

**NOTIFICATION OF LAWS AND REGULATIONS UNDER
ARTICLES 18.5 AND 32.6 OF THE AGREEMENTS**

Replies to Questions posed by CANADA¹
Regarding the Notification of AUSTRALIA²

The following communication, dated 11 August 1999, has been received from the Permanent Mission of Australia.

Q1. Paragraph 1 of Article 15 of the Agreement on Subsidies and Countervailing Measures requires a determination of injury to be made with respect to the domestic market for like products which is defined in footnote 46.

In view of the foregoing can Australia explain how section 269T(A4) is consistent with the Agreement when it provides when like goods are close processed agricultural goods, the industry in respect of those goods includes persons producing the raw agricultural goods from which the processed goods are derived?

Reply

Section 269T(4A) does not extend the scope of what is a like good, rather it clarifies the meaning of producer of a like product, where that product is a "close processed agricultural good". This provision has been in the legislation since 1992 and was not affected by the amendments made in 1998.

Q2. Subsection 269TACB(2) provides five methods for the Minister to compare normal values and export prices but does not seem to indicate which method will normally be used. What circumstances determine the application of each method?

Reply

Unlike some other administrations, Australia does not have an order of preference for determining what method of comparison will be used. Nor does Australia prescribe in its regulations what method to use. Rather the method is left to the discretion of the investigating team. The method the team chooses will be based on a number of factors, including the availability of the information obtained and the volume of that information.

¹ G/ADP/Q1/AUS/1-G/SCM/Q1/AUS/1

² G/ADP/N/1/AUS/2-G/SCM/N/1/AUS/2

However, Australia is keen to bring some regularity to the process and in order to determine what is the best practice among members, has placed an item of the Ad Hoc Group's agenda. Australia is currently preparing a discussion paper on this topic.

3. Subsections 269ZJ(5) and (6) both provide that where a person will not agree to the inclusion in the public file of some information or will not provide a non-confidential summary of the information, the CEO may disregard the information unless it is demonstrated that the information is correct. Can Australia explain what is meant by "unless it is demonstrated that the information is correct"? Would the information be used without the existence of a non-confidential summary?

Reply

Australia's legislation reflects the wording of A-D Article 6.5.2 and SCM Article 12.4.2. If information is not provided in a non-confidential version, Customs has discretionary powers whether or not to use that information, unless it can be demonstrated that the information is correct.

Information can be used, even though a non-confidential version has not been supplied, provided that it can be demonstrated that the information is correct. No test is set out in the legislation to determine what meant by "correct". However the information must be demonstrated to be correct. This would require, as referred to in A-D Article 6.5.2 and SCM Article 12.4.2 that information from other sources is available which can be used to test the accuracy of the information provided under subsection 259ZJ(5) and (6).

4. Article 5.6 of the WTO Agreement on the Implementation of Article VI states:

"If, in special circumstances, the authorities concerned decide to initiate an investigation without having received a written application by or on behalf of a domestic industry for the initiation of such an investigation, they shall proceed only if they have sufficient evidence of dumping, injury and a causal link, as described in paragraph 2, to justify the initiation of an investigation".

Is there a provision in Australia's legislation restricting Minister-initiated investigation to "special circumstances"? If so, what are these circumstances.

Reply

A-D Article 5.6 does not define what is a "special circumstance" and neither does the Australian legislation.

Section 269TAG however allows the Minister to initiate an take anti-dumping investigation on his or her own initiative. Under section 269TAG(5), the Minister is required to ensure that such an initiation is consistent with Australia's WTO obligations.

5. In decisions taken by the Minister to:

- **reject the CEO's report concerning the continuation of anti-dumping measures (Article 269ZHG);**
- **reject the CEO's report concerning the review of anti-dumping measures (Article 269ZDB);**
- **reverse the Trade Measures Review Officer's decision on whether or not a reviewable decision should be referred back to the CEO for reinvestigation (Article 269ZZL); and**

- **reject the CEO's decision upon reinvestigation of a Ministerial decision (Article 269ZZM(1)).**

will the Minister, in giving public notice of such decisions, disclose the basis for the decisions?

Reply

The public notice advising of the Minister's rejection of recommendations from either the Trade Measures Review Officer or the CEO must set out the reasons for the decision, including all material findings of fact or law. Alternatively the material findings of fact or law may be contained in a separate report. If so, the notice must set out the manner in which copies of the report can be obtained.
