RESPONSES BY AUSTRALIA TO QUESTIONS ON ITS ANTI-DUMPING LEGISLATION SUBMITTED BY THE REPUBLIC OF KOREA

The following responses to questions on the Anti-Dumping Legislation of Australia, submitted by the Republic of Korea and circulated as ADP/W/223, have been received from the delegation of Australia.

ANTI-DUMPING AUTHORITIES ACT 1988

Question 1

What is the meaning of the phrase "... the Authority's recommendation shall ... relate to any like goods not covered by the application but imported into Australia ... (underline added)" in section 7(2)? Does this mean imposing an anti-dumping duty on like goods for which no petition was filed against but were imported into Australia? If so, what is the difference between this case and the imposition of an anti-dumping duty through a self-initiated investigation by the Government?

Answer

With regard to section 7(2) of the Anti-Dumping Authority Act 1988, one interpretation may be that the Authority could make recommendations that anti-dumping action be taken on a country or countries not included in the petition. The Authority would regard such an interpretation as being outside the spirit of the GATT Anti-Dumping Code. Accordingly, the Authority would limit its recommendations to apply to the country or countries covered by the petition.

Question 2

Who conducts reviews for revoking an outstanding anti-dumping duty order or price undertaking when requested by an interested party?

Answer

Section 7(4) of the Anti-Dumping Authority Act 1988 provides for the Authority to conduct an enquiry to determine whether dumping duties or undertakings should be revoked. In the course of conducting such an
enquiry, all interested parties would be given the opportunity to put forward their views prior to the Authority forwarding its report and recommendations to the Minister.

Under the Customs Tariff (Anti-Dumping) Act 1975 it is possible for the Australian Customs Service to recommend to the Minister that outstanding dumping duties or price undertakings be revoked. However, it is the clear intention of the Government that, in almost all cases, revocation action would not be undertaken without enquiries and that these enquiries will be undertaken by the Anti-Dumping Authority. The rare exceptions would be those cases where it was obvious to all parties that the need for a revocation was beyond dispute. In such cases, the Australian Customs Service would consult with the Anti-Dumping Authority prior to recommending to it that the arrangements had been revoked.

CUSTOMS LEGISLATION (ANTI-DUMPING AMENDMENTS) ACT 1988

Question 3

In relation to section 269TB, how does Australia interpret the phrase "introduced into the commerce of another country" of Article VI of GATT? What is the meaning of the words "is likely to be imported" and "may be imported"?

Answer

Australia interprets "introduced into the commerce of another country" in regard to exports to Australia as goods that have been introduced into the domestic market in Australia.

It should be noted that section 269TB of the Customs Act permits an application for a dumping duty notice/countervailing duty notice to be lodged prior to the actual importation of the goods under enquiry. It does not empower the imposition of those duties.

The duties are imposed under the provisions of section 8 or 10 of the Customs Tariff (Anti-Dumping) Act 1975 respectively. These provisions reflect those of the respective Codes; that is, material injury must have been caused or be threatened to the Australian industry producing like goods by goods exported at less than their normal value or by goods on which a subsidy has been paid or granted.

Australia recognizes that it would be extremely rare that these provisions could be satisfied prior to the actual importation of the goods.

The purpose of including the words "is likely to be imported" or "may be imported" in section 269TB is to permit enquiries to be commenced prior to importation to enable expeditious action to be taken in cases where it is considered appropriate; for example, where a tender has been let for future supply of one-off capital equipment.
For action to be initiated against impending imports, the volume of goods must be of such magnitude as to have the potential to disrupt the local market and the Australian authorities must be satisfied that material injury is imminent and clearly foreseeable.

Before initiating an enquiry in regard to goods which are "likely to be imported" or "may be imported", the Australian Customs Service would need to be satisfied on the basis of firm evidence that the likelihood of the goods being imported was more than mere allegation, conjecture or remote possibility.