

CLARIFYING THE LEGAL AMBIGUITY IN ARTICLE 2.2.2(III) OF THE ANTI-DUMPING AGREEMENT: A PROPOSED SET OF INTERPRETATIVE GUIDELINES FOR “ANY OTHER REASONABLE METHOD”

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ABSTRACT

When investigating authorities construct normal value under Article 2.2 of the Anti-Dumping Agreement, they may, if the method prescribed by the chapeau of Article 2.2.2 is unavailable, opt to use Article 2.2.2(iii)'s “any other reasonable method” to calculate amounts for SG&A and for profits, subject only to a “profit cap”. The apparent ambiguity enshrined in Article 2.2.2(iii) has been interpreted to give investigating authorities broad discretion and has engendered various overly discretionary, sometimes abusive, interpretations by investigating authorities. A guideline for the interpretation of Article 2.2.2(iii) can be, however, drawn from the overall context and structure of Article 2 of the Anti-Dumping Agreement. In order to clarify the ambiguity in Article 2.2.2(iii) of the Anti-Dumping Agreement and to prevent any abusive use of “other reasonable method” by investigating authorities’ construction of Constructed Value, all Article 2.2.2(iii) methods must be consistent with this structural guideline of Article 2 of the Anti-Dumping Agreement.

KEYWORDS: *WTO Anti-Dumping Agreement, article 2.2.2(iii)'s other reasonable method, interpretive guidelines*

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