

**COMMENTS BY AUSTRALIA ON THE UNITED STATES' PAPER ON
CERTAIN MAJOR ISSUES UNDER THE ANTI-DUMPING AND
SUBSIDIES AGREEMENTS (DOCUMENT TN/RL/W/72)**

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

Australia wishes to thank the United States for this latest contribution identifying additional areas for clarification and improvement which was tabled at the February 2003 session of the Negotiating Group on Rules.

- A number of these issues have not posed concerns in practice for Australian customs authorities. However, Australia recognizes in a number of the issues the United States has raised in this paper that there may be a lack of clarity in the WTO Anti-Dumping and Subsidies Agreements in the application and practice of provisions. Those areas identified would be perishable/seasonal and cyclical products; the “all others” rate; new shipper reviews; and critical circumstances.
- The United States notes that the “critical circumstances” provisions and the resultant retroactive application of duties 90 days prior to a preliminary determination are of limited effectiveness. It also notes that consequential consideration should be given to clarifying the provisions to ensure that any surges in imports prior to the imposition of provisional measures does not undermine the remedial effect of the measure.
- This issue, and particularly the problems that arise where there are import surges anticipating a positive preliminary determination, emphasizes to us the market effect that anti-dumping measures may have. A number of WTO Members have noted the importance of the confidentiality provisions in light of the “trade chilling” effect of a decision to initiate an anti-dumping investigation. In some ways, this is the opposite effect of the situation which may arise as described in the United States’ paper. We therefore agree that this is an issue where some examination is merited.
- On the issue of persistent dumping or subsidization, the United States gives an example where there are import surges from countries not covered by anti-dumping measures immediately or soon after measures have been applied to another members, thereby undercutting the remedial effects of the measures. The US suggests expedited procedures. We would need to consider this very carefully, particularly where there is an assertion that these imports are causing injury. But we understand the US’s underlying concerns which have also been raised by others, for example, Canada (TN/RL/W/47) and our earlier comments on this paper (TN/RL/W/62).
- The second aspect which the US raises under the heading of “Persistent dumping/Subsidization” is where anti-dumping measures are imposed on the same product in numerous countries in

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almost a “domino” effect. The US notes that this indicates that the exporter chooses to shift export market.

- Australia has some concerns with this as an issue for the Group to discuss. It raises a number of aspects or at least presumptions which we do not consider should or could address within the Group’s mandate.
 - At the core of our concern is the need to distinguish between dumping and alleged injurious dumping within an importing Member’s market (where there is a legitimate and available remedy in the form of an anti-dumping proceeding).
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