As delivered

IN THE WORLD TRADE ORGANIZATION

WT/DS429

United States — Anti-Dumping Measures on Certain Frozen Warmwater Shrimp from Viet Nam

Oral Statement
by
Norway as a Third Party

Geneva
11 December 2013

I. INTRODUCTION

Mr. Chairman, Members of the Panel,

1. Norway welcomes this opportunity to present its views on the issues raised in these panel proceedings.

2. In its written statement, Norway addressed some interpretative issues relating to the standard of review, the role of precedent in WTO case law and the prohibition of zeroing. We will not repeat these arguments here. Rather, we would like to draw the Panel's attention to certain aspects of Article 11 of the Anti-Dumping Agreement relating to the duration and review of anti-dumping duties. We would also like to address the obligation to comply with the recommendations and rulings of the Dispute Settlement Body (hereinafter the DSB) as laid down in Article 21.3 of the Dispute Settlement Understanding (the DSU).

3. Article 11.3 of the Anti-Dumping Agreement lays down an obligation to terminate anti-dumping duties no later than five years from its imposition, unless the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury. In its first written submission, Viet Nam claims that the margins of dumping relied on by the United Stated in the sunset review were determined in a manner that is inconsistent with the Anti-Dumping Agreement, including by using zeroing.[1]

4. Norway would like to reiterate that the Appellate Body has made it clear that the use of zeroing is inconsistent with WTO law. This includes the reliance on anti-dumping duties calculated by the use of zeroing in sunset reviews. In *US – Continued Zeroing* the Appellate Body explicitly stated: *"the application and continued application of antidumping duties in these four cases is inconsistent with Article 11.3 of the Anti-Dumping Agreement to the extent that reliance is placed upon a margin of dumping calculated through the use of the zeroing methodology in the sunset review determinations."*[2]

[1] Viet Nam, First Written Submission, para 303.
[2] *US – Continued Zeroing,* WT/DS350/AB/R, para 199, original emphasis.

5. Accordingly, a margin calculated with zeroing cannot be the foundation for a determination of the likelihood of continuation or recurrence of dumping.

6. In its first written submission, the United States asserts that where the investigating authority has relied on WTO-consistent factors, a sunset determination may be WTO-consistent even if the authority also considered WTO-inconsistent factors.[3]

7. The Appellate Body has interpreted this aspect of Article 11.3 of the Anti-Dumping Agreement in *US – Anti-Dumping Measures on Oil Country Tubular Goods.* The Appellate Body stated in this case that it would render a sunset review inconsistent with Article 11.3 if the investigating authority relied upon a WTO-inconsistent margin of dumping. In accordance with this statement, the Panel must thus assess whether the investigation authority *did* rely upon WTO-inconsistent margins, for instance by the use of zeroing, and not whether other factors may justify the determination.

8. Moving on to Articles 11.1 and 2 of the Anti-Dumping Agreement, these provisions affirm that anti-dumping duties shall only remain in force as long as necessary. Article 11.2 further states that the relevant authorities shall review the need for a continued imposition of the duty where warranted or, on certain conditions, upon request by any interested party. In its first written submission, Viet Nam claims that the United States is acting inconsistently with these two provisions by refusing "*to individually investigate the anti-dumping margins for individual respondents that have not been individually investigated because of the application […] of Articles 6.10 and 9.4*".[4]

9. Article 6.10 states that dumping margins, as the main rule, should be determined individually for each known exporter or producer concerned of the product under investigation. However, this provision also allows for derogations from the main rule where the number of exporters, producers, importers or type of products involved is so large as to make an individual determination impracticable. In these cases, the relevant authorities may limit their examination on certain conditions, so called "sampling". Article 11.2 states that the authorities *"shall review the need for the continued imposition of the duty […] upon request*

[3] United States, First Written Submission, para 270.
[4] Viet Nam, First Written Submission, para 347.

by any interested party", provided certain conditions are fulfilled. The language of Article 11.2 gives any interested party a right to a review, whether or not they have been individually investigated.

10. When an interested party is in a position to submit positive information substantiating the need for a review and a reasonable period of time has passed since the imposition of the definitive anti-dumping duty, this party has a legitimate interest in a review. Thus, it is our view that there can be no automatic rejection of a request for review, even if the exception in Article 6.10 has been applied at a previous stage of the anti-dumping procedure. The cross-reference in Article 11.4 to Article 6 does not influence this interpretation.[5] Furthermore, the overarching principle in Article 11.1 that anti-dumping duties shall not remain in force longer than necessary supports this view.

11. Finally, turning to the last issue we would like to raise today. In its first written submission, Viet Nam argues that Section 129 of the Uruguay Round Agreements Acts is as such inconsistent with a number of provisions in the Anti-Dumping Agreement and the GATT 1994. Viet Nam maintains that due to the retrospective system for assessing anti-dumping duties, this provision prohibits the United States from complying with adverse rulings and recommendations of the DSB.[6]

12. In accordance with Article 21.3 of the DSU, Members shall comply with the rulings and recommendations of the DSB immediately. If immediate compliance is impracticable, the Member shall have a reasonable period of time in which to comply.

13. Norway recalls that the Appellate Body has clarified that Members have an obligation to comply with the rulings and recommendations of the DSB no later than by the end of the reasonable period of time. In *US-Zeroing (Japan) (Article 21.5 - Japan),* the Appellate Body explicitly addressed the obligation to implement recommendations and rulings of the DSB in respect of conduct relating to imports that entered a Members territory prior to the expiration of the reasonable period of time. In this case, the Appellate Body stated that WTO-

[5] Article 11.4 of the Anti-Dumping Agreement sets out that the provisions of Article 6 "regarding evidence and procedure" shall apply to reviews carried out under Article 11.
[6] Viet Nam, First Written Submission, paras 211-212.

inconsistent conduct must cease completely by the end of the reasonable period of time, irrespective of the date on which the imports entered the territory of the implementing Member.[7] Thus, WTO-inconsistent measures affecting imports that entered the implementing Member's territory prior to the expiration of the reasonable period of time must be rectified by the end of the reasonable period of time.

14. Mr. Chairman, distinguished Members of the Panel, this concludes Norway's statement today.

Thank you for your attention.

[7] *US-Zeroing (Japan) (Article 21.5 - Japan),* WT/DS322/AB/RW, paras 160-161.