

GENERAL AGREEMENT ON

TARIFFS AND TRADE

RESTRICTED

ADP/68

SCM/127

15 October 1991

Special Distribution

Committee on Anti-Dumping Practices

Original: English

Committee on Subsidies and
Countervailing Measures

AUSTRALIAN ANTI-DUMPING/COUNTERVAILING DUTY LEGISLATION

Communication from the European Communities

The following communication, dated 27 September 1991, has been received from the Permanent Delegation of the European Communities with the request that it be circulated to signatories.

At the last regular meeting of the Committee, on 1 May 1991, the Community raised the issue of certain amendments to the Australian Anti-Dumping/Countervailing Duty legislation which had been announced by the Australian Government in March this year. More specifically, the Community referred to legislation aimed at ensuring "that injury suffered by industries producing agricultural or horticultural products as a result of dumped or subsidized imports of processed products would be taken into account in anti-dumping and countervailing duty investigations", thereby giving "Australia's agricultural and horticultural producers, when they are truly vertically integrated, an avenue for redress when they fall victim to unfair trading practices in the processed products of their industry" (quotes from the Industry Statement, March 1991).

While acknowledging that this was a mere announcement, and that legislation had not yet been tabled before the Australian Parliament, let alone enacted, in that occasion the Community stated its concern over this announcement, and drew the attention of the Committee and of the Australian authorities to the fact that the existing GATT rules on this issue are quite clear. Now, however, this legislation has, in fact, been enacted by the Australian Parliament.

The Community is firmly of the opinion that this provision makes Australian legislation inconsistent with GATT and the Subsidies Code. Specifically, this provision is inconsistent with the definition of

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"domestic industry" for the purpose of determining injury contained in Article 6:5 of the Code, as supplemented by the definition of "like product" contained in footnote 18 to Article 6:1 of the Code.

Enactment of the above legislation constitutes a violation of Australia's obligation under Article 1 of the Code "to ensure that the imposition of a countervailing duty ... is in accordance with the provisions of Article VI of the General Agreement and the terms of this Agreement".

The only precedent for such a provision was the definition of "industry" for wine and grape products in the US Trade and Tariff Act of 1984. The Community successfully challenged then the conformity with GATT and the Code of that provision, whose validity fortunately expired shortly thereafter.

The Community, therefore, wishes to draw once again the attention of the Committee and of the Australian authorities to the serious violation of Code disciplines on the use of countervailing duties which the enactment of such a provision implies. The Community obviously reserves the right to take any action it may deem appropriate under GATT and the Code. The Community also believes that discussion of these issues in the Committee is necessary and urgent, and requests therefore that this point appear on the Committee's agenda for the next regular meeting.