Reproduced herewith are replies by Sweden to questions put by the United States (ADP/W/119) and the EEC (ADP/W/122) on the Swedish anti-dumping legislation (ADP/1/Add.2/Suppl.1).

US Questions

Question 1

Does Section 9 of the Swedish law require preliminary findings of both injury and subsidization prior to the imposition of provisional measures?

Answer

The National Board of Trade shall, as stated in section 2 of the Ordinance, conduct dumping investigations in accordance with the provisions of the Anti-Dumping Code. The Board is not to refer the matter of taking provisional measures to the Government until it deems it necessary, following the prerequisites in Article 10 of the Code. Neither will the Government - as a matter of international law - decide upon provisional measures unless those prerequisites about dumping, sufficient evidence of injury and necessity to prevent injury during the period of investigation are fulfilled.

Question 2

Section 4.1 refers to the filing of a petition by "the industry affected". Does this mean that an affected industry can file a petition if it is not producing a like product as required by Article 4.5 of the Code?

Answer

No, the notion "industry affected" in this context has the same meaning and extent as in Article 4.1 of the Anti-Dumping Code.

1 Probably "dumping".
2 Probably "4.1".
Question 3

The Supplement submitted by the Swedish delegation (ADP/1/Add.2/Suppl.1) states that the Swedish authorities will choose between "three basic types" of duties, "namely variable duties, ad valorem duties and specific duties". Please explain how these types of duties will operate and under what circumstances a particular type of duty might be appropriate.

Answer

Variable duties vary with the import price. The duty increases when the prices are being lowered, decreases when the prices are being raised, and becomes zero when the actual import prices correspond to the lowest, fixed in advance, import price.

Ad valorem duties are calculated at a certain percentage of the import price.

Specific duties are calculated on the import quantity and not the import price.

Variable duties has a disadvantage in that they are demanding to administer and control. Ad valorem duties are simpler in those respects but have one weakness in so far as they change in parallel with the import price. Hence, if the latter price raises, the duty might well exceed the margin of dumping.

Margins of dumping and amounts of subsidies are often being fixed per unit for the dumped or subsidized goods, i.e. in specific terms. In the light of this, anti-dumping or countervailing duties may well take the form of specific duties. However, the ordinary Swedish duties for most goods are ad valorem duties, which speaks in favour of also shaping the anti-dumping or countervailing duties likewise.

As was stated in the explanatory statement by the Swedish Government it is not possible to give a general recommendation in favour of one type of duty above the other. A choice will have to be made in each individual case.

EEC questions

Question 1

What is the legal status of the National Board of Trade (governmental or non-governmental organisation?) and what is its composition? What are its position and powers vis-à-vis the Swedish Government?

Answer

The National Board of Trade is a governmental authority with a council consisting of the director general and seven other persons. One of its main tasks is to handle questions concerning international economic and commercial organizations, another is to conduct investigations in foreign trade matters, either by own decision or after instructions from the Government. The decisions of the Board in different questions are independent from the
Government. Decisions can often be appealed against to a court or — if the matter more strictly concerns trade policy — to the Government.

As regards dumping investigations the Board conducts those in accordance with the provisions of the Anti-Dumping Code. (See section 2 of the Swedish Ordinance). Decisions by the Board not to initiate an investigation can be appealed against to the Government.

Question 2

Considering that the Ordinance on dumping and subsidy investigations only elaborates on some of the issues regulated in the Anti-Dumping Code it would be useful to clarify to what extent the Code is directly applicable in Sweden and if the parties concerned can derive subjective rights from the Code.

Answer

According to Swedish legal principles international agreements have to be either transformed or incorporated into Swedish law to be directly applicable in courts. The Swedish Government is however always bound, as a matter of international law, by the commitments in the agreements, independent of a transformation or incorporation.

The Swedish Government has not deemed it necessary to include the Code in its legislation, partly due to the fact that many of the provisions in the Code are directed at first hand to the investigating authority. This does not mean that a concerned party is deprived from referring to the Code, for example in a situation in which the correct conduct of an investigation is questioned.