

Article 11
Retroactivity
[General Rule]

International Antidumping Code:

Article 11

Antidumping duties and provisional measures shall only be applied to products which enter for consumption after the time when the decision taken under Articles 8(a) and 10(a), respectively, enters into force, except that in cases: ...

Antidumping Act, 1921, As Amended:

Section 202 (a) allows reach-back for unappraised entries made up to 120 days before question of dumping was raised.

U.S. Treasury Regulations:

Section 14.9 (a) provides that if the Withholding of Appraisement Notice finds the proper basis of comparison for fair value purposes is Exporter's Sales Price or if the notice does not specify the appropriate basis of comparison, the withholding of appraisement is retroactive 120 days before the question of dumping was raised; if purchase price is the proper basis, the withholding of appraisement starts after the date of publication of such notice.

This provision that dumping duties will no longer be assessed retroactively in cases where purchase price is controlling as the basis for comparison with foreign market value is reasonable since importers in such cases are not related by ownership or control to their foreign supplier, and hence cannot be presumed to know the home market price of the foreign supplier. 14.9 (a).

Comment:

The general rule of Article 11 is no retroactivity with certain exceptions.

Section 202 (a) of U.S. law merely sets outside limit of 120 days on retroactivity. Treasury can reduce the length of this reach-back to less than 90 days by regulation without violating U.S. law.