

Retroactivity (Cont'd)

[Exception: For Duration of Provisional Measures]

[Exception: Final Duty Limited by Provisional Duty]

International Antidumping Code:

11 (i) Where a determination of material injury (but not of a threat of material injury, or of a material retardation of the establishment of an industry) is made or where the provisional measures consist of provisional duties and the dumped imports carried out during the period of their application would, in the absence of these provisional measures, have caused material injury, antidumping duties may be levied retroactively for the period for which provisional measures, if any, have been applied.

If the antidumping duty fixed in the final decision is higher than the provisionally paid duty, the difference shall not be collected. If the duty fixed in the final decision is lower than the provisionally paid duty or the amount estimated for the purpose of the security, the difference shall be reimbursed or the duty recalculated, as the case may be.

Antidumping Act, 1921, As Amended:

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

Comment:

Retroactivity is limited to the period covered by provisional measures. However, since provisional measures would have a limited 3-month life, as per Article 10 (d), the application of antidumping duties would also be limited to those products entered within the 3-month operation of provisional measures. If the investigation took longer to complete than 3 months after the start of provisional measures, all entries after the 3-month period could be dumped with impunity. Where no provisional measures were taken at all, there would seem to be no basis for any retroactivity.