

**GENERAL AGREEMENT ON
TARIFFS AND TRADE**

RESTRICTED

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Committee on Subsidies and
Countervailing Measures

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AUSTRALIAN CUSTOMS AMENDMENT ACT 1991

Request by the European Communities for Consultations
under Articles 3 and 16 of the Agreement

The following communication, dated 9 March 1992, has been received from the Permanent Delegation of the European Communities with the request that it be circulated to signatories.

The European Community is seriously concerned about some provisions of recently enacted Australian anti-dumping and countervailing duty legislation, in particular about clause 7 of the Customs Amendment Act 1991 and the notion of domestic industry contained therein.

The Community has already drawn the attention of the Australian authorities to this matter, both bilaterally and in the context of the Committee on Subsidies and Countervailing Measures (at its regular meetings of 1 May and 22 October 1991). Signatories of the Subsidies Code have also been made aware of the Community's concerns through the communication circulated in document ADP/68-SCM/127 of 15 October 1991.

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 "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".

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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. Furthermore, when Canada applied similar concepts (although without a specific provision to this effect in Canadian CVD legislation) in the context of a CVD investigation involving goods of Community origin, the Community challenged the imposition of countervailing duties by Canada with equal success.

The Community's concerns are now highlighted by the application of this new legislation in two pending AD/CVD investigations on imports of glacé cherries and canned tomatoes from Community member States, and this makes it all the more urgent to find an appropriate solution to this matter.

The European Community therefore requests the Australian authorities for consultations under the provisions of Articles 3 and 16 of the Subsidies Code, with the aim, inter alia, of clarifying the situation and arriving at a mutually agreed solution.