WORLD TRADE ORGANIZATION

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COMMENTS BY AUSTRALIA ON THE UNITED STATES' PAPER ON SUBSIDIES DISCIPLINES REQUIRING CLARIFICATION AND IMPROVEMENT (DOCUMENT TN/RL/W/78)

The following communication, dated 30 April 2003, has been received from the Permanent Mission of Australia.

Australia thanks the United States for its extensive paper on subsidy disciplines and agrees that a number of issues merit further consideration. Australia would appreciate clarification on some aspects of the paper to assist in Members' consideration and provides some preliminary reaction to a number of issues raised within the paper.

Prohibited Subsidies

The United States proposes that there be progressive deepening of subsidy disciplines through the expansion of the existing category of prohibited subsidies. It notes that the practices captured under the now-lapsed "dark amber" provisions of SCM Article 6.1 should be included in such a category. Australia notes that no agreement was reached within the Subsidies Committee on the Informal Group of Experts work on the calculation of the so-called deeming level provided under Article 6.1 (and its corresponding Annex IV).

- How would the United States define "large" domestic subsidies? For example, is the United States proposing that an ad valorem subsidization of over 5 per cent would constitute "large" and therefore be prohibited?

- How would this be calculated, given as noted above, there was no agreement on this issue as a result of the work by the Informal Group of Experts?

- Does the United States consider that Article 6.1 relates to the type of subsidy or covers the level of subsidization?

- Does the United States consider that a one-time measure would be captured by this expanded category? Would its incorporation in this category be determined by the size of the measure? (Australia notes that SCM Article 6.1(c) does not relate to "one-time measures which are non-recurrent and cannot be repeated …".)

Australia would be interested in how the remedy would be strengthened as the United States suggests for prohibited subsidies. The remedy of a countervailing duty measure reflects that the subsidy has adverse effects or, in other words, there is a presumption that adverse effects must be shown.

- Is the United States suggesting that, for the purposes of a countervailing duty action involving a prohibited subsidy, injury and causal link would be presumed?

- Could the United States elaborate on how it would otherwise address the distinction between the categories?

Serious Prejudice

Australia notes the efforts by the Informal Group of Experts to examine SCM Annex IV, including footnote 62, relating to the calculation of the total ad valorem subsidization, as the United States notes in its paper under the heading "Codification of Analytical and Quantification Methodologies". The United States notes that the remedy is "to remove the adverse effects".

- Does the United States consider that this has retrospective application?

- What does the United States consider that "withdrawal of the subsidy" means?

Indirect Subsidies

- How would the United States consider that an entity which has been corporatized (i.e. no longer government-owned, controlled or directed) and which operates in a purely commercial fashion fall under SCM Article 1.1(a)(1)(iv)?

Australia agrees that SCM Article 14 gives guidance in relation to government loans, but the threshold issue is the second limb of the definition of a subsidy finding, namely, whether it is "by a government".

- Could the United States provide an example of countervailing duty action involving government intervention in bankruptcy proceedings and explain how this was an issue of government ownership/control?

Provision of Equity Capital

- Given the lack of recourse to SCM Article 8.3, how would a prior notification of any intended provision of equity capital work in practice?

The United States notes that the provisions of SCM Article 14(a) need to be clarified and improved and that the standard "inconsistent with the usual investment practice (including for the provision of risk capital) of private investors…" is open to a number of interpretations.

- Could the United States elaborate on the types of tests or standards that could be used to determine benefit?

- Would it consider a "but for" test to be relevant, for example?

Royalty-Based Financing

- Does the Unites States consider that the very involvement by government in royalty-based financing schemes would entail a subsidy within the meaning of the SCM, notwithstanding that such involvement was based on commercial practice?

Codification of Analytical and Quantification Methodologies

Australia agrees that it would be useful for the work of the Informal Group of Experts to be a basis for discussions. An exchange of views between Members on measurement-related concepts could be a useful starting point leading to the possibility of consensus of common acceptable practices.

Subsidy Notification

Australia agrees that the approaches adopted by the Committee in May 2001 should be more fully reflected in the SCM.