Reproduced herewith are responses by the authorities of the Philippines to questions on the countervailing duty legislation of the Philippines (SCM/1/Add.23) raised by the United States (SCM/W/109), the EEC (SCM/W/114) and Australia (SCM/W/117).
The Philippine law appears to provide for extremely short periods for countervailing duty investigations: 15 days for a finding of subsidization and 45 days for an injury finding. How will the Philippine authorities compile the information necessary to conduct a thorough investigation of the facts and to develop sufficient evidence to justify the imposition of countervailing duties?

The Tariff Commission is required to report on both the issue of subsidization and injury within 45 days after receipt of a case from the Finance Minister. The Minister is called upon to issue a Decision within 15 days from the date of receipt of the report. This period provided for in Department Order No. 300 is merely directory and not mandatory. Reports submitted beyond that period is not invalidated by the delay (the period for the submission of reports may be extended for valid reasons).

Philippine authorities have noted that in the Subsidies Code a period of one year is allowed for investigations.
**QUESTION 2**: Given the short time periods for investigations, what measures will the Philippines authorities take to ensure that all interested parties have a "reasonable opportunity" to present their views, as required by Article 2:5 of the Code?

**ANSWER**: Pursuant to Section 302 (a) of Presidential Decree No. 1973, a countervailing case is refered to the Tariff Commission for investigation. The investigative function of the Commission includes the holding of public hearings where the petitioner and other known interested parties, trade and commercial organizations and pertinent government entities are notified. For this purpose, notice of public hearings stating the name of the petitioner, the kind and nature of the petition, brief description of the article involved, its corresponding tariff heading, the country of origin are published in two newspapers of general circulation in the Philippines. Moreover, a copy of said notice is posted in the premises of the Commission within a reasonable time before the date of public hearings. All parties interested may appear at the public hearings and present, under oath, evidence relevant and material to the subject matter of the investigation.

While the law and Department Order No. 300 do not expressly provide for a public hearing, the above-mentioned procedure is actually adopted by the Commission in compliance with the constitutional guaranty of procedural due process of law.
QUESTION 3: Sections 6 and 7 of the Philippine law appear to authorize a finding by the Tariff Commission that subsidized imports are causing injury prior to the determination by the Secretary of Finance that the imports are subsidized. Since some imports may not be benefitting from subsidies, how can the Tariff Commission make the injury finding without prior identification of the subsidized imports by the Secretary of Finance?

ANSWER: A preliminary finding of the Finance Minister is necessary before the Tariff Commission conducts the investigation proper after which a report is submitted. The final finding of the Minister is based on the Commission's report.

The actual procedures observed, in sequence, are as follows:

- A determination by the Finance Minister of prima facie case of subsidization enjoyed by the imported article in question and injury to domestic industry;

- Investigation by the Tariff Commission;

- Within 45 days after receipt of the case, the Commission makes a report to the Finance Minister;

- The Finance Minister makes a decision (final finding) within 15 days from the date of receipt of the report.
What measures do the authorities take to ensure that the provisions of Article 2:1 of the Code requiring that authorities have sufficient evidence of subsidization, injury and a causal link between them before initiating a countervailing duty investigation are met?

Under Section 3 of Department Order No. 300, information or complaints of possible violation of Section 302 of the Tariff and Customs Code of the Philippines shall be given due course as long as they include data substantially sufficient to establish a reasonable ground to believe that there would be possible violation. The information or complaint shall be accompanied by a statement substantially containing the data enumerated in Section 3 (d) of the Department Order, such as all pertinent facts obtainable as to subsidization (Section 3.d.5) and such other information as may be deemed necessary to establish material injury, etc. (Section 3.d.6).
QUESTION 2: Do the amendments introduced by Presidential Decree No. 1973 amending Section 302 of Decree No. 1464 allow the Philippine authorities to impose immediate countervailing duties on the basis of only prima facie evidence of subsidization and injury to a domestic industry before a preliminary affirmative finding has been made that a subsidy exists and that there is sufficient evidence of injury?

ANSWER: No. After an initial determination by the Finance Minister of a prima facie case of subsidization enjoyed by the imported article in question and injury to domestic industry, the Minister shall refer the case to the Tariff Commission and pursuant to Department Order No. 300, order the Bureau of Customs to require the imposition of bonding requirement in an amount double the dutiable value of the protested article. The determination of a prima facie case by the Minister is a result of the Ministry's preliminary investigation. The Commission's role after the preliminary findings is to conduct the main investigation and submit a report and recommendation to the Minister. This should not be confused with the affirmative preliminary findings of the Minister which warrant the imposition of the bonding requirement, a provisional measure.
QUESTION 3: What is the basis, under the Code, for the provisions in Section 4 of Department Order No. 300 under which

(i) goods may be released, pending investigation and final decision of the case, only if a bond is filed at double the dutiable value thereof;

(ii) the provisions under (i) above shall apply equally to goods imported 60 days preceding the filing of information?

ANSWER: Section 302 (a) of the Philippine Tariff & Customs Code of 1978, as amended (see GATT SCM/1/Add. 23) is presently seldom invoked, or not at all for the last several years, hence, the bonding requirement is actually inoperative (It may be mentioned that Department Order No. 300 was issued long before the Philippines accepted the Agreement).

Philippine authorities are in the process of examining the provisional measure requiring the filing of a bond at double the dutiable value of a protested article with a view to making appropriate amendments to Section 4 of Department Order No. 200.

With respect to question 3 (ii), it is believed that the sixty-day period can be justified as substantially in conformity with the Subsidies Code because it is deemed reasonable to cover investigations of other importations arriving under the same circumstances within that period in order to establish injury to the domestic industry. As with the matter raised in question 3 (i) above, this question is under examination by Philippine authorities.
The first paragraph of Section 4 of Department of Finance Order No. 300 appears to provide for immediate penalty in excess of what might be necessary to remove injury. Could the Philippines provide an explanation of the consistency of this provision in terms of the Agreement?

Section 302 (a) of the Philippine Tariff & Customs Code of 1978, as amended (see GATT SCM/1/Add. 23) is presently seldom invoked, or not at all for the last several years, hence, the bonding requirement is actually inoperative (It may be mentioned that Department Order No. 300 was issued long before the Philippines accepted the Agreement).

Philippine authorities are in the process of examining the provisional measure requiring the filing of a bond at double the dutiable value of a protested article with a view to making appropriate amendments to Section 4 of Department Order No. 200.
QUESTION 2: Does the legislation of the Philippines allow foreign suppliers involved in an investigation to submit information and to discuss a case with the authorities conducting the investigation?

ANSWER: Pursuant to Section 302 (a) of Presidential Decree No. 1973, a countervailing case is referred to the Tariff Commission for investigation. The investigative function of the Commission includes the holding of public hearings where the petitioner and other known interested parties, trade and commercial organizations and pertinent government entities are notified. For this purpose, notice of public hearings stating the name of the petitioner, the kind and nature of the petition, brief description of the article involved, its corresponding tariff heading, the country of origin are published in two newspapers of general circulation in the Philippines. Moreover, a copy of said notice is posted in the premises of the Commission within a reasonable time before the date of public hearings. All parties interested may appear at the public hearings and present, under oath, evidence relevant and material to the subject matter of the investigation.

While the law and Department Order No. 300 do not expressly provide for a public hearing, the above-mentioned procedure is actually adopted by the Commission in compliance with the constitutional guaranty of procedural due process of law.
QUESTION 3: Can investigations be suspended or terminated by the acceptance of undertakings?

ANSWER: The Philippine countervailing law does not expressly provide for suspension or termination of a countervailing action by the acceptance of undertakings. However, a countervailing investigation like any other administrative proceeding is governed by the rules of administrative investigation where substantial evidence as the quantum of proof determines the success or failure of litigants. Hence, should at any stage of the proceedings a party presents proof that the foreign law granting subsidies to the protested article has been modified, suspended or repealed, the Tariff Commission is duty-bound to recommend to the Ministry of Finance the dismissal of the protest. The effect of such dismissal would be deemed substantially similar to the situation contemplated in Article 4, paragraph 5 (a) (i) of the Agreement.