

Retroactivity (Cont'd)

[Exception: Unrelated Suspension]

International Antidumping Code:

11 (ii) Where appraisement is suspended for the product in question for reasons which arose before the initiation of the dumping case and which are unrelated to the question of dumping, retroactive assessment of antidumping duties may extend back to a period not more than 120 days before the submission of the complaint.

Antidumping Act, 1921, As Amended:

Section 202 does not require, as does Article 11 (ii) of the International Antidumping Code, that the 120 day reach-back before submission of the complaint only apply to entries on which appraisement was suspended "for reasons which arose before the initiation of the dumping case and which are unrelated to the question of dumping."

Comment:

Article 11 (ii) seems to make a concession to 120-day reach-back provision in U.S. law but limits this to exclude products on which appraisement was suspended after the initiation of the dumping case for reasons related to the question of dumping. Thus, any suspension of appraisement after initiation of complaint and before provisional measures (see Article 11 (i)) would not be subject to dumping duty. [This would seem to be aimed at informal withholding or "foot dragging" by appraisers sympathetic to complainant; the "workload" excuse would still seem to be unaffected because "unrelated to the question of dumping."]