

WORLD FOOTWEAR

Arguments with regard to WTO continue to rage in many industries and a major complaint everywhere outside of China is that of 'dumping'. One method that has been used to try to determine what is and what is not a genuine instance of this is referred to as 'zeroing'. Greg Kanargelidis, a Canadian lawyer who specialises in international trade and commodity taxation, explains what this involves for all parties concerned, using Canada as an example.

The zeroing debate



Photo: Wilsons the Leather Expert Inc.

Pursuant to Canada's trade remedies legislation, unfairly traded goods may be subject to an anti-dumping duty if the goods are being 'dumped' and if the Canadian International Trade Tribunal (CITT) decides that the dumped goods have caused, or are likely to cause, material injury to like goods produced in Canada.

The Canada Border Services Agency (CBSA) determines whether particular goods are being dumped and the margin of dumping involved. In 2005, the CBSA ceased applying the zeroing methodology it had historically applied in making these calculations. The change was supported by importers and foreign exporters, who pointed out that it was consistent with Canada's international trade obligations.

What is zeroing?

The margin of dumping is the difference between the normal value and the export price. In general, the normal value is the price normally charged by a foreign exporter to customers in its home country. The export price is that charged to the importer in Canada or any other recipient country.

To calculate the margin of dumping, the weighted average export price is subtracted from the weighted average normal value. When zeroing was still being applied, the CBSA would ignore—by setting to zero—any instances where the export price was higher than the normal value and, therefore, prevent dumping. The practice of zeroing therefore tends to raise the resulting margin of dumping.

Importers and foreign exporters argued that it artificially inflated the margin of dumping and was therefore not appropriate. Canadian manufacturers countered this by saying that this approach was entirely accurate as the object is to calculate the extent of 'dumping' and not that of 'non-dumping'.

The laminate flooring case

The first test case occurred in May 2005, when imports of laminate flooring from Austria, Belgium, France, Germany, Poland and China were investigated. In the case of China, injurious subsidisation was also alleged. The CBSA decided that in the case of four of the countries, Austria, Belgium, Germany and Poland, the goods had not been dumped or that the margin of dumping was below 2% and therefore insignificant.

The Canadian laminate flooring industry has subsequently appealed to the Federal Court of Appeal on the grounds, among other things, that the CBSA erred in law in determining the methodology to be employed in anti-dumping investigations by using a novel methodology that was contrary to law.

WTO pronouncements on zeroing

The issue of zeroing has been addressed several times over the past few years. In 2000, it investigated exports of Indian cotton bed linen to the EC. More recently, it was Canada's exports of softwood lumber to the United States in 2004. In both instances, the WTO Appellate Body determined that zeroing is not consistent with the WTO Anti-dumping Agreement. The CBSA is therefore moving to a policy that is more consistent with its international trade obligations.

Future implications

The CBSA's discontinuing of zeroing will tend to result in lower overall margins of dumping per foreign exporter and more accurate measurements at both the preliminary and final stages of anti-dumping investigations. It is not clear, however, whether the new approach will also tend to exclude countries from future investigations. This will depend on factors such as the number of exporters within a country and the individual pricing practices of each of them.

In addition, for exporters who fully participate in anti-dumping investigations neither zeroing nor the new methodology is likely to have much, if any, ultimate impact. This is because the amount of dumping duties payable by the importer is based on the normal value and is therefore not affected whether zeroing is used or not.

The most direct result of the decision to abandon zeroing may be in a more precise and measured complaint by domestic industries. In particular, any industry preparing a dumping complaint may wish to consider its representations more carefully on the definitions of the product to be investigated, so as to include only those products or models in respect of which a positive margin of dumping is thought to exist.

Decisions can be beneficial all round

Again in 2005, the Canadian International Trade Tribunal rescinded its material injury finding covering women's boots from China. As a result, for the first time in 15 years, they are no longer subject to anti-dumping duties. This was a significant judgement as the CBSA had only recently increased the duty rate from 29% to 72.1%, which importers would have had to pay for five more years.

Footwear importers appealed and felt confident that the facts were in their favour, despite the original finding in 1990 and its two subsequent renewals at five-year intervals. As a result, many importers chose to file requests for product exclusions in the hope that certain goods not produced by domestic manufacturers would be removed from the finding if it was renewed for a further five years.

The CITT ultimately reached the conclusion that rescission of the finding would not result in the likelihood of material injury to Canadian producers of women's boots. Importers can now import women's boots from China free of anti-dumping duty. Consumers are assured of a wider choice of women's boots rather than just the restricted lines offered by Canada's producers. Furthermore, there would be little or no impact on domestic production as it was concentrated on waterproof warm-lined leather winter boots, at which it excels and in which China is currently showing no interest.

Factors influencing the decision

The Tribunal concluded that Chinese imports were concentrated towards the cheaper end of the boot market, whereas domestic manufacturers did not produce anything in a similar price bracket. In the

case of higher priced imports, these tended to be trendy and fashionable, so again they did not see any conflict. In short, the domestic industry had not established that there was significant 'toe-to-toe' competition between the two parties.

The Tribunal also concluded that imports of city and dress boots from China would be likely to increase in response to market demand if the order expired, but that this increase would merely displace imports of similar products from other countries. The obvious lack of direct competition with domestic winter boot production was therefore also unlikely to have any adverse effect on pricing for local manufacturers.

It was also noted that fashion trends had had a direct impact on Canadian producers and that it was consumers moving to more fashionable boots that, in part, accounted for the domestic industry's reduced sales. Domestic producers did not appear to have reacted to this change in the market, mainly due to the fact that they were geared to an annual or semi-annual product development cycle. Rapidly changing fashions, on the other hand, required manufacturers to keep pace and deliver product quickly throughout the year.

Comments

Importers can learn a number of lessons from this case. An expiry review is an opportunity for importers to challenge the continuation of a material injury finding. As a result of changes in circumstances (as in the previous case), the underlying basis for the continuation of the finding may no longer be present. They should not assume that a renewal is inevitable and neither should local manufacturers.

The waterproof footwear expiry is currently under examination and the one for safety footwear is due later this year. The surge in footwear imports from China into the European Union during 2005 has set alarm bells ringing everywhere. What is patently clear from the Canadian experience is that all parties have to think out their strategy, be sure of their facts and concentrate on issues where they know they stand a real chance of proving their case. 

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