

Committee on Anti-Dumping Practices

Original: English

REQUEST FOR CONCILIATION UNDER ARTICLE 15:3
OF THE AGREEMENT

The following communication has been received from the Permanent Mission of Finland regarding the dispute concerning deliveries of Finnish power transformers to Australia.

Background and general matters

1. Australia and Finland have initiated bilateral consultations under Article 15:2 of the Anti-Dumping Code on 16 January 1989. Those consultations have been pursued in the form of exchanges of letters. A settlement seems very unlikely.
2. The Finnish company Stromberg Ltd started to export power transformers to Australia in 1979. Since then the company has exported a total of thirteen such transformers. Imports of these products into Australia have been subject to anti-dumping measures since 1981, meaning that for each individual transformer the Australian Customs Service (ACS) has made an assessment of the normal value and the export price. That assessment was previously based on the constructed value method in Article 2:4 of the Anti-Dumping Code. Representatives of the ACS made several visits to the production premises of Stromberg Ltd in Vaasa in Finland. Those investigations indicated that the export price covered the cost of production plus a reasonable amount for administrative, selling and any other costs. No anti-dumping duties were imposed from 1981 to 1986.
3. As from 1986, as a result of the review of Australia's anti-dumping legislation, the definition of dumping has, whenever possible, been based on a comparison between the prices of goods sold abroad and those prevailing in the home market. Australia has applied this approach in the normal value assessments after 1986 and as from then Australia has abandoned the constructed value methodology applied earlier.
4. To make the comparison and to take account of technical differences between transformers sold in Finland and exported to Australia the so called Westinghouse Price Rules (WPR) have been applied. Those price rules were created in 1968 by the Westinghouse Company in the US as guides for pricing their own transformers. The price rules would facilitate the tasks of Westinghouse's own customers when assessing the costs of purchasing Westinghouse's goods made to certain specifications of the customer and when budgeting investments.

5. The ACS has applied the WPR to three orders; Gordon, New Norfolk and Muja. The contracts regarding those orders were concluded and the prices were agreed in 1985 before Australia instituted a review of its anti-dumping legislation. The situation with respect to these orders is as follows:

Gordon: The ACS has established an anti-dumping duty of 143 770,-A\$.

New Norfolk: ACS has assessed an anti-dumping duty of 218 877,-A\$.

Muja: An anti-dumping duty of 842 988 A\$ has been assessed by the ACS.

6. The total amount of anti-dumping duties assessed according to the WPR is thus 1 205 635,-A\$.

7. There are two main questions in the dispute, i.e.

- 1) The question if transformers sold in Finland and exported to Australia are like products, as defined in Article 2:2 of the Anti-Dumping Code, and
- 2) The assessment of normal value.

Like products

8. In the consultations Finland has expressed the view that the various transformers are not "like products" due to their custom built nature. Finland has asked Australia for explanations why in 1986 Australia has abandoned the constructed value method and started making comparisons with domestically sold transformers.

9. In the latest letter from the Australian Delegation, dated 21 March 1989 it is indicated i.a. that "Australia is committed to a domestic price comparison basis for normal value and will not return to a cost of production basis".

10. In the Finnish view that categorical statement makes it unlikely that it would be possible in bilateral consultations to settle the dispute resulting from the Australian view that the transformers are like products and the Finnish view that due to the custom built nature of each individual transformer they are not.

11. The reasons for the Finnish view can be summarized as follows:

A transformer is basically a device for raising or for lowering voltage during the transmission of electric power. Fundamentally a transformer consists of an iron core and two sets of wire winding. The relationship between the input and the output voltages is directly governed by the number of turns of the windings as the input and the output. Apart from these basis features the specifications, design and construction of transformers can vary to a large extent.

12. Large power transformers are supplied under tender. Each transformer is custom designed to the specifications of the individual customer and to accomplish a particular task. A transformer built in accordance with one set of specifications cannot be switched to another application.

13. The complexity and diversity of design by different manufacturers may lead to a wide disparity in prices tendered for a contract. In determining the most economic offer of those received on the basis of overall cost in the supply of electric power, electricity authorities consider such factors as capital cost and operating losses of the transformer. The losses can vary considerably according to the designs although each design may otherwise be acceptable on a technical basis. For example, a reduction in the weight of the steel core and coils may result in a lower capital cost but a higher operating cost because greater electrical losses may occur. Conversely, increasing the weight of copper and steel raises the capital cost but lowers the operating costs as there is less electrical loss. Tenders are usually compared on an annual charge basis or some such equivalent method so as to take into account the capital cost and the efficiency of the unit.

14. Individual customers mostly indicate in the request for tenders the specifications that the desired transformers should fulfil. Electricity authorities in Finland and in the individual Territories in Australia have widely differing preferences regarding operating economy, capital cost, performance, quality and design of their transformers.

15. For those reasons Finland is of the opinion that power transformers built individually to the specifications of customers cannot be considered like products, as defined in Article 2:2 of the Anti-Dumping Code, despite the similarities in the fundamental functioning and construction of all electric transformers.

Assessment of normal value

16. For its initial investigation, ACS decided that, because large power transformers were custom designed and manufactured specifically for each contract, there were no like goods in the domestic market of the exporter. The preferred method for determining normal value was therefore the cost of production.

17. However, the assessment of normal value for the transformers supplied in relation to the Gordon, New Norfolk and Muja contracts followed a major change in the ACS policy for determining normal values for transformers. In 1984, during the course of an inquiry into a dumping complaint against power transformers from West Germany, the ACS decided that power transformers sold in the domestic market of that country were "like goods" to power transformers exported into Australia.

18. In the Finnish cases, the ACS now followed this policy, i.e. power transformers sold in the domestic market of the country of export are "like

goods" to those exported to Australia. However, unlike the West German case, the ACS did not use actual costs in making adjustments under Article 2:6 of the Anti-Dumping Code. Instead, those adjustments were made by applying the Westinghouse Price Rules.

19. The WPRs are the pricing instructions of the Westinghouse company in the USA to its staff in that country in an attempt to ensure that, when quoting a customer, all features of the contracted transformer are included at the appropriate cost in the total price. Other transformer manufacturers around the world have their own pricing instructions or set their prices according to production costs plus a margin placed on market conditions. The WPRs are just one of a number of methods for building up total prices for power transformers.

20. As the WPRs do not contain any provision to reflect the efficiency of transformers, independent technical advice was obtained to develop an accepted method to adjust for differences in efficiency between the export and the domestic transformers. This method involves following a particular mathematical formula.

21. That approach of the ACS may be summarised in the following way:

- 1) Selection of comparable transformer sold on the domestic market;
- 2) Application of the WPR to the selected domestic transformer to develop a theoretical price;
- 3) Application of the WPR to the actual export transformer to develop a theoretical price;
- 4) Calculate the ratio of theoretical export price to the theoretical domestic price;
- 5) Adjust actual domestic selling price for differences in efficiency;
- 6) Apply the ratio of theoretical WPR prices to the adjusted actual domestic market price.

22. In the Finnish view the approach explained in paragraph 21 above does not fulfil the criteria for technical adjustment in Article 2:6 of the Anti-Dumping Code. In particular GATT rules do not permit the development of theoretical prices neither for assessing normal value or export price.

23. As regards the application of the WPR the Australian Delegation has shown some flexibility by indicating that "reliance on the WPR as an adjustment mechanism is not to exclude any other mechanism should one be able to be found and it is open to Finland to suggest another mechanism and we will consider it and if more suitable, adopt it".

Conclusions and further procedure

24. In view of the categorical and inflexible Australian position on the primary and most important question of "like product", Finland does not believe that further progress on central issues could be achieved in bilateral consultations. As final anti-dumping duties have been assessed on the Gordon, New Norfolk and Muja transformers, Finland has initiated dispute settlement procedures under Article 15 of the Anti-Dumping Code. At the present stage Finland wishes to refer the matter to the Anti-Dumping Committee for conciliation according to Article 15:3, at the Committee's meeting in April 1989.

25. In the dispute settlement procedure the primary Finnish objective is to obtain a ruling that the transformers are not like products.