

# GENERAL AGREEMENT ON TARIFFS AND TRADE

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Committee on Anti-Dumping Practices

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## CANADIAN ANTI-DUMPING PROCEDURES

### Communication from Spain

The Spanish Embassy in Canada has informed the Spanish Government that the Anti-Dumping Tribunal of that country, on reviewing its earlier decision of 25 August 1971, has determined that the difficulties encountered by the footwear industry in Canada are not attributable to imports of women's footwear from Italy and Spain.

Consequently, as from September 1973 the Canadian authorities have eliminated the anti-dumping duties which had been charged on Spanish women's footwear since the spring of 1971.

The Spanish delegation wishes to express to the Committee on Anti-Dumping Practices its satisfaction at the favourable and equitable decision taken by the Anti-Dumping Tribunal which confirms Spain's views concerning the injury alleged to be caused to Canadian manufacturers by Spanish exports; those views were set forth in the communications put before this Committee by the Spanish delegation at the meetings in September 1971 (COM.AD/W/21) and September 1972 (COM.AD/W/29).

Nevertheless, while expressing this satisfaction, the Spanish delegation wishes at the same time to draw this Committee's attention to the questionable manner in which the Canadian Department of National Revenue determined that the export price of Spanish women's footwear was abnormal, and to express its concern at the prospect that Canada might continue applying its anti-dumping legislation so as to protect its interests in a way that is clearly in contradiction with the spirit underlying the Anti-Dumping Code.

In the first place, the Canadian Department of National Revenue has repeatedly refused to allow as an element of adjustment in export prices the rebate of indirect taxes to which Spanish footwear exporters are entitled, as are all exporters of any product, similarly to what happens in other countries, for the simple reason that our system of indirect taxation is a "cascade" type tax system, in contrast with the value-added system. This is contrary to the specific provisions of Article VI:4 of the General Agreement.

In the second place, the Canadian authorities did not take into account the different sales conditions existing in the Spanish domestic market and in the export market, more particularly in respect of discounts for prompt payment and commission paid to salesmen. This approach is not consonant with Article 2(f) of the Anti-Dumping Code.

In the third place, the Canadian authorities applied an anti-dumping duty greater than the estimated margin of dumping. Indeed, the average margin of dumping attributable to Spanish women's footwear exporters was estimated at approximately 10 per cent, (coinciding, curiously enough, with the percentage rebate of indirect taxes to footwear exporters in Spain); yet anti-dumping duty was nevertheless imposed at the rate of 12 per cent. This too was inconsistent with Article 3(c) of the Anti-Dumping Code.

In the fourth place, in its aforementioned decision of 25 August 1971 the Anti-Dumping Tribunal stated that "the problem that has troubled the Canadian manufacturer of ladies' footwear ... does not arise in any material degree from the dumping of footwear from Italy and Spain, but rather arises from a fashion explosion which ... domestic manufacturers were ... unwilling or unable to supply". The Tribunal added, however, that footwear imports from Italy and Spain might forestall the necessary adjustments in the Canadian industry. On the basis of this extremely remote threat of injury the anti-dumping duties were imposed, contrary to the provisions of Article 3(e) of the Anti-Dumping Code.

We cannot but be surprised at this attitude which, if further extended in anti-dumping procedures, would merely serve to allow such procedures to impede progress based on sound and fair competition.

We cannot really believe that either Article VI or the Anti-Dumping Code was conceived and drafted for the purpose of hindering the progress and, ultimately, the expansion of international trade.

The foregoing considerations were presented by the Spanish delegation to the Canadian delegation in the bilateral consultations held at the request of the Canadian delegation in January 1972, following the Spanish complaint to this Committee in September 1971 (COM.AD/W/21). Those consultations ended with no agreement, but with an undertaking on the part of the Canadian delegation to review "as expeditiously as possible" the question of intermediate taxes and normal value. The Spanish authorities have never been advised that any such review had been carried out by the Canadian authorities, despite repeated requests to that effect made by the Government of my country, as stated in the Spanish communication dated 27 September 1972 (COM.AD/W/29).

A further year passed without any progress toward solving the question of normal price, because the Canadian authorities remained unwilling to give serious and detailed consideration to the reasons adduced by Spain, this time on the grounds that the Anti-Dumping Tribunal would shortly be reviewing its decision of 25 August 1971, and that review was to start in March 1973.

The review eventually took place recently, and the Anti-Dumping Tribunal found that as stated at the beginning of this communication, there is no threat of injury to the Canadian industry. Nevertheless, while taking note with satisfaction of the most recent decisions of the Canadian authorities, the Spanish delegation feels bound to express its deep concern over the fact mentioned earlier, namely the impairment caused to competition, progress and international trade as evidenced by the following information.

Spanish exports of women's footwear to Canada declined by 15 per cent in value in 1972 as compared with 1971, and declined by 18 per cent in volume, while Canada's total imports of women's footwear increased by 12 per cent over the same period. It should be underlined that, in contrast with the trend in our exports to Canada, total Spanish exports of women's footwear increased substantially in both volume and value between 1971 and 1972. It is therefore clear that this downturn in Spanish sales of women's footwear to Canada is solely due to the application of an anti-dumping duty by the Canadian authorities which we cannot but consider as totally unjust. In this way, irreparable injury has been caused to Spanish export interests, because the place which our product had won in the Canadian footwear market has been taken by footwear from other origins and our exporters may have great difficulty in recovering it. This fact is still clearer if one takes into account the fact that women's footwear alone accounts for more than 12 per cent of our total exports to Canada.

Accordingly, the Spanish authorities reserve the right to present, at an appropriate time and in the appropriate framework, a claim for compensation in respect of the damage incurred by exports of women's footwear to Canada.

For this reason the Spanish delegation wishes to underline once more before this Committee that anti-dumping duties have been unjustly imposed on Spanish women's footwear by the Canadian authorities, and to express its concern over the very real danger that the anti-dumping legislation might be used by certain developed countries as a means, not of ensuring sound international competition, but of protecting sensitive sectors of their economy which have ceased to be competitive. This attitude should be condemned, all the more so when anti-dumping measures are applied unjustly by a powerful country to sectors that are of vital interest for the foreign trade of developing countries.

The existence of this danger is borne out by the fact that a new accusation of dumping has been levelled by Canadian producers against exporters in my country in a vital sector of our exports, namely green olives packed in glass.

It is truly surprising that the leading world producer of a Mediterranean fruit such as the green olive should be accused of dumping by a country situated north of the forty-fifth parallel which does not produce a single olive.

As this cannot, therefore, be a case of defending olive producers, we are led to the conclusion that the aim is to defend the Canadian packing industry. It follows that these procedures are making it difficult for a developing country to export its products with the minimum amount of processing implied in packing so as to oblige it to export the product in the crude form and in bulk. Yet it is absolutely natural that the Spanish packing industry should be developing as a result of the logical comparative advantages which this industry enjoys in Spain in relation to Canada.

Despite this, the Department of National Revenue has determined that "there is evidence that the products in question have been or are being sold at dumping prices and that the said dumping has caused, is causing or may cause material injury to Canadian production of like products", in accordance with the provisions of Regulation 13 of the Canadian Anti-Dumping Regulations. Consequently, the corresponding anti-dumping investigation has been initiated.

Experience in the matter of women's footwear leads us to fear that, while Canada continues not to accept the rebate of indirect taxes as an element of adjustment in export prices, although it has an obligation to accept this under Article VI of the General Agreement, the Canadian authorities may conclude that dumping exists in respect of our exports of packed olives. Hence our concern and our complaint.

If the Canadian authorities persist in refusing to permit as an element of adjustment the indirect taxes charged on a product when intended for the domestic market but no charge when the product is exported, then virtually all our exports to Canada, and likewise exports by other countries applying a cascade-type tax system, will be liable to the same illegal treatment applied in respect of Spanish women's footwear.

Furthermore, if the most recent intervention of the Anti-Dumping Tribunal is a guarantee that anti-dumping measures will be applied solely in the event that the dumping complained of is causing or threatening material injury to a domestic industry, the lengthy period required to prepare the corresponding file from the moment when the Tribunal determines that there is injury or threat of injury, might result in the application over an excessively long period of some duties that do not seem clearly justified, as happened in the case of women's footwear.