

GENERAL AGREEMENT ON TARIFFS AND TRADE

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Committee on Anti-Dumping Practices

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REQUEST FOR CONCILIATION UNDER ARTICLE 15:3 OF THE AGREEMENT

EEC Complaint Concerning Anti-Dumping Action by Canada on Electric Generators imported from the Community

Communication from the EEC

On 4 November 1983 the EEC delegation made an oral request to the Chairman for the Committee to undertake conciliation in terms of Article 15:3 of the Agreement on the Implementation of Article VI of the General Agreement, regarding the dispute between the EEC and Canada concerning anti-dumping actions on electric generators imported from the EEC. The EEC delegation would be grateful if the Committee could meet in a special conciliation meeting during its regular autumn session. A memorandum regarding the matter is attached for the information of the Committee.

CANADIAN ANTI-DUMPING PROCEEDING CONCERNING HYDRO-ELECTRIC GENERATORS FROM ITALY

Request for conciliation by the European Communities pursuant to Art. 15 of the Anti-Dumping Code.

1. Factual background

The above-mentioned proceeding which was initiated following a complaint by Canadian General Electric Company Limited (CGE) was based on the following facts:

In 1980, an Italian producer of hydro-electric generators, Ansaldo, submitted an irrevocable tender in respect of the Upper Salmon development project of Newfoundland and Labrador Hydro. At the tender opening it was found that Ansaldo's bid, which was the lowest, undercut the Canadian bidder's by 15%.

In 1981, again tenders were called for publicly by the same utility for the supply of generators for its Cat Arm development project. This time, CGE was the lowest bidder while Ansaldo's price was found to be some 30% higher. Ansaldo's price remained higher than CGE's even if one were to take into account the more favourable financing terms offered in the context of Ansaldo's bid.

Finally, in 1982 bids were called for the Nipawin project. This time, Ansaldo did not bid.

In each of the above-mentioned cases the contracts were awarded to CGE.

2. Findings by the Canadian authorities

a) Dumping

The Canadian authorities consider that a tender, whether accepted or not, constitutes an agreement to sell and is, therefore, a sale under the terms of the Canadian Anti-Dumping Act. This determination has been upheld by the Federal Court of Canada. On this basis, it was determined that Ansaldo's offers in the Upper Salmon and the Cat Arm development project constituted dumping.

b) Injury

The Canadian Anti-Dumping Tribunal has concluded that this dumping of hydrogenerators from Italy has caused, is causing and is likely to cause material injury to a Canadian industry because of the Canadian producer's "pre-emptive pricing". The Tribunal was of the opinion that, had it not been for the experience of Ansaldo pricing at Upper Salmon, CGE would have tendered at least at a level which represented full costs.

3. Main issues

a) Dumping

The determination of dumping with regard to a product which has not been exported is contrary to the Anti-Dumping Code. Under the terms of Art.2(1) of the Anti-Dumping Code a product is to be considered as being dumped "if the export price of the product exported from one country to another is less than (its normal value)". This implies that there must have been exports of the product concerned before there can be dumping. There have not been, however, nor will there be, exports of generators from Italy because the contracts for all projects have been awarded to the Canadian producer.

b) Injury

In the Community's view there can be no question of the Italian offers having caused injury. In all three cases the contracts were awarded to the Canadian producer. The Canadian authorities' determination of injury, therefore, hinges upon the fact that CGE's bids for the Cat Arm and the Nipawin projects were made at unprofitable prices, in anticipation of dumped bids by Ansaldo. It is the Community's view that the Canadian producer's so-called "pre-emptive pricing" led to self-inflicted injury resulting from pure speculation. This is particularly obvious in view of the fact that CGE's anticipations have proved wrong in all cases: first in the Cat Arm project, when Ansaldo's offer was significantly higher, and subsequently in the Nipawin project, when Ansaldo did not bid at all.

c) Threat of injury

It is the Community's view that Ansaldo's tenders for the Upper Salmon and the Cat Arm project do not threaten to cause injury to the Canadian industry either. Under the Anti-Dumping Code, the concept of threat of injury is a very narrow one. The Code requires that the situation in which the dumping would cause injury must be clearly foreseen and imminent and it quotes as an example increased imports of dumped products in the immediate future. These conditions were not fulfilled in the present case since it results from the Anti-Dumping Tribunal's own findings that there will be no further awards for hydro-electrical projects in Canada before 1986, most projects being deferred indefinitely or to a later date. This by itself excludes the possibility of imminent injury.