

WITHDRAWAL OF A SUBSIDY

Communication from Australia

Revision

The following communication, dated 22 January 2007, is being circulated at the request of the Delegation of Australia.

In response to the Chair's invitation to put new proposals on subsidies before the Negotiating Group on Rules, Australia submits the following revised textual proposal and explanatory outline on "withdrawal of a subsidy".¹

1. Explanatory Outline

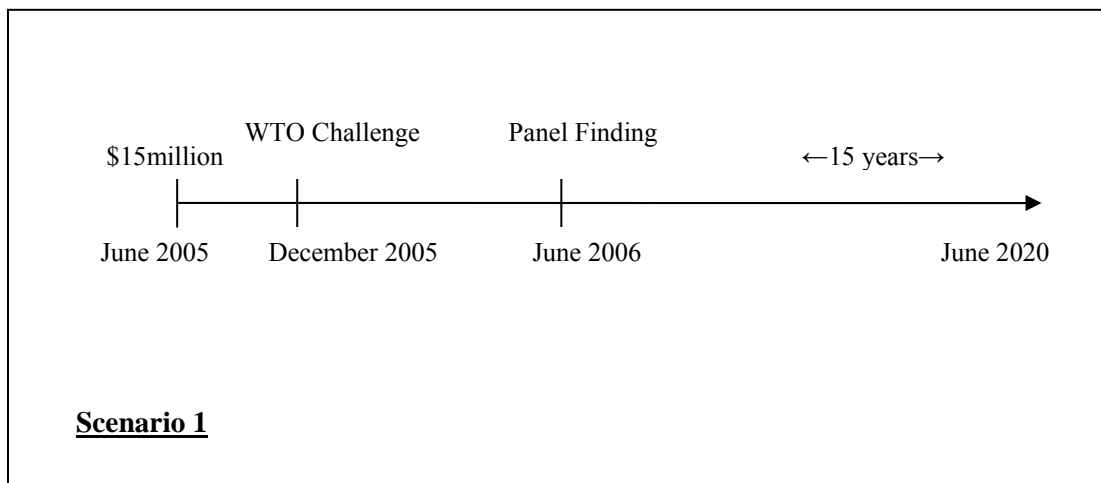
Australia is essentially looking to address the remedy of "withdrawal" of one-off, allocated subsidies (and not those subsidies which are recurring or expensed). The proposed textual amendment intends to convey that depending on the facts and circumstances, the remedy of "withdrawal" may need to address the ongoing benefit of a subsidy.

The following scenarios are not intended to provide a formulaic approach to defining the standard for "withdrawal" of the subsidy but are merely to illustrate the difficulties surrounding the granting of a subsidy and the range of possible approaches for withdrawing the subsidy given particular sets of facts and circumstances.

Scenario 1: One-off

An example under Scenario 1 would be a one-off grant of \$15 million for plant and equipment, paid in June 2005 and where the useful life of assets is 15 years.

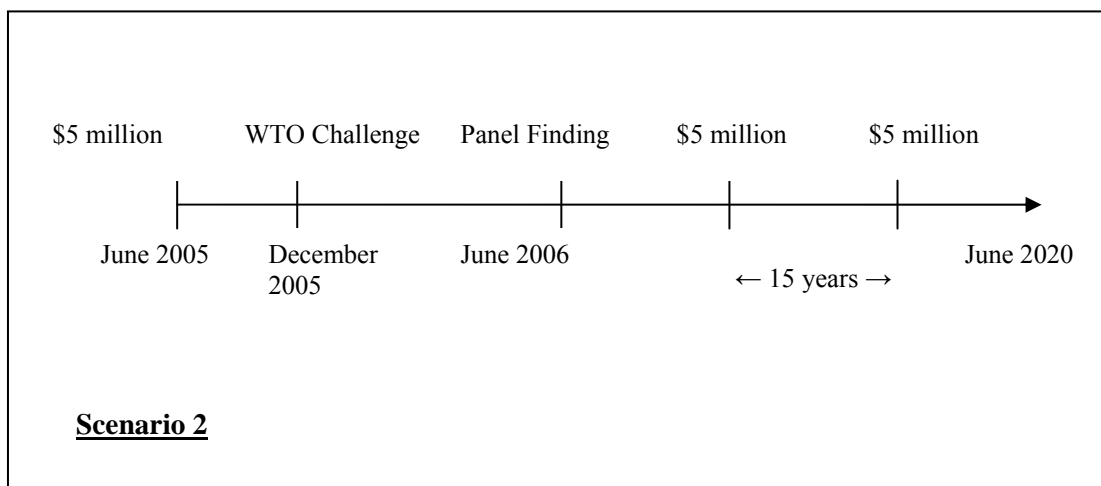
¹ Previous submissions by Australia on this issue are contained in documents TN/RL/W/139, dated 18 July 2003, TN/RL/GEN/35 (JOB (05)/41), dated 23 March 2005, TN/RL/GEN/97 (JOB (06)/9), dated 20 January 2006 and TN/RL/GEN/115 (JOB (06)/96), dated 21 April 2006.



Withdrawal in this scenario would mean repayment (extinguishment) of the ongoing benefit (that is, equivalent to the subsidy benefit conferred over the period June 2006 – the date of the adoption of the panel findings – to June 2020). This would contain a *punitive* element, given the provision of a one-off grant which has been found by a panel to be prohibited. This punitive element should also provide a *deterrent* effect on the provision of one-off prohibited subsidies. Without a deterrent effect, "withdrawal" would not be an effective remedy as governments could design one-off grants which are contingent on export performance or the use of domestic over imported goods without fear of any remedy. Equally, an affected WTO Member would have an ineffective remedy to a subsidy which is prohibited and deemed to cause serious trade effects.

Scenario 2: Grants paid in instalments

In Scenario 2, an example would be a grant of \$15 million for plant and equipment, paid in three instalments.



In this scenario, the subsidizing Member would be required not to pay future non-disbursed payments (from the date of the adoption of the panel findings). In other words, there would be non-payment of future instalments (\$10 million).

Scenario 3: Expensed

In Scenario 3, a tax incentive is paid on an annual basis and therefore expensed in the year of receipt. In this scenario, withdrawal of the subsidy found to be prohibited could be:

- Termination of the program,
- Amendment of the program to remove the prohibited element from the design of the subsidy program. That is, replacement of a prohibited subsidy with an actionable subsidy.

2. Proposed Textual Amendments

In light of consultations and discussions with other WTO Members and the range of views expressed to date, Australia has further simplified and refined its proposal to clarify Article 4.7 by inserting a footnote to indicate that there must be some consideration of what "withdrawal of the subsidy" constitutes.

4.7 If the measure in question is found to be a prohibited subsidy, the panel shall recommend that the subsidizing Member withdraw the subsidy **[footnote *]** without delay. In this regard, the panel shall specify in its recommendation 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 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.
