

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

L/712/Corr.3
27 May 1958

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ANTI-DUMPING AND COUNTERVAILING DUTIES

Secretariat Analysis of Legislation

Consequent to the recent changes of the Australian Anti-dumping and Countervailing Legislation the following amendments, based on a request by the Australian Government, have been made:

- Page 6 The footnote "No use is made of some powers (Section 11A, page 36)" should be changed to:
- "Section 11A (page 36) which was introduced in 1956 and has not yet been used is wider in scope than Article VI but it includes a provision that action must be consistent with international commitments."
- Page 7 The note against Australia in the fourth paragraph should be changed to:
- "Previously did not distinguish between anti-dumping and countervailing duties but by amendment to the Customs Tariff (Industries Preservation) Act of 12 December 1957, Sections 11B and 11C were introduced to provide specifically for the imposition of countervailing duties."
- Page 11 The reply to Question 11 should be changed to read:
- "The fair market value as defined in the legislation, refers to 'the goods' or 'goods of the same class or kind'. It is the overall domestic selling price in the exporting country. Consequently calculations may be made on one or more, of the criteria mentioned in (a), (b), (c) and (d), but more particularly on (d). Regarding (e), no calculations are based on prices for like products in a third country".
- The final paragraph on page 11 should thus be amended as follows:
- "It emerges from the replies that normally all contracting parties in question except Australia base the calculation of the normal value on the price of the 'same product from the same producer'. The other possibilities are used only occasionally. Australia, however, bases calculations of normal value on the overall price - a like product from all producers in the exporting country. Reference has already been made etc."

- Page 12 Footnote 1 - Article 11A should read Section 11A.
- Page 13 The statement that "Australia states clearly that no provision exists concerning products which have been transformed in the existing country" should be deleted.
- Page 14 In the third paragraph on this page the sentence:
"Australia, however states that the burden of proof remains with the complainant (Question 19b)" should be deleted. Australia should be included with the other countries in the first sentence of this paragraph as having the burden of proof with the investigating body.

After the words "one of dumping" at the end of the second sentence of the fourth paragraph on page 14, the words "to the detriment of an Australian industry" should be added.
- Page 15 The second sentence of the fifth paragraph should be deleted.

The last sentence of the fifth paragraph on this page should read:

"Australia and the United States do not provide for the inclusion of values in the decree."
- Page 17 The mention of Australia in the first sentence of the third paragraph should be deleted and a separate sentence inserted in this paragraph as follows:

"Australia normally imposes anti-dumping duties to the full amount but there is a regulation which provides that in certain circumstances where the margin of dumping is not more than 5 per cent no anti-dumping duties shall be imposed."

The reply to Question 30 should be amended to read:

"The anti-dumping duty is fixed at the full amount except in certain circumstances where the difference between the fair market value and the export price does not exceed 5 per cent of the fair market value. In such cases the goods may be exempted from anti-dumping duties."
- Page 20 The introductory note to the analysis of Australian legislation should be deleted.
- Page 21 The answer to Question 2 should be amended to:

"The provisions applicable are set out in the Customs Tariff (Industries Preservation) Act 1921-1957 (see Appendix). Sections 8, 9, 10 and 11 are regarded as inoperative."

This suggested amendment also envisages reproduction of the whole of the Act in the one appendix because this would be a simpler arrangement in view of the extensive recent additions.

Page 22

The reply to Question 7 should be changed to:

"The extent of dumping is defined in Sections 4 to 7A of the Customs Tariff (Industries Preservation) Act 1921-57. (See Appendix)."

The footnote on this page should be amended to read:

"Not included in this analysis are the Sections 8 to 11 (special exchange duty) which are inoperative and Section 11A providing for a special emergency duty which, in the view of the Australian Government, is not an anti-dumping or countervailing duty."

Page 23

The citation of the Act in the replies to Questions 8(a), 8(c) and 10 should be changed to Customs Tariff (Industries Preservation) Act 1921-57.

Page 24

The citation of the Act in Question 12 should likewise be amended.

The answer to Question 14 should be changed to:

"Yes, (See Sections 4A, 5A, 6A, 7A and 11C in the Appendix)".

Page 25

The answers to Questions 17 and 19 should be changed to:

Question 17 "Yes. The complaint originates from an affected party and is investigated fully before the goods are listed."

Question 19 "(a) Investigation of a complaint is carried out by the Department of Customs and Excise. Where it is a question of detriment to an Australian industry and the Department is satisfied that there is a prima facie case of dumping the matter is referred to the Tariff Board for public enquiry. If the complaint concerns detriment to the trade of a third country the Department makes a full inquiry itself.

"(b) The complainant of detriment to an Australian industry must be able to substantiate a prima facie case that dumping is occurring. The matter is then referred to the Tariff Board which is responsible for taking evidence from interested parties and investigating all aspects of the matter. The burden of proof concerning its recommendation as to whether or not to impose anti-dumping duties then lies with the Tariff Board. In regard to complaints of detriment to the trade of a third country the country concerned would be expected to submit comprehensive supporting evidence.

"(c) The decision is made by the Minister for Customs and Excise."

Page 27 The citation of the Act in the reply to Question 25 should be amended (See note to page 23 above).

Page 29 The present note concerning countervailing duties under Section B should be deleted and replaced by the following:

"Australia

Section B

Countervailing Duties

"By amendment of the Customs Tariff (Industries Preservation) Act in December 1957 specific provisions were introduced concerning the imposition of countervailing duties. No action has so far been taken under the terms of these provisions which are set out in Sections 11B and 11C of the Act (See Appendix).

"The terminology of Section 11B and 11C is not the same but is fundamentally in accord with the terms of Article VI. This legislation is not wider in scope than Article VI. It provides for the imposition of countervailing duties in respect of goods which are subsidized or receive other financial assistance including assistance through differential exchange rates when imported into Australia to the detriment of an Australian industry or the trade of a third country.

"The amount of the countervailing duty shall be equal to the amount of the subsidy or other financial assistance.

"The procedures for determining detriment and other arrangements for administration of countervailing duties follow the same lines as procedures in respect to anti-dumping duties which have been described in detail in Section A."