

GENERAL AGREEMENT ON

TARIFFS AND TRADE

RESTRICTED

ADP/W/202

1 February 1989

Special Distribution

Committee on Anti-Dumping Practices

Original: English

QUESTIONS RAISED BY CANADA ON THE ANTI-DUMPING LEGISLATION OF MEXICO¹

Question No. 1: Initiation of Investigation

- (a) Article 10 of the Legislation provides that a complaint needs to be filed on behalf of domestic producers accounting for at least 25 per cent of the domestic production of like goods. How is this threshold compatible with the requirement of Article 4 of the Code which refers to "domestic producers as a whole ... or (which constitute a) major proportion"? Will the administering authority seek to determine whether the complaint is supported by other producers of the like good before initiating an investigation?
- (b) The Regulation stipulates in Article 13 that the administering authority shall inform the complainant within five working days of its decision whether to initiate an investigation. How does such a short period of time allow the authority to determine whether there is sufficient evidence of dumping, injury and a causal link between the dumped imports and the alleged injury, as required by Article 5 of the Code?

Question No. 2: Imposition of Duties

- (a) Article 11 of the Legislation provides that the administering authority shall determine the amount of provisional duty payable within five working days following the initiation of the investigation. While the Code does not specify a precise timetable, how is such a very short investigatory period consistent with Article 6 of the Code which request that foreign suppliers be given ample opportunity to present in writing all evidence they consider useful in respect to the investigation in question? What steps will be taken to ensure transparency in decisions taken by the administering authority?
- (b) Article 13 provides that the final determination shall be made within six months of the date the provisional duty takes effect. How is this time frame consistent with Article 10 of the Code which

¹ADP/1/Add.27 + Suppl.1

stipulates that provisional measures shall not exceed four months, except in the unusual circumstances where the exporters request that they be extended to six months?

- (c) Article 19 of the Legislation provides that the duty shall remain in force until the unfair pricing practices is declared by the administering authority to have ceased. Will the Mexican authority rescind the finding when there is no longer injury to domestic production? Will there be specific time limits set for the review of findings? Why did the Mexican government not include a sunset clause? How will transparency in reviewing decisions be ensured? What provisions exist for interested parties to petition for a review of any decision to apply an anti-dumping duty?

Question No. 3: Undertakings

- (a) Paragraph III of Article 19 provides for the acceptance of quantitative undertakings channelled through government authorities of the exporter's country. Does this provision apply to anti-dumping investigation? Will the Mexican authority consider the acceptance of an undertaking which would eliminate the injury to domestic producers?

Question No. 4: Injury Determination

- (a) Paragraph VIII of Article 1 of the Regulation defines injury as an adverse effect on one or several domestic producers, representing a significant part of national production. How is this meaning consistent with Article 4 of the Code which stipulates that in determining injury, "the term domestic production shall be interpreted as referring to the domestic producers as a whole or to those of them whose collective output constitutes a major proportion"?
- (b) How does the definition of injury referring to a significant part of national production relate to the threshold of 25 per cent of domestic production used to initiate an investigation?
- (c) Does the use of the term "injury" in the Legislation intend to mean "material injury" as specified in Article 3 of the Code?

Question No. 5: Institutional Arrangements

- (a) The Secretariat of Trade and Industrial Development will be responsible for conducting the investigation and making the injury determination. Some signatories have preferred to set up a separate, quasi-independent body to examine the injury question to enhance the transparency of the procedures. Did the Mexican authority examine this possibility? If so, why was it rejected?

Question No. 6: Relationship with other Import Measures

- (a) The wording of Article 5 of the legislation provides that the measures referred to in Article 1(II) (a), (b) and (d), (i.e. prior authorization for import of goods, quotas and import prohibitions), shall be instructed in cases which include circumstances involving "unfair international trade practices" (Article 5(V)). In light of the definition of unfair international trade practices given in Article 7, (i.e. dumping and subsidization), does this mean that measures such as licensing, quotas, and/or import prohibitions could be imposed in place of, or in addition to a countervailing duty?