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TARIFFS AND TRADE**

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Committee on Anti-Dumping Practices

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Committee on Subsidies and
Countervailing Measures

QUESTIONS CONCERNING THE IMPLEMENTING
LEGISLATION OF AUSTRALIA

Responses by Australia

Reproduced herewith are responses by the Australian authorities to the questions raised by the United States in document ADP/W/89 and SCM/W/79 concerning Australia's Anti-Dumping and Countervailing Legislation.

Australia makes the following response to the specific questions posed by the United States.

1. IMPLEMENTING REGULATIONS AND POLICY STATEMENTS

Copies of Australia's revised anti-dumping and countervailing administrative procedures in draft form have been forwarded to the Secretariat for information of the members of the Committee.

Copies of the second reading speeches to the Australian Parliament during passage of Bills amending the Customs Tariff (Anti-Dumping) Act 1975 will be provided.

2. LEGISLATIVE HISTORY OF THE AMENDED ACT

The following amendments have been made to the Customs Tariff (Anti-Dumping) Act 1975 since it entered into force.

Customs Tariff (Anti-Dumping) Amendment Act 1981

- amendments to incorporate in the Act new provisions of the revised Anti-Dumping Code and the Subsidies and Countervailing Duties Code
- other technical amendments.

Customs Tariff (Anti-Dumping) Amendment Off-Shore Installations Act 1982

- amendment to include provisions relating to off-shore installations.

Customs Tariff (Anti-Dumping) Amendment (Countervailing Duties) Act 1982

- amendment to provide for reciprocal countervailing duty measures.

Customs Tariff (Anti-Dumping) Amendment Act (No.2) 1982

- repeal of section 14 of the 1975 Act.

Customs Tariff (Anti-Dumping) Amendment Bill (No.2) 1983.

Customs Tariff (Anti-Dumping) Miscellaneous Amendments Bill 1983

- amendments arising out of review of the legislation in 1983.

Copies of Bills will be provided.

3. PROVISIONS OF THE ACT - ADMINISTRATIVE PROCEDURES .

The draft administrative guidelines which have been furnished to the Secretariat for circulation to Committee members outline in detail the manner in which the amended legislation and the revised procedures are to be administered.

Where precedents exist these have been incorporated in the guidelines referred to above. Precedents which result from any future decisions handed down in Australian Courts arising out of appeals against dumping or subsidisation decisions will be incorporated in the guidelines from time to time.

The Australian Administration does not consider it necessary or appropriate to include hypothetical illustrations in the guidelines nor in response to the questions on Australia's legislation posed by the US Administration.

(A) Section 4(2)

These provisions are necessary to enable action to be taken to counter sales or "hidden" dumping in transactions between associated parties that are deemed to be not at arms length. Considerations other than price could be: offset arrangements in the price of other goods traded between the parties; hidden rebates; payment of monies to the importer's overseas bank account by the exporter. An importer in each of these situations would receive reimbursement or compensation.

The phrase "commercial or other relationship" refers to associates - see definition in sub-section 4(3B).

(B) Section 4(3)

The purpose of the provision is to enable investigation and construction of export price where it is found that a compensatory arrangement exists between exporter and importer. It is recognised that there could be other reasons for an importer to sell goods at a loss on the Australian domestic market without any compensatory arrangement with an exporter. In such cases, export price is determined according to the normal criterion of actual price paid less any charges accruing after exportation of goods.

(C) Section 4(3A)(b) and (3A)(d)

The costs necessarily incurred in the importation and sale of any goods include such costs as overseas freight, insurance and exchange charges, Customs duties and taxes, handling, selling and administrative expenses in Australia. This listing is not necessarily exhaustive.

To this stage there have been no determinations made under sub-section 3A and there are no precedents for such other matters as the Minister considers relevant. These would be considered on a case by case basis.

(D) Section 4A(1)(c)

A determination by the Minister under paragraph 4A(1)(c) is made in terms of the criteria set out in paragraph 4A(1)(b).

Where goods are resold to an Australian buyer prior to arrival within the port of landing in Australia, the Department considers the export price in relation to that sale in exercising the discretion provided by paragraph 4A(1)(c).

Where goods are sold after their arrival at the port of landing in Australia but before entry for home consumption, such sales will be disregarded for export price purposes. Export price will be determined on the basis of the price paid by the importer (ie beneficial owner at the time of arrival at the port of landing - paragraph 4(1)(a)), not the subsequent owner.

The paragraph 4A(1)(c) discretion is also exercised in the case of consignment goods. The export price of goods imported "on consignment" cannot be established until after the sale of the goods in Australia. It is determined by reference to the Australian selling price, less all costs, charges, expenses and duties arising after exportation.

In the cases where the purchase of goods is not an arms length transaction, and the goods are not subsequently sold by the importer but are retained for captive use, export price would be determined under 4A(1)(c). To date there have been no such determinations and export price would be determined according to the circumstances of the transaction.

(E) Section 4A(2)(c)

In ascertaining the amount of profit the Minister will have regard to all the circumstances of the importer's operation and it will be consistent with the profit level which could be expected to be earned by the importer in normal trading conditions.

(F) Sections 4A(3), 5(4), 10(7) and 11(7)

Where the Minister is satisfied that sufficient information has not been produced or is not available for export price, normal value or amount of subsidy, bounty, reduction etc to be ascertained within the respective preceding provisions of the legislation, he has the authority to determine these amounts within these sub-sections; based on relevant information that is available.

(G) Sections 4A(4) and 5(4A)

The purpose of these provisions is to enable the Minister to exercise discretion when considering information provided by parties which has not been attested to or notarised or in respect of which the opportunity for official verification was withheld or was not possible. There is no compulsion on the Minister to consider that all such information is unreliable.

(H) Section 5(7)

The purpose of this provision is to enable the Minister to determine that the normal value of goods should be ascertained in the country of origin rather than in the country of export when he is satisfied that the goods have been exported from an intermediate country to contrive a lower normal value than would otherwise apply. In such cases the Minister would take into account the circumstances of the export sale transaction.

(I) Sections 8(6), 9(6), 10(6) and 11(6)

The above provisions do not authorise retroactive application of security requirements or dumping duties. Sub-sections 8(1), 9(1), 10(1) and 11(1) when read in conjunction with Section 13 of the Customs Tariff (Anti-Dumping) Act prescribe for the retrospective imposition of duties where securities as provisional measures in terms of Section 42 of the Customs Act are in place or where the Customs had the right to require and take such securities.

These provisions are to be read with sub-sections 8(5), 8(5A), 9(5), 9(5A), 10(5), 10(5A), 11(5) and 11(5A) respectively.

- (J) Section 10(2E)
- (K) Section 10(7A)

These provisions have no practical application to this point in time. They were inserted in the Customs Tariff (Anti-Dumping) Act in 1982 with other sub-sections to provide a mechanism for Australia to introduce reciprocal countervailing duty measures in prescribed circumstances.

- (L) Sections 10(10) and 11(10)

These provisions have not been utilised in administration of the legislation to date.

- (M) Sections 9 and 11 Third Country Anti-Dumping and Countervailing Duties

Australia has not to date initiated any investigations or made any findings based on these provisions.