

**COMMENTS FROM AUSTRALIA ON THE EUROPEAN COMMUNITIES'
SUBSIDIES PAPER (TN/RL/W/30)**

Submission by Australia

The following communication, dated 25 November 2002, has been received from the Permanent Mission of Australia.

Australia welcomes the EC's paper which outlines a number of different areas relating to the WTO's treatment of subsidies. Australia would welcome further clarification on some of the proposals put forward by the EC. For its part, Australia sees some merit in further discussion and exploration on some of these elements, some of which have also been proposed by other WTO Members within the Negotiating Group on Rules.

Australia provides some preliminary comments to the EC's paper and would like to pose some specific questions to facilitate its understanding of the scope of the EC's proposals and to better understand where the EC considers that there are deficiencies in the current WTO Agreement on Subsidies and Countervailing Measures (ASCM).

Part I, Section 2: The ASCM in practice

- Does the EC consider that a non-specific subsidy would be in the "non-actionable" or "green" category of subsidies?

Part II, Section 1 (a): "Disguised subsidies"

- The EC notes in document TN/RL/W/30 that "disguised" subsidies benefit "all of the commercial activities of the recipient rather than being in line with its stated "general" purpose". Could the EC explain what is meant by "general purpose"?

Part II, Section 1 (b): State-controlled entities

- Does the EC consider that subsidies provided by state-controlled entities are not currently captured by the ASCM? How does the EC proposal relate to Article 1.1(a)(1)(iv) of the ASCM?

It is not clear where the EC considers that there are deficiencies in the ASCM in regard to assessing whether subsidies have been provided by state-controlled entities under government direction. In the example provided (the granting of loans and other financial support through financial institutions which are acting on non-commercial terms), the issue would seem to be the establishment of whether such loans were granted on non-commercial terms regardless of the entity.

- Does the EC consider that Article 1 requires a test of whether or not state-owned enterprises should be considered part of the government, rather than whether a government entrusts or directs a private body?
- If the answer is yes, does the EC consider that this would go beyond the scope of ASCM Article 1?

Part II, Section 3: Clarification on export financing

Australia agrees that the OECD regime on official support for export credits to be a tested and workable set of rules. Australia is actively engaged in improving and reviewing the OECD Arrangement to take into account developments in WTO case law, concerns expressed by developing countries and transparency issues vis-à-vis non-Participants.

Part II, Section 4: More effective notification rules

Australia notes the EC's observations in regard to the notification process and the poor record of WTO subsidies notifications. Australia agrees that Article 25 of the ASCM requires Members to notify any subsidy granted or maintained within their territories. Australia notes that the provision is to encourage transparency and that notification of a measure has no legal effect in terms of its status under GATT 1994 and the ASCM, its effects or the nature of the measure itself. However, Australia has some concern over any proposal which sought to penalize Members on the quality and scope of notifications or partial notifications.

- Does the EC consider that there are already provisions which allow for scrutiny of non-notified subsidies by the Subsidies Committee?
- How does the EC see its proposal in relation to existing provisions within ASCM Article 25.8, for example, where any Member may request information on the nature and extent of any subsidy?

Part II, Section 5: Subsidies and the environment

The EC proposes consideration of how to approach subsidies aimed at protection of the environment following expiry of the "green box".

- Does the EC consider that all types of subsidies under the "green box" in the lapsed ASCM Article 8 should be reinstated?

Part III: DDA and countervailing disciplines

Australia sees merit in exploring clarification and improvement of provisions in the ASCM relating to countervailing duty investigations analogous to those in the WTO Anti-Dumping Agreement.

- Does the EC propose changes to other provisions than those relating to initiation standards and sunset provisions?

Part IV: DDA and Developing Countries

The EC notes that S&D treatment based on the existing ASCM Article 27 could be considered “in clearly defined circumstances, for remedies, including countervailing duties, against certain prohibited and actionable subsidies given by developing countries”.

- Could the EC clarify which specific provisions within ASCM Article 27 would it base such S&D treatment on?
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