

GENERAL AGREEMENT ON

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TARIFFS AND TRADE

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Committee on Anti-Dumping Practices

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RESPONSES OF THE GOVERNMENT OF THE UNITED STATES
TO QUESTIONS SUBMITTED BY THE GOVERNMENT OF SWEDEN

Question (1)

Section 1317--Third Country Dumping.--Paragraph (e): What happens if the Agreement Country does not refuse but is unable to undertake anti-dumping measures?

How are the requirements of the Anti-Dumping Code, Article 12:4 to seek approval for an action from the CONTRACTING PARTIES taken care of in this legislation?

Are there any time-limits in the American anti-dumping law which also affect this new section?

Answer

Article 12 of the Antidumping Code, which is explicitly referenced in section 1317 of the 1988 Act, provides for antidumping actions to be taken on behalf of a third country. It bears mention that to date, the U.S. has not received any requests for action under section 1317. Accordingly, the U.S. has not developed any policies with respect to the implementation of this provision. Moreover, section 1317 does not, of course, address the question of the procedures or timetable that an importing country might follow upon receipt of a request made in accordance with Article 12 of the Code.

Finally, the United States is unable to respond to the first point raised by Sweden because it is not clear what Sweden means by a circumstance in which a country is "unable to undertake antidumping measures."

Question (2)

Section 1330.--Cumulation

(a) What are the differences between the possibility to cumulate volume and price effects when there is "material injury" and when there is "threat of injury," apart from that in the first situation it is mandatory and in the second it is permissive?

(b) Paragraph (v) TREATMENT OF NEGLIGIBLE IMPORTS - At which stage of the investigation does the Commission determine that the

import is negligible? Does a respondent (exporter) in an antidumping investigation have to request the Commission to determine that the imports are negligible or does the Commission make this evaluation automatically?

U.S. Response

(a) The question misapprehends the nature of the U.S. cumulation statute. Under that statute, cumulation is not mandatory. 19 U.S.C. section 1677(7)(iv) provides that in its material injury determination and for the purposes of evaluating the volume and price effects of dumped imports if certain conditions indicative of cumulative impact, the so-called "hammering effect," are met:

the Commission shall cumulatively assess the volume and effect of imports from two or more countries of like products subject to investigation if such imports compete with each other and with like products of the domestic industry in the United States market.

Although couched in slightly different language, the cumulation statute for threat cases does not differ substantively from the statute concerning present injury. Neither part of the cumulation statute provides precise criteria for the determination.

(b) The statute also provides, at 19 U.S.C. section 1677(7)(C)(v), that the Commission need not cumulate in any case in which the Commission determines that the dumped imports are "negligible and have no discernable adverse impact on the domestic industry." The statute gives the Commission the discretion to refrain from cumulating in such a situation. The Commission is neither required nor forbidden to do so.

The Commission will make the determination of whether the volume and market share of certain imports are negligible when it makes its material injury determination at the conclusion of an investigation. When appropriate, the commission will make such a determination whether or not one or more parties has requested it to do so. Parties are, of course, permitted and would be well advised, to argue to the Commission that such a determination is appropriate in their case.

Question (3)

Section 1321.--Short Life Cycle Products

One could argue over the need to have a special provision concerning this kind of merchandise. As the Conference report states, one example of the kind of merchandise that is intended to be included under the category is semiconductors. According to the Conference's own statement, the life cycle for semiconductors is often 2-3 years. There seems to be good reasons to presume that a company selling this kind of merchandise typically sets its prices at a high level, reflecting expectations that the product might be outmoded after a relatively short period of time. Prices therefore need to reflect R&D costs, etc. and be set at a level guaranteeing a profitable return on investments.

Against this background it seems strange to introduce a section in the U.S. AD law that in some respects seems to build on a presumption of guilt, i.e., dumping when it comes to a specific category of products.

U.S. Response

The short life cycle product provision does not "build upon a presumption of guilt." Under the statute, there would be no presumption of either injury or dumping. Rather, in an investigation falling under this provision, the determinations of dumped sales and injury, if any, would continue to be made only after thorough inquiry and in an objective and transparent manner.

The only substantive change is with respect to the investigatory time limits and the determination of critical circumstances for firms that have been found to have dumped repeatedly within categories of short life cycle merchandise. These changes are designed to minimize the possibilities of relief being provided too late to injured domestic producers of such merchandise. While we would like to believe Sweden's hypothesis that pricing in such products would universally reflect the need to guarantee a relatively quick return on substantial investments, experience suggests that this is not often the case.