

GENERAL AGREEMENT ON

TARIFFS AND TRADE

RESTRICTED

ADP/W/263

21 February 1990

Special Distribution

Committee on Anti-Dumping Practices

Original: English

SUPPLEMENTARY QUESTIONS SUBMITTED BY CANADA ON THE
UNITED STATES OMNIBUS TRADE AND COMPETITIVENESS ACT OF 1988

1. Section 1321: Prevention of Circumvention of Anti-Dumping and
Countervailing Duty Orders

(a) Determination of the value of components

With respect to Section 781(a)(1)(C), in determining whether "the difference between the value of such merchandise sold in the US and the value of the imported parts and components referred to in Section 781(a)(1)(B) is small", will the administering authority apply the regulations on the calculation of US price, fair value and foreign market value as found in Sub-part D of the anti-dumping regulations?

(b) Minor alterations of merchandise

(i) In Section 781(c)(1), articles "altered in form or appearance in minor respects" are to be included in the scope of investigations. What criteria will be used to determine what is or is not a minor alteration in the absence of any guidance from a change in tariff classification?

(ii) In Section 781(c)(2), an exception to the application of Section 781(c)(1) is created where the administrative authority determines that it would be unnecessary to consider the altered merchandise within the scope of the investigation, order or finding. What criteria will the administering authority use in making such a determination as to the applicability of Section 781(c)(1)?

(c) Advice of the International Trade Commission (ITC)

(i) With regard to Section 781(e)(2), on what factors will the ITC base its decision to request consultations with the administering authority?

(ii) How will the Commission determine whether the inclusion of parts and components is inconsistent with its prior affirmative determination? Will it conduct a full investigation on the injury caused to domestic producers of the assembled merchandise by the importation of parts and components? Will the existence of a separate market for parts and components be factored in the analysis? Will there be an examination of whether the petitioners also import parts and components from the source subject to the dumping finding?

(d) Evidence

What specific procedural measures are applied by the administering authority in order to ensure that the investigation into allegations of circumvention is conducted according to the criteria set out by Article 6 of the Anti-Dumping Code?

2. Section 1328: Material injury

(a) Sales at more than fair value

In issuing a positive dumping determination, does the administering authority provide any information as to the proportion of sales, if any, made at more than fair value? Is this information made available to the ITC?

(b) Causality

If a significant proportion of imports which are the subject of the investigation are sold at more than fair value, how does the Commission distinguish between those and dumped imports in the process of demonstrating "that dumped imports (and not the "volume of imports of the merchandise which is subject to the investigation" as ascertained by the US in ADP/W/241) are, through the effect of dumping, causing injury within the meaning of the Code" as set out in Article 3:4 of the Anti-Dumping Code?

3. Section 1329: Threat of material injury

Sub-clause (X) of Section 771(7) has been replaced with a requirement that the ITC consider "the actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the like product". In its investigation of the threat of material injury in a particular matter, what criteria will the ITC use in its consideration of the potential negative effects on the existing development and production efforts of the domestic industry?