In document SCM/W/234, dated 31 May 1991, Canada raised a series of questions concerning the Countervailing Duty Legislation of Australia as detailed in document SCM/1/Add.18/Rev.1/Suppl.3.

Before responding specifically to the Canadian questions, it is appropriate to say that the legislation is not new as such, rather the purpose of the transfer of a series of existing sections from the Customs Tariff (Anti-Dumping) Act 1975 into Part XVB of the Customs Act 1901 was to avoid possible difficulties with the requirements of Section 55 of the Australian Constitution, and were detailed at the October meeting of the Subsidies and Countervailing Measures Committee by the representative of Australia as recorded at paragraph 18 on page 4 of SCM/M/48.

Page 10, part 3, item 10, Right to Require Security:

**Question 1:**

Is this provision meant to be interpreted as authorizing customs to collect securities before a preliminary finding of subsidization and injury has been made in cases where an undertaking has been breached? If Canada's interpretation is correct, how does this new provision conform to the provision of the Code, Article 5:1?

**Answer:**

Undertakings may be considered as soon as there is clear evidence of subsidization, material injury and the causal relationship. This means that where an undertaking is or has been breached and measures are imposed, a preliminary affirmative finding that a subsidy exists would have been made and that there is sufficient evidence of injury and causal link. This does not conflict with Article 5:1 of the Subsidies and Countervailing Duties Code.
Page 20 (Should read pages 29-30), Countervailing Duties, 269 TJ (4)-(6):

Question 2:

This section of package legislative amendments reads very much like a countermeasure against foreign subsidized imports, to be invoked in instances where Australian exports are countervailed in a foreign country. What is the intent of this new provision and what particular problem or problems is it designed to address? Are the provisions of Section 269 TJ (4)-(6) intended to operate in advance of or subsequent to dispute settlement under the Subsidies Code?

Answer:

The provisions of sub-sections 269 TJ (4)-(6) of the Customs Act 1901 previously formed part of sub-sections 10 (1) to (2E) of the Customs Tariff (Anti-Dumping) Act 1975 and are not new.

These provisions were inserted in 1982 when the Australian Government decided that as a matter of trade policy, and notwithstanding the "injury test" requirement of the Code, Australia needed the facility to be able to take countervailing action without requiring proof that exports to Australia, if subsidized, are causing or threatening material injury to a domestic industry in cases where countries do not accord Australian exports the same test in their countervailing actions.

The provisions can be applied by the Minister subsequent to any dispute settlement under the Subsidies Code.

Page 31, Third Country Countervailing Duties:

Question 3:

The revised legislation contains a provision whereby Australia may initiate a countervailing duty investigation on third country subsidized imports at the request of the government of a third country. How does this new provision relate to GATT Article VI, paragraph 6 (b) and (c)?

Answer:

GATT Article VI, paragraphs 6 (b) and (c) provides that the requirement of paragraph 6 (a) may be waived in certain circumstances. Section 269TK of the Customs Act 1901 provides that duty may be imposed if a third country producer or manufacturer (i.e. an industry) of "like goods" (as defined) is being materially injured, hindered or threatened (as the case may be).