

IN THE WORLD TRADE ORGANIZATION

Before the Appellate Body

**United States – Anti-dumping and Countervailing Measures on large
residential washers from Korea**

(AB-2016-2 / DS464)

Oral Statement

by

Norway as a Third Participant

Hearing of the Appellate Body

Geneva

20-21 June 2016

Mr Chair, Members of the Division,

1. Norway welcomes this opportunity to make a brief statement as a Third Participant before the Appellate Body in this appeal. In this statement I will not repeat the arguments presented by Norway in its written submission, but rather take this opportunity to briefly comment on one other issue of relevance to this dispute: the “mathematical equivalence” argument put forward by the United States.
2. In its Appellant Submission, the United States argues that prohibiting the use of zeroing under the weighted average-to-transaction comparison methodology would be an incorrect interpretation of Article 2.4.2 of the Anti-Dumping Agreement, as this would lead to results that are “mathematically equivalent” to the comparison methodologies under the first sentence of the provision. The United States draws this conclusion from findings by the Appellate Body that the first two comparison methods should not “lead to results that are systematically different”. Thus, the United States asserts that the third comparison method “by logical extension” *should* lead to results that are systematically different,¹ and that any interpretation to the contrary would “deprive the second sentence of Article 2.4.2 of any meaning”, and the provision would no longer be “exceptional”.² This, in turn, would according to the United States be contrary to the principle of effectiveness.³
3. From the outset, Norway would like to stress that the “mathematical equivalence” argument is in any event misleading. The focus of the exceptional methodology in the second sentence of Article 2.4.2 is, after having examined all transactions, to show a pattern of dumping targeted at particular purchasers, regions or time periods. What is then allowed is to address such targeted dumping with targeted measures. In this regard, we would like to refer to our Third Participant Submission for further elaboration.
4. Moreover, the mathematical equivalence argument rests on the assumption that the investigating authority must use the same set of pricing data. This is a consequence of the United States’ interpretation of the term “a weighted average normal value” in the first sentence of Article 2.4.2 as meaning the same as “a normal value established on a weighted average basis” in the second sentence. Norway agrees with Korea that this assumption is

¹ United States’ Appellant Submission, para. 107.

² United States’ Appellant Submission, para. 108.

³ United States’ Appellant Submission, para. 113.

false.⁴ As argued by Korea in its Appellee Submission as well as by China in its Third Participant Submission, such a limitation does not follow from the Anti-Dumping Agreement.⁵ On the contrary, as Japan puts it in its Third Participant Submission, an investigating authority “may use different pools of home market transactions” when calculating the two different normal values.⁶

5. Like Canada and Japan,⁷ we would also point to the fact that this argument has already been rejected by the Appellate Body in *US – Softwood Lumber V (Article 21.5. – Canada)*. In that case, the Appellate Body held that the possibility of the weighted average-to-transaction comparison methodology producing “results that are equivalent to those obtained from the application of the weighted average-to-weighted average methodology is insufficient to conclude that the second sentence of Article 2.4.2 is thereby rendered ineffective”.⁸

Mr Chair, Members of the Division,

6. This concludes Norway’s statement. Thank you.

⁴ Korea’s Appellee Submission, para. 73

⁵ Korea’s Appellee Submission, paras. 73-76; China’s Third Participant Submission, para. 128.

⁶ Japan’s Third Participant Submission, para. 63.

⁷ Canada’s Third Participant Submission, para. 35; Japan’s Third Participant Submission, para. 60.

⁸ Appellate Body Report, *US – Softwood Lumber V (Art. 21.5 – Canada)*, para. 99.