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REPLIES BY AUSTRALIA TO QUESTIONS RAISED BY THE EUROPEAN COMMUNITIES
AND THE UNITED STATES CONCERNING THE ANTI-DUMPING AND
COUNTERVAILING DUTY LEGISLATION OF AUSTRALIA¹

The following communication has been received from the Permanent Mission of Australia in response to questions by the Delegations of the European Communities (ADP/W/197) and the United States (ADP/W/193 and SCM/W/161).

EC (ADP/W/197)

Anti-Dumping Authority Act 1988

Question 1:

Does Section 9 also refer to the initiation of anti-dumping proceedings on the initiative of the Australian authorities when no anti-dumping complaint has been received from the domestic industry?

Answer: Yes

Section 9 would permit this. However the Government's intention is that initiative normally rests with the industry to complain as reflected in the procedural part of the legislation, 269TB of the Customs Act.

Question 2:

May the Australian authorities initiate an anti-dumping proceeding on their own initiative? If so, under what circumstances?

Answer: Yes

Again the Government's clear intention is reflected in Section 269TB of the Customs Act.

The Anti-Dumping Authority Act states that the circumstances under which the Authority may instigate an inquiry are "where it considers it appropriate to do so".

¹See document ADP/1/Add.18/Rev.1/Suppl.2 - SCM/1/Add.18/Rev.1/Suppl.2.

Accordingly the Authority has considerable flexibility as to how and when it would call on this section of the Act. In practice it is likely that the Authority would use this section primarily to address dumping issues of a general nature rather than to report on a specific product.

Any inquiry which related to a specific product would have to preserve the natural justice aspects of Section 269TB of the Customs Act which reflect those provisions of the Code relating to process.

The Authority has recently at the Minister's request conducted an inquiry into:

- The circumstances when a profit component should be included in a normal value construction;
- The extent to which factors such as substantially reduced profits and the market share of imports need to be established in determining material injury; and
- The interpretation of "extended period of time" under Section 5(9) of the Customs Tariff (Anti-Dumping) Act 1975.

Under this provision of the legislation it would have been authorized to conduct such an inquiry on its own initiative.

Question 3:

It would appear from Section 22(1)(b)(i), (ii) and (iii) that the Authority may act in an informal manner. How will the Australian authorities ensure that the rights of defence of the interested parties are respected when the Authority acts informally?

Answer:

The Anti-Dumping Authority will ensure that all parties to its proceedings are given ample opportunity to present evidence to the Authority. Furthermore, the Australian judicial system allows for recommendations of the Authority to be challenged where a party feels there has been a denial of natural justice or where the Authority has not either acted within the terms of the Act or has acted outside the terms of the Act.

Customs Legislation (Anti-Dumping Amendments) Act 1988

Question 1:

Section 269T(2)

Will account be taken of costs such as R&D and royalties when calculating the costs incurred in Australia with regard to which an anti-dumping procedure may be initiated?

Answer: No

Costs that are considered in calculating the costs incurred in Australia include only the cost to make the goods, including factory labour, factory overheads and materials. R&D and royalties are not considered part of factory costs as such.

Question 2:

Section 269T(3)

What are the criteria for determining whether a "substantial process" in the manufacture of the goods was carried out in Australia?

Answer:

There would need to be some identifiable physical change to the nature of the goods - e.g. crushing of rock to a smaller size would not be regarded as a "substantial process".

Question 3:

Section 269T(5) (in conjunction with Section 269TB(1)(a)(ii))

Under what circumstances may an anti-dumping application be made when a consignment of goods is likely to be imported into Australia?

Answer:

Where there was positive evidence of the impending import into Australia, e.g. sales contract or letting of a tender. The mere offer to sell would not be sufficient to commence an inquiry.

Question 4:

Section 269TB(1)(c)

What is the definition of the person who may lodge an anti-dumping application?

Does such a person need the standing of a petitioner?

Answer:

An anti-dumping complaint may be initiated by any interested party, who may be affected by the alleged dumping or subsidization. This could include trade unions and farmers, or other suppliers of inputs, as well as the directly affected industry.

See also the response to Question 4 of the United States below.

UNITED STATES (ADP/W/193, SCM/W/161)

Anti-Dumping Authority Act

Question 1:

Clause 7 - Concerning the Authority's recommendation to the Minister on the imposition of duties, is there any requirement or preference that the information considered by subject to some form of verification? If so, is it to be performed by the Customs Service, before or after the Comptroller has made a preliminary determination?

Answer:

The Authority would give greater weight to information which has been verified. Evidence may be submitted to and verified by the Australian Customs Service prior to a preliminary finding being made. Once a matter has been referred to the Authority, the Authority may seek additional evidence where it feels this is necessary. In such cases the Authority may take whatever steps it feels necessary to verify the information provided.

Question 2:

Clause 9 - Concerning the Authority's reports to the Minister on "anti-dumping matters", could Australia provide specific examples of the kind of reports that are envisioned? For example, what issues might be covered and would the reports be made with a particular purpose in mind or in response to a particular request? Would these reports serve as "policy papers" to guide the Comptroller, the Authority and the Minister in making their respective decisions and recommendations?

Answer:

Some examples of issues that the Authority currently has before it are references from the Minister for Science, Customs and Small Business relating to Ministerial Directions and Regulations which will determine how the Australian Customs Service and Anti-Dumping Authority will assess matters such as material injury and normal value. These inquiries are of a general nature not relating to any specific product.

These arrangements highlight the transparent nature of the Australian anti-dumping arrangements and the willingness of the Australian Government to give all parties the opportunity to put forward their point of view in the development of Government policy in this area.

Question 3:

Clause 12 - Could Australia provide a more precise explanation as to the nature of directions which the Minister might provide the Authority? What is meant by the statement that "the aim is to ensure that the Authority is guided by the current industry policy of the Government...?"

Answer:

The nature of the directions which the Minister might provide to the Authority are to some extent covered in Question 2 above. The directions provided by the Government will ensure that the Authority is guided by the current industry policy objectives of the Government.

In this regard, the Government will not use the imposition of duties under the Anti-Dumping Authority Act to assist import competing industries in Australia or to protect industries in Australia from the need to adjust to changing economic conditions.

Customs Legislation (Anti-Dumping Amendments) Bill 1988

Question 1:

Section 269TB

Could Australia clarify the new law requirements with respect to standing to file a complaint, and how they relate to the relevant Code provisions concerning standards for initiation, domestic industry and injury?

Answer:

An anti-dumping complaint may be initiated by any interested party who may be affected by the alleged dumping or subsidization. This could include trade unions and farmers, or other suppliers of inputs, as well as the directly affected industry.

The Australian Customs Service recognizes that interested parties would not normally be able to substantiate a case for material injury in terms of Article 3 of the Code unless supported by a major proportion of the domestic industry.

In any case, before an application may be accepted and an investigation commenced, sufficient evidence as to dumping, subsidization and material injury caused must be present.

Question 2:

Section 269TE

What is meant by the statement that the Comptroller "shall determine the matter in like manner as if he or she was the Minister and having regard to the same considerations which the Minister would be required, under [the Anti-Dumping] Act, to have regard?" (ADP/1/Add.18/Rev.1/Suppl.2, SCM/1/Add.18/Rev.1/Suppl.2 refer.)

Answer:

Under the Customs Tariff (Anti-Dumping) Act 1975, decisions in respect of final findings are made by the Minister. Decisions made in respect of

whether or not to initiate an inquiry and preliminary findings are made by the Comptroller-General (or his delegate). Section 269TE of the Customs Act requires that the Comptroller in making a decision have regard to the same legislation that would be considered by the Minister in making a decision in a final finding.