QUESTIONS CONCERNING LEGISLATION OF AUSTRALIA

The following questions are submitted by the Delegation of the United States in response to the invitation by the Chairmen of the Committee on Anti-Dumping Practices and the Committee on Subsidies and Countervailing Measures, that Signatories submit written questions to the Secretariat on the antidumping and countervailing legislation of Australia.

1. Please provide a copy of other laws which the Government of Australia considers to be in pari materia with the Customs Tariff (Antidumping) Act 1975 and the amendments thereto notified in the documents ADP/1/Add.18 and ADP/1/Add.18/Suppl.1. Please explain the relationship of these other laws to (A) the Customs Tariff (Antidumping) Act 1975 and amendments thereto; and, (B) the Code obligations of Australia.

2. Please explain the appeal process available to parties affected by decisions of the Government of Australia made under its antidumping and countervailing duty statutes. How does the appeals process in Australia ensure that the laws of Australia are applied consistently with Australia's international legal obligations? Are the Codes themselves enforceable in court through litigation by interested parties?

3. Please explain how Australia's legislation is consistent with the following provisions of the Antidumping Code:

(A) Art. 2, Para. 4-6 (Determination of Dumping);
(B) Art. 3, Para. 1-7 (Determination of Injury);
(C) Art 4, Para. 1-4 (Definition of Industry);
(D) Art. 5, Para. 1-3, Para. 5 (Initiation and Subsequent Investigation);
(E) Art. 6, Para. 1-3, 5-7 (Evidence);
(F) Art. 7, Para. 1-7 (Price Undertakings);

(G) Art. 8, Para. 2-5 (Imposition and Collection of Antidumping Duties);

(H) Art. 9, Para. 2 (Duration of Antidumping Duties);

(I) Art. 10, Para. 1-4 (Provisional Measures); and

(J) Art. 11, Para. 1-3 (Retroactivity).

4. Please explain how Australia's legislation is consistent with the following provisions of the Subsidies Code:

   (A) Art. 2 Para. 1-7, 14-16 (Domestic Procedures and Related Matters);

   (B) Art. 3, Para. 1-2, 4 (Consultations);

   (C) Art 4, Para. 3-9 (Imposition of Countervailing Duties);

   (D) Art. 5, Para. 1-8 (Provisional Measures and Retroactivity); and

   (E) Art. 6, Para. 1-6, 8 (Determination of Injury).

5. Regarding questions 3 and 4 above, the Delegation of the United States is particularly concerned with the following aspects of the legislation of Australia as notified to the Signatories:

   (A) The absence of provisions establishing a system for notifying the public and interested parties of administrative decisions and the reasons and bases for administrative decisions;

   (B) The absence of provisions that establish standards and procedures for the initiation of investigations, for the conduct of investigations, for the right of informed participation by interested parties, and for periodic review of notices imposing antidumping or countervailing duties;

   (C) The absence of standards governing the exercise of Ministerial discretion and the grant of unfettered Ministerial discretion incorporated in various sections of the Customs Tariff (Antidumping) Act 1975 as amended, particularly sections 4, 5, 10, 11, and 11A;

   (D) The provisions that sanction, for purposes of calculating normal value, the use of the highest price for export to third countries (Section 4(2)(D)), or in some cases, the Australian price (Section 4(3) (F));
(E) The deletion of the original section 14 of the Customs Tariff (Antidumping) Act 1975 (unless Code obligations are self-executing under Australian law, or unless other provisions give private interested parties the right to assert in Australian Courts rights created by the Codes);

(F) The retaliatory actions authorized by section 10(2B), 1U(2C), 10(2D) and 1U(4) of the Customs Tariff (Antidumping) Act 1975 as amended by the Customs Tariff (Antidumping) Amendment (Countervailing Duties) Act 1982;

(G) The apparent ability to waive the imposition of duties on a discriminatory basis; and

(H) The absence of a basis in the GATT or in the Subsidies Code for a countervailing duty imposed on behalf of a third country.

6. In any case in which Australian legislation does not cover points raised in Questions 3, 4 and 5 above, please describe specifically how Australian regulations or practices operate to ensure conformity with applicable Code obligations.

The United States Delegation reserves the right to ask further question in light of the response by Australia.