

GENERAL AGREEMENT ON
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PRIORITY ISSUES IN THE ANTI-DUMPING FIELD

Submissions by Australia and Canada Concerning National Practices

In accordance with the invitation extended by the Committee on Anti-Dumping Practices at its October 1978 meeting (L/4711, paragraph 27), the following communications concerning national systems and practices relating to priority issues 7, "initiation and reopening of investigations", and 8, "explanation and reconsideration of decisions", have been transmitted by Australia and Canada.

AUSTRALIA

INITIATION AND REOPENING OF INVESTIGATIONS

A. INITIATION OF INVESTIGATIONS

Australia requires the establishment of a prima-facie case of both dumped prices and material injury (or threat thereof) to the local industry concerned before initiating an anti-dumping investigation.

Industry complaints are submitted in the form of a standardised questionnaire document which provides for the evidence of alleged dumping and injury to be fully documented. The format of this questionnaire was circulated in March 1978 as G.A.T.T. Document COM AD/47.

Before proceeding to formal notification of an anti-dumping investigation the Australian Department of Business and Consumer Affairs simultaneously considers all aspects of the evidence submitted of alleged dumped prices and injury. Preliminary inquiries are made with both importers and local producers and the degree of industry support for the complaint is assessed. All factors which may be influencing the local market situation are considered.

Australia's view is that the prerogative for initiation of anti-dumping investigations should remain solely with the authorities of the affected country. Although Australia has not had recourse to utilise the "special circumstances" clause contained in Article 5(a) of the Code the provision is seen as necessary and justifiable.

B. REOPENING OF INVESTIGATIONS

In circumstances where a dumping investigation has been suspended on the basis of voluntary undertakings which are subsequently dishonoured, reactivation of the investigation should be at the volition of the authorities concerned in full consultation with the affected industry. It is recognised that the updating of previously submitted dumping and injury data would be necessary where changed circumstances reflect such a need.

A prima facie case of both dumping and consequent material injury (or threat thereof) must be established to the satisfaction of the Australian authorities before reopening of an investigation would be contemplated.

EXPLANATION AND RECONSIDERATION OF DECISIONS

A. EXPLANATION OF DECISIONS

Notification procedures followed by the administering authority are considered to fully accord with the requirements of Articles 6(f), 6(h) and 10(c) of the Code.

If preliminary investigations following a dumping complaint substantiate a prima facie case of dumping and consequential injury a public notice is issued to advise that overseas investigations are being initiated. The notice includes such details as the overseas country or countries concerned, tentative dumping margins and the principal elements of injury being caused, prima facie, to local industry.

Foreign governments are similarly advised through their Embassies in Australia.

Where provisional measures are taken pending completion of investigations such action is also advised by public notice.

Australia has adopted a procedure whereby a Meeting of Interested Parties is convened once the available evidence indicates that injurious dumping is occurring.

In terms of Article 6(g) of the Code, all parties directly involved in an anti-dumping investigation are thereby given an opportunity to submit and exchange evidence and to put forward rebuttal arguments relative to any claims made, prior to a final decision being taken by the Australian authorities. Non-confidential evidence is circulated amongst directly involved parties prior to each meeting.

If a dumping complaint is terminated at any stage of the investigations a public notice setting out the reason for such termination is issued and directly interested parties informed separately.

Where dumping duty is imposed, Australia's anti-dumping legislation requires that a notification be made in the Commonwealth of Australia Gazette. Copies of the administering authorities report on the case are forwarded to the Embassies of Foreign Governments and to other directly interested parties.

B. RECONSIDERATION OF DECISION

Australia's anti-dumping legislation provides for review of decisions to impose dumping duty or otherwise by an independent authority, the Industries Assistance Commission. Requests for review of decisions may originate from either local industry or importing interests.

On completion of inquiries the Commission reports to the Minister responsible for anti-dumping administration.

In accordance with Article 9(b) of the Code the Australian authorities conduct regular reviews of commodities subject to anti-dumping measures. These reviews are conducted in consultation with directly interested parties to determine whether the anti-dumping action should be continued or terminated.

CANADA

I. Explanation and Reconsideration of Decisions

Explanation

At the time of initiation of an anti-dumping investigation or the making of a preliminary determination of dumping, all countries and companies involved in the anti-dumping investigation are notified of the decision and notice of the decision is published in the Canada Gazette. When requested by authorities of an exporting country the Department of National Revenue will furnish the reasons for initiation of the investigation or the making of the preliminary determination, within the bounds of the confidentiality of the information supplied.

Subsequent to the Anti-dumping Tribunal's injury finding and prior to the making of the final determination of dumping, the Department of National Revenue provides an opportunity to meet with importers, exporters and their representatives to explain the basis of the normal value, export price, margin of dumping and calculations. These discussions may result in amendment to the calculations either up or down. These discussions take place on a company by company basis which ensures the maintenance of the confidentiality of information obtained.

Where normal values or export prices are determined by Ministerial Prescription, on the basis of the best information available, importers, exporters and their representatives are given the reasons for the utilization of Ministerial Prescriptions as well as the method by which the prescription is applied to their products.

Following these discussions and explanations, the final determination of dumping is made and the normal values as calculated are applied to any goods entered during the provisional period and to any subsequent shipments to Canada covered by the Anti-dumping Tribunal Finding.

Reconsideration

If, after receipt of written complaint alleging injurious dumping, the Deputy Minister of National Revenue decides not to initiate an investigation by reason only that he is of the opinion there is no evidence of injury, the complainant or the Deputy Minister of National Revenue has the option of requesting the Anti-dumping Tribunal to consider the question of injury and relay its opinion to the Deputy Minister. The Deputy Minister will then initiate the investigation or reject the complaint depending upon whether the Tribunal's opinion on injury was positive or negative.

The complainant and the Deputy Minister of National Revenue also have the same option as above if the Deputy Minister of National Revenue decides not to make a preliminary determination of dumping by reason only that he is of the opinion there is no evidence of injury related to the dumping.

In line with Article IX of the Anti-dumping Code, the Anti-dumping Act provides that the Anti-dumping Tribunal may review, rescind, change, alter or vary any order or finding that it has made. The review of the Anti-dumping Tribunal injury finding does not take place after any set period of time but takes place when conditions in the Canadian market indicate the need for such a review or when interested parties request a review and submit information substantiating that the review is needed. At the time of the review, public hearings are held at which all interested parties are given the opportunity to advance arguments either for or against the injury finding. The Anti-dumping Tribunal then confirms, alters, or rescinds its original injury finding.

II. Initiation of Investigation

Under the Canadian Anti-dumping Act, the Deputy Minister of National Revenue, Customs and Excise must cause an anti-dumping investigation to be initiated respecting the dumping of any goods if he is of the opinion that there is evidence that the goods are being or have been dumped and he is of the opinion, or the Anti-dumping Tribunal advises it is of the opinion, that the dumping has caused, is causing or is likely to cause material injury to the production in Canada of like goods or is materially retarding the establishment of production in Canada of like goods.

In most instances the Deputy Minister initiates an anti-dumping investigation as the result of complaints filed by or on behalf of Canadian producers. However, the Anti-dumping Act does allow for the Deputy Minister of National Revenue to initiate an anti-dumping investigation without having received representations from Canadian producers provided he is satisfied that there is evidence of dumping and material injury or retardation.

Usually, Canadian producers make a tentative complaint of injurious dumping to the Department of National Revenue. The Department of National Revenue then explains to the complainant the provisions of the anti-dumping legislation and outlines the information which will be necessary for the Deputy Minister to satisfy himself whether there is or is not prima facie evidence of injurious dumping. To facilitate the securing of the necessary information the Department asks each producer to complete a Producer's Questionnaire. Respecting evidence of dumping each of the producers is asked to define the goods which are allegedly being injuriously dumped, indicate the country of origin, and supply information relative to the exporting

country's domestic marketing practices, prices, and price construction, and historic export trends of the product to Canada. In order to obtain evidence of injury, the Canadian producers provide a summary of the Canadian industry, including an estimate of each company's historical share of the market and their own financial, production, import, export and domestic sales information. Also requested, is the Canadian producers' method of marketing, their historical capacity and utilization rates and a breakdown of employment directly related to the goods in question.

After as much of the requested information as possible is obtained, it is collated with industry statistics, import data and other information obtained by the Department from its own sources. The Deputy Minister then forms his opinion respecting the existence of dumping and material injury or retardation. By administrative policy, the maximum time taken to evaluate the information is one month from the receipt of a satisfactorily documented submission from the Canadian producers.

In the event that the evaluation of the information indicates that there is no evidence that the goods are being dumped, the Deputy Minister sends written notification of his decision to the producers setting out the reason for not proceeding with the investigation. This terminates the proceedings.

Should the Deputy Minister decide not to initiate the anti-dumping investigation by reason only that he is of the opinion there is no evidence of material injury or retardation related to the dumping either he or the Canadian producers may refer the question of evidence of material injury or retardation to the Anti-dumping Tribunal. The Deputy Minister and the Canadian producers have thirty days from the Deputy Minister's decision not to initiate an anti-dumping investigation to make the reference to the Anti-dumping Tribunal.

Should the Anti-dumping Tribunal advise that there is evidence that the dumping of the goods has caused, is causing or is likely to cause material injury to the production in Canada of like goods or has materially retarded or is materially retarding the establishment of the production in Canada of like goods, the Deputy Minister will initiate an anti-dumping investigation. Should the contrary advice be provided, proceedings are terminated.

At the initiation of an anti-dumping investigation, the Deputy Minister gives notice, pursuant to the Anti-dumping Act, to the known importers and exporters, the complainant if any, the government of the country of export. The notice of initiation of investigation is published in the Canada Gazette. In addition, although not required by law, a press release is issued.