

Introductory Workshop on WTO Trade Remedies

Session 7

Canadian Anti-Dumping Legislation and Practices

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Canada



Anti-dumping Agreement

Article 9: Imposition and Collection of AD Duties

9.1 The decision whether or not to impose an anti-dumping duty in cases where all requirements for the imposition have been fulfilled, and the decision whether the amount of the anti-dumping duty to be imposed shall be the full margin of dumping or less, are decisions to be made by the authorities of the importing Member. It is desirable that the imposition be permissive in the territory of all Members, and that the duty be less than the margin if such lesser duty would be adequate to remove the injury to the domestic industry.



Lesser Duty

- Why?
- ADA is about eliminating injury
 - Clear from text



Lesser Duty and Public Interest

- Finding a balance
 - Excessive duties
 - Competition issues
 - Short supply and alternate sources



Canada

Public Interest in Canada

- SIMA s. 45
- SIMA s. 14
- CITT make Recommendations to Federal Cabinet



Canada

Public Interest Procedure

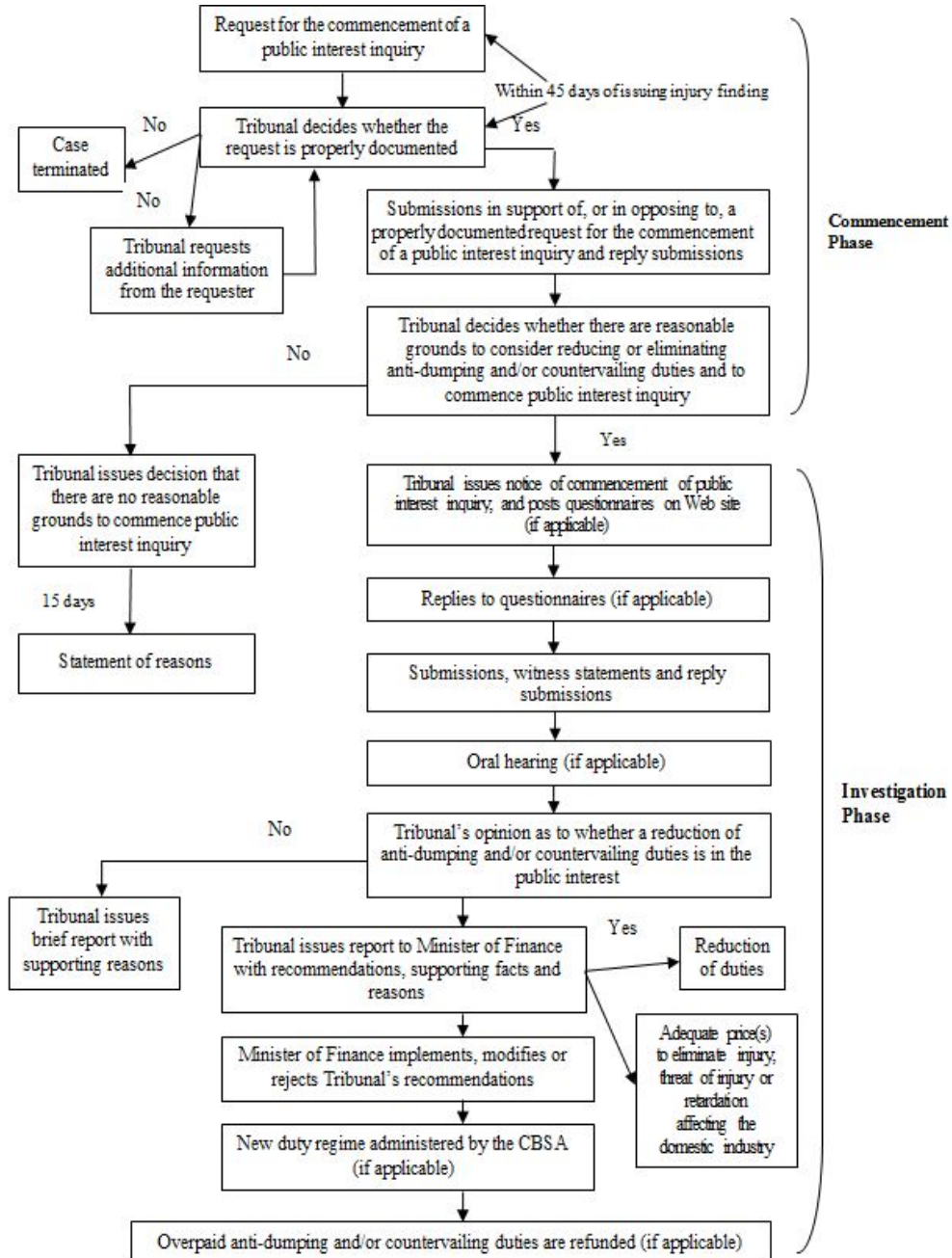
- Only undertaken if there is an injury finding
- Separate proceeding post-injury inquiry
- Persuading Tribunal



Canada

Public Interest Procedure - Tribunal

- Public Interest Inquiry Flow Chart



Public Interest Procedure - Tribunal

Commencement Phase:

- Filing a request for the commencement of a Public Interest Inquiry
- Decision on whether the request for a Public Interest Inquiry is properly documented
- Schedule for the Commencement Phase
- Tribunal's Notice of a properly documented request for a Public Interest Inquiry
- Submissions
- Reply Submissions
- Decision on whether to commence a Public Interest Inquiry



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Public Interest Procedure - Tribunal

Information to be Included in a Request for the Commencement of a Public Interest Inquiry

Pursuant to subsection 40.1(2) of the Regulations, a request to the Tribunal to commence a public interest inquiry shall:

1. include (when applicable) the name, address for service, business and mobile telephone numbers, fax number and e-mail address of the requester and of the requester's counsel, and be signed by the requester or the requester's counsel;
2. include a statement of the public interest affected by the imposition of anti-dumping and/or countervailing duties, indicating the degree to which it is affected;
3. include sufficient information as to whether the imposition of anti-dumping and/or countervailing duties would not or might not be in the public interest;

Cont'd...



Canada



Public Interest Procedure - Tribunal

Information to be Included in a Request for the Commencement of a Public Interest Inquiry: *(cont'd)*

4. address all relevant factors, including, where applicable:
 - a) the availability of goods of the same description from countries or exporters to which the order or finding does not apply,
 - b) the effect that the imposition of anti-dumping and/or countervailing duties has had or is likely to have on:
 - i. competition in the domestic market,
 - ii. producers in Canada that use the goods as inputs to produce other goods or provide services,
 - iii. competition by limiting access to:
 - goods that are used as inputs to produce other goods and provide services, or
 - technology

Cont'd...



Canada



Public Interest Procedure - Tribunal

Information to be Included in a Request for the Commencement of a Public Interest Inquiry: *(cont'd)*

4. address all relevant factors, including, where applicable: *(cont'd)*
 - iv) the choice or availability of goods at competitive prices for consumers; and
 - c) the effect that a reduction or elimination of anti-dumping and/or countervailing duties is likely to have on domestic producers of inputs, including primary commodities, used in the production of like goods; and
5. include any other information that is relevant in the circumstances



Public Interest Procedure - Tribunal

Factors that the Tribunal may consider in a Public Interest Inquiry

Pursuant to subsection 40.1(3) of the Regulations, in conducting a public interest inquiry, the Tribunal may take into account any factor that it considers relevant, including the following:

1. whether goods of the same description are readily available from countries to which the order or finding does not apply;
2. whether the imposition of full anti-dumping and/or countervailing duties has had or is likely to have the following effects;
 - a) substantially lessen or eliminate competition in the domestic market in respect of like goods,
 - b) cause significant damage to producers in Canada that use the goods as inputs in the production of other goods and in the provision of services,

Cont'd...



Canada



Public Interest Procedure - Tribunal

Factors that the Tribunal may consider in a Public Interest Inquiry

Pursuant to subsection 40.1(3) of the Regulations, in conducting a public interest inquiry, the Tribunal may take into account any factor that it considers relevant, including the following: *(cont'd)...*

- c) significantly impair, competitiveness by limiting access to:
 - i. goods that are used as inputs in the production of other goods and in the provision of services, or
 - ii. technology,
 - d) significantly restrict the choice or availability of goods at competitive prices for consumers or otherwise cause them significant harm;
3. whether a reduction or elimination of anti-dumping and/or countervailing duties is likely to cause significant damage to domestic producers of inputs, including primary commodities, used in the domestic production of like goods; and
 4. any other factors that are relevant in the circumstances.



- Competition in downstream markets
- Ban on drawback of FTAs
- Magnitude of duty
- Availability of alternative sources



Canada

- Avoiding problems
- Pay attention to concerns
- Silicon Metal
- Exclusions process – currently captive
- Exclusion process must begin earlier
- Educating Business



Canada



Baby Food

October 1997, H.J. Heinz Company of Canada Ltd. filed an antidumping petition in Canada against the only U.S. exporter of baby food, Gerber Products Company, claiming that Gerber was selling certain prepared baby foods at less than normal value in the Canadian market, and these imports were causing H.J. Heinz material injury.

The U.S. baby food industry exports virtually nothing to Canada to this day.



Baby Food

Canadian market for jarred baby food was estimated to be valued at C\$60 to C\$70 million. Heinz accounted for about 75 to 80 percent of the Canadian baby food market, with Gerber accounting for the remainder. Gerber in 1990 the company closed its Canadian production facilities and began exporting baby food produced in the United States to Canada through a Canadian subsidiary, Gerber sold baby food for as little as C\$0.33 per jar, about 10 cents less than Heinz.¹

¹ Jason Brooks, "Baby Food Fight," Reason Magazine, December



Baby Food

Gerber U.S., the largest baby food producer in North America, accounting for approximately 65 percent of the U.S. market in 1997.

In 1997, Gerber had three U.S. plants producing baby food, although all of the products exported to Canada were produced in Fremont, Michigan.



Canada

Baby Food

In the mid-1990s, the Canadian market for jarred baby food began to shrink.

Canada was not only experiencing declining birth rates, but more consumers were preparing their own baby food following an announcement by the Canadian Centre for Science in the Public Interest which questioned the nutritional value of baby food. Organic baby food, was also realizing growing market shares in the mid to late 1990s. Heinz claiming that Gerber could be blamed for at least a portion of the company's poor financial situation.



Baby Food

Heinz claimed that if not for the large dumping margins, Gerber would be unable to compete in the Canadian market. Gerber had allowed Gerber to win significant contracts, thus reducing the size of the market held by Heinz. Pricing practices by Gerber had prevented Heinz from increasing their own price, thus limiting profit margins.



Baby Food

Revenue Canada, announced its preliminary decision on December 30, 1997, imposing a dumping margin of 68.7 percent on Gerber products. The final margin was revised slightly to 59.76 percent on May 30, 1998.

Gerber's weighted average selling price to selected U.S. customers, or those customers that bought a comparable quantity of baby food as the Canadian importer, Gerber Canada. Compared to the adjusted export price, calculated as the importer's resale price of the goods in Canada less import and other sales expenses plus a profit margin.



Baby Food

April 29, 1998, the Canadian International Trade Tribunal (Tribunal), made an affirmative decision, paving the way for the permanent imposition of dumping duties of 59.76 percent to be imposed on Gerber's imports. While there were other significant causes of injury to Heinz during this time period, the dumping by Gerber resulted in significant price erosion and a decrease in the market share enjoyed by Heinz.



Canada



Baby Food

Gerber did stop selling baby food in Canada soon after the final decision, an outcome that had been feared by the Consumers Association of Canada and the Canadian Institute of Child Health.

Canadian Competition Bureau, requested that a North American Free Trade Agreement (NAFTA) panel review the antidumping decision. However, the NAFTA panel upheld Canada's decision on November 17, 1999.



Baby Food

The Tribunal instituted a public interest investigation regarding the antidumping duties on July 3, 1998. As a result of this investigation, on June 23, 1999 the Minister of Finance reduced the antidumping duties on Gerber products by two-thirds.

Gerber closed its Asheville, North Carolina plant in 1998, reducing its production capacity for baby food by approximately one-third. It also disposed of all equipment in the Fremont, Michigan plant that produced baby food that met Canadian requirements for jar size.



Baby Food

Canadian baby food market continued to decline due to decreasing birth rates and increasing consumption of organic and frozen baby food. The Tribunal estimated that the Canadian baby food market decreased by almost 25 percent between 1998 and 2003.



Baby Food

Canada initiated a sunset review of the antidumping duties on August 19, 2002. Although the Commissioner of Customs and Revenue determined that the elimination of duties would likely result in the resumption of dumping by Gerber, the Tribunal determined on April 28, 2003 that the elimination of the duties would not result in material injury of domestic producers, and the order was suspended.



Gypsum Board

In 2016 CertainTeed Gypsum Canada filed complaint about dumping of Gypsum board from USA into Western Canada



Preliminary determination

- Preliminary determination issued on September – 2016 resulted in massive provisional duties.
- Ranged from 102% to 276%
- Highest margins were facts available
- CBSA methodology has been condemned in Welded pipe



Preliminary determination

- Georgia Pacific had mothballed two plants in Western Canada
- Consolidated Production USA in larger plants
- Suspicions of price fixing in USA- if true would have increased dumping
-



Canada

Gypsum Board

- Canadian contractors were taken by surprise by size of duties
- While some could pass on increases would be a very bad business decision
- Forest Fire has caused extensive damage to Fort Mac Murray, Alberta in oilsands district.
- Concerns about cost of rebuilding



Canada

Gypsum Board

- In response to lobbying Minister of Finance ordered CITT to conduct separate parallel inquiry into state of competition and whether duty should be reduced or eliminated in Public Interest.
- Unprecedented – public hearing was twice normal length
- Final determination raised duty range to 94.6% to 324.1%



Canada

Gypsum Board

- CITT found injury
- Recommended relief for Fort Mac Murray and contractors.
- Producer and union lobbied to ensure reduced duty was meaningful
- Direct appeal open letter from Union to Prime Minister and Minister of Finance



Canada

Gypsum Board

- Public interest inquiries in Canada usually involve imports from USA
- When others seek Public interest availability of supplies from USA usually defeats the claim
- Article 3.3 of Canada-EU Comprehensive Economic and Trade Agreement requires lesser duty examination



Canada

Public Interest

- Sometimes public interest inquiry is too late .
- Steel for auto parts
- Need a process to detect and exclude problems before they arise
- Petitioners may not be helpful.
- Scope definition too broad
- Unwilling to admit what they cannot do



Canada

Public Interest

- Compliant about Corrosion resistant steel sheet
- Car makers claimed they could not use Canadian product in exposed applications.
- Knew complaint was coming so argued for exclusion from start
- It was granted



Canada

Public Interest

- Publicize filing of complaint before initiation
- Allow for brief comment period for stakeholders
- Test industry's ability to supply
- If there is a supply problem change the scope.



CETA: Article 3.3 – Consideration of public interest and lesser duty

1. Each Party's authorities shall consider information provided in accordance with the Party's law as to whether imposing an anti-dumping or countervailing duty would not be in the public interest.
2. After considering the information referred to in paragraph 1, the Party's authorities may consider whether the amount of the anti-dumping or countervailing duty to be imposed shall be the full margin of dumping or amount of subsidy or a lesser amount, in accordance with the Party's law.



SIMA: Section 14 – Exemption from Application of Act

Exemption of goods from application of Act

14 (1) The Governor in Council may, on the recommendation of the Minister of Finance, make regulations exempting any goods or class of goods from the application of this Act.

Exemption of goods of Chile from application of Act

(2) The Governor in Council may, on the recommendation of the Minister of Finance, make regulations exempting any goods or class of goods of Chile from the application of this Act or any of its provisions. The exemption may be in respect of the dumping of those goods or that class.

Duration and conditions

(3) Regulations made under subsection (2) may specify the period during which the exemption applies and make it subject to conditions.



Competition Act: Section 125 (1)

- Representations to Federal Boards, etc.

125 (1) The Commissioner, at the request of any federal board, commission or other tribunal or on his own initiative, may, and on direction from the Minister shall, make representations to and call evidence before the board, commission or other tribunal in respect of competition, whenever such representations are, or evidence is, relevant to a matter before the board, commission or other tribunal, and to the factors that the board, commission or other tribunal is entitled to take into consideration in determining the matter.



Canada

Q&A and Discussion

Thank you for your participation.

