

SUBSIDIES: WITHDRAWAL OF A SUBSIDY

Communication from Australia

The following communication, dated 20 April 2006, is being circulated at the request of the Delegation of Australia.

The submitting delegation has requested that this paper, which was submitted to the Rules Negotiating Group as an informal document (JOB(06)/96), also be circulated as a formal document.

Australia indicated at the February 2006 meeting of the Negotiating Group on Rules that it would bring forward a more elaborated proposal on addressing the meaning and scope of what constitutes “withdrawal” of the subsidy as provided under Article 4.7 of the WTO Agreement on Subsidies and Countervailing Measures (SCM).¹

Australia notes the previous useful discussions including suggestions for clarifying the proposal. Australia looks to working with other Members in developing this proposal further.

In considering this proposal, Australia considers it would be helpful to set out the following broad guidelines to clarify the scope of the proposal:

- (i) The text of SCM Article 4 should be clarified by setting out the parameters of what is required in order to “withdraw” the subsidy.
- (ii) In doing so, the text of SCM Article 4 should reinforce the obligation under SCM Article 3.2, that is, prohibited subsidies shall not be granted nor maintained.
- (iii) The standard of “withdrawal” will be met where the subsidy that is granted or maintained is terminated.
- (iv) The parameters of “withdrawal” should take into account the facts and circumstances surrounding the granting or maintaining of the subsidy. In other words, “withdrawal” of the subsidy should take into account the nature of the measure in question, including whether the benefits of the subsidy are allocated to future production.

¹ Previous submissions by Australia on this issue are contained in documents TN/RL/W/139, dated 18 July 2003, TN/RL/GEN/35 (JOB(05)/41), dated 23 March 2005, and TN/RL/GEN/97 (JOB(06)/9), dated 20 January 2006.

- For example, where portions of a subsidy are allocated to future production and involve more than one payment, payments would be required to be terminated – no further payments could be made.
- (v) A Member would be required to outline to a panel what constitutes withdrawal of the subsidy in relation to the challenged measure.
- (vi) In response to the parameters required to be outlined in (v) above, the panel would be required to make a finding to elaborate on what in broad terms would constitute “withdrawal” of the subsidy.
- (vii) Clarification of analogous provisions within Article 7.8 in relation to “withdraw the subsidy” may also be helpful.

PROPOSED TEXTUAL AMENDMENTS

[4.4 bis A Member bringing a claim before a panel shall outline what in its view would constitute withdrawal of the subsidy.]

4.7 If the measure in question is found to be a prohibited subsidy, the panel shall, **in response to a specific claim required under paragraph 4 bis**, recommend that the subsidizing Member withdraw the subsidy [footnote *] without delay. In this regard, the panel shall specify in its recommendation **what would constitute withdrawal of the subsidy and** the time period within which the measure must be withdrawn.

Footnote */4.7 bis What constitutes withdrawal of the subsidy necessarily depends upon the facts and circumstances surrounding the granting of the subsidy, including, but not limited to, whether the subsidy granted continues to confer a benefit.

A prohibited subsidy will be considered to be withdrawn where the prohibited subsidy granted or maintained is terminated. Where a prohibited subsidy continues to provide a benefit, further payments shall be terminated.

[Alternatively:
What constitutes withdrawal of the subsidy necessarily depends on the nature of the measure in question including whether the benefits of the subsidy are allocated to future production.]

7.8 Where a panel report or an Appellate Body report is adopted in which it is determined that any subsidy has resulted in adverse effects to the interests of another Member within the meaning of Article 5, the Member granting or maintaining such subsidy shall take appropriate steps to remove the adverse effects or shall withdraw the subsidy [footnote **].

Footnote ** As set forth in Article 4.7 of this Agreement.
