lewis

World Bank -"Caribbean Countries Pool Risks Ahead of 2007 Hurricane Season"

The first ever Risk Insurance pool for the Caribbean has been put in place by the World Bank at the request of CARICOM heads. The World Bank worked with Caribbean companies to design the plan. To date, US$47 Million has been donated by member countries for the establishment of the fund. World Bank President, Paul Wolfowitz, speaking at a donor pledging conference held in February 2007, stated that the Risk Insurance Facility is intended to help member countries start repairs quickly after a natural disaster. www.worldbank.org.

Africa

The African parliament is actively studying a report by stakeholders on dual membership in the Common Market for Eastern and Southern Africa (COMESA), and the Southern Africa Development Committee (SADC). COMESA wants to turn its Free Trade Area, launched in 2000, into a customs union by 2008. SADC plans to have a customs union of its own by 2010. Under WTO rules, no member country should belong to two customs unions. www.tralac.org

USA Trade Defence

The President of the United States, George Bush asserted in his annual economic report to Congress, that China is keeping its currency artificially low, giving companies in China a significant trade advantage over US companies. He said that the US trade deficit with China is the greatest ever with a single country. This has lead to calls from some Democrats and Republicans for the imposition of tariffs on Chinese goods. Subsequent to this, on Friday March 30, 2007 the U.S. Commerce Department announced that it will impose duties on subsidised imports from China. The first duties will be applied on imported "coated–free" paper. www.tralac.org

The US also confirmed on April 9, that it was filing a pair of cases against China with the WTO to resolve Intellectual Property issues, in particular the piracy or American movies, books, software and music. Currently the cases are at the stage of consultations. These cases were filed against the background of increasing pressure to address the growing trade deficit which the US has with China. www.iht.com

Democrats' Wish List for US Trade Policy

In January of this year, President Bush sought a renewal of his Trade Promotion Authority (TPA) which expires in July. The TPA gives the president the authority to negotiate and sign trade agreements without amendment by Congress, provided that he meet certain requirements - essentially allowing him to "fast track" agreements. It seems however, that renewal will come with a hefty price, as Democrats, unhappy with high trade deficits and increasing displacement of US labour, in their response set forth their demands, which included:

- A plan to eliminate trade deficits with the Big 3 economies – China, Japan and the EU
- WTO complaints against China
- Vigorous enforcement of trade remedy laws
- Pursuit of a Doha Agreement that achieves core US objectives. www.acici.org ◘

CARICOM CORNER

Khalile Nelson

WTO DG Visits Jamaica

His Excellency, Pascal Lamy, Director General of the WTO visited with CARICOM heads and businesses in Jamaica from April 12 - 13, 2007. At a short meeting held on April 13 with the Jamaica Chamber of Commerce, the DG focused his remarks on progress in the Doha Round. He noted that he has been transparent about the informal processes necessary to effectuate the negotiations process at the WTO. Executive Director of the Anti-dumping and Subsidies Commission (ADSC), Andrea Marie Brown was able to briefly speak to the DG and present him with copies of TRADE GATEWAY. The DG indicated that he was familiar with the progress of the ADSC and its initiative in preparing to become a regional resource. He noted that many lacked the capacity to tackle issues such as Jamaica had done in establishing the ADSC. Informally, he indicated approval of the investment made by Jamaica and the region in trade infrastructure.

EU Development Ministers Enlightened on ACP Issues

On March 12-17 2007, the EU Development Ministers and the Informal ACP-EU Dialogue met in Petersberg, Germany to discuss the Economic Partnership Agreements (EPAs) between the European Union and the ACP countries.

The relationship between the EPA and the handling of development challenges was among the most important issues discussed at the meeting. In addressing the issue, the CRNM reports that the Honourable Dame Billie Miller, Senior Minister in the Ministry of Foreign Affairs and Foreign Trade of Barbados and CARIFORUM Ministerial spokesperson on EPAs, noted that it was necessary to include a chapter on development in the EPA to help CARIFORUM address the supply-side constraints that continue to impede the ability to seize trade opportunities. She also noted that CARIFORUM must articulate specific development needs which would require technical and financial assistance from the EU. She noted that CARIFORUM has undertaken objective assessment studies designed to prioritise needs and development projects which are intended to facilitate sustainable development., and that the process includes such considerations as trade development measures, trade regulatory capacity building, competitiveness and innovation. www.crnm.org

CARIFORUM-EU EPA Negotiations - Trade Experts Question EU Motive

Some trade experts are questioning the real motive behind the interest of the European Union in the Economic Partnership Agreement (EPA) with the Caribbean, the Daily Observer newspaper reports. The main purpose of the EPA was to help the Caribbean boost its regional integration so that business among its member countries can thrive and make the region more attractive to foreign investors. The World Trade Organisation, (WTO) gave a direct order that a new reciprocal EPA must replace the old non-reciprocal trade agreement, which was said to be discriminatory and unfair, by January 1, 2008.

According to the Observer, one Caribbean government official involved in the negotiations has acknowledged that the EU is pushing for an integrated Caribbean market because it would attract more EU investors to the region. He indicated that the EU and CARIFORUM have a difference in opinion on the appropriate period for the anticipated integration to occur. He said that as a result of their small size and fragmentation of the region, as individual islands, there has been no significant level of investment in the Caribbean from the EU. He opined that the interest of the EU in EPA arrangement was that the harmonisation which would result would spark the interest of European investors.

(Continued from page 4) *Trade Remedies Corner*

The basic principle that seems to operate in identifying a "particular market situation" is the determination of whether the event, practice or characteristic of the market in which exports are sold, would render the price "abnormal," that is, the actual transaction price observed would not obtain under "normal" market conditions. Therefore, while there is no precise definition or formula laid out in the rules, Investigating Authorities (IAs) may take into account a number of scenarios that might arise in the real world. A good example of this would be instances in which an investigation involves a formerly planned economy. The concept allows IAs flexibility to choose prices that reflect the free operation of market forces, since prices in these economies in transition would not always reflect this.

Bear in mind, however, that some degree of discretion is involved and authorities are scrutinised when they invoke these provisions, because they are regarded as being easily captured by protectionist interests. As a general rule therefore, IAs should make the determination in an objective manner and provide a sound rationale for their conclusion. Some would argue that the considerable room for discretion may be a double-edged sword. For example, Jamaican exporters may find themselves the subject of an investigation where this discretion in interpretation might form the basis of a foreign industry's claim to reject the actual transaction price of the Jamaican producers' goods. If the actual price is rejected, the IA would use either a third country price or constructed value. This may result in an inflated normal value and hence a higher dumping margin. It is worth noting that of the two alternatives, constructed value is the favoured among some IAs. Not surprisingly, this often results in the higher normal value. Dispute settlement rulings suggest that there is no hierarchy between third country price and constructed value, and IAs are, in fact, free to use either.

Exporters may therefore find themselves rebutting spurious claims. However, awareness of the provision, its meaning and its implications equips any party in an investigation to adequately defend its position, even against spurious allegations of "particular market situation." Further, if IAs reject parties arguments they must provide sufficient grounds for doing so. Rejecting a party's claim without providing adequate reasons can form the basis for dispute settlement action.

In the current round of negotiations, some countries have identified this as being one of the provisions that require clarity. However, while the lack of a clear definition of the provision does leave room for the exercise of discretion, there are checks and balances in the trade remedy investigation process that can act to limit potential abuse of discretion. ◘

(Continued from page 6) *CARICOM Corner*

This argument has been refuted by Carlo Pettinato, head of the European Commission's Economics, Trade, Politics and Information. He asserts that the reason that the EU is demanding market access is as a result of directives from the WTO to protect both regions from legal challenges at the WTO. **The Daily Observer, Jamaica, April 4, 2007.**

Caribbean Retains St. Kitts and Nevis Sugar Quota

At a recent ACP Ministerial Special Consultations on Sugar held in Brussels on Thursday, March 16, 2007, ACP Ministers agreed that the permanent shortfall of sugar from St. Kitts and Nevis as part of the ACP sugar quota to the EU would be retained by the Caribbean.

Dr. Henry Jeffrey, Minister of Foreign Trade and International Corporation, as CARICOM spokesperson on sugar said that the decision was a significant expression of solidarity within the ACP Sugar Consultative Group. Further intensive negotiations that will have to be undertaken with the European Commission in the ongoing effort to secure a guaranteed remunerative price for the export of sugar to the EU. Dr. Jeffrey opined that the decision regarding the existing quota was a positive sign in these very difficult times.

Full Market Access Granted to ACP Regions by the EU

As part of the Economic Partnership Agreement (EPA) negotiations that are currently underway, on April 4, 2007 the European Union proposed to remove all the remaining quota and tariff limitations on access to certain products exported into the European market from all ACP countries. EPAs are trade development agreements which the EU is currently negotiating with six (6) ACP regions including CARIFORUM, Africa and the Pacific. The products affected will include agricultural goods like beef, dairy, cereals, fruit and vegetables. The elimination of quota and tariff limitations will have immediate effect as soon as the agreement is signed, except rice and sugar are expected to be gradually phased in. It is important to note that this proposal will result in all ACP countries having the same market access conditions. The idea appears to be to encourage ACP neighbours to work together in the building of regional market and supply chains. ◘

(Continued from page 2) *WTO in Brief*

United States made as a member of the WTO. U.S. trade officials disagreed, saying that negotiators involved in the Uruguay Round of global trade talks clearly intended to exclude gambling. Antiguan authorities also argued that restrictions barring U.S. residents from betting at offshore casinos were harming efforts to diversify its economy, and mitigate its dependence on tourism. Antigua, a former British colony in the Caribbean is the smallest country to successfully litigate a case in the WTO's twelve-year history.

What's Happening with Doha?

As most of us are aware, in July of 2006, the Doha talks were suspended after countries failed to reach agreement, particularly in the area of Agricultural Subsidies. In early 2007, there were rumblings that the talks would resume and this was formally announced after high level discussions took place on the fringes of the World Economic Forum held in January. In a speech made in Mexico City in March of this year, the Director General indicated that talks were underway in all negotiating groups and bilaterally, in particular between the US, EC, Brazil and India. Reflecting on what was already achieved, he pointed to the proposed elimination of all forms of agricultural export subsidies by 2013.

He noted that there needed to be increased momentum, as the talks were progressing at a slow pace. On the matter of agricultural subsidies, he opined that while the offers on the table were impressive, the US needed to make sharper cuts. This was critical as other areas in the negotiation, such as Rules, were awaiting a needed push from agreement in the main areas of negotiation, including agricultural support.

Trade Prospects for 2007

Economists at the WTO have forecast 3% global economic growth in 2007. This could slow the growth in merchandise trade to 6% when compared to 8% in 2006. The major risks lie in developments in financial and property markets and the imbalances in goods and services trade. The best way to mitigate these risks, they suggest, is to strengthen the multilateral trading system by way of a successful conclusion to the Doha Round. ◘ **See www.wto.org**

(Continued from page 1) *WTO Law In Trade Remedy Disputes in CARICOM*

the Revised Treaty, consultation with the alleged subsidising Member State is required, and COTED must authorize imposition of a definitive measure.[5] Under the SCM, while consultation is required before the initiation of an investigation, the Member may act unilaterally to impose a definitive remedy once it has met the necessary conditions.

Differences Between The SGA And The Safeguard Provisions In The Revised Treaty

One noteworthy difference between the Revised Treaty and the SGA (read in conjunction with Article XIX of GATT 1994) is the absence of the 'unforeseen developments' requirement for the application of a safeguard measure. There is also no general provision on the duration of a definitive measure, whether a measure may be extended, and the period for the extension of a definitive measure.[6]

Implications For Dispute Settlement

The differences highlighted above suggest some discretionary scope in the applicable law. With respect to safeguard provisions, NAFTA for example, does not apply the concept of 'unforeseen development' as a requirement for the imposition of a safeguard measure.[7] Likewise, in the case of AD, the calculation of dumping margins is not necessarily done according to the provisions of the ADA, which has been read to exclude practices such as zeroing.[8]

Importantly, the standard under the Revised Treaty for judicial review of domestic measures is also, not surprisingly, not influenced by WTO jurisprudence.[9] The variation between the AD provisions in the Revised Treaty and the ADA also open the possibility for inconsistent rulings between a domestic reviewing court and COTED. A judicial review application of a provisional measure may find that the domestic investigating authority acted in accordance with the applicable law, while COTED may take a different view.[10] Arguably, this situation is less likely where the dispute involves CARICOM origin goods, and more likely where non-CARICOM origin goods are the subject of the domestic investigation.[11]

On the other hand, where the Revised Treaty framework becomes fully operational with a system of directives, regulations and opinions, as is the case in the European Union (EU), parallel litigation is less likely in trade remedy matters. Arguably, this may entail redrafting of domestic anti-dumping legislation to exclude domestic judicial review of anti-dumping investigations involving CARICOM Members where COTED decides to exercise jurisdiction, or the inclusion of some provision in the Revised Treaty to bar domestic review proceedings in such cases.

Application Of WTO Trade Remedy Law To RTAs

Regional Trade Agreements (RTAs) are governed by Article XXIV of GATT 1994, which requires some consistency with the WTO regime. That complete consistency is not mandatory is observed from the fact that Article XXIV provides exemptions from Articles XI, XII, XIII, XIV, XV, and XX of GATT 1994, where necessary. No such exemptions are stipulated regarding to trade remedies. The absence of Article VI of GATT 1994 (governing dumping and subsidies) and Article XIX of GATT 1994 (the unforeseen developments requirement for application of safeguard measures) may suggest that the provisions were meant to be observed where RTAs implement a trade remedy regime.

Disputes brought before the WTO also suggest that the substantive provisions of the trade remedy agreements are to be observed irrespective of whether an FTA excludes the provision from application within the FTA. Arguing that MERCOSUR provisions precluded the application of its safeguard measure against MERCOSUR Members, in ***Argentina-Footwear***[12] Argentina maintained in its defence, the consistency of its measure with Article 2 of the SGA, and that a customs union could selectively apply a SGA measure .

The Appellate Body rejected the argument, clarifying that if the finding of an increase in imports (one necessary criteria for the application of a safeguard measure) was based on imports from MERCOSUR Members, the measure must be applied against them as well. The principle of *parallelism* must be observed. The ruling left open the question of whether the measure would still have to be applied against MERCOSUR Members if their imports had been excluded from the analysis of an increase in imports. This issue was not framed in the dispute, and no clarification was sought or given on it. It is noteworthy that some Members have come to interpret this as providing for the exclusion of RTA partners from a safeguard measure if they were in fact left out of the determination of an increase in imports. The Appellate Body did not treat the selective application issue as arising under footnote 1 of Article 2 of the SGA (relating to measures adopted by a customs union). The measure at issue was not applied on behalf of the customs union, but by a member of the union for its benefit. Therefore, the question of whether there could be deviation from substantive rules of the SGA was left unresolved.

Selective application may also arise with respect to subsidy provisions. For example, the Revised Treaty exempts agricultural subsidies from its general provisions on subsidies. Doubtless, this provision was meant to mirror the perceived relationship between the SCM Agreement and the Agreement on Agriculture. However, WTO law on the relationship between the two agreements is a moving target, or so it seems. Prior to the ***US-Subsidies on Upland Cotton decision***,[13] the SCM Agreement was treated as subject to the Agreement on Agriculture. Thus, export subsidies, generally proscribed under the SCM Agreement, were considered shielded from challenge for agricultural products to the extent that those export subsidies were included in the subsidising WTO Member's schedule.

Two developments question this reading of the relationship: first, the expiry of the 'peace clause' (Article 13 of the Agreement on Agriculture) on January 1, 2004, and, second, the Appellate Body's decisions in ***EC-Bananas III***,[14] and ***Chile Price Band System***,[15] that signaled the interpretive approach it would adopt in the ***Upland Cotton*** decision. In ***EC-Bananas III***, and ***Chile Price Band System***, the Appellate Body had occasion to interpret Article 21 of the Agreement on Agriculture, specifically the relationship between Article 21 and the Annex IA Multilateral Agreements of GATT 1994. Article 21 of the Agreement on Agriculture provides for the application of the GATT 1994 Annex 1A Multilateral Agreements "subject to the provisions of this Agreement". This provision was interpreted to mean "except to the extent that the Agreement on Agriculture contains specific provisions dealing specifically with the same subject matter".

The term 'same subject matter' was then applied in the context of the relationship between the Agreement on Agriculture and the SCM Agreement to mean that, as regards prohibited subsidies, the specific provision invoked in the Agreement on Agriculture as an exception to the SCM Agreement must specifically refer to prohibited subsides. In ***US-Subsidies on Upland Cotton***, none of the provisions of the Agreement on Agriculture advanced by the United States, to justify their subsidies, mentioned prohibited subsidies specifically.

The current position, as clarified by the Appellate Body in ***Upland Cotton***, is that prohibited subsidies under the SCM Agreement Article 3.1(a) and 3.1(b) are not shielded from challenge, despite introductory language of Article 3.1 of the Agreement, "except as provided in the Agreement on Agriculture." That the expiry of the 'peace clause' did not influence this holding suggests that prohibited subsidies are now inconsistent with the Agreement on Agriculture. In short, prohibited subsidies whether on agricultural or industrial goods are subject to the discipline of the SCM Agreement.

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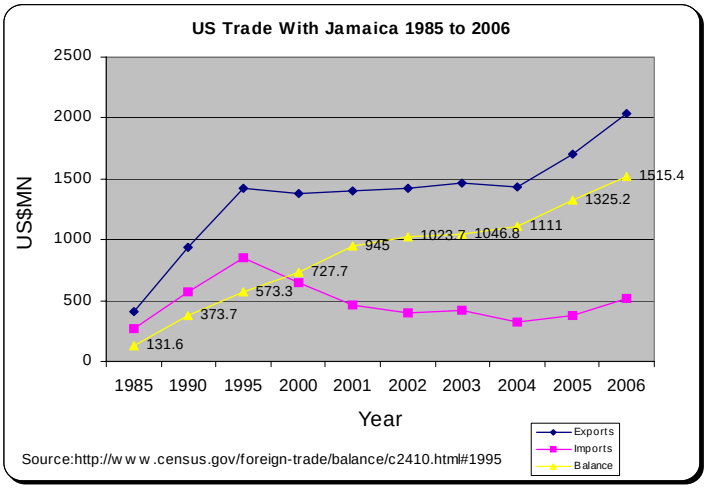
(Continued from page 3) ***Focus on Future Jamaica***

The seminars will be held, one in Kingston (May 9 – 10, 2007 at UWI, Mona Campus) and one in Montego Bay in collaboration with Friedrich Ebert Stiftung and the Montego Bay Chamber of Commerce (May 1, 2007 at the Holiday Inn, Montego Bay). Participants from the private and public sectors, non-governmental organisations, and academia are all welcome. To confirm participation you are asked to send an email to ftmfaja@cwjamaica.com or call 926-4220 -8.

Persons wishing to participate in the Conference may register online at www.conferenceonthecaribbean.org.

Jamaica - US Trade[5]

The US is Jamaica's major trading partner. Over 700,000 American tourists visited Jamaica in 2005, accounting for over 70% of tourist arrivals.[6] Remittances from Jamaicans living abroad have become a leading source of foreign exchange, and amounted to an estimated $1.5 billion in 2004. The graph below shows the trend in US exports to Jamaica and US imports of Jamaican products over the period 1985 to 2006. The US has enjoyed a growing trade surplus with Jamaica over the last two decades, whereas Jamaican exports to the US experienced a down-turn and mixed performance thereafter from 1995. This has occurred despite Jamaica being a CBI beneficiary since the 1980s and is to some extent as a result of competition from low-cost producers such as Mexico, the Dominican Republic and Honduras.



Notwithstanding this trend, the US presents numerous and exciting opportunities for Jamaican firms. The US is the world's largest economy, and is particularly strong in the services sector and in technology. Jamaica, and indeed the rest of CARICOM, are services economies. The major challenge for Jamaica is to take advantage of synergies and complementarities that the US market offers, which can assist Jamaica to diversify and broaden its services base beyond tourism.

Deepened trade with the US offers an opportunity to create efficiency enhancing competition in the financial services, telecoms and transport sectors, to name a few, which may have positive spin-offs for consumer. The US is already a major investor in the country, with capital estimated to be over $1 billion, and over 80 US firms operating in the country. A trade agreement with the US is an opportunity to attract further investment and technology in several key sectors that include, Agriculture, Agribusiness, Chemicals, Mining, Energy, Entertainment - Music and Film, Information and Communications Technology, Infrastructure and Tourism. ◘

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[1]The Caribbean Basin Initiative (CBI) is a collection of temporary, unilateral and non-reciprocal trade programs (providing tariff and other trade benefits) initiated by the US, intended to facilitate the economic development and export diversification of 24 Caribbean Basin economies, and in the process, advances US economic and security interests. Increased trade and economic prosperity are expected to reduce dependence on aid, illegal immigration into the US, as well as the trafficking of narcotics. The first program launched in 1983 was the Caribbean Basin Economic Recovery Act (CBERA). However, the entry into force of NAFTA in 1994, resulted in the CBI beneficiaries losing their preferential advantage relative to Mexico – a major competitor in industries such as textiles and apparel. NAFTA-parity was achieved in 2000 through the US – Caribbean Basin Trade Partnership Act (CBTPA). The CBI currently provides the 24 beneficiary countries with duty-free access to the U.S. market for most goods. The CBTPA continues in effect until September 30, 2008 or the date, if sooner, on which the FTAA or another free trade agreement as described in legislation enters into force between the US and a CBTPA beneficiary country. See http://www.ustr.gov and http://www.mac.doc.gov

[2]See Raúl Zibechi. 2005. Regional Integration After the Collapse of the FTAA. [online] http://americas.irc-online.org/pdf/briefs/0511collapse.pdf

[3]See www.bilaterals.org

[4] World Bank. "A Time to Choose: Caribbean Development in the 21st Century" Available online: http://web.worldbank.org/

[5] See http://www.fas.org/sgp/crs/row/RS22372.pdf

[6] Economist Intelligence Unit. December, 2005. Background Note: Jamaica U.S. Department of State, Nov. 2005; Organisation of Eastern Caribbean States Country Report.

(Continued from page 5) ***Special Project (PSDP) Update***

seminars in the future and also achieve cost-effective large scale distribution of its newsletter, **TRADE GATEWAY**, as well as other public education materials. As the Commission studies and contemplates potential revision of its framework for fulfilling and broadening its mandate it was able to hire necessary expertise to review its processes and structure and advise on the next phase of its development as a Centre of Trade Excellence (COTE).

As part of its effort at capacity building and increasing the knowledge of International Trade and industry's access to Trade Remedies, the Commission was also able to acquire texts covering both legal and economic issues in international trade, as well as a wide range of doctrinaires and international magazines for its reference library. The Reference Centre at the Commission is made available to the public, and can be accessed at any time by making an appointment. The Commission will continue to build upon the gains made under the PSDP Project. In particular, the Commission intends to continue to build its resources to provide its stakeholders with access to expertise on a range of trade issues.

The Commission is by many standards still in its infancy but believes that the PSDP project has allowed it to fortify its foundation to a degree that will ultimately make a significant contribution to trade capacity building in Jamaica and in the Region. ◘

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The Newsletter of the Anti-dumping and Subsidies Commission

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(Continued from page 8) *WTO Law In Trade Remedy Disputes in CARICOM*

A duty exemption or duty concession regime regarding CARICOM origin goods may also give rise to disputes with non-CARICOM Members under both Article 1 of GATT 1994, and the SCM Agreement. A duty exemption or remission that is less than the bound rate inscribed in a CARICOM Members Schedule of Concessions, and accorded to other CARICOM Members by that Member, may be treated as a subsidy, despite provisions requiring the application of that duty rate to CARICOM origin goods.

As the Appellate Body noted in ***Canada-Certain Measures Affecting the Automotive Industry***,[16] the relevant benchmark for purposes of determining whether revenue otherwise due is foregone, under Article 1 of the SCM Agreement, is not the provisions requiring the duty exemption or duty remission regime, but rather the Schedule of Concessions of the WTO Member with respect to the goods benefiting from the duty exemption or remission. This holding was in response to Canada's argument that duty otherwise due is not foregone unless the duty waived is more than the duty accrued. Using the duty exemption regime as the benchmark meant there was no duty foregone.

Is this ruling relevant for the CARICOM regime, given that the dispute with Canada concerned an FTA and not a customs union with a common external tariff? Yes and no. No, if the common external tariff (CET) satisfies Article XXIV: 5, that is, it is, on the whole, no higher than what existed before the formation of the customs union with respect to trade with non-CARICOM Members. Additionally, there should be satisfaction of other conditions for the establishment of a customs union, notably the internal liberalisation requirement.

There is no bar to raising Article XXIV as a defense to a claim for breach of any of the core provisions of GATT 1994, including trade remedies. However, this would doubtless open the door for arguments about the consistency of a purported customs union with GATT 1994. Yes, then, with respect to an Article XXIV defense for breach of GATT 1994.

Application of WTO Law Where Differences Exist In Provisions Between WTO Agreements and RTA Regime

Differences in the regimes permit some margin of appreciation in the applicable law for disputes. This situation is more likely to be the case with disputes among CARICOM Members, but less likely where the dispute involves non-CARICOM Members. A dual regime is doubtless permissible, as appears to exist in the case of MERCOSUR or NAFTA: for MERCOSUR, non-application of trade remedies for its Members, but the right to apply them against non-Members; for NAFTA, selective application among its Members, together with a regime that retains the rights of Members to apply the remedy against non-Members.

For CARICOM, a dual regime may be subject to challenge where the trade remedy measure involves non-CARICOM goods and a dispute is brought before the WTO. For example, it would be problematic for safeguard investigations involving CARICOM and non-CARICOM origin goods to be subject both to CARICOM safeguard provisions, with respect to CARICOM origin goods, and the WTO Safeguards Agreement, with respect to non-CARICOM origin goods because of the likelihood of a violation of Article 1 of GATT 1994.

Moreover, special and differential provisions that ensured the involvement of some lesser developed CARICOM Members in the RTA may be a source of conflict with the WTO regime, if the benefits for those countries under the relevant provisions are not extended on an MFN basis.

It would seem, therefore, that in the face of the growing integration of CARICOM in the multi-lateral trading system, its relationship with other FTAs and the proposed European Partnership Agreement (EPA) there is a need to examine the broader trade policy context for the application of trade remedies that factor into account WTO disciplines in order to avoid challenges to domestic investigating authority determinations. That said, it is important to note that the extent to which the principle of MFN may be waived in the application of a trade remedy by an RTA is yet to be settled at the WTO. ◘

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[1] Revised Treaty, Article 133(3) (f). As a practical matter, this provision does not accurately reflect the nature of anti-dumping complaints which are usually against a particular firm and not a country per se. The drafting language incorrectly implies that the act of dumping is attributable to state action.

[2]Revised Treaty, Article 133(3) (f).

[3]Revised Treaty, Article 98 (1) (a).

[4]Revised Treaty, Article 104(2), with respect to prohibited subsidies, and Revised Treaty, Article 115(2) with respect to subsidies alleged to be causing serious adverse effects.

[5]Revised Treaty, Article 98(2).

[6]One exception exists in the case of disadvantaged countries. These are allowed a three year safeguard measure in the first instance. See, Article 150 of Revised Treaty.

[7]NAFTA, Article 801 does not mention Article XIX of GATT 1994 with respect to bilateral safeguard actions involving NAFTA parties, although NAFTA, Article 802 includes obligations under Article XIX of GATT 1994 regarding safeguard measures to be applied against non-NAFTA parties.

[8]But see, NAFTA Bi-national Panel Report, In re Certain Softwood Lumber Products from Canada, Final Affirmative Anti-dumping Investigation, USA-CDA-2002-1904-02, Third Remand, June 9, 2005, where the panel directed Department of Commerce (DOC) to apply a non-zeroing methodology to calculate dumping margins to comply with Appellate Body Report in Softwood Lumber IV.

[9] NAFTA panels apply a domestic standard of review.

[10] For example, there is no provision in the Revised Treaty that forecloses the exercise of a domestic court's jurisdiction to review an anti-dumping investigation once COTED becomes seized of the matter following a preliminary determination.

[11]Revised Treaty, Article 131(5) and 131(6), read in conjunction, contemplate this possibility by vesting COTED with jurisdiction to investigate cases of alleged dumping by third states, but also reiterating the right of Members to conduct investigations consistent with international agreements to which they are signatories. This would include the WTO Agreement, and by extension, the provisions in the ADA for domestic legislation with respect to review of anti-dumping proceedings.

[12]WT/DS98/AB/R,adopted January 12, 2000.

[13]WT/DS267/AB/R, adopted March 21, 2005.

[14]WT/DS27/AB/R,adopted September 25,1997,para. 155.

[15]WT/DS207/AB/R, adopted October 23, 2002,para. 186.

[16]WT/DS/139/AB/R, adopted June 19, 2000.

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