

**GENERAL AGREEMENT
ON TARIFFS AND TRADE**

RESTRICTED
ADP/W/354
14 February 1994
Special Distribution

(94-0273)

Committee on Anti-Dumping Practices

Original: English

**RESPONSES BY AUSTRALIA TO QUESTIONS
RAISED BY THE DELEGATION OF HONG KONG¹
CONCERNING THE LEGISLATION OF AUSTRALIA**

(ADP/1/Add.18/Rev.1/Suppl.1)

The following communication, dated 2 February 1994, has been received from the Permanent Mission of Australia.

Customs Legislation (Anti-Dumping Amendments) Act 1992

Clause 5 (Non-injurious price)

Question 1

How is the level of "non-injurious price" derived and is it subject to regular reviews?

Non-injurious prices are usually calculated as follows:

The first step in the process is to establish an unsuppressed selling price; a price, that is, at which the domestic industry would be able to sell the goods today in the absence of dumping but with all other market forces present.

To arrive at such a price, the investigating authority's first preference is to use a price which exists in the market place. Often, however, the current market price is distorted by the influence of dumping and, therefore, cannot be used.

In the absence of a reliable market price, the most common method is to determine the domestic industry's current costs to make and sell the like goods from verified account data. To these are added an appropriate amount for profit.

The level of profit is an amount judged to be reasonable for the industry concerned in the light of the general economic climate under which it is presently operating. The notional profit is tested for reasonableness against other available information, which can include industry surveys, economic indicators and reports, and the relationship between the industry's costs and profit which applied prior to dumping occurring.

¹ADP/W/348

The investigating authority then goes on to determine what is considered to be a reasonable profit for importers. In a similar vein to determining the profit used for the unsuppressed selling price, a profit margin for importers is considered in the light of available information.

The investigating authority then deducts from the unsuppressed selling price amounts incurred by an importer in importing and selling the like goods on the domestic market, as well as deducting the importer's profit. The costs which are deducted include selling and administration expenses, duty and freight from the country of export.

The resultant amount is the free-on-board price at which the like goods could be exported without causing or threatening injury to the Australian industry.

If the price so assessed is less than the ascertained normal value of the like goods, then that price becomes the non-injurious price. If, on the other hand, that price is greater than the ascertained normal value, the amount of the normal value is the non-injurious price. This follows from the fact that "injury", in the present context, means injury caused by dumping; if the goods were exported at a price equal to the normal value, they would not be dumped and dumping could not cause or threaten material injury.

As placed before the Committee in April of this year, there is formal provision for a review of certain variables, which encompasses a review of a determined non-injurious price. The legislation allows importers, exporters or the local industry to apply for a review of the interim duty rate (established by reference to the lesser duty rule) one year after it has been set and at yearly intervals thereafter. Moreover, firms not included in the original enquiry may also apply for a review, provided they export, import or manufacture like goods.

The Minister has the discretion to initiate a review of interim duty rates at any time. Once initiated, Customs has 100 days to complete a review.

Question 2

It is noted from the GATT document SCM/W/297 that "non-injurious prices are not considered in calculating the level of security during the period of provisional measures". What is the rationale behind this?

Under the provisions operating in Australia the Australian Customs Service is responsible for preliminary finding enquiries. It must arrive at such findings within 100 days of initiation; or in 120 days of initiation in more complex cases. In making positive preliminary findings Customs must be satisfied that the applicant industry is suffering or is threatened with material injury which is caused by dumping of the goods. Where a positive preliminary finding is made it is usual to impose provisional measures which are at the full margin of dumping.

The Australian legislation no longer requires preliminary dumping investigations conducted by the Australian Customs Service to be determined on the basis that, where dumping is found, the level of the dumping margin should only be that which is necessary to remove the injury being suffered by the Australian industry as a result of the dumped or subsidized import. Customs now applies the full dumping margin (that is, the difference between the normal value of the goods in the country of export, and the export price of the dumped product).

This helps give effect the Government's decision to shorten the time taken to process dumping complaints.

However, please note that in coming to a final decision on whether or not to impose dumping duties, the Minister is required to have regard to the desirability of ensuring that the amount of dumping duty is not greater than is necessary to prevent the injury or a recurrence of the injury. This is consistent with Article 8:1 of the GATT Anti-Dumping Code which indicates that duties collected at less than the full margin of dumping may be collected if such a lesser duty would be adequate to remove the injury to the domestic industry.

Note that Section 109 of the Anti-Dumping Authority Act emphasizes that dumping duties should not be used to assist import competing industries nor to protect industries from the need to adjust to changing economic conditions.

Customs Tariff (Anti-Dumping) Amendments Act (No. 2) 1992

Clause 4 (Dumping Duties)

Question 1

According to the new subsection 8(4) of the principal Act, the interim dumping duty is an amount equal to the difference between the ascertained export price and the ascertained normal value. How are the ascertained export price and the ascertained normal value derived?

Ascertained values are obtained through enquiry and certification at the premises of importers, exporters and manufacturers as appropriate.

Question 2

What is the difference between the "interim dumping duty" and the provisional measures as provided by the Anti-Dumping Code?

Previous statements made by the Australian delegation and reflected in paragraphs 30 *et seq.* in the Minutes for the April meeting of the Committee on Anti-Dumping Practices refer.

Following an affirmative preliminary finding by Customs, provisional measures would normally be taken in the form of a security. These securities are calculated and collected using essentially the same method as for an interim dumping duty. Provisional measures are applied in the manner outlined above in the response to question 2 of the part on non-injurious prices.

Australia's new duty collection system is a more equitable method for ensuring compliance with our obligations under Article 8:1 and 3 of the Code. Under the old system of duty collection, duties were collected as the difference between the normal value or non-injurious price determined on a prospective basis at the time of the enquiry and the export price of each specific consignment. The method of duty collection based on a prospective normal value may have precluded the importer from any refund of duty which may have been overpaid as a result of changes in the normal values during the period in which the prospective normal value applied.

The new interim duty overcomes this deficiency in that a normal value and export price are, as a result of the refund procedures, ascertained for each consignment of goods during a particular importation period to calculate the actual duty liability for that particular consignment. This approach ensures that any interim duty collected, which is later found to be in excess of the actual duty liability, is refunded.

Question 3

What is the relationship between the "interim dumping duty" and "dumping duty"?

After a period of six months and at six monthly intervals during which measures apply, importers may make an application to Customs for a duty assessment. Customs will then ascertain the normal value and export prices pertaining to each consignment of the goods in the relevant importation period and calculate the actual duty liability. It is this actual duty liability which is referred to as the Dumping Duty. If the interim duty collected exceeds the actual duty payable for a particular importation period the difference will be refunded in full. However, if the interim duty is less than the liability as calculated in the assessment the additional amount is not collected. Upon completion of the duty assessment the actual dumping duty liability is known.

If no application for duty assessment is made the interim duty collected is taken to be equal to the actual duty liability.