WORLD TRADE ORGANIZATION

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RESPONSES TO QUESTIONS POSED BY AUSTRALIA (DOCUMENT TN/RL/W/135) 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 August 2003, has been received from the Permanent Mission of Canada.

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1. What are Canada's views on the relationship between start-up subsidies in paragraph 4 of Annex IV (the 15 per cent deeming level) and the 5 per cent deeming level specified in SCM Article 6.1?

Paragraph 4 of Annex IV to the ASCM does not have an obvious correlation to the 5 per cent threshold specified in Article 6.1(a) of the Agreement. Whereas the 15 per cent threshold prescribed in paragraph 4 of Annex IV is established by reference to the total funds invested in a start-up operation, the 5 per cent threshold prescribed in Article 6.1(a) is established by reference to the value of the product.

Paragraph 2 of Annex IV suggests that paragraph 4 operates as an exception to the general rule set out in that provision for determining whether the overall rate of subsidization exceeds 5 per cent of the value of the product. (This is presumably because start-up firms may not have produced any products in the most recent 12-month period). However, paragraph 4 seems anomalously situated insofar as it, unlike the other paragraphs in Annex IV that relate directly to the calculation of the amount of subsidization for the purposes of Article 6.1(a), deems serious prejudice in its own right for certain start-up subsidies.

2. Could Canada provide further elaboration on the improved disciplines it is seeking in respect of start-up subsidies?

There are certain technical aspects of current paragraph 4 of Annex IV that, in Canada's view, might benefit from clarification in order to better define the parameters of the deeming provision. For example:

(a) consideration could be given as to whether current paragraph 4 of Annex IV allows recourse to the deeming clause once a firm exits its start-up period even if it were demonstrated that, while the firm was in a start-up situation, it received subsidies exceeding the prescribed threshold and that the benefit stream deriving from those subsidies extended beyond the start-up period; and

(b) clarification could be provided on what the term *"funds invested"* (which represents the denominator in the 15 per cent threshold test), captures.

Technical clarifications aside, Canada is also exploring options on how the substantive disciplines in respect of start-up subsidies might be improved and expects to be in a position to offer specific proposals in the near future.

3. What are Canada's views on the implications of Annex IV, paragraph 1. In particular, is "cost to government" an appropriate methodology given that the conferral of a "benefit" is a constituent element of the definition of subsidy?

Canada would certainly be open to the consideration of alternative methodologies.

4. Does Canada have any further views on how the amount of subsidy arising from royalty-based financing might be quantified?

By, for example, basing repayments on unrealistic future sales and revenue stream projections, non-recourse royalty-based financing schemes can serve as an effective vehicle for the granting of subsidies. Therefore Canada (as indicated in its submission TN/RL/W/112) considers it important that more detailed guidelines be developed in this area. In this regard, Canada is still developing its views on this complex issue and expects to be in a position to offer specific proposals in the near future.

5. Could Canada provide clarification on how modalities could be developed, which would be consistent with ASCM Article 15, for the assessment of the net effect between domestic and foreign subsidies?

Under a net subsidy approach, once the respective levels of foreign and domestic subsidization were determined (either through a double-tracked, sequential or other investigative approach) one could envisage the injury determination proceeding much as it does under current Article 15 of the ASCM, with findings as to the consequent impact of imports on domestic producers made on the basis of the net subsidy found (i.e. the test of whether or not the subsidized imports were, through the effects of the subsidy, causing injury, would be based on the difference between the levels of foreign and domestic subsidies). If injury were found, neither provisional nor definitive duties would be levied in amounts greater than the net amount of subsidy found to exist.