In document ADP/W/294, dated 31 May 1991, Canada raised a series of questions concerning the Anti-Dumping Legislation of Australia as detailed in document ADP/1/Add.18/Rev.1/Suppl.3.

Before responding specifically to the Canadian questions, it is appropriate to say that the legislation is not new as such, rather the purpose of the transfer of a series of existing sections from the Customs Tariff (Anti-Dumping) Act 1975 into Part XVB of the Customs Act 1901 was to avoid possible difficulties with the requirements of Section 55 of the Australian Constitution, and were detailed at the October 1990 meeting of the Anti-Dumping Committee by the representative of Australia as recorded at paragraph 6 on pages 3 and 4 of ADP/M/31.

Page 10, part 3, item 10, Right to Require Security:

Question 1:

Is this provision meant to be interpreted as authorizing customs to collect securities before a preliminary finding of dumping and injury has been made in cases where an undertaking has been breached? If Canada's interpretation is correct, how does this new provision conform to the provision of the Code, Article 10:1?

Answer:

The purpose of this amendment to the Customs Act 1901 was previously explained in document ADP/M/31 at paragraph 6 on pages 3 and 4 and there is nothing new.

Undertakings may be considered as soon as there is clear evidence of dumping, material injury and the causal relationship. This means that where an undertaking is or has been breached and measures are imposed, a preliminary affirmative finding of dumping would have been made and that there is sufficient evidence of injury and causal link. This does not conflict with Anti-Dumping Code Article 10:1.
Page 13, Export Price

Question 2:

Why does Australia only consider the price paid by the importer to determine the export price, as opposed to taking the lower of the exporter's sale price or the importer's purchase price?

Answer:

In most cases the actual f.o.b. price paid by the Australian importer is accepted as the export price. Where the export price is influenced by an association between the importer and exporter, or the price paid is either unavailable or unreliable, Section 269TAB of the Customs Act 1901 (formerly Section 4A of the Customs Tariff (Anti-Dumping) Act 1975) prescribes other methods of assessment. The process adopted is consistent with the Code.

Page 18, section (1) (2), Material Injury to Industry:

Question 3:

Why does the legislation not include reference to "quantity of dumped goods" when determining material injury? The Anti-Dumping Code refers to "dumped" under Article 3:1.

Answer:

Section 269TAE of the Customs Act 1901, (formerly Section 5A of the Customs Tariff (Anti-Dumping) Act 1975) deals with material injury and contains a non-exhaustive list of factors that may be considered when assessing injury. The Minister in considering "the quantity of goods" for the purposes of this section are the goods which have been dumped. The process adopted is consistent with Article 3:1 of the Anti-Dumping Code.

Pages 19-21, sections (2) (3), Anti-Dumping Action on Behalf of a Third Country:

Question 4:

Canada would be interested in knowing the reasons for including a specific provision on this matter.

Answer:

Article 12 of the Anti-Dumping Code provides for consideration to be given to Anti-Dumping action on behalf of a third country. Section 269TAE(2) and (3) reflect third country provisions, as do other sections of the Customs Act 1901, e.g. Section 269TB. The process adopted is consistent with Article 12 of the Anti-Dumping Code.
Question 5:

It is specified that "notice shall include a statement of the amount that the Minister has ascertained is or would be the normal value of the goods to which the declaration relates at the time of the publication of the notice unless, in the opinion of the Minister, the inclusion of that statement would adversely affect the business or commercial interests of any person". Notwithstanding this provision, can the authorities nonetheless inform an interested party about the normal value?

Answer:

Yes, under administrative arrangements interested parties can be advised of the normal value.