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GENERAL AGREEMENT ON TARIFFS AND TRADE

Committee on Anti-Dumping Practices

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CANADIAN ANTI-DUMPING PROCEDURES

Communication from Spain

The following communication has been submitted by the delegate of Spain.

In respect of the determination of dumping by Canada[1] with regard to women's footwear from Spain, the Spanish observer has submitted the following comments:

1. The preliminary determination of dumping by the Department of National Revenue and the assessment of the provisional anti-dumping duty of 12 per cent on imports of women's footwear from Spain results principally from the fact that in determining the "normal value" of this footwear in Spain, the Department of National Revenue included indirect taxes borne by these products when destined for consumption in Spain, which are refunded upon the export of these products. Department of National Revenue officials have interpreted Regulation 11 of the Canadian Regulation Relating to the Imposition of the Anti-Dumping Duty, as only permitting an adjustment in "normal value" for the amount of tax levied on the shoes themselves when destined for consumption in Spain and have not permitted any adjustment for the totality of the taxes borne by the shoes as a result of the indirect taxes paid upon the component parts thereof under Spain's "cascade" type turnover tax. As a consequence, in determining the "normal value" of the shoes in Spain, the Department of National Revenue has only allowed an adjustment for the 2.5 per cent Impuesto de Trafico de Empresa (business turnover tax) which applies to the finished shoe sold in Spain, and has permitted no adjustment to reflect the remainder of the 10 per cent tax rebate by the Government of Spain upon the export of these products, which amount has been determined by the Government of Spain to represent the total amount of the indirect taxes borne by this product when destined for consumption in Spain.

The Department of National Revenue's interpretation of Regulation 11 is clearly inconsistent with the requirements of Article 6, paragraph 4, of the General Agreement on Tariffs and Trade which provides that:

> "No product of the territory of any contracting party imported into the territory of any other contracting party shall be subject to anti-dumping or countervailing duty by reason of the exemption of such product from duties or taxes borne by the like product when destined for consumption in the country of origin or exportation, or by reason of the refund of such duties or taxes."

This provision has been consistently interpreted as applying to the totality of the taxes "borne by the like product when destined for consumption in the country of origin", including both the taxes paid on the finished product as well as on the

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[1] See document COM.AD/11 page 2.

component parts thereof. Moreover, it should be noted that the distinction applied by the Department of National Revenue in its interpretation of Regulation 11 unjustifiably discriminates against imports from countries with a "cascade" type turnover tax system (such as Spain and Italy) as compared with imports from countries with a "value added" type turnover tax system (such as France and Germany).

Furthermore, in making its preliminary determination of dumping with respect to imports of women's footwear from Spain, the Department of National Revenue made no adjustment in the "normal value" of the goods to reflect the fact that the price of these goods in Spain includes the 7 per cent commission paid to the salesman obtaining the order, or to reflect the 3 per cent discount generally allowed for prompt payment on sales of Spanish footwear which is utilized by most Canadian importers.

2. With respect to the issue of injury, there is serious question as to whether the decision of the Anti-Dumping Tribunal in this case is consistent with Article 3 of the International Anti-Dumping Code (Agreement of Implementation of Article VI of the General Agreement on Tariffs and Trade). Article 3(a) of the Code specifically requires that:

> "A determination of injury shall only be made when the authorities concerned are satisfied that dumped imports are the principle cause of material injury or the threat of material injury to a domestic injury ... In reaching their decision the authorities shall weigh, on one hand the effect on the dumping and, on the other hand, all other factors taken together which may be adversely affecting the industry."

Moreover Article 3(f) of the code requires that:

> "With respect to cases where material injury is threatened by dumped imports, the application of anti-dumping measures shall be studied and decided with special care."

Although the Anti-Dumping Tribunal found that future imports threatened injury to the Canadian industry, the Tribunal's own opinion in this case clearly indicates that these Code requirements were not met. The Tribunal specifically recognized that:

> "It would appear that the principal problem that has troubled the Canadian manufacturer of ladies' footwear in the immediate past does not arise in any material degree from the dumping of footwear from Italy and Spain, but rather arises from a fashion explosion which radically favoured the kinds of footwear made in Italy and Spain and, which in large measure, domestic manufacturers were, for one reason or another, unwilling or unable to supply."

The Tribunal's opinion makes it clear that the principal cause of any injury has been the failure of Canadian producers "to attune to style changes as they occur and to manufacture and merchandise footwear in keeping with contemporary tastes". The Tribunal noted that this situation would have to be corrected "if Canadian manufacturers are to enjoy a substantial future in this business".

Although the Tribunal specifically found that "there is little convincing evidence that dumped imports from Italy and Spain have been other than an insignificant factor in the difficulties facing the industry in Canada", it nevertheless made a finding of threat of injury with respect to any future dumping on the grounds that "future dumping might forstall the necessary adjustments in the Canadian industry ..." (emphasis supplied).

It is therefore apparent from the Tribunal's own decision that dumped imports are not "demonstrably the principal cause of material injury or of threat of material injury to the domestic industry" as required by the Article 3(a). The International Anti-Dumping Code certainly does not permit a determination of injury or threat thereof, to be made in order to permit a domestic industry to adjust to the other factors (i.e. the unwillingness or inability of domestic producers to manufacture or merchandise the style of footwear the public wished to buy) which the Tribunal recognized to be the principal cause of any injury, or threat thereof, to Canadian producers.

3. The Department of National Revenue has applied these duties to 180 Spanish exporters, based upon the data which the Department obtained with respect to the sales of twenty-eight Spanish exporters. The Department of National Revenue determined that the data obtained from these twenty-eight exporters revealed margins of dumping for these individual firms ranging from 1 per cent to over 30 per cent and the average margin of dumping for these firms was determined to be in the order of 10 per cent. Nevertheless, the Department of National Revenue applied a provisional dumping duty of 12 per cent to imports from 180 Spanish manufacturers and has persisted in applying a 12 per cent duty to such imports entered subsequent to the Tribunal's determination without any new determination the "future imports" have, in fact, been dumped. Such action is inappropriate for the following reasons:

(a) Where complete data is available, any dumping duty assessed upon the goods of any individual exporter should not exceed the actual margin of dumping, if any, determined to assist with respect to their exports to Canada.

(b) If the average margin of dumping determined for individual firms for which the Department has complete data is in the order of 10 per cent, there is little basis for applying a margin in excess of that amount for those firms for which sufficient information is not available to permit the calculation of the margin of dumping.

(c) Inasmuch as the Anti-Dumping Tribunal found that there had been no injury as a result of alleged dumping provisionally determined by the Deputy Minister of National Revenue, and the Deputy Minister has issued a Final Determination refunding the dumping duties with respect to imports prior to 26 August 1971, there can be little justification for applying a 12 per cent anti-dumping duty on imports of women's footwear from Spain after that date based upon margins of dumping alleged to have existed in the first six months of 1970. The requisite

injury determination was made only with respect to "future dumping" and there has been no investigation on determination of dumping in respect of imports of women's footwear from Spain occurring after the Tribunal's determination.

4. In addition, since the Anti-Dumping Tribunal found no injury as a result of the imports of women's footwear from Spain which the Department of National Revenue had preliminarily determined to be dumped, the Department of National Revenue was required to issue a Final Determination providing that the 12 per cent provisional anti-dumping duty collected with respect to imports of Spanish footwear since 1 June be returned to the importer. However, in its Final Determination of 27 August 1971, the Department of National Revenue has required that a 12 per cent anti-dumping duty be collected on future imports of women's footwear from Spain. Since the Anti-Dumping Tribunal has specifically found that there was no injury caused by past imports of women's footwear from Spain which the Department of National Revenue had determined to have a 12 per cent margin of dumping, there exists little basis for applying the 12 per cent margin found to have existed over one year ago to future imports of women's footwear imported from Spain. In the light of the Anti-Dumping Tribunal's decision, as regards future imports, the Department of National Revenue should first determine that such imports have in fact been dumped prior to applying any anti-dumping duty with respect to them.

5. In addition to applying an anti-dumping duty of 12 per cent to imports of women's footwear from Spain, the Canadian Government has since 1 June 1971 increased by 12 per cent the valuation of such imports for normal duty purposes. Since this action also fails to adjust for internal taxes applicable within Spain which are refunded upon export, as previously referred to in paragraph 2, it is clearly inconsistent with the requirements of Article VII, paragraph 3 of the General Agreement on Tariffs and Trade which states:

> "The value for customs purposes of any imported product should not include the amount of any internal tax, applicable within the country of origin or export, from which the imported product has been exempted or has been or will be relieved by means of refund."

The aforementioned actions by the Government of Canada pose a serious threat to the future of Spanish-Canadian commercial relations. Imports of women's footwear account for over 12 per cent of Spain's total exports to Canada. Inasmuch as Spain purchases from Canada almost twice as much as it sells here, and has a deficit excess in $30 million a year in its trade with Canada, the protectionist action taken by the Government of Canada in this case can have a significant adverse effect upon the mutually beneficial and rapidly developing commercial relations between Canada and Spain, which the Governments of our two countries have worked so hard to foster.