

GENERAL AGREEMENT ON

TARIFFS AND TRADE

RESTRICTED

SCM/147

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Committee on Subsidies and
Countervailing Measures

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AUSTRALIAN CUSTOMS AMENDMENT ACT 1991

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

The following communication, dated 10 April 1992, from the Permanent Delegation of the European Communities to the Permanent Mission of Australia has been received by the secretariat with the request that it be circulated to signatories.

I refer to your letter of 2 April 1992, which replies to the Community's request for consultations under the Subsidies Code, in relation with certain aspects of Australia's AD/CVD legislation.

I note that you have transmitted to the Chairman of the Subsidies Committee Australia's comments (SCM/W/259) on the Community's previous communications on this subject. While I do not wish to enter into the substance of Australia's arguments at this stage, as I believe the issue will be debated again at the next meeting of the Committee, you should be aware that Australia's response to the Committee does not allay the concerns that this matter has raised in the Community.

The Community must also disagree with Australia's contention, expressed in the above-mentioned document, with reference to the special meeting of the Committee held on 26 March 1992, that "... Australia could not consider, for the purposes of Article 17, the process which had taken place to be a valid consultation possibly leading to further action under Article 16 or 18", and that "... legislation itself cannot be validly examined under the dispute settlement provisions of the Code."

In this respect, the Community would like to make the following points:

- signatories have an unqualified 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."; enactment of domestic

legislation which is clearly incompatible with those provisions makes it impossible, and indeed illegal under domestic law, to comply with the obligation of Article 1: this would be, therefore, a violation of the Code, and other signatories do have the right to resort to the dispute settlement provisions of the Code, quite apart from any action which may have been taken under the legislation at issue;

- the examination of domestic legislation by the Committee constitutes an important instrument to ensure transparency, but cannot exclude in an absolute manner, the applicability of the dispute settlement provisions of the Code;
- the Community has not invoked, so far, the dispute settlement provisions of Articles 17 and 18; the Community was interested first of all in having bilateral consultations with Australia, provided that such consultations be put in a multilateral framework: this was the reason for the request to have this matter taken up under Article 16 at a special meeting of the Committee;
- however, this interest in pursuing the process bilaterally does not detract in any manner from the validity of the Community's request and of the process which has taken place in the Committee for the purpose of the dispute settlement procedures of the Code, should resort to such procedures ever appear appropriate.

With regard, more specifically, to your letter of 2 April, I note your offer to renew bilateral consultations under Articles 3 and 16 of the Code in relation to certain countervailing duty investigations being carried on by Australia. We shall consider the need for such consultations at this stage and reply to Australia's offer in due course.

I also note, however, that you do not mention our request for bilateral consultations in respect of certain provisions of Australia's CVD legislation. The Community has made it clear, at the special meeting of the Subsidies Committee on 26 March, that it considers that the meeting itself has fulfilled its function to put this process on a multilateral footing, but that this does not eliminate, in the Community's view, the appropriateness of bilateral consultations with Australia in this framework, with a view to discussing fully the legal and substantive aspects of our respective positions on this issue.

I would reiterate, therefore, our request for such bilateral consultations. In the light of this, we have decided not to insist on this question being maintained as a separate item on the agenda of the next regular meeting of the Subsidies Committee.