

**PRELIMINARY REPLIES TO THE QUESTIONS BY AUSTRALIA  
CONTAINED IN DOCUMENT TN/RL/W/61**

Document Submitted by Venezuela and Cuba

First and foremost, we would like to express our appreciation of the questions put forward by Australia, which will be very useful for reaching a better understanding of the proposal contained in document TN/RL/W/41 and for its subsequent development. We regard the active involvement of Members in discussions on issues related to the Agreement on Subsidies and Countervailing Measures (the SCM Agreement) as desirable, in order to balance the progress already being made in other areas covered by this Working Group. We welcome Australia's opinion on the merits of examining the issue of non-actionable subsidies within this Group, which we support in a constructive spirit and with flexibility.

In principle, and pursuant to the mandate of paragraph 28 of the Doha Ministerial Declaration, we are interested primarily in identifying the relevant provisions of the SCM Agreement for clarification and improvement in these negotiations. In accordance with paragraph 10.2 of the document on Implementation-Related Issues and Concerns, we think alternatives should be considered for creating some categories of non-actionable subsidies aimed at legitimate development goals. This could obviously entail a change to Article 8 of the SCM Agreement.

We agree with Australia that the categorization of subsidies according to their trade-distorting effects is reinforced to some extent by the Panel decision on the *Canada Regional Aircraft* case (WT/DS70/R, 14 April 1999) and, in particular, the application of the test determining that a *prima facie* case must be established for any subsidy that would not have been granted "but for" anticipated exportation or export earnings. We understand that no non-actionable subsidies, as they are reflected in Article 8 of the SCM Agreement, have ever been notified, which is why, with the exception of the above-mentioned decision, there is no additional WTO jurisprudence on this issue. In this respect, clarification and improvement of the existing rules and disciplines on non-actionable subsidies could be an effective way to maintain such categorization within the SCM Agreement in the future and turn it into a useful development tool.

A possible starting point for conducting an exercise to clarify and improve the relevant provisions on non-actionable subsidies, in which the incorporation of categories additional to those already specified in Article 8 of the SCM Agreement could be examined, might be to pursue a discussion of why this Article was never notified. The non-use of these provisions may be attributed to reasons such as the benchmarks set in each of the existing categories of Article 8, as well as the fact that such categories are designed for Members with resources available to implement them. The above-mentioned aspects, together with other issues that could be identified by Members, could be very useful for clarifying and improving these provisions of the SCM Agreement.

Australia asks about the view of Venezuela and other developing countries with regard to the development dimension and the proposal contained in document TN/RL/W/41. We consider that non-actionable subsidies could help to support and complement certain development policies. One of the suggestions made in the aforementioned document is that Members should treat measures aimed

at achieving legitimate development goals, such as production diversification, as non-actionable subsidies. Production diversification is a legitimate development goal that is relevant in the case of Venezuela and features among the recommendations set out in its second Trade Policy Review, conducted in 2002. Like other developing country Members, our countries depend almost exclusively on the production and marketing of one or very few commodities, placing us in a very vulnerable situation. It would be difficult to achieve an objective of this nature without providing some incentives.

Australia asks whether a totally new approach, for example to Article 8.2(c), is envisaged. In the current phase of issue identification, it is perhaps too early to predict the result of adopting a specific approach to any of the existing provisions of Article 8 of the SCM Agreement, which is why a totally new approach to these and other provisions of the SCM Agreement is not necessarily to be expected. Nevertheless, an exercise to clarify and improve the rules and disciplines on non-actionable subsidies, under the terms of the relevant mandates, might include approaches and amendments to the text of this and the other provisions of the SCM Agreement; it should also take into consideration the interests of all the WTO Members and, therefore, the possibility of proposed textual amendments and various approaches towards their implementation. We would prefer to maintain non-actionable subsidies for the benefit of the developing and least developed country Members, so as to boost the development dimension in the legislative framework and in the WTO disciplines.

In general, we consider that the multilateral trading system should retain a set of different rules, disciplines and standards for the developing and least developed country Members, in keeping with the preservation of the basic concepts, principles and effectiveness of the SCM Agreement. However, it is not necessary in every instance for there to be an evaluation of non-actionable subsidies under guidelines relating to the development dimension. The need for such evaluation guidelines will depend on the nature of the rules, disciplines and standards which, in regard to non-actionable subsidies, might be agreed on in the course of negotiations for use by developing and least-developed country Members.

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