

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

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Group of Negotiations on Goods (GATT)

Negotiating Group on MTN
Agreements and Arrangements

AMENDMENTS TO THE ANTI-DUMPING CODE

Submission by Australia

At the last session of the Group, the Chairman advised participants that he would be preparing a paper on his own responsibility which would contain proposals for the structure and organization of the Group's work in 1990. It would also reflect in a comprehensive and balanced way all issues raised in the Group. To this end, all participants were invited to submit by 20 December 1989 proposals for the negotiations so that these could be taken into account in his paper.

Australia avails itself of this opportunity to highlight several important issues which ought to be addressed in the negotiations during 1990 with the aim of incorporating the results into the Code. Our underlying objective in this is to:

- reinforce the Code as a practical and effective instrument to deal with unfair trading practices;
- ensure the Code is cognizant of, and capable of responding to modern business international organization and practices aimed at circumvention of the Code;
- provide protection of the interests of local industry as well as importers and exporters; and
- ensure that the Code's integrity is not undermined by its being used as a protectionist instrument.

The issues which Australia believes must be addressed in the negotiations in 1990 are set out below and are submitted without prejudice to the final position Australia might take on any of them. Australia reserves its rights to raise other issues if necessary at a later date.

I. Abuse of anti-dumping procedures

Australia considers that the Code should be reinforced by strengthening its provisions to prohibit anti-dumping becoming a vehicle for protectionism. In particular, the Code's provisions relating to anti-dumping procedures need to be strengthened to prevent their abuse. It is important that the negotiations address the following:

- the Code should be developed with specific provisions requiring contracting parties to implement anti-dumping procedures and methodologies which reflect unequivocally the spirit and intent of the Code;
- the abuse of anti-dumping procedures by contracting parties is to be condemned. The application of anti-dumping measures as a punitive or protectionist instrument, as a means to harass importers or as a means to deter potential market entrants should be eliminated;
- the Code's provisions should require that procedures employed by signatories are such that they cannot be used by domestic industry to unfairly threaten anti-dumping action and so deter importers by the high cost of legal action;
- while procedures should not be such as to discourage legitimate complaints, the Code should however incorporate rigid provisions requiring contracting parties to introduce:
 - (i) definitive disciplines and transparency on the initiation and conduct of anti-dumping actions (and including for example a rigorous testing and thorough examination of the complainant's application before initiation); and
 - (ii) definitive disciplines and transparency on anti-dumping duty assessment mechanisms.

II. Circumvention

Australia agrees with other contracting parties that this is an issue requiring solutions in the Code. Our preference is to have circumvention addressed in a distinct and separate group of provisions within the body of the Code. Our main concerns are:

- that the ability and flexibility of modern business to internationalize its operations and to facilitate the rapid switching of supply, sourcing and production, transfer pricing etc, to negate the legitimate rights of contracting parties to counter unfair trading practices should be specifically addressed with the Code;
- specific embodiment with the Code of adequate provisions to counter circumvention: it would restore credibility to the instrument as one which provides an effective response to unfair trading in accordance with its original intent;
- the concept of circumvention needs to be rigidly defined in the Code which should also incorporate specific guidelines that would be applied to identify instances of circumvention falling within the scope of the proposed Code provisions;
- where the circumstances of circumvention are identified, interim security measures may be applied immediately upon notification and subsequent definitive action may be applied retroactively; and

- counter circumvention action should not hinder the establishment, in the country of the importing contracting party, of a legitimate manufacturing/assembly operation.

III. Other items for negotiation

(i) Sunset clause

- Australia takes the view that anti-dumping measures are intended to be a short-term remedy to a short-term problem and fully endorse the incorporation of a sunset provision within the Code;
- in order to reinforce the concept that anti-dumping measures not be used as a general purpose trade policy tool for protectionist purposes, a time limiting discipline should be embodied in the Code (for example, 3 years);
- any request for remedy under the Code subsequent to the expiration of an anti-dumping measure should be treated as a new complaint and processed on its own merits.

(ii) Cumulation

- Australia considers that in any consideration of injury, cognizance should be given to the cumulative effect of dumped imports, which collectively, can have a significant effect on an industry;
- it is recognized, however, that the question of cumulation of injury is complex, and each case should be examined on its merits.

(iii) Dispute settlement

In order to achieve effectiveness and maintain a balance of rights and obligations under the Code, dispute settlement procedures need to be timely, of authority, and binding. Australia considers that the Code's dispute settlement provisions ought to reflect as far as possible the relevant provisions, understandings and procedures of the GATT, taking into account the recent reforms agreed at the mid-term review, together with whatever outcome in this regard may be reached by the end of the Uruguay Round.