World Trade Organization

Panel Proceedings

China – Anti-Dumping Measures on Imports of Cellulose Pulp from Canada
WT/DS483

Third Party Oral Statement
by
Norway
at the Third Party Session of the Panel

Geneva, 12 May 2016

Thank you, Mr. Chair, Members of the Panel,

1. Norway welcomes this opportunity to present its views on the issues raised in these panel proceedings. We did not present a written third party submission to the Panel. In this oral statement, I will therefore briefly set out Norway's view on one of the legal issues raised: namely the requirement in the *Anti-Dumping Agreement* Article 3.2 that the investigating authorities "consider whether there has been a significant increase in dumped imports".

2. According to Canada, MOFCOM's determination "that subject imports, both in absolute and relative terms, 'showed a growth trend' fails to meet the standard […] with respect to the rigorous inquiry required by Article 3.2.[1]

3. The Appellate Body has stated that Article 3.1 of the Anti-Dumping Agreement "is an overarching provision that sets forth a Member's fundamental, substantive obligation concerning the injury determination, and informs the more detailed obligations in the succeeding paragraphs".[2] According to this provision, the investigating authority is required to conduct an "objective examination" of the economic state of the "domestic industry" on the basis of "positive evidence". The Appellate Body, in *EC – Bed Linen (India - 21.5)*, ruled that an "objective examination" requires authorities to reach a result that is "*unbiased, even-handed*, and *fair*".[3] In *US – Hot-Rolled Steel (AB)*, the Appellate Body found that it would not be "even-handed" for investigating authorities:

[1] Canada's First Written Submission, para. 69.
[2] Appellate Body Reports, *China – HP-SSST (Japan and EU),* para. 5.137; *China – GOES*, para. 126; *Thailand – H-Beams*, para. 106.
[3] Appellate Body Report, *EC – Bed Linen (Article 21.5 – India)*, para. 133 (emphasis original).

> to conduct their investigation in such a way that it becomes *more likely* that, as a result of the fact-finding or evaluation process, they will determine that the domestic industry is injured.[4]

4. Furthermore, the Appellate Body stated in the same appeal, that "an 'objective examination' requires that the domestic industry, and the effects of dumped imports, be investigated in an unbiased manner, without favouring the interests of any interested party, or group of interested parties, in the investigation".[5]

5. Among others, Article 3.1 requires the investigating authority to examine objectively "the volume of the dumped imports". Article 3.2 elaborates on this obligation, stating that the authority must examine whether there has been a "significant increase in dumped imports". The term "significant" was interpreted by the panel in *Thailand – H-Beams* to mean "noteworthy, important, consequential"[6]

6. Canada contends that China violated Articles 3.1 and 3.2 of the *Anti-Dumping Agreement* by failing to "objectively examine all positive evidence relating to the magnitude of any increase in volume and the circumstances in which subject imports entered the domestic market, including trends in domestic demand, domestic like product volumes and non-subject import volumes, to determine whether an increase is significant".[7] China does not appear to contest the factual matter, but argues that "Article 3.2 does not require the investigating authority to make a 'determination' but rather to 'consider'".[8] This is supported by Brazil in its written and oral third party submission.[9] Both China and Brazil appear to base their arguments on the panel's remarks in *Thailand – H-Beams*.[10] In the first part

[4] Appellate Body Report, *US – Hot-Rolled Steel (AB)*, para. 196 (emphasis added).
[5] Appellate Body Report, *US – Hot-Rolled Steel (AB)*, para. 193 (emphasis added).
[6] Panel Report, *Thailand – H-Beams*, para. 7.163.
[7] Canada's First Written Submission, para. 70.
[8] China's First Written Submission, para. 42.
[9] Brazil's Third Party Submission, para. 6.
[10] Panel Report, *Thailand – H-Beams*, para. 7.161.

of paragraph 7.161 of that report, the panel noted that a definition of the term "consider" does not entail an "explicit 'finding' or 'determination'".

7. In Norway's view, one must bear in mind that even though there is no obligation to *make an explicit determination*, it is a prerequisite in the provision that the increase to be considered is in fact significant. In order to complete the analysis required in Article 3.2, it is necessary to either directly or indirectly note the existence of a significant increase for it to be possible to consider this. This is also in line with the panel report in *Thailand – H-Beams*, which held that even though the term "significant" need not necessarily "appear in the text of the relevant document ", it "[n]evertheless, […]must be *apparent* in the relevant documents in the record that the investigating authorities have given attention to and taken into account whether there has been a significant increase in dumped imports".[11]

8. Norway would caution against overemphasising the meaning of the first part of paragraph 7.161 of the panel report in in *Thailand – H-Beams.* Reading the first sentences of that paragraph without taking into account the proper context of the following sentences of the same paragraph, could lead to an interpretation of Article 3.2 which would render the provision void. Additionally, such an interpretation would be contrary to the obligation in Article 3.1 of the *Anti-Dumping Agreement* to carry out an "objective examination".

Mr. Chair, Members of the Panel,

9. This concludes Norway's statement. I thank you for your attention.

[11] Panel Report, *Thailand – H-Beams*, para. 7.161 (emphasis added).