WORLD TRADE ORGANIZATION

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COMMENTS AND VIEWS FROM AUSTRALIA ON CANADA'S SUBMISSION ON IMPROVED DISCIPLINES UNDER THE AGREEMENT ON SUBSIDIES AND COUNTERVAILING MEASURES (DOCUMENT TN/RL/W/112)

The following communication, dated 11 July 2003, has been received from the Permanent Mission of Australia.

The following is based on comments and questions raised at the June 2003 session of the Negotiating Group on Rules in relation to Canada's further submission on proposed issues for clarification and improvement of disciplines under the WTO Agreement on Subsidies and Countervailing Measures. Australia thanks Canada for this contribution which usefully develops areas for possible clarification and improvement.

Australia agrees that the constituent elements of the definition of a "subsidy" and the pass-through of a benefit must be clearly established in an investigation. It would be useful for consideration to be given to establishing guidelines to assist in pass-through analyses for investigating authorities. Australia also agrees that there are certain aspects of the definition of "specificity" within SCM Article 2 that could be clarified.

On serious prejudice, Australia notes Canada's proposal to reinstate and enhance SCM Article 6.1. Australia considers that SCM Article 6.1 has been ineffective due to the lack of clarity and complexities involved in relation to the calculation of the ad valorem subsidization deeming level. Australia is of the view that the reinstatement of SCM Article 6.1 would therefore be premature without further work in relation to Annex IV as Canada has proposed (and indeed Australia has proposed that the work undertaken by the Informal Group of Experts on calculation would be a good basis for further examination of calculation of subsidization in the context of Part V of the SCM and sees value in such work continuing).

Canada refers to Paragraph 4 of Annex IV and the possibility of improving disciplines in relation to start-up subsidies. Given the range of issues examined by the Informal Group of Experts such as allocation of subsidies and depreciation, Australia would be interested in Canadian views on the relationship between start-up subsidies in paragraph 4 of Annex IV (the 15% deeming level) and the 5% deeming level specified in SCM Article 6.1. Australia would also appreciate further elaboration on the improved disciplines on start-up subsidies that Canada is seeking. Is Canada seeking to explore this on the basis of the text of Annex IV in relation to start-up subsidies or seek to have specific provisions relating to such subsidies captured by the provisions of the SCM proper?

Australia would also welcome Canada's views on the implications of Annex IV, paragraph 1, which states that any calculation of the amount of a subsidy "shall be done in terms of the **cost** to the granting government" (emphasis added). One of the constituent elements of the definition of a subsidy is conferral of a **benefit**. Case law has supported that it is the benefit, not the cost to

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government, which determines a subsidy. Australia is of the view that any future examination or work in relation to calculation of subsidization must take into account, first that there is a benefit and secondly, how that benefit is calculated. Should that be on the basis of cost to government?

On the issue of possible improvements and clarifications to countervail investigations, Australia agrees that it would be useful to look at guidelines on how to quantify a subsidy. Australia notes that Canada has given an example of royalty-based financing and that the Informal Group of Experts did not reach a consensus on the cost to government of government providing such financing. That Group noted in its supplementary report that consensus was unlikely to be reached. However, Australia is interested in further Canadian views on this issue.

Canada proposes that where a domestic like product is itself being subsidized, modalities should be explored whereby there is a net effect assessed between domestic and foreign subsidies. Australia believes that this goes beyond the scope of the WTO Agreements to provide a legitimate remedy to subsidization.

Notwithstanding that there may be a subsidy conferred on a domestic like product, the permissible remedy is to counter or offset the injurious effect of subsidized *imports* on the domestic industry within the importing Member's market. It is the existence of a subsidy which benefits imported product, not the domestic product, which is causing injury. A countervail investigation is based on prima facie evidence of injurious subsidization notwithstanding that assistance may be provided to the domestic like product. Causation must be demonstrated. There is no "differential impact" but an assessment of the impact of subsidized imports. An assessment of factors other than the subsidized imports which may be injuring the domestic industry is also taken into account in a countervail investigation. "Trade" has been distorted only to the extent that imports into the domestic market have been injuriously subsidized. Whether or not the domestic like product is subsidized and exported and causing injury in another market is not at the heart of the countervail investigation. Indeed, it could be argued that, without such subsidization of the domestic like product, the injurious effect of the subsidized imports in the importing Member's market may be greater. Australia would therefore appreciate clarification from Canada on how modalities could be developed which would be consistent with SCM Article 15 in relation to the determination of injury.

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