

# GENERAL AGREEMENT ON TARIFFS AND TRADE

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Committee on Anti-Dumping Practices

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Committee on Subsidies and  
Countervailing Measures

## QUESTIONS CONCERNING LEGISLATION OF AUSTRALIA

Following the meeting of the Committee on Anti-Dumping Practices and the Committee on Subsidies and Countervailing Measures in April 1983 the European Communities would like to draw the attention of the Government of Australia to the following points of its anti-dumping and countervailing legislation, which is contained in the Customs Tariff (Anti-Dumping) Act 1975 as amended by six subsequent Acts of 1981 and 1982. It raises a series of questions as to its conformity with the GATT and the Anti-Dumping Code as well as with the Code on Subsidies and Countervailing Duties.

- 1) Sec. 15 implies that any person engaged in an Australian industry can request the opening of an investigation while under the Codes only a "domestic industry" can apply for opening of anti-dumping proceedings, i.e. those domestic producers who account at least for a major proportion of total domestic production (Art. 4 and 5 Anti-Dumping Code, Art. 6 Subsidies Code).
- 2) The Australian Act does not specify that a complaint shall include sufficient evidence on dumping, subsidies, injury and causality as required by Art. 5 Anti-Dumping Code and Art. 2 Subsidies Code.
- 3) The Australian Act does not provide for a notice of opening of an investigation to be published prior to any measures taken.

4) Under Sec. 5 constructed value is the sum "of such amounts as the Minister determines to be the cost of production or manufacture" and "an amount calculated in accordance with such rate as the Minister determines would be the rate of profit on that sale".

No reference is made to the rule of Art. 2 (4) Anti-Dumping Code that the addition for profit shall not exceed the profit normally realised in the country of origin and that the amount for general, selling and administrative costs must be reasonable.

Moreover, in cases of third country export price, sec. 5 requires the highest such export price to be chosen as normal value. This rule does not ensure that such price is representative as is required by Art. 2 (4) Anti-Dumping Code.

5) The Australian Act leaves completely open the questions of definition and calculation of subsidies. In addition Sec. 10 (2E) considers countervailable so-called "prescribed assistance" which is defined as "any assistance, incentive, exemption, privilege or benefit (whether financial or otherwise) in relation to goods other than payment or grant of a subsidy, bounty, reduction or remission of freight or other financial assistance on the production, manufacture, carriage or export of the goods".

This section extends the scope of the Australian countervailing duty law far beyond what has been envisaged by Art. 6 (3) GATT which says that no countervailing duty shall be levied in excess of an amount equal to the estimated bounty or subsidy determined to have been granted, directly or indirectly, on the manufacture, production or export of a product in the country of origin or exportation, including any special subsidy to the transportation of a particular product.

Finally, Sec. 12 considers "by definition" a subsidy when the freight charged for the transport of the goods concerned to Australia has been less than "normal freight" as defined in the law. Cases of "freight dumping" are not covered by Art. VI GATT or by the Codes, and it is not in conformity with the Codes that without prior subsidy inquiry any freight charge below "normal" rates is considered to constitute a subsidy.

- 6) The Australian Act is silent on the procedure, on whether and how an investigation is carried out and on the rights of the parties involved in anti-dumping proceedings. In fact Sec. 15 states explicitly that the Minister may refer to the Industries Assistance Commission for inquiry as to the existence of dumping, subsidies and injury, which implies that he may also act without a formal investigation.

There are no criteria for injury and causality nor is there a definition of what constitutes an Australian industry. Moreover, notices published in the context of anti-dumping proceedings need not set forth the reasoning of the Australian authorities.

- 7) The Australian Act does not contain any rules with regard to provisional duties, when they can be imposed, their duration and extension and the release of securities. There is only a short reference to "securities taken under Art. 42 of the Customs Act". It appears that provisional duties can be imposed without prior investigation and preliminary determination on dumping, subsidies and material injury caused thereby. In fact in 22 cases in 1982 the Australian authorities have imposed provisional duties on the day of the initiation of the procedure and in one case even before that day.

- 8) Sec. 13 (2) permits the imposition of duties on goods which have been entered for home consumption already without "securities" actually having been collected. Such retroactive imposition of anti-dumping or countervailing duties is not in conformity with the very restrictive rules of the Codes concerning retroactivity (Art. 11 Anti-Dumping Code and Art. 5 Subsidies Code).
- 9) Sec. 10 (2B) and (2D) allow for imposition of countervailing duties without an injury test on subsidized imports from a country which itself applies countervailing duties to Australian exports without proper injury test.

This provision is against Australia's obligations under GATT and the Subsidies Code. The fulfilment of these obligations should not be dependent on a more or less arbitrary judgement concerning the findings made and measures taken by other signatories.

- 10) It is unclear what is the difference between Sec. 8 (4) and Sec. 8 (5) concerning the amount of anti-dumping duties imposed. Similar provisions exist in Sec. 10 concerning countervailing duties.
- 11) Sec. 9 and 11 contain extensive rules on third country dumping and countervailing duties. Contrary to Art. 12 (3) Anti-Dumping Code dumping duties may be applied when injury has been caused to "a producer or manufacturer", i.e. not necessarily to the industry concerned as a whole in the third country as stipulated by Art. 12 Anti-Dumping Code.

Moreover, countervailing action with regard to third countries has not been authorized at all by the Contracting Parties or by the Subsidies Code.

12) Sec. 14 included a general reference to Australia's obligations under the Codes. It read:

"The Minister shall not cause a notice to be published under any provisions of the Act unless he is satisfied that the publication of the notice is not inconsistent with the obligations of Australia under any international agreement relating to tariffs or trade".

This section, which recognized the relevance of Australia's international obligations under its domestic law has been repealed. Australian government officials have stated that now the parties concerned would be deprived of the possibility to evoke these obligations before Australian courts of law.

The questions raised above, which do not necessarily cover all points where the Australian law may not be in full conformity with Australia's international obligations, gives rise to serious concern as to the way in which Australia carries out its anti-dumping and countervailing proceedings, and the Australian government is asked, therefore, to clarify the matters and to amend its internal law where it is found to be not in conformity with the GATT and the Codes.