

GENERAL AGREEMENT ON

RESTRICTED

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TARIFFS AND TRADE

Committee on Anti-Dumping Practices

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QUESTIONS RAISED BY CANADA REGARDING THE U.S. OMNIBUS TRADE AND COMPETITIVENESS ACT OF 1988¹

Section 1320 - Downstream Product Monitoring

Will criteria such as the value of the parts and the extent of transformation be interpreted at the discretion of the administering authority or will there be guidelines to be used in these circumstances? If so, when will the guidelines be notified to the Committee?

Under which conditions will the administering authority decide to initiate an anti-dumping investigation when imports of the downstream product have increased by more than 5 per cent? How will the administering authority proceed to gather sufficient evidence that the product is being dumped in an injurious fashion before self-initiating an investigation to satisfy the requirements of Article 5.1 of the Code?

Section 1321 - Prevention of Circumvention

How will this provision be administered? What conditions need to be satisfied before the administering authority opens an investigation into allegations of circumvention? Does the petitioner have to provide a reasonable indication that products assembled in the U.S. or in a third country are being sold in the U.S. market at less than the fair value established for products already subject to a finding? Does a review of the injury determination have to be conducted prior to initiating an investigation under this provision?

What is the role of the ITC in determining that products assembled domestically or in a third country fall within the scope of the existing finding? Is it possible to envisage situations where the ITC would issue a negative opinion as to the necessity of expanding the scope of the original finding but the administering authority would nonetheless issue a positive determination? If so, please explain under what circumstances such a situation might arise.

In determining whether the difference between the value of the merchandise sold in the U.S. and the value of the imported components

¹ See document ADP/1/Add.3/Rev.4

is "small", will there be guidelines used in these circumstances? If so, what are they? How will the value of the merchandise sold in the U.S. be determined? For example, will it be the market value or the value at the ex factory level? Will it include all general administrative and selling expenses? How will the value of the imported parts and components be determined? When the transaction occurs between related parties, will adjustments be made? Will the administering authority investigate whether the export price of parts and components was based on fully allocated costs including a reasonable profit?

Section 1328 - Material Injury

New Section 771 (7) B (i) (I), (II) and (III) relates to the volume and consequent impact of "imports of the merchandise which is the subject of the investigation" for purpose of injury determinations. Does that provision refer to the volume of dumped imports only or does it refer to all imports (dumped and not dumped) of that merchandise from the country subject to the investigation? In the latter case, how is this justified in relation to Article 3.4 of the Code?

Section 1330 - Cumulation

How does the administering authority intend to apply the definition of negligible? Will it involve quantifiable criteria? In instances where the domestic market has a low price sensitivity, will consideration be given to the margin of dumping in determining whether some imports have had a negligible impact on the injury to domestic producers?

Section 1333 - Correction of Ministerial Errors

Have procedures been established for the correction of errors in final determinations?