

GENERAL AGREEMENT ON TARIFFS AND TRADE

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ANTI-DUMPING AND COUNTERVAILING DUTIES

Submission of Laws and Regulations

The following statements have been received from the Governments of Australia, Finland and Italy:

AUSTRALIA

"Anti-dumping duties are imposed under the Customs Tariff (Industries Preservation) Act 1921-1936, read as one with the Customs Act 1901-1954. At present there is no specific legislative provision for countervailing duties.

"The principal operative provisions of the Act are as follows: -

"Definitions

3. 'The Export price' of goods exported to Australia means the price at which the goods are sold by the exporter to the importer in Australia (including the free on board charges in the country of export);

'The Fair Market Value' of goods means the fair market value of the goods, or of goods of the same class or kind, sold in the country of export in relation to which the expression is used, for home consumption in the usual and ordinary course of trade plus free on board charges in that country, but not including any excise duties payable in that country.

"Dumping Duty

4. (1) If the Minister is satisfied, after inquiry and report by the Tariff Board, that goods exported to Australia, which are of a class or kind produced or manufactured in Australia, have been or are being sold to an importer in Australia at an export price which is less than the fair market value of the goods at the time of shipment, and that detriment may thereby result to an Australian industry, the Minister may publish a notice in the 'Gazette' specifying the goods as to which he is so satisfied.

(2) Upon the publication of the notice there shall be charged..... on those goods imported into Australia a special duty (in this section referred to as 'the dumping duty').

(3) The amount of the dumping duty in each case shall be the sum which represents the difference between the fair market value of the goods at the time of shipment and the export price:

Provided that where the importer satisfies the Minister that he purchased the goods within six months prior to the time of shipment and that after the date of purchase and prior to the date of shipment the fair market value of the goods had increased, the fair market value to be taken for the purposes of this section shall be the fair market value at the date of purchase.

"An exception to this Section of the Act is provided by regulation viz: -

The following goods are exempted from dumping duty under Section 4 of the Act: -

All goods in respect of which the difference between the fair market value and the export price does not exceed five per centum of the fair market value, except such goods or classes of goods as the Minister may specifically direct shall not be so exempted.

"This is the only regulation so far made under this Act.

"Dumping below cost duty

5. (1) If the Minister is satisfied, after inquiry and report by the Tariff Board, that goods produced or manufactured outside Australia have been or are being sold to an importer in Australia at an export price which is less than a reasonable price, and that detriment may thereby result to an Australian industry, the Minister may publish a notice in the 'Gazette' specifying the goods as to which he is so satisfied.

(2) Upon the publication of the notice, there shall be charged on those goods imported into Australia, a special duty (in this section referred to as 'the dumping below cost duty').

(3) The amount of the dumping below cost duty in each case shall be the sum which represents the difference between a reasonable price of the goods at the time of shipment and the export price of the goods.

(4) In this section 'a reasonable price' means such a price as represents the cost of production of the goods, plus such addition, not exceeding twenty per centum, as is determined by the Minister after inquiry and report by the Tariff Board, plus free on board charges.

(5) In the absence of satisfactory evidence as to the cost of production the Minister may, after report by the Tariff Board, fix such amount as he thinks fit as the cost of production, and the amount so fixed shall, for the purposes of this section, be deemed to be the cost of production.

"Provisions in case of goods on consignment

6. (1) If the Minister is satisfied, after inquiry and report by the Tariff Board, that goods have been or are being consigned to Australia for sale, and that they may be sold at less than a reasonable selling price, and that detriment may thereby result to an Australian industry, the Minister may publish a notice in the 'Gazette' specifying the goods as to which he is so satisfied.

(2) Upon the publication of the notice in the 'Gazette' there shall be charged.....on those goods imported into Australia, a special duty (in this section referred to as 'the dumping consignment duty').

(3) The amount of the dumping consignment duty in each case shall be the sum which represents the difference between the wholesale selling price in Australia and a reasonable selling price.

(4) In this section 'a reasonable selling price' means the price ascertained upon the following basis, namely: To the fair market value of the goods there shall be added the freight, insurance, landing and other charges, together with the amount of duty payable under the Customs Tariff, together with such addition, not exceeding fifteen per centum on the aggregate of all the items mentioned, as is determined by the Minister after inquiry and report by the Tariff Board.

(5) If the evidence of the fair market value is, in the opinion of the Minister, insufficient, the Minister may, for the purposes of the last preceding sub-section, substitute in lieu thereof the ascertained cost of production plus such addition, not exceeding twenty per centum of such cost, as is determined by the Minister after inquiry and report by the Tariff Board, or, if the cost of production is not ascertainable, the cost of production estimated from such information as is available, plus such addition, not exceeding twenty per centum of such estimated cost, as is determined by the Minister after inquiry and report by the Tariff Board.

"Dumping freight duty

7. (1) If the Minister is satisfied, after inquiry and report by the Tariff Board, that any goods exported to Australia, of a class or kind produced or manufactured in Australia, have been or are being carried -

- (a) in subsidized ships at rates of freight lower than the normal rate of freight; or
- (b) at ballast rates of freight, being rates lower than the normal rate of freight; or
- (c) freight free;

or that, by reason of any circumstance, including the granting of rebates, refunds or other allowances, the amount or the net amount of freight paid or payable on goods exported to Australia, of a class or kind produced or manufactured in Australia, is lower than the amount of freight which would have been or would be payable at the normal rate of freight, and that in any such case detriment may thereby result to an Australian industry, the Minister may publish a notice in the 'Gazette' specifying the goods as to which he is so satisfied.

(2) Upon the publication of the notice, there shall be charged on those goods imported into Australia a special duty (in this section referred to as 'dumping freight duty').

(3) The dumping freight duty shall be -

- (a) in the case of goods which have been or are being carried freight free - the amount which would have been or would be payable as freight on those goods if they had been or were carried at the normal rate of freight; and
- (b) in the case of any other goods - such amount as, in the opinion of the Minister, is equal to the sum by which the freight which would have been or would be payable on those goods if they had been or were carried at the normal rate of freight exceeds the freight or the net freight paid or payable on those goods.

(4) The normal rate of freight in respect of any goods to which this section applies shall, for the purposes of this section, be such as is determined by the Minister, but not exceeding the highest rate of freight payable, at the date of shipment of those goods, on similar goods carried by general cargo vessels which, in the opinion of the Minister, trade regularly with Australia.

(5) If any dispute arises as to the rate of freight in respect of any goods, or the amount of any rebate, refund or other allowance in respect of freight on goods to which this section applies, that rate or that amount shall, for purposes of sub-section (3) of this section, be such rate or amount as the Minister determines.

"Duties to be collected separately and in addition to ordinary duties

12. The various duties imposed by this Act shall be separately charged, notwithstanding that more duties than one may apply to any particular goods.

15. The special duties payable under this Act shall be in addition to such other duties (if any) as are payable under the Tariff.

"Power to specify goods and to apply duties retrospectively

13. The powers given by this Act to the Minister to publish notices specifying goods shall extend to the publication of notices specifying goods of any particular class or kind or to any particular shipment of goods or to goods exported by any particular exporter or to goods specified in such other manner as the Minister thinks fit, and, if the notice so provides to all or any goods entered for home consumption on or before the date of issue of the notice as well as to goods entered for home consumption after that date.

16. Where at the time of the entry for home consumption of any goods dutiable under this Act, the duty payable under this Act was not paid, the Collector may at any time call upon the importer to pay the duty, and the importer shall pay the duty accordingly.

"Termination of anti-dumping duties

14. (1) Any notice published in pursuance of this Act may be revoked at any time if the Minister is satisfied that the conditions which occasioned the publication of the notice no longer exist, and that it is desirable that the notice should be revoked.

(2) Upon the revocation of the notice the duties charged in consequence of the publication of the notice shall no longer be collected.

"Exception for Canadian goods

"In accordance with Article V of the 1931 Trade Agreement between Australia and Canada, the provisions of the Customs Tariff (Industries Preservation) Act do not apply to goods imported from Canada.

"Operation of the legislation

"Section 7 of the Customs Tariff (Industries Preservation) Act providing for 'dumping freight duty' is very seldom used. Of Sections 4, 5 and 6, Section 4 is the main section under which anti-dumping duties are levied, while Section 5 covers cases in which it is not possible to calculate the 'fair market value' of the goods, such as goods not sold domestically in the country of export, and Section 6 is applicable to goods imported on consignment.

"The normal procedure is for a complaint to be lodged that dumping is occurring with detriment to an Australian industry. After a preliminary investigation by Customs officers the complaint is referred to the Tariff Board which makes a full inquiry into the matter, paying particular attention to whether the goods are being dumped and if so whether it may cause detriment to an Australian industry. If the Tariff Board finds that a local industry may be damaged by dumping of imported goods it recommends to the Minister for Customs and Excise that a dumping duty be imposed. After receipt of the Tariff Board's recommendation, the Minister decides the issue and if a dumping duty is to be imposed the goods upon which the duty is to be imposed are notified in the Commonwealth 'Gazette'.

"The detailed and comprehensive inquiry which is made on each occasion where dumping is suspected means that a considerable time elapses between the initial complaint and the gazettal of the goods. This period may be as long as a year.

"To prevent damage to the local industry during this period the Department of Customs and Excise may require importers of the goods to pay cash security to the extent of an estimated level of dumping duty. If it is ultimately decided not to impose a duty or to impose a duty less than the estimated duty the cash securities or the amount of the securities above the duty payable are refunded to the importer. If cash securities were not taken or if the securities taken were less than the duty payable at the rate finally decided upon, the importer is required to pay the full amount retrospectively to the commencement of the inquiry.

"Although there are many complaints requiring investigation, there are at present only three items currently gazetted for dumping duty purposes."

FINLAND

"In Finland there exists no anti-dumping law proper, nor are any other regulations explicitly providing for the levy of anti-dumping and countervailing duties in force than those to be found in the text of the General Agreement. The only reference to other measures that can be taken to protect domestic production against the competition of low-priced imports is to be found in Article 157 of the Customs Law of 8 September 1939. The article reads as follows:

'The importation, exportation or transiting of any product can be made subject to special provisions or be prohibited by governmental decree for a limited duration of time, even if not provided for elsewhere in this law, whenever such a measure is found necessary for combatting contagious human, animal or plant diseases, for countervailing manifest dumping, for the maintenance of public order and security, for defence or other special reasons or for the fulfilment of international commitments.

'When a decree has been published by virtue of the preceding paragraph, a government Bill on the subject should be placed before Parliament at the earliest possible opportunity. The decree nevertheless remains in force until Parliament has decided on the matter and the law enters into force if the Bill was adopted, or the decree is abrogated if the Bill was rejected'."

ITALY

"At present there is in Italy no law or regulation which would empower the Government to apply anti-dumping duties or to take similar anti-dumping measures. However, the problem is being examined by the competent State administration and Parliament, to which a Bill has recently been submitted which would make it possible to take sanctions against such unfair competition.

"On the other hand, there is in Italy a law which enables the executive power to institute countervailing duties to offset the effect of export subsidies. The relevant provisions appear in article 8 of 'Disposizioni Preliminari della Tariffa Doganale Italiana' which provides as follows:

'Whenever the importation of certain products causes material injury to the corresponding sector of the national market as a result of the payment of subsidies or of premiums in the country of origin or provenance, either the subsidies are paid directly or indirectly and regardless of their nature, the duties due on such products originating or coming from such countries can be increased by a coefficient to compensate for the premium which has been paid on such products'."

