

# GENERAL AGREEMENT ON

## TARIFFS AND TRADE

RESTRICTED

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Special Distribution

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Committee on Anti-Dumping Practices

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Committee on Subsidies and  
Countervailing Measures

### INFORMATION ON IMPLEMENTATION AND ADMINISTRATION OF THE AGREEMENT

#### Legislation of Australia

Reproduced herewith is a copy of Australian Customs Notice No. 87/169 outlining new procedures for the processing of anti-dumping and countervailing duty petitions.

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## Australian Customs Notice

No. 87/169

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### NEW PROCEDURES FOR PROCESSING DUMPING AND SUBSIDY COMPLAINTS

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The Minister for Industry, Technology and Commerce, Senator John Button, recently announced changes to procedures applying to the investigation of dumping or subsidisation complaints. A copy of the News Release is attached.

This notice is issued to provide further details of those changes and to advise of other developments in the administration of the Customs Tariff (Anti-Dumping) Act 1975 arising from the Government's decision last year to create an Anti-Dumping Authority.

The Notice also details some changes which follow action by the Australian Customs Service (ACS) to have its dumping/subsidy administration reviewed by a private management consultant. The ACS is implementing recommendations made by the consultant and, in particular, is redrafting its operating procedures and a number of its administrative policies. The major part of this process will take about six months and result in the publication of a new dumping manual.

When the manual is released, the ACS will welcome submissions from interested parties on its content, in particular in respect to administrative policy issues including definitions and accounting practices. Certain procedures which are relevant to efficient administration and arrangements for establishing the Dumping Authority, are to be progressively introduced as new complaints are accepted.

#### The Anti-Dumping Authority

As announced by the Minister for Industry, Technology and Commerce, Senator Button, on 30 October 1986, the role of the Authority when established will be to recommend to the Minister whether anti-dumping or countervailing action should be taken. It is also to develop guidelines, in particular relating to material injury, causal link and the use of sub-section 5(9) of the Customs Tariff (Anti-Dumping) Act 1975. In coming to conclusions on particular cases, it will rely on factual information provided by the ACS which will continue to receive dumping/subsidy complaints and carry out inquiries into normal values, export prices and injury caused to an industry.

To carry out its role and interface with the Authority, the Minister has decided that the ACS will conduct its complete investigation of dumping/subsidy, injury and causal link in the period leading to the Preliminary Finding. This will include overseas verification of material received. The maximum period from initiation of the investigation to publication of the report is to be 180 days.

If the Preliminary Finding is positive, i.e. that the three required elements, dumping/subsidy, material injury and causal link are present, the report and all supporting documents will be forwarded to the Authority for further evaluation and report to the Minister. Interested parties may make immediate submissions to the Authority. The ACS is to be available to assist the Authority in any further investigation work which may be necessary in its consideration of the issues.

If the Preliminary Finding is negative, i.e. where any one of the required elements is not present, there will be provision for the Authority to examine any appeal by the complainant.

#### The ACS Investigation Process

Pending the establishment of the Authority, the Minister has decided that the ACS should introduce the new approach of complete investigation before a Preliminary Finding, commencing with new cases which are initiated on and after 1 September 1987. Apart from the future establishment of the Authority, the need for this new approach to investigations has become increasingly clear as a result of the outcome of appeals made under the Administrative Decisions (Judicial Review) Act. This has been particularly in respect of questions of denial of natural justice. Other claims and representations made to the ACS were that the investigation in the context of a period as short as 55 days was inadequate given the implications of a Preliminary Finding for interested parties as well as for bi-lateral trade relations.

To accommodate this new approach the ACS has engaged a leading accountancy firm to advise on the design of standard questionnaires for local manufacturers, importers and overseas suppliers. Procedures are being designed to set standard times within the investigative period so that more control and direction can be maintained over the investigation process. It is intended that time limits will eventually be prescribed in the dumping legislation as is the situation in the USA and Canada.

As part of this new approach meetings of interested parties may be held before the Preliminary Finding. This will not preclude the Authority, when established, from conducting Public Hearings subsequent to the Preliminary Finding.

### Public File

An important part of the new investigation procedure will be the introduction of a Public File which will operate along lines similar to that adopted by the US Department of Commerce in respect of dumping and subsidy investigations. All public submissions, including non-confidential summaries of confidential submissions, correspondence and other details of contact with interested parties will be placed on this file and be available for scrutiny at the ACS Dumping Control Branch during business hours. A pay photocopying machine will be available. This facility will replace the previous practice of the ACS copying all such material to all interested parties. The cost in resources involved in that practice has become prohibitive and has at times been a major contributor to the delays in completing cases within acceptable time periods.

To ensure confidentiality of sensitive material, parties supplying such information must ensure that it is clearly marked "confidential" at the top of each page. Material so marked will not be placed on the public file. Information supplied confidentially must, however, be accompanied by a non-confidential summary or, if it is not susceptible to summarisation, a statement of the reasons why summarisation is not possible must be provided. This will ensure that the public file provides interested parties with access to all relevant information available to the ACS except that information which is confidential.

As provided for in the Codes, the ACS may disregard any confidential material supplied which is not accompanied by appropriate summaries.

### Acceptance of Complaints

For some months now the ACS has been operating a new approach to the receipt and acceptance of dumping and subsidy complaints. This approach is formalised from 1 September 1987 and will be fully documented in the manual when it is published. Essentially it involves two stages. The first involves verifying that a complaint lodged with the Dumping Control Branch is complete in that it contains an adequately documented case. In the second stage the complaint is passed to the Dumping Operations Branch which decides whether the complaint constitutes a prima facie case of material injury or threat thereof caused by dumping/subsidy and merits investigation.

This process will eventually involve statutory time limits. Initially the ACS will operate on the basis of stage one involving a maximum of 30 days, and stage two 40 days. An important aspect of this approach is the procedure for rejection of complaints.

An inadequately documented complaint will be rejected within 30 days of receipt with a statement of the reasons for rejection. The officer responsible for the stage one process will be available to provide information and advice generally on the system for investigating complaints of dumping/subsidy causing or threatening injury.

An adequately documented complaint may subsequently also be rejected as not constituting a prima facie case warranting notification and investigation. Rejections on these grounds will be made within the second period of 40 days and will contain detailed reasons for the rejection. In such cases the project officer responsible will be available for consultation.

Under the new system for lodgement of complaints, there will be no scope for the complaint to lie on the file for an extended period while further information is sought which may justify either acceptance or investigation. If a complaint is rejected, the complainant may subsequently resubmit or lodge a further complaint for consideration.

#### Further Information

As stated earlier, these changes in procedures precede a more comprehensive statement of both procedures and administrative policies to be made later. Should clarification or further information be required this may be obtained by contacting Mr P. English on (062) 71 6351.

(T.P. Hayes)  
Comptroller-General

CANBERRA ACT

4 September 1987



IMMEDIATE RELEASE

27 AUGUST 1987

C27/87

NEW ANTI-DUMPING INVESTIGATION PROCEDURES

The Minister for Industry, Technology and Commerce, Senator John Button, today announced new procedures applying to the investigation of complaints of dumping or subsidisation of goods imported to Australia.

The new procedures will apply to industry complaints accepted on or after 1 September 1987. In these cases, the Australian Customs Service (ACS) will carry out a full investigation of the dumping/subsidy complaint, claimed injury and any causal link before reaching its Preliminary Finding. This will include verification overseas of information supplied by foreign manufacturers and exporters and discussions with overseas Governments.

The ACS investigation following a positive Preliminary Finding will essentially be a review of the situation in the light of further submissions received from interested parties. This second stage will ultimately become the responsibility of the Dumping Authority following its eventual establishment.

Senator Button said that the first stage of the investigation process will be carried out within a maximum of 180 days and the second within a further 120 days. Present guidelines are 55 and 120 days respectively - although it was always envisaged that more complicated cases would take longer.

"Experience has shown that longer initial investigation periods are necessary. Decisions taken at the Preliminary Findings stage are important and effect bilateral trade relations as well as interested parties. We need to consider more thoroughly the evidence presented along with questions of natural justice before a preliminary decision is taken," Senator Button said.

The new approach to investigations before a Preliminary Finding generally accords with the approach in the USA and the European Communities. The 180 day maximum investigation period is the same as that normally applying in the USA.

Senator Button emphasised that although the new time limit guidelines are longer than those previously applying to investigations they are considerably less than the actual times taken in recent years due to legal challenges, claims and representations made to the ACS.

*Our Front-Line protects Australia's backyard.*

Timing in both the USA and Canada is set out in legislation and is therefore binding on all parties. Senator Button said that statutory time limits for the submission of evidence or information and for the decision-making process will likewise be introduced under Australian legislation. As such, they will impose a discipline on all users of the system as well as the ACS while maintaining transparent natural justice.

Details of the changes to ACS procedures will be issued shortly in an Australian Customs Notice.

For further information contact:

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