

**COMMENTS FROM AUSTRALIA ON THE THIRD CONTRIBUTION
FROM A NUMBER OF COUNTRIES (DOCUMENT TN/RL/W/29)**

The following communication, dated 7 February 2003, has been received from the Permanent Mission of Australia.

Australia would like to take the opportunity to make some brief comments and seek clarification on points raised in the third contribution from a number of countries, which was considered at the last meeting of the Rules Group in November last year.

A. DEFINITION OF "DUMPED IMPORTS"

Australia considers that Article 3.1 of the ADA is clear that a determination of injury relates to dumped imports, as noted in the paper. However, Australia would appreciate clarification on the example provided.

Is it suggested that once there is a determination that imports are not dumped, there should be a 'recalculation' of the volume of dumped imports in terms of negligible imports (Article 5.8 notes that "there shall be immediate termination in cases where the authorities determine that the margin of dumping is *de minimis*, or that the volume of dumped imports, actual or potential, or the injury, is negligible")?

If we understand the example correctly, do the proponents consider that cumulation under Article 5.8 is relevant?

In the example provided, would the proponents agree that no anti-dumping measures would be imposed on company B if there was no positive determination made for company B?

B. DEFINITION OF "SUFFICIENT QUANTITY OF SALES OF THE LIKE PRODUCT IN THE DOMESTIC MARKET FOR THE DETERMINATION OF THE NORMAL VALUE"

Australia agrees that there would be merit in examining the approach of reapplying the 5 per cent test to the sales of each category of the product under investigation in relation to the second footnote to Article 2.2.

C. CONSTRUCTED EXPORT PRICE: CONDITIONS TO DISREGARD THE EXPORT PRICE PRACTISED

Australia agrees that there would be merit in seeking clarification of what is an association or compensatory arrangement between the exporter and the importer or a third party under Article 2.3 of the ADA.

D. CUMULATIVE ASSESSMENT OF IMPORTS: PARAMETER FOR DEFINITION OF NEGLIGIBLE VOLUME OF IMPORTS

The proponents suggest that Article 3.3 does not establish a parameter for definition of negligible volume of imports for the purposes of cumulatively assessing the effects of dumped imports. Do the proponents consider that Article 5.8 provides such a parameter?

E. PRICE UNDERTAKINGS – “LESSER-PRICE RULE”

Australian practice is to apply the lesser duty rule in cases of price undertakings. We do not consider that it is inappropriate to apply a higher duty.

F. PUBLIC NOTICE AND EXPLANATION OF THE DETERMINATIONS

Australia sees merit in seeking clarification on standards and procedures for public notices as currently provided under Article 12 of the ADA. As noted previously, we consider that transparency, predictability and due process are important underlying principles which should be applied in the application of anti-dumping measures. We would welcome further elaboration on the types of information the proponents are seeking related to both initiation of investigations and preliminary and final determinations.

G. PERIODS OF DATA COLLECTION FOR ANTI-DUMPING INVESTIGATIONS

In relation to the proponents' request for the ADA to provide guidelines for determining the periods of data collection for anti-dumping investigations, Australia recalls the recommendation adopted by the Anti-Dumping Practices Committee in May 2000.

H. TREATMENT IN CASE OF A LARGE NUMBER OF EXPORTERS, PRODUCERS, IMPORTERS OR TYPES OF PRODUCTS

In relation to seeking elaboration and precise criteria on terms such as “reasonable number” or “largest percentage of the volume ... which can reasonably be investigated”, do the proponents consider that this is practicable or possible given the nature of different industry sectors? Do the proponents consider that it would be sufficient for investigating authorities to provide explanations when determining dumping margins on the basis of sampling? How do the proponents relate this proposal to the existing requirements of Article 6.10.1, for example?
