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Paper by Australia

The following communication, dated 17 March 2000, has been received from the Permanent Mission of Australia.

TERMINATION OF INVESTIGATIONS UNDER ARTICLE 5.8 IN CASES OF *DE MINIMIS* IMPORT VOLUME

Australia legislation follows the WTO Anti-Dumping Agreement in that the Chief Executive Officer of the Australian Customs Service (CEO) must immediately terminate an investigation, in relation to a country, where the volume of dumped goods (actual or potential) is negligible. A negligible volume of dumped goods is defined as being less than 3 per cent of the total Australian import volume over a "reasonable examination period". The reasonable examination period is a period that comprises the whole or substantial part of the investigation period or any period after the end of the investigation period that is taken into account for the purpose of considering possible future importations of the goods under consideration.

For the purpose of assessing whether there is only a negligible volume of dumped imports, dumped imports include those with margins of less than 2 per cent. Thus dumping must be assessed before an investigation is terminated on the basis of negligible volume (unless it is determined that all imports from a source constitute less than 3 per cent of the total Australian import volume in which case the investigation would normally not have been initiated). In practice, this means that terminations normally occur late in an investigation.

Where a number of countries account for import volumes of dumped goods of less than 3 per cent of the total Australian import volume but the aggregate of the dumped imports is more than 7 per cent of the total Australian import volume, then the volumes of dumped imports are not regarded as being negligible.

While the CEO can have regard to potential as well as actual dumped imports over the reasonable examination period, the CEO has regard to potential volumes only when there is a demonstrated trend of increased volumes over the investigation period that indicates that the negligible volume would be exceeded shortly after the end of the investigation period.

PRACTICAL ISSUES AND EXPERIENCE IN CASES INVOLVING CUMULATION UNDER ARTICLE 3.3

Australian Legislation - Section 269TAE(2C)

In determining, for the purposes referred to in subsection (1) or (2), the effect of the exportation of like goods to Australia by different exporters from the same country of export or from different countries of export, the Minister should consider the cumulative effect of those exportations only if, having regard to:

- (a) the conditions of competition between those goods; and*
- (b) the conditions of competition between those goods and like goods that are domestically produced;*

the Minister is satisfied that it is appropriate to do so.

The application must include evidence of material injury to the Australian industry. The evidence must include an examination of the volume of the dumped imports, their effect on prices in the Australian market, and the consequent impact of these imports on the Australian industry in terms of s. 269TAE. Where allegedly dumped imports from several countries are "cumulated" to support injury claims, the applicant must demonstrate that cumulation is appropriate. The evidence is examined to determine whether material injury has been or is being caused, or is threatened, or whether the establishment of an Australian industry has been materially hindered. Where injury is found to be negligible, the application is rejected.

Under s. 269TAE(2C) dumped goods from a number of sources may be cumulated to determine whether they have caused material injury only. In doing so the competitive conditions must be examined.

Regard must be had to the conditions of competition between the exported goods, and the conditions of competition between the exported goods and like goods that are domestically produced.

Evidence of competition would be that the goods competed in the same market during the investigation period for the same customers. However there is no requirement for the end users in Australia to be aware of the level of competition.

Where imports are cumulated the report (preliminary affirmative determination and/or statement of essential facts as well as the final) must demonstrate that this issue was considered before the decision to cumulate was made.

PRACTICAL ISSUES AND EXPERIENCE WITH RESPECT TO QUESTIONNAIRES AND REQUESTS FOR INFORMATION UNDER ARTICLES 6.1 AND 6.1.1.

Questionnaires

Apart from the Application form, the only questionnaire is that for exporters. Where the exporter is not the producer of the goods under consideration, the exporter is only required to fill out that part of the questionnaire that is relevant to the exporter. The exporter is requested to forward a copy of the questionnaire to the manufacturer for completion of the questions relating to the manufacture of the goods. The current exporter questionnaire has recently undergone extensive revision to meet changing requirements. The format of the revised questionnaire is consistent with other major users of the anti-dumping system.

Questionnaires (as well as a copy of the non-confidential application) are sent to all known exporters on initiation of the investigation (however, verification visits may only extend to selected exporters).

The exporter questionnaire is a lengthy document (42 pages) but so far has been well received by exporters. Customs prefers to receive the required information in an electronic format (but data submitted in hard copy is not considered to be “non-cooperative”) and provides a template for each of the preferred spreadsheets. There are no specific arrangements for SMEs, however any exporter experiencing difficulty in compiling the required information is encouraged to discuss the issue with Customs in order to make alternative arrangements.

The exporter questionnaire is sent in hard and electronic copy.

The exporter questionnaire is segmented with instructions setting out Customs’ expectations and providing information that allows the exporter to complete the questionnaire.

Section A relates to company structure and operations. As well, Customs seeks general background information on such elements as accounting methods and standards; company income and expenditure; and points of communication.

Section B requires the information to establish export price. Customs seeks 100 per cent of sales to Australia of the goods during the investigation period, customer by customer. Information is sought under the following headings: level of trade; model/grade; product code; invoice number; date of sale; order number; shipping terms; payment terms; quantity; invoice value; discounts; other charges; invoice currency; exchange rate; net invoice value in the currency of the exporting country; rebates or other allowances; quantity discounts; ocean freight; marine insurance; f.o.b. export price; packing; inland transport costs; handling, loading etc; warranty/guarantee expenses; after sales service; commission and any other costs.

Section C requires a complete list of each model/type of the good exported to Australia in order to test like goods. As well, Customs seeks information of like domestic goods, and the differences between export and domestic sales.

Section D covers domestic sales. In this section, Customs seeks information about the exporter’s selling methods and prices on the domestic market in the country of export. Detailed descriptions of the exporter’s selling chains and the functions/activities performed by each party in the chain, and a copy of any agency or distributor agreements are required to support the data. Similar information as was sought for export sales to Australia is required for domestic sales.

Section E relates to fair comparison. In order to eliminate factors that have unequally modified the prices to be compared, adjustments may be claimed. Customs must examine cost differences between the sales in different market and be satisfied that those costs are likely to have influenced price. A party seeking an adjustment is obligated to support the claim by relevant and substantiating evidence. Claims for adjustments should be based on actual costs incurred.

For costs associated with export sales, Customs would normally consider claims in relation to inland transport costs; handling, loading and ancillary expenses (such as terminal charges, wharfage and other port charges, container taxes, document fees, clearance charges, bank charges etc); the cost of extending credit; packing costs; commission paid in relation to export sales to Australia; import charges (taxes, customs duty etc); warranties and after sales service; currency conversion and any other factor that can be shown to influence price.

For costs associated with the domestic sales, Customs considers adjustment claims in relation to physical characteristics (i.e. differences such as quality, chemical composition, structure and design etc); level of trade; the costs of extending credit; etc.

Section F relates to export sales to countries other than Australia (third country sales). Customs may use this information for comparison with exports to Australia as a basis for normal value determinations. Similar information as was sought for export sales to Australia is required.

Section G relates to costing information and is used by Customs for various purposes, including constructing a normal value, testing the profitability of sales of like goods on the domestic market and adjustments.

Detailed information is required on production processes and capacity; cost accounting practices; cost to make and sell like goods on the exporter's domestic market and cost to make and sell the goods exported to Australia.

The latter part of the document contains an exporter's declaration, explanation of terms used in the document and an exporter's checklist.

Deadlines for the exporters questionnaire

Australia's initiation notice (of new investigations, reviews and continuations, i.e. sunset reviews) gives all interested parties an opportunity to make submissions in response to that notice. At initiation all known exporters are notified and provided with a questionnaire. In general, Customs requires submissions to be lodged by day 40 in the investigation.

Request for extensions in which to lodge submissions may be granted in certain circumstances. A party may request an extension, and the CEO must be satisfied that the reasons given are valid, before such an extension is granted. No specific reasons are set out in the legislation but the CEO would bear in mind such factors as:

- the complexity of the case, e.g. the product covers a number of types and models;
- the time required by the exporter to translate the documents into the language of the exporter;
- availability of staff of the exporter to respond to the questionnaire;
- national or other holidays in country of export; and
- the deadline at which the statement of essential facts is published.

It is not the practice for the Customs to forward an additional questionnaire to exporters. Additional responses are only sought to clarify the answers provided by an exporter.

PRACTICAL ISSUES AND EXPERIENCE IN PROVIDING OPPORTUNITIES FOR INDUSTRIAL USERS AND CONSUMER ORGANIZATIONS TO PROVIDE INFORMATION UNDER ARTICLE 6.12

Any person may make a submission to Customs supporting an application and such submissions must be considered provided it is made within 40 days of the date of the initiation of the investigation. Late submissions can be considered if such consideration would not delay the publication of a statement of essential facts. Once a statement of essential facts is published any person has 20 days to make further submissions.

PRACTICAL ISSUES AND EXPERIENCE IN CONDUCTING "NEW SHIPPER" REVIEWS UNDER ARTICLE 9.5

New Shipper reviews are dealt as an accelerated review of anti-dumping measures under the Customs Act 1901. A new shipper is required to lodge an application to request an accelerated review. However such an application can be rejected if the applicant:

- did not cooperate in the original investigation; or
- is related to a party which did not cooperate in the original investigation.

The application for an accelerated review only requires a description of the goods to which a dumping notice relates and a statement of the basis that the exporter considers that the particular notice is not appropriate so far as that exporter is concerned.

The investigation must be carried out and report prepared to the Minister as soon as practicable by the CEO but in any event no later than 100 days after the date that an application is lodged.

To date no application for an accelerated review has been received.
