

derailing the rules-based focus of the system, this post-consultations meeting enhances it. It provides a further opportunity to resolve issues consistent with the rules and allows the Parties to settle the manner without recourse to time-consuming and expensive litigation.

Recommendation 17

When a NAFTA binational panel finds that the final determination by a government agency to impose anti-dumping or countervailing duties was in error, all duties should be repaid by the domestic authority to the foreign exporter. The Government of Canada should therefore propose to its NAFTA partners a formal system for repayment of all duties, retroactive to the date set by any preliminary and/or final determination imposing duties.

Article 1904.15(a) of the NAFTA requires each NAFTA Party to “amend its statutes or regulations to ensure that existing procedures concerning the refund, with interest, of antidumping or countervailing duties operate to give effect to a final panel decision that a refund is due...”. The Government is not aware of any evidence that any of the three NAFTA Parties have not incorporated this obligation in their own domestic laws, nor is it aware of any specific circumstance in which antidumping or countervailing duties which should have been refunded further to a panel decision was not eventually refunded by the appropriate domestic authority.

Canadian governments and industry have requested NAFTA Chapter 19 panel reviews of last year's US final determinations of subsidy, dumping and injury with respect to imports of softwood lumber from Canada. The panels are now reviewing the US determinations; the results of these reviews are binding. The Government has confidence in the strength of Canada's arguments before these panels. In the event that Canadian parties are successful before these panels, the United States will be required to refund the countervailing and anti-dumping cash deposits collected with interest.

The Special Import Measures Act (SIMA) is administered by the Canada Customs and Revenue Agency (CCRA) and the Canadian International Trade Tribunal (Tribunal). Certain dumping and countervailing determinations made by the Commissioner of the CCRA or the Tribunal under SIMA can be appealed to a NAFTA bi-national panel (Part I.1 of SIMA). In some cases, this can result in a decision by a panel to remand the determination back to the Commissioner or the Tribunal for reconsideration. This could result in a different determination by the Commissioner or the Tribunal. As a consequence, anti-dumping or countervailing duties that had been collected by CCRA in respect of the original determination may be refunded, in whole or in part, as required by Section 12 of the SIMA. Therefore, the Committee's recommendation is already implemented in Canadian legislation.

