

COMMENTS FROM AUSTRALIA ON VENEZUELA'S SUBMISSION ON NON-ACTIONABLE SUBSIDIES UNDER THE AGREEMENT ON SUBSIDIES AND COUNTERVAILING MEASURES (DOCUMENT TN/RL/W/41)

The following communication, dated 7 February 2003, has been received from the Permanent Mission of Australia.

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- Australia welcomes Venezuela's contribution to identification of specific issues which merit consideration for clarification within the Rules Group negotiations.
 - We note Venezuela's statement that Members "could explore the possibility of re-introducing the concept of [non-actionable subsidies] into the SCM Agreement in such a way as to allow its application".
 - Australia sees merit in discussing non-actionable subsidies within the context of the Agreement on Subsidies and Countervailing Measures (SCM).
 - As Venezuela points out, the "traffic light" approach to categorisation of subsidies is based on the trade-distorting effects of certain subsidies. Australia notes that the lapsing of SCM Article 8 at the end of 1999 did not remove from the "traffic light" approach the category of subsidies which are non-actionable or "green". Rather, what makes a subsidy non-actionable is if it is non-specific within the meaning of Article 2 of the SCM. If a subsidy is non-specific, there is a presumption in the SCM that it is least trade-distorting.
 - Australia also recalls that in the *Canada Aircraft* case (WT/DS70/R, 14 April 1999), the panel, in examining subsidies contingent on export performance, noted that "subsidies for pure research, or for general purposes such as improving efficiency or adopting new technology, would be less likely to satisfy the "but for" test than subsidies that directly assist companies in bringing specific products to the (export) market." Australia considers that this also reinforces the categorisation of subsidies according to their trade-distorting effects.
 - Venezuela recalls paragraph 10.2 of the Doha Ministerial Decision on Implementation-related Issues and Concerns and the proposal to treat measures aimed at achieving legitimate development goals as non-actionable subsidies. It suggests that SCM Article 8 could be a relevant basis for considering the types of subsidies to be included in the category of non-actionable subsidies. Australia would be interested in the views of Venezuela and others on a development dimension to Article 8 of the SCM.

- Australia also poses the following questions and comments with a view to furthering discussion and focus on non-actionable subsidies. These are without prejudice to any position Australia may take following the initial phase of the negotiations.
 - ? Does Venezuela envisage a totally new approach to SCM Article 8.2(c), for example?
 - ? In any assessment of a non-actionable subsidy, should there be a development dimension or criterion?
 - ? If so, should any measures intended to achieve development goals be assessed on a sectoral basis, for example, where a developing country Member is internationally competitive in a product?
 - ? Australia notes the export competitiveness “test” in SCM Article 27.6. Should a similar test apply in relation to non-actionable subsidies whereby if a Member reaches export competitiveness in a product, there could be no claim that the subsidy is least trade-distorting or non-actionable?
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