

WORLD TRADE ORGANIZATION

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Committee on Anti-Dumping Practices
Committee on Subsidies and Countervailing Measures

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QUESTIONS CONCERNING THE NOTIFICATIONS PROVIDED BY
THE EUROPEAN COMMUNITIES¹ OF LAWS AND REGULATIONS
UNDER ARTICLES 18.5 AND 32.6 OF THE AGREEMENTS

The following communication, dated 29 September 1995, has been received from the Permanent Mission of Australia.

Please find enclosed the written questions submitted by Australia in view of the legislation review to be carried out in the next meeting of the Anti-Dumping and Countervailing Measures Committees.

Anti-Dumping Duty Legislation (G/ADP/N/1/EEC/1)

1. Article 2(10)(d) only provides for a level of trade adjustment where the different levels of trade exist in the domestic market of the exporting country. Will the EC authorities make due allowance for differences in levels of trade that affect price comparability but that are not present in the domestic market of the exporting country, as required under Article 2.4 of the Anti-Dumping Agreement?
2. Article 3(5), in listing the factors set out in Article 3.4 of the Anti-Dumping Agreement on the determination of injury, also includes as an additional factor "the fact that the industry is still in the process of recovering from the effects of past dumping or subsidization". What is the basis for using such a factor in the examination of the impact of the dumped imports on the Community industry?
3. Article 4(1), in defining "Community industry", says "a major proportion, as defined in Article 5(4), of the total Community production of those products". However Article 5(4) does not explicitly define a "major proportion" but rather defines the proportion of the "Community industry" supporting an application sufficient for the initiation of an investigation. How does the EC determine what is the "Community industry" both for determining support for the application as well as for injury assessment?
4. Under Article 4(3) it is proposed that duties be levied on the EC as a whole. Does the constitutional law of the EC preclude duties being levied only on those products consigned for consumption in the area in question, as provided for under Article 4.2 of the Anti-Dumping Agreement? (Note that the EC's notification to the Safeguards Committee (G/SG/N/1/EEC/1) provided for the application of measures to one or more regions of the EC where that is more appropriate (Article 18)).

¹G/ADP/N/1/EEC/1 and G/SCM/N/1/EEC/1.

5. The test for negligible volume in Article 5(7) and referenced in Article 9(3) differs from the definition of negligible volumes set out in Article 5.8 of the Anti-Dumping Agreement (i.e. the thresholds are different; they are of domestic consumption and not imports; and they appear to be in respect of all imports rather than dumped imports). Whether or not the conditions in the Regulation would be consistent with the Anti-Dumping Agreement would vary from case to case. How will the EC ensure that its approach is consistent with the Anti-Dumping Agreement?

6. Article 9(1) provides that "[w]here a complaint is withdrawn, proceedings may be terminated unless such termination would not be in the Community interest". In what circumstances would an investigation continue even if the Community industry making the complaint did not wish it to proceed?

7. While setting out thresholds in Articles 5(7) and 9(3) on volumes, the Regulation appears not to say explicitly that the investigation once initiated will be terminated if it is determined that the volume of dumped imports is less than the volumes set out in Article 5(7). Will there be automatic termination in that case?

8. Article 9(3) sets out conditions for import volumes where "injury shall normally be regarded as negligible". Would there be any circumstances in which the injury would not be regarded as being negligible, despite the volumes meeting the conditions of Article 5(7), other than a determination that the potential volume of dumped imports is not negligible?

9. In Article 9(3) what does the phrase "they shall remain subject to the proceedings" imply?

10. Under Article 10(2) provisional duties can be definitively collected when the facts as finally established show that there is dumping and injury, ... , irrespective of whether a definitive anti-dumping duty is to be imposed". Do those facts also have to show causal link? In the absence of a definitive anti-dumping duty (and hence the non-application of Article 10(3)), does the Regulation limit the level of duty definitively collected, except that it cannot be more than the original provisional duty?

11. Article 13 sets out circumstances where anti-dumping duties may be extended to countries not subject to investigation and to products that are not like products to those for which measures are in force. Are these anti-dumping duties in the sense of GATT Article VI and the Anti-Dumping Agreement? If so, what justification is there for such extensions?

12. What special provisions for rules of origin for anti-dumping purposes are envisaged under Article 14(3)?

13. Could the EC explain what is covered by its Article 20 on disclosure. Article 20(1) says that disclosure regarding the imposition of provisional measures may be requested, whereas Article 12.2 of the Anti-Dumping Agreement requires that there be public notice (possibly including a separate report) disclosing such details. Is something more detailed envisaged by the EC? With regard to Article 20(2), Article 6.9 of the Anti-Dumping Agreement requires the EC to make disclosure to all interested parties and not just to those that make a timely request. The final sentence of Article 20(4) refers to different facts and considerations being "disclosed as soon as possible". Would this be before the final decision or does this simply refer to the public notice/report of the final determination?

Countervailing Duty Legislation (G/SCM/N/1/EEC/1)

14. Under Article 4(1), "the amount of countervailable subsidies ... shall be calculated in terms of the benefit conferred to the recipient". Does the Regulation allow for the pass through of benefits from upstream subsidies?

15. Article 4 says that the "[t]he amount of countervailable subsidy ... shall be calculated ... found to exist during the investigation period for subsidization". How would the EC treat the situation where the subsidy ceased to be granted after the investigation period but before the final determination with either no countervailable subsidy being granted or a new subsidy programme being provided?

16. Do the negligible volume criteria in Article 11(4) apply to all developing countries or only to those that are WTO Members as set out in Article 27.10(b) of the Subsidies Agreement?

17. Article 11(6) says that "[t]he amount of the countervailing duty shall not exceed the amount of countervailable subsidies from which the exporters have found to benefit". Does this require an assessment of whether the exporter in question has actually benefited from the subsidy?