

2.2 Following the award of the contract, a New Zealand company which had also tendered for the contract, requested that the New Zealand Customs Department (Customs) initiate dumping proceedings against the Finnish exporter. Anti-dumping proceedings were initiated on 17 March 1982 but were

III. Main arguments

A. Dumping

3.1 The delegation of Finland denied that the Finnish exporter had engaged in dumping. The information supplied by the exporter clearly indicated that the price of the transformers was quite adequate to cover production costs, overheads and profits, i.e. that the transformers were not sold at dumped prices. The Finnish exporter had fully co-operated, to the extent possible, in the investigation. The fact that it had not been in a position to provide all the information requested did not entitle the investigating authorities to base their dumping finding on hypothetical calculations, in particular when they were aware of the exporter's problems in supplying the information in the required format. Finland therefore asked the Panel to determine that New Zealand was not permitted, under GATT practice, to base its findings on hypothetical calculations.

3.2 In developing its argument, Finland recognized that the investigated company was obliged to co-operate and to provide the information it had available, if the time and effort involved were not unreasonable. However, in case the investigated company did not itself possess the requested information, or if it could not be retraced or processed to the requested format without undue time and effort, the investigators should work on the basis of the information provided, unless they had very specific reasons to doubt its reliability. In the present case the investigators had asked the Finnish exporter to provide information which it did not have available. The information which was provided had been considered insufficient and unreliable by the investigating authorities. In particular, the latter had considered computer sheets of the cost calculations to be insufficient and had insisted on obtaining invoices and purchase receipts for input materials specifically purchased for the production of the two transformers. Explanations concerning the 12.5 MVA transformer had been disregarded, as well as the assurance that the requested data concerning the 4.5 MVA transformer were not available. The investigating authorities were fully aware that the accounting and reporting system of the Spanish exporter was such that it could not provide purchase receipts for input materials for these particular transformers.

3.5 The New Zealand delegate said that since both transformers were custom designed and manufactured, it had not been possible to compare the selling price of the units sold to New Zealand with units sold by the exporter on its home market or to third countries. The investigating authority had, therefore, to use the alternative method provided for in Article VI:1 of the GATT, namely to establish the cost of production. An investigation based on cost of production usually involved an examination and verification of data relating to input components and pricing, costings, technical details, contractual specifications as well as evidence of selling and administrative expenses, overhead and profit. The New Zealand authorities had

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3.13 The New Zealand delegation stated that the imports concerned were landed at a time when the complaining firm was facing a sharp and sustained downturn in new orders and orders on hand in the market segments of 1-10 and 10-20 MVA identified below. In that connection it had to be noted that the transformer industry in New Zealand was structured in such a way that there existed four distinguishable ranges of transformers. This market segmentation

IV. Conclusions

4.1 The Panel based its consideration of the case before it on Article VI of the General Agreement, in particular its paragraphs 1, 2 and 6(a). It noted that paragraph 1 of Article VI defined dumping as the introduction of products of one country into the commerce of another country at less than their normal value, but condemned dumping as such only in case material injury had been caused. In this connection, Article VI:6(a) prohibited the levying of an anti-dumping duty by a contracting party on the importation of any product of another contracting party unless it determined that the effect of the dumping was such as to cause or threaten (threaten) TjETBT1 0 0 1 700 0 eBT1 0 0 1 213.84 642 T3 Tm/F8 11 T

in the present case. To conclude otherwise would give

represented only 3.4 per cent of this increase. In view of these facts, the Panel concluded that while the New Zealand transformer industry might have suffered injury from increased imports, the cause of this injury could not be attributed to the imports in question from Finland, which constituted an almost insignificant part in the overall sales of transformers in the period concerned. In this connection, the Panel rejected the contention advanced by the New Zealand delegation that, at least as far as material injury in terms of Article VI was concerned, "any given amount of profit lost" by the complaining firm was in some sense an "injury" to a domestic industry.

4.8 The Panel noted that while the decision of the New Zealand Minister of Customs to impose anti-dumping duties was based solely on material injury having been caused by the imports in question, the New Zealand delegation had also alleged before the Panel the existence of threat of material injury. In view of the high import penetration of the New Zealand transformer market, the significant increase in imports from all sources over one single year and the minimal impact of the actual Finnish imports in question, the Panel saw no reason to assume that imports from Finland would in the future change this picture significantly. The Panel noted in addition that at the time the ministerial decision was taken, the Finnish exporter had not attempted to make any further sales to the New Zealand market. The Panel could therefore not agree that the imposition of anti-dumping duties could have been based on threat of material injury in terms of Article VI.

4.9 In view of the reasons contained in the preceding paragraphs, the Panel came to the conclusion that New Zealand had not been able to demonstrate that any injury suffered by its transformer industry had been material injury caused by the imports from Finland. The Panel therefore found that the imposition of anti-dumping duties on these imports was not consistent with the provision of Article VI:6(a) of the General Agreement.

4.10 In accordance with established GATT practice, the Panel held that where a measure had been taken which was judged to be in3.68 447.6 Tm/F8 11 Tf(Articprovision) TjETBT1 05 TmhBT8 11 Tf(had) TjETB