

# WORLD TRADE ORGANIZATION

RESTRICTED

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**Committee on Anti-Dumping Practices  
Ad Hoc Group on Implementation**

Original: English

## **LIST OF QUESTIONS POSED BY MEMBERS ON THE APPLICATION OF THE LESSER DUTY RULE AND CONSIDERATION OF PUBLIC INTEREST**

### Replies of Canada

The following communication, dated 23 April 2001, has been received from the Permanent Mission of Canada.

**Q1. Are industrial users and consumer organizations given the right to review and copy the non-confidential versions of all documents submitted by the parties to the investigation? (This is relevant only to Members who do not maintain a full public file of all documents relating to the investigation.)**

#### Reply

Yes - Canadian authorities maintain full public files of all documents relating to anti-dumping investigations.

**Q2. At what stage of the investigation do the Members provide opportunities for industrial users and consumer organizations to provide information? Do they have a right to be heard as well as to submit written information?**

#### Reply

At any time during the preliminary and final investigations of dumping and injury, interested parties are invited to file written submissions to the appropriate investigating authority containing any information believed to be relevant to the particular investigation (dumping or injury).

With regard to public interest, industrial users and consumers, among others, may request that the Canadian International Trade Tribunal conduct a public interest inquiry to consider whether the imposition of the anti-dumping duties, or the imposition of such duties in the full amount, is in the public interest. In such inquiries, parties may make representations orally and/or in writing to the Canadian International Trade Tribunal.

**Q3. Are there Members who maintain a verification procedure for verifying the factual information submitted by these parties?**

#### Reply

Information submitted to Canada's investigating authorities for the purposes of an anti-dumping investigation is verified by various means. In the context of a public interest inquiry,

information is verified through questioning by the parties of the material submitted, and through cross examination of witnesses during a public hearing.

**Q4. Do those Members who do not include a public interest clause in their anti-dumping regimes provide an opportunity for industrial users and consumer organizations to provide information? If so, what effect, if any, do their views have on the determinations made by the Authorities?**

Reply

Not applicable - Canadian law allows Canadian authorities to consider the broader public interest in the administration of its anti-dumping and subsidy countervail law.

**Q5. To what extent do those Members who do include a public interest clause in their anti-dumping regimes consider the information and comments received from the industrial users and consumer organizations in their final determinations? It may be useful to provide specific examples of cases where those comments actually had an impact on the final determination.**

Reply

Industrial users and consumers have the opportunity to make submissions concerning dumping or injury at any stage of an anti-dumping investigation. Public interest inquiries, when held, are conducted subsequent to affirmative final determinations of dumping and injury. In that context, industrial users and consumers are specifically invited to make submissions to the Canadian International Trade Tribunal on matters related to the broader public interest of imposing anti-dumping duties in a specific case. These public interest issues could include competition policy concerns, broader economic impacts to downstream users, health care issues or consumer interests. This process allows a broad spectrum of interested persons an opportunity to be heard.

In that context, representatives of industrial users and consumers groups, as well as Canada's competition authorities, submitted information to and appeared before the Canadian International Trade Tribunal in several inquiries including Certain Grain Corn in 1986, Certain Jarred Baby Foods in 1998 and Iodinated Contrast Media in 2000.

**Q6. Do Members affording opportunities for industrial users to comment also include the suppliers of the raw material as parties who may provide relevant information to the investigating authorities?**

Reply

Yes, suppliers of raw material have the opportunity to provide comment to the investigating authorities in the context of public interests inquiries.

**Q7. Is there any distinction drawn between the preliminary and final determination with respect to the relevance of information provided by users or consumers?**

Reply

As noted above in reply to question 2, at any time during the dumping investigation interested parties can submit comments containing information that are believed to be relevant to the dumping or injury and causality determinations. Industrial users and consumers more commonly make

submissions in the context of a public interest inquiry which, if conducted in a particular case, is conducted subsequent to final determinations of dumping and injury.

**Q8. How do Members take into account the “relevancy” of submissions from consumers and downstream users?**

Reply

Submissions are considered to the extent that the information is relevant to the question at hand in the particular inquiry. In a public interest inquiry, these submissions are central to the question of the elimination or reduction of the anti-dumping duties.

**Q9. Are competition authorities allowed and/or required to provide input on behalf of consumers and downstream industries?**

Reply

Canada's competition authorities have the right to intervene in the injury aspect of anti-dumping investigations in as much as the submissions relate to the questions of injury and causation and arguments in favour of having a public interest inquiry. In respect of public interest inquiries, the competition authorities are authorized to participate in the inquiry and provide any information related to the public interest, including competition concerns.

**Q10. Can representations from these groups result in the reduction of anti-dumping duties?**

Reply

Yes, public interest inquiries may result in a recommendation by the Canadian International Trade Tribunal to the Minister of Finance that the anti-dumping duties be reduced or eliminated for public interest reasons.

**Q11. Is not "public interest" a sovereign judgement?**

Reply

In Canada's system, such decisions are made by the Government of Canada on recommendation of the Minister of Finance, who decides whether or not to act on a public interest report. However, the requirement to consider the relevant submissions from industrial users and consumers is a WTO obligation under Article 6.12 of the ADA. Canada allows for the consideration of submissions from these parties in a fashion that may allow them to have an impact on the level of final duties.

**Q12. May not the public interest lie in enforcement of Anti-dumping laws?**

Reply

Yes, in the vast majority of cases, Canadian authorities have determined that the overall public interest lies in the normal enforcement of Canada's anti-dumping legislation.

**Q13. Can not a sovereign determine that its economy is best served by enforcement of Anti-dumping laws?**

Reply

Canada does not see a contradiction between the right of parties to make submissions concerning the overall public interest of levying anti-dumping duties or levying such duties in the full amount and the right of a sovereign nation to levy such duties up to, but not exceeding, the margin of dumping.

**Q14. Does consideration of public interest testimony allow for testimony of producers and employees of the industries subject to alleged dumping?**

Reply

Submissions from producers and employees of the industries subject to alleged dumping are considered both during the dumping and injury investigations and in any subsequent public interest inquiry.

**Q15. To what extent is a public interest evaluation affected by the fact that the duty is less than the margin of dumping?**

Reply

Under the Canadian anti-dumping system, the amount of anti-dumping duty is always equal to the margin of dumping unless the government, on recommendation of the Minister of Finance, has reduced the amount of anti-dumping duties pursuant to a public interest inquiry. One option for reducing such duties is to apply a lesser-duty concept.

**Q16. In the context of lesser duty calculations, to what extent, if any, are competition authorities allowed in the process?**

Reply

Canada's competition authorities have a right under the Competition Act and trade remedy law to participate in public interest inquiries before the Canadian International Trade Tribunal and, in this regard, have made submissions on the appropriate level of duty reductions.

**Q17. To what extent, if any, are importers in the investigation allowed to represent the downstream consumer?**

Reply

To the extent that they have relevant authoritative information about the effects on downstream consumers, importers of the goods in question may present that information to the Canadian International Trade Tribunal in the context of a public interest inquiry.

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