INFORMATION ON IMPLEMENTATION AND ADMINISTRATION OF THE AGREEMENT

LEGISLATION OF AUSTRALIA

The Permanent Mission of Australia has requested that the following communication, dated 28 April 1993, which was orally presented to the members of the Committee on Anti-Dumping Practices (See ADP/M/40, para. 31), be circulated to the members of the Committee.

New Anti-Dumping and Countervailing System

Amendments to Australia’s anti-dumping and countervailing legislation, introducing a new system for applying dumping and countervailing duties, received royal assent on 21 December 1992.

This change was foreshadowed in December 1991 when the then Minister for Industry, Technology and Commerce, announced a package of changes following a review of Australia’s anti-dumping system.

I referred to the new provisions at the last meeting of this committee. Details have now been provided to the Secretariat and are available as documents.

The new system has 3 main elements. It introduces:

- a concept where an interim duty will be imposed and collected on each consignment of goods subject to anti-dumping measures;
- a provision where an importer can claim reimbursement of any excess interim duty paid where it can be shown that the actual total duty payable is less than the total interim duty paid in a 6 month period; and
- a provision for a review of the interim duty level after the duty has been in place for one year and on a yearly basis thereafter.

The system came into operation on 1 January 1993 and does not apply to goods currently subject to final anti-dumping and/or countervailing measures.

Interim Duties

Where a decision is taken to impose provisional or final dumping measures, it is necessary also to ascertain what is or would be the normal value, export price and non-injurious export price of those goods. The details of these ascertained normal values, export prices and non-injurious prices
must be published in the formal notice of the positive finding unless the release of such details contains information regarded by an interested party as confidential.

An interim dumping duty is then collected as the difference between the ascertained normal value (or the ascertained non-injurious price [NIP] if that is lower) and the ascertained export price of the goods, irrespective of the invoiced export price of the particular export consignment. The interim duty may be levied on an ad valorem basis (i.e. x per cent of the export price), as a price per unit of quantity (e.g. $y per tonne or z cents per can) or as a combination of the two. This "up front" payment of an interim duty is one of the key reforms in this legislative package to ensure Australian industry obtains adequate relief from injurious dumping.

The legislation also recognizes that exporters may react to the imposition of measures by a further reduction in the export price to offset, or partly offset the dumping duties. Where this occurs the interim duty payable includes an amount equal to the difference between the actual export price of the goods and the ascertained export price.

Refunds

After a period of six months, and at six monthly intervals during which measures apply, an importer may make an application to Customs for a duty assessment. Customs will then ascertain the normal value and export price pertaining to each consignment of the goods in the relevant importation period and calculate the actual duty liability. If the interim duty collected exceeds the actual duty payable for a particular importation period the difference will be refunded in full. However, if the interim duty collected is less than the liability as calculated in the reassessment the additional amount is not collected.

Applications for assessment of actual duty liability require that the applicant provide sufficient details for a full assessment. Applications will be processed by Customs within 180 days and decisions will be appealable to the Anti-Dumping Authority.

Reviews

The new legislation allows importers, exporters and the local industry to apply for a review of the interim duty rate one year after it has been set and at yearly intervals thereafter. Exporters of goods subject to anti-dumping measures, who were not included in the initial enquiry, or subsequent review, may also apply for a review after the expiry of one year. The Minister has the discretion to initiate a review of duty rates at any time. Once initiated, Customs has 120 days to complete a review.

Securities

Following a positive preliminary finding by Customs, securities will be calculated and collected using essentially the same method as for an interim dumping duty. However, any security collected will be based on the difference between the normal value and the export price of the goods as ascertained by Customs during the preliminary finding enquiry. Non-injurious prices are not considered in calculating the level of security during the period of provisional measures.

In the final finding enquiry the interim normal values and export prices ascertained by Customs are re-examined, and consideration is given to a NIP, or lesser duty sufficient to remove injury. If the reexamination establishes that the interim duty liability for the period of the final finding is less than the amount of securities collected the additional securities are promptly refunded.
Subsequent to the final finding, an importer may request that the duty liability based on the actual normal values, export prices and the NIP’s be calculated for the period after the preliminary finding but before of the final finding was reached. If this establishes that the interim dumping duty collected during this period is in excess of the actual duty liability, the excess will be refunded.

GATT Consistency

This new system of collecting anti-dumping duty represents a positive step in maintaining consistency of Australia’s anti-dumping legalisation with the GATT Anti-Dumping Code, in particular it provides for a more equitable collection of dumping duty consistent with Article 8(3) of the Code.

Under the old system of duty collection in Australia, duties were collected as the difference between a normal value or non-injurious price determined on a prospective basis at the time of the enquiry and the export price of each specific consignment. This method of duty collection based on a prospective normal value may have precluded the importer from any refund of duty which may have been overpaid as a result of changes in the normal value during the period in which the prospective normal value applied. The new interim duty overcomes this deficiency in that a normal value and export price are, as part of the refund procedure, ascertained for each consignment of goods during a particular importation period to calculate the actual duty liability for that particular consignment. This approach ensures that any interim duty collected which is later found to be in excess of the actual duty liability is refunded.

The efficient refund of any over paid duty has been facilitated by the introduction of a 180 day timeframe to be adhered to by the Customs when processing applications for assessment of actual dumping duty liability. The prescribed timeframe is consistent with Article 8.3 of the Anti-Dumping Code.

Article 8.1 of the Anti-Dumping Code states that it "...is desirable that... the [dumping] duty be less than the dumping margin if such lesser duty would be adequate to remove the injury to the domestic industry". The amendments to Australia’s anti-dumping duty collection system outlined above ensure there is a transparent procedure and due regard is given to the desirability of imposing a lesser amount of duty than the full margin of dumping if that lesser duty would be sufficient to remove the injury to the Australia industry. The decision to impose a lesser amount of duty based on NIP is up to the discretion of the Minister and is reassessed with each review.

Although non-injurious prices are not considered in calculating the amount of security during the period of a final finding the level of any actual dumping duty payable on imports during the period of the final finding does include a consideration of NIP’s and is therefore consistent with Article 11.1(i) and Article 8.1 and 8.3 of the Anti-Dumping Code in terms of retroactivity and refunds of duty paid respectively.