

PROHIBITED EXPORT SUBSIDIES

Communication from Australia

Revision

The following communication, dated 22 January 2007, is being circulated at the request of the Delegation of Australia.

In response to the Chair's invitation to put new proposals on subsidies before the Negotiating Group on Rules, and following further discussions and suggestions from other WTO Members, Australia submits the following revised textual proposal to Article 3.1(a) of the WTO Agreement on Subsidies and Countervailing Measures (SCM) to clarify the standard of "in fact" export contingency.¹

Proposed Textual Amendments

3.1 Except as provided in the Agreement on Agriculture, the following subsidies, within the meaning of Article 1, shall be prohibited:

- (a) subsidies contingent, in law or in fact⁴, whether solely or as one of several other conditions, upon export performance, including those illustrated in Annex I ...

4. This standard is met when the facts demonstrate that the granting of a subsidy, without having been made legally contingent upon export performance, is in fact tied to actual or anticipated exportation or export earnings. The mere fact that a subsidy is granted to enterprises which export, **regardless of the level of export**, shall not for that reason alone be considered to be an export subsidy within the meaning of this provision. **All relevant factors shall be considered with no one of these factors by itself necessarily giving decisive guidance. Rather, the totality of relevant factors must lead to the conclusion of contingency in fact.**

¹ Previous submissions by Australia on this issue are contained in documents TN/RL/W/139, dated 18 July 2003, TN/RL/GEN/22 (JOB (04)/151), dated 19 October 2004, TN/RL/GEN/34 (JOB (05)/40), dated 23 March 2005 and TN/RL/GEN/80 (JOB (05)/283), dated 16 November 2005.