

**COMMENTS ON DOCUMENT TN/RL/W/10 ON
ANTI-DUMPING MEASURES**

Paper from Australia

The following communication, dated 14 October 2002, has been received from the Permanent Mission of Australia.

The following are Australia's general comments and preliminary reactions to the second paper submitted by a group of countries contained in Document TN/RL/W/10. An earlier document was originally circulated by Australia as a room document on 8 July 2002. Australia thanks the group of countries for their responses to the questions and comments contained in Document TN/RL/W/18 of 4 October 2002 and reserves the right to provide further comments and questions on that Document.

Australia welcomes Document TN/RL/W/10 as it raises a reasonable set of issues requiring clarification and notes that a number of these issues have been the subject of dispute settlement action or discussion within the Working Group on Implementation.

1. Definition of Product under Investigation/Consideration and Like Product

We recall that one of the topics suggested for examination within the Working Group on Implementation last year related to the application of 'like product' in anti-dumping investigations.

- How do the proponents relate this proposal of more clearly defining the "product under investigation" (a) with the concept of 'like product' which is reflected in the ADA and (b) to Article 4.1(ii) relating to segmented markets?

There is considerable WTO case law on 'like product' which has identified the following criteria in determining if a product is a 'like product': the product's end use in a given market; consumer tastes and habits; the product's properties, nature and qualities; and tariff classification. This would seem to provide a sufficient basis for investigating authorities to determine properly a 'like product'.

2. Definition of Domestic Industry

Australia agrees that there would be some merit in examining the application of what constitutes "major proportion" under Article 4.1 of the ADA. However, the second question posed by the paper (namely, whether there should be criteria to determine when authorities are allowed, in exceptional cases, not to use the definition of "domestic producers as a whole of the like products") suggests turning the ADA on its head. Notwithstanding that in exceptional circumstances production

may be divided into segmented markets, Article 4.1(ii) does not undermine the basic definition (the “major proportion of total domestic production”) contained in the chapeau of Article 4.1.

3. Standing Rules

Australia considers that there needs to be minimum standards for initiating anti-dumping proceedings to ensure that there are no ‘frivolous’ unfounded applications designed purely to have a trade chilling effect. Of course, the issue of standing is a separate issue from that of definition of domestic industry for the purposes of a determination of injury. The second paragraph of the illustrative example in the paper appears to confuse standing with definition of industry.

4. Initiation Standards

In principle, there is an argument to support the claim that initiation standards are too low. However the example given in the paper is very case specific. In Australia’s case, other sources of information would be examined to see if the application contained information that was correct. However the initiation process is based on a prima facie test, so the starting point is always what is contained in the application.

Australian practice may be helpful in consideration of this issue. Amendments have been made to Australia’s anti-dumping application form which now requires greater specification of information. This is aimed at weeding out unsubstantiated applications which would be unlikely to proceed due to lack of a basis of dumping/injury/causal link.

The last paragraph of the illustrative example suggests placing the burden on the investigating authorities to rectify deficient applications.

- Do the proponents consider that the burden should rather be on the petitioners?

5. Determination of Normal Value – Affiliated Parties and Their Transactions

Australia considers that this is an area of the ADA where clarification would be helpful. Australia notes the relevance of the US Hot Rolled Steel case which examined the issue of the meaning of “the ordinary course of trade”.

- How do the proponents relate this proposal with the provisions in the ADA relating to “in the ordinary course of trade” and “fair comparison”?

6. Injury Determination

The proponents note that the ADA does not provide adequate guidance to evaluate the factors to be considered when determining injury. Evaluation of injury factors is a matter in which there must be some degree of discretion.

- Consequently, do the proponents consider that this is an area where agreement could be reached on criteria used to evaluate injury factors?
- Do the proponents consider that the ADA must specify all circumstances in relation to the factors outlined in Article 3.4? As Article 3.4 states in the last sentence, “this list is not exhaustive, nor can one or several of these factors necessarily give decisive guidance.”

- Could the proponents elaborate on what is meant by clarifying the relationship between Article 3.4 and other provisions of Article 3?

7. Price Undertakings

Australia has no comments to make at this time in relation to price undertakings.

8. Reviews

Australia agrees that some clarification in relation to reviews could be useful.

- Are the proponents seeking to redress situations where the domestic selling prices have not moved in response to dumping duties (in other words, the dumping duty has been absorbed by the exporter)?
- What situations would give rise to dumping authorities reviewing the continuation of measures “on their own initiative”?
- Do the proponents consider that Article 11.4 is insufficient in giving guidance in relation to evidence and procedure?

9. Constructed Export Price: methodology for construction

Australia agrees in principle that clarification on this issue would be useful.

10. “All others” Rate

Australia also agrees that this issue warrants clarification.

11. The Authorities’ Discretion on the Use of Cost Data

Australia agrees that this issue warrants clarification in order to assist in defining what are reasonable costs.
