

**COMMENTS BY AUSTRALIA ON THE PROPOSAL BY VARIOUS
MEMBERS ON REVIEWS (DOCUMENT TN/RL/W/83)**

The following communication, dated 13 June 2003, has been received from the Permanent Mission of Australia.

Australia thanks the proponents for their proposal in relation to reviews and agrees that there is a need to clarify the provisions, methods and procedures in relation to reviews under the WTO Anti-Dumping Agreement (ADA). This is a complex issue and one on which Australia wishes to give further considered thought. The following comments and questions are therefore of a preliminary nature and do not necessarily represent the areas which we consider are the most significant on the issue of reviews.

The proponents have raised a number of elements in the proposal. Most Members would agree on the desirability of greater clarity and predictability in the broad but it is the more complex, detailed application and procedures in relation to reviews which will need to be considered very carefully by all Members.

Australia notes that there is WTO jurisprudence which provides some guidance and reaffirms the provisions of Article 11 reviews, in particular the *United States DRAMS* case.¹

The proponents have identified several provisions of the ADA which should apply to reviews. In particular, the proponents raise the issue of the de minimis and/or its threshold in Article 5.8 as one example. In Australia's view, the *United States DRAMS* case reaffirms our view that the de minimis rule and/or its threshold in ADA Article 5.8 should not be applied in reviews nor in any event applied in duty assessments under ADA Article 9.3.

- In relation to the second element, could the proponents elaborate on why Article 9.3 reviews can only be made by exporters or importers?

In regard to the proposed fifth element of a solution, namely the development of harmonized indicative lists relating to the assessment of dumping and the "likelihood" of injury, Australia notes that regard would be had to the most recent information without reference to the original investigation. While Australia agrees that consideration should be given to more recent information, to ignore past behaviour may be too restrictive, particularly if the context and meaning of the "likelihood" standard is to be upheld.

¹ *United States - Anti-Dumping Duty on Dynamic Random Access Memory Semiconductors (DRAMS) of one Megabit or above from Korea*, Report of the Panel, WT/DS99/R, adopted 19 March 1999.

Australia has some reservations and will need to give careful and further thought in relation to the items which are proposed for inclusion in a harmonized indicative list. In Australia's view, the "necessity" test of offsetting injurious dumping includes a need to assess the recurrence of dumping.

In relation to the fifth element of a solution, the proponents note that ADA Article 11.2 does not provide for the use of a "likelihood" test for dumping, only for injury purposes.

- Do the proponents consider that the "necessity" test of Article 11.1 and Article 11.2 should continue to be a factor in consideration of reviews?
