

# GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

• COM.AD/5  
19 September 1969  
Special Distribution

Committee on Anti-Dumping Practices

Original: English

## CANADIAN ANTI-DUMPING LEGISLATION

At the meeting of the Committee on 25-26 February 1969, it was suggested that members of the Committee submit memoranda on their administrative procedures and practices in implementing their anti-dumping legislation (paragraph 63 of the Note on the meeting, see document COM.AD/3).

In connexion with this suggestion, the Canadian delegation has transmitted to the secretariat the following communication.

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The Canadian legislation providing for the imposition of anti-dumping duties is the Anti-Dumping Act, which came into effect on 1 January 1969. Anti-dumping duties may be levied under the Act where it has been found that goods are dumped and that such dumping has caused, is causing or is likely to cause material injury to the production in Canada of like goods, or has materially retarded or is materially retarding the establishment of the production in Canada of like goods. Provision is also made for the retroactive assessment of anti-dumping duties in accordance with the provisions of Article 11 of the Anti-Dumping Code.

The determination of dumping and the levying and collection of anti-dumping duties comes under the jurisdiction of the Department of National Revenue. Decisions on injury or material retardation is the responsibility of the Anti-Dumping Tribunal, which is an independent court of record.

### DUMPING

The amount of anti-dumping duty which may be levied is equal to the margin of dumping. Goods are dumped if the normal value exceeds the export price, and the margin of dumping is the amount by which the normal value exceeds the export price. Comparison between normal value and export price is made at the same level of trade, usually at the ex-factory level.

### NORMAL VALUE

Normal value is usually based on the price at which the exporter freely sells like goods for domestic consumption in the ordinary course of trade during a minimum period of sixty (60) days preceding the date of sale to Canada. The price used is that at which the preponderance of sales were made during the period specified.

In the absence of such a preponderance, the weighted average of the prices at which sales were made during the period is used. Where the exporter sells goods solely or primarily for export, domestic sales of like goods by other vendors in the country of export may be used for this purpose.

Differences in terms and conditions of sale, in taxation and other differences relating to price comparability between the sale of the goods to the Canadian importer and the domestic sales by the exporter are taken into consideration in determining normal value. In this regard, allowances may be made for differences in quantities, trade status, quality, structure, design, material and other such differences. Allowances may also be granted for deferred and cash discounts.

Where there were not a sufficient number of home market sales that comply with the terms and conditions required of such sales, normal value may be based on the exporter's selling price of like goods to importers in other countries, or on the basis of the cost of production plus an amount for administrative, selling and all other costs, and for profits. The choice as to the method used rests with the Deputy Minister of National Revenue.

In the event the government of the exporting country controls its export trade, or domestic prices are substantially determined by the government, the Minister of National Revenue prescribes the manner in which normal value is to be determined. In such cases, the Minister has prescribed that normal values be based on the prices at which comparable goods produced in a market economy are freely sold for domestic consumption under competitive conditions in that country.

#### EXPORT PRICE

Export price is equal to the lesser of the exporter's selling price for the goods or the importer's purchase price. The selling price or purchase price is adjusted by deducting (a) all costs, charges and expenses incurred by the exporter in preparing the goods for shipment to Canada that are over and above those generally incurred on sales for home consumption and (b) all costs, charges and expenses incurred by the exporter after the place from which the goods were shipped directly to Canada.

Where is no exporter's sale price or importer's purchase price, as in the case of goods shipped on consignment, or where the price is considered to be unreliable because the sale was between associated persons, or there existed a compensatory arrangement, the export price is based on the price at which the goods are sold by the importer in Canada to unrelated purchasers. In addition to the costs, charges and expenses incurred by the exporter which were previously mentioned, all costs incurred by the importer until the time the goods are resold in Canada, as well as an amount for any profit accruing on the sale, are deducted from such selling price.

If sufficient information is not furnished or is not available, normal value and export price are determined in the manner prescribed by the Minister of National Revenue.

## PROCEDURES

An investigation respecting the dumping of goods may be initiated by the Deputy Minister of National Revenue either on his own initiative or on receipt of a complaint in writing by or on behalf of producers in Canada. Prior to initiation of an investigation, the Deputy Minister must be of the opinion that there is evidence of dumping and that the dumping has caused, is causing or is likely to cause material injury to production in Canada. Normally, investigations are initiated as a result of complaints from Canadian producers and, to date, all investigations initiated resulted from such complaints in which prima facie evidence of dumping and injury has been furnished.

When an investigation is initiated, notice is given to the government of the country of export, the exporter, the importer and the complainant, as well as published in the Canada Gazette. The Canada Gazette is the official publication of the Government of Canada. Throughout the investigation, the Department of National Revenue is prepared to receive representations and to make available to the persons involved all information that is not confidential.

Where investigation reveals that there is insufficient evidence of dumping to justify proceeding with the investigation, or the margin of dumping of the goods or the actual or potential volume is negligible, the investigation is terminated. Similarly, where an investigation has been initiated without prior advice of the Tribunal and the Deputy Minister comes to the conclusion that there is no evidence of injury or retardation, he causes the investigation to be terminated or, either he or the complainant refers the matter to the Tribunal for its advice. When a reference is made to the Tribunal, the investigation is not terminated. The Tribunal renders its advice on the basis of such information and advice as is then available to it without holding any hearings.

If investigation establishes that the goods have been or are being dumped, and that the margin of dumping and the actual or potential volume is not negligible, a preliminary determination of dumping is made by the Deputy Minister. Notice of the preliminary determination is given to the government of the country of export, the exporter, the importer and the complainant, as well as published in the Canada Gazette. Notice is also filed with the Secretary of the Anti-Dumping Tribunal. During the period commencing on the date of the preliminary determination and ending on the date of an order or finding by the Tribunal, imports of like goods are entered provisionally and the importer must either post security or pay provisional duties, at the discretion of the Deputy Minister, in an amount not greater than the margin of dumping.

On receipt of notice of the preliminary determination, the Anti-Dumping Tribunal holds public hearings into the questions of injury or material retardation resulting from dumping. The Tribunal is required to make such order or finding as the nature of the matter requires within three (3) months from the date of receipt of notice of the preliminary determination. A copy of each order or finding is forwarded to the Deputy Minister of National Revenue, the importer, the exporter, and other interested parties.

Upon receipt of an order or finding of the Tribunal, the Deputy Minister makes a final determination of dumping in respect of those goods entered into Canada during the period in which provisional measures were in effect. If the dumped goods have been found to be injurious, the Deputy Minister determines that the goods entered are goods described in the order or finding of the Tribunal, and appraises the normal value and export price.

The amount of anti-dumping duty applicable as a result of the final determination may not exceed the provisional duty, if any, which was payable. In the event the dumped goods were found to be not injurious, all provisional duties which were levied are refunded.

The final determination is required to be made within three (3) months from the date of the preliminary determination. Notice of the final determination is given in writing to the government of the country of export, the exporter, the importer and the complainant, as well as published in the Canada Gazette.

#### APPEALS

The Act contains procedures for appealing decisions as to whether the goods imported are goods of the same description covered by an order or finding of the Tribunal, and the consequent appraisal of normal value and export price.

The Deputy Minister's final determination of dumping made with respect to goods entered during the provisional period, that is, prior to the order or finding of the Tribunal, is appealable to the Tariff Board within sixty (60) days from the date of such decision. Goods entered into Canada subsequent to an order or finding by the Tribunal are subject to appeal by the importer to a Dominion Customs Appraiser within ninety (90) days of the port appraiser's decision. The Dominion Customs Appraiser's decision may be appealed to the Deputy Minister within ninety (90) days of such decision. The Deputy Minister's decision is appealable to the Tariff Board within sixty (60) days of his decision. Decisions of the Tariff Board are appealable to the Exchequer Court and thereafter to the Supreme Court of Canada on points of law. This appeal procedure is consistent with the provisions of the Customs Act respecting appeals from decisions involving tariff classification and value for regular duty purposes.

There is no appeal from the Tribunal's decisions on the question of injury. However, the Tribunal may at any time after the date of an order or finding made by it, review, rescind, change, alter or vary the said order or finding or may rehear any matter before deciding it.

#### ANTI-DUMPING TRIBUNAL

The Anti-Dumping Tribunal is composed of not more than five (5) members appointed by the Governor in Council. To date, only three (3) members have been appointed. The head office is located in Ottawa. The purpose or function of the

Tribunal is to receive representations, to hear evidence and to arrive at decisions concerning the effect of dumped goods on Canadian production. In carrying out this function, the Tribunal holds public hearings at such times and places as it considers necessary and desirable for the proper conduct of its business. Notices of public hearings are published in the Canada Gazette.

Material injury is not defined in the Anti-Dumping Act. The determination of injury is regarded as a matter of fact. The findings of the Tribunal are based on the merits of each individual case. In reaching its decisions, the Tribunal takes into account such things as market shares, profits, prices, employment, export performance and productivity, and gives appropriate weight to each of these factors.

Enquiries may be instituted by the Tribunal only after a preliminary determination of dumping has been made. The scope or extent of the enquiry is circumscribed by the preliminary determination, that is, while the Tribunal may make a finding of injury with respect to a narrower class or description of goods than that covered by the preliminary determination, it may not expand its enquiries to include a broader range of goods. Where, during the course of an enquiry, the Tribunal becomes aware that goods closely resembling the goods to which the preliminary determination applies are being injuriously dumped, it may direct the Deputy Minister to cause an investigation to be initiated respecting the dumping of such goods.

In considering any question relating to the production in Canada of any goods or the establishment in Canada of such production, the Tribunal is required to take fully into account the provisions of paragraph (a) of Article 4 of the Agreement on Implementation of Article 6 of the General Agreement on Tariffs and Trade signed at Geneva on 30 June 1967.

A report relating to the activities of the Tribunal is to be laid before Parliament annually.