

**GENERAL AGREEMENT
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Committee on Anti-Dumping Practices

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**REPLIES BY ROMANIA TO QUESTIONS RAISED
BY THE DELEGATION OF CANADA¹ CONCERNING
THE LEGISLATION OF ROMANIA**

(ADP/1/Add.9/Rev.1)

The following communication, dated 11 April 1994, has been received from the Permanent Mission of Romania.

Government Decision No. 228/7 May 1992

Question 1

Articles 2 and 3 of the Decision provide for the imposition of dumping and countervail duties without any reference to an injury or causality test. This, if read independently of Joint Order No. 128 that provides for the appropriate injury and causality test, is clearly contrary to the GATT and the Code. What is the relationship of the Decision with the Joint Order? Can the Decision be used to apply anti-dumping duties without reference to the provisions of the Joint Order?

Answer to Question 1

Decision No. 228/7 May 1992 establishes the general legislative framework for the protection of domestic producers against the unfair competition caused by dumped or subsidized imports. This Decision contains the basic principles for anti-dumping and countervailing duties and requires (Article 8) that implementation rules and procedures be established by ministerial orders. Therefore, the Decision cannot be considered as the single framework, without referring to the provisions of Order No. 127/20 August 1992 and of Joint Order No. 128/24 August 1992 which establish the implementation rules and procedures.

Article 4 of Joint Order No. 128 stipulates that an injury, or a threat of injury shall exist. It also indicates the elements which shall be considered in the examination.

These three regulations (Decision No. 228/1992, Order No. 127/1992 and Joint Order No. 128/1992) shall therefore be considered together, as it was mentioned in the Anti-Dumping Practices Committee in April 1993, when these documents were circulated.

It is thus clear that the three interdependent regulations provide the global framework in the field of anti-dumping. They are consistent with the GATT and Anti-Dumping Code provisions.

¹ADP/W/357

Question 2

Article 9 appears to require domestic firms to set contract terms with foreign partners to ensure they reflect "the level of prices in the normal commercial transactions in the domestic and international market". Given that neither the GATT nor the Code prohibit dumping, what is the legislative intent of the Article?

Answer to Question 2

It is true that the provisions of Article VI of the GATT and of the Anti-Dumping Code do not prohibit dumping practices. Nevertheless, in case that these practices cause an injury, or a threat of an injury, for a national industry within the territory of a Contracting Party, measures are foreseen against such practices. Article 9 deals with "export prices" for Romanian export products. It thus appears logical that the provisions of a national legislation should contain elements which draw the attention of economic operators on the necessity to avoid the practice of dumping prices. Consequently, this is the very intent of Article 9 of Government Decision No. 228/1992.

Question 3

Articles 10 and 11 elaborate on the role of the Price Office. What is the purpose of the list of ruling prices referred in both Articles? Is it meant for information purposes only or is it binding? How is the information for this list to be collected?

Answer to Question 3

As stipulated in the respective Articles, the List of ruling prices mentioned in Articles 10 and 11 has the role of informing the economic operators in order to assist them in their export activities. The price levels in this list are not binding. They are meant only for information purposes. These levels are based on the market information (tender prices, catalogues, customs statistics a.s.o.).

Order No. 127/20 August 1992

Question 4

In Chapter I, are the two "experts" in the panel which carries out the preliminary investigation to be government officials? If not, will they be sworn not to violate the confidentiality of the information they come across? Will penalties be applicable if they breach the confidentiality of proceedings?

Answer to Question 4

According to Chapter I of Order No. 127/1992 the preliminary investigation is carried out, within the Directorate for Surveillance of Import and Export Competition, by a panel formed of the director of the Directorate and two experts, who are also from this Directorate. Romanian material law contains provisions for ensuring the confidentiality of information, providing for criminal penalties in case of their non observance.

Joint Order No. 128/24 August 1992Question 5

Article 5 establishes the process to be carried out before a complaint is officially initiated. It does not, however, require the Commission to verify that the complaint represents a major proportion of the industry. Will the Commission verify the standing of complainants?

Answer to Question 5

Paragraph 1 of Article 5 of Joint Order No. 128/1992 stipulates that: "Any natural or legal person, or any association having or not having legal personality, acting on behalf of the Romanian producers, as they are defined under Article 4, paragraph 5, which considers itself injured or threatened by dumped or subsidized import may lodge a written complaint".

Paragraph 5 of Article 4 defines the term "Romanian producers/production" as "Romanian producers, as a whole, of the like products or those of them whose collective output constitutes a major proportion of the total Romanian production of those products".

Hence, it is clear that the Commission will open the investigation only after verifying whether the complainant fulfils these conditions.

Question 6

The Joint Order makes numerous references to the term "interested parties". Who is considered an interested party? Does the definition cover foreign producers of the good under investigation?

Answer to Question 6

The term "interested parties" stipulated in the Romanian anti-dumping legislation is not expressly defined.

Taking into account the context, this term refers, as the case may be, to:

- the exporters, importers or foreign producers of a product subject to the investigation, or a trade and business association a majority of the members of which are producers, exporters or importers of such product;
- the producers of the like product in the importing country, or a trade and business association a majority of the members of which produce the like product in the importing country;
- the exporting country's authorities.