

D. Antidumping Duties and Provisional Measures

Article 8

Imposition and Collection of Antidumping Duties
[Discretion of Authorities]International Antidumping Code:

8 (a) The decision whether or not to impose an antidumping duty in cases where all requirements for the imposition have been fulfilled and the decision whether the amount of the antidumping duty to be imposed shall be the full margin of dumping or less, are decisions to be made by the authorities of the importing country or customs territory. It is desirable that the imposition be permissive in all countries or customs territories parties to this Agreement and that the duty be less than the margin, if such lesser duty would be adequate to remove the injury to the domestic industry.

Article VI, GATT:

2. In order to offset or prevent dumping, a contracting party may levy on any dumped product an antidumping duty not greater in amount than the margin of dumping in respect of such product. For the purposes of this Article, the margin of dumping is the price difference determined in accordance with the provisions of paragraph I.

Antidumping Act, 1921, As Amended:

Section 202 (a) requires a special dumping duty to be applied for which the full margin of dumping is to be the basis.

S. 1726 (90th Congress):Judicial Review

Rather than allow "the authorities" the ultimate decision, the Bill makes clear that judicial review is available to both importers and complainants when proceeding concluded. This would clarify the confusion as to the extent courts can review Treasury Department and Tariff Commission findings. Appeals would be direct to the Court of Customs and Patent Appeals. The Court would be authorized only to continue, not to initiate, the withholding of appraisement pending an appeal. Section: 6 [212(j)].

Comment:

[NOTE] The fact that once dumping and injury have been found the authorities still have a decision (1) whether or not to impose an antidumping duty, and (2) whether the amount of duty to be imposed is the full margin of dumping is a direct circumvention of Section 202(a) of the Antidumping Act, 1921, as amended, in which the imposition of a special dumping duty in the full amount of the dumping margin is mandatory.