

WORLD TRADE ORGANIZATION

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Negotiating Group on Rules

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IMPROVED DISCIPLINES UNDER THE AGREEMENT ON SUBSIDIES AND COUNTERVAILING MEASURES AND THE ANTI-DUMPING AGREEMENT

Communication from Canada

The following communication, dated 12 April 2002, has been received from the Permanent Mission of Canada.

Effective rules/disciplines on the use of trade remedies and government subsidies are critical to the reduction of distortions to trade and investment and to the promotion of global competition. While the Uruguay Round represented a significant achievement, our collective experience since then suggests that there are certain gaps/deficiencies in the fabric of WTO trade remedy rules that have led to divergent interpretations and practices. While dispute settlement has attempted to address some of these issues, the continuing lack of clarity in the rules has impaired the ability of governments to formulate trade and economic policies and programmes that fully conform to their WTO obligations. Canada believes that clarification of the issues outlined in this paper would benefit developing and developed countries alike.

This submission touches on some of the areas in which the SCM and AD Agreements might be usefully clarified and improved. In this regard, it does not purport to be an exhaustive enumeration of negotiating issues nor should it be regarded as Canada's final position on any of these issues. Rather, it is intended to establish some preliminary markers on broad issues where we would expect negotiations. Canada intends, at a later date, to table a more detailed paper dealing with these and other trade remedy issues.

Subsidies

Recent dispute settlement decisions on factors relevant to the assessment of contingency on export performance have placed certain economies at an apparent disadvantage *vis-à-vis* those with large domestic markets. This issue will grow in importance with the increasing integration of international markets. As such, clarification of prohibited subsidies provisions is required to, among other things, ensure the equitable application of SCM Agreement rules/disciplines among WTO Members.

The serious prejudice provisions of the SCM Agreement are an important complement to WTO rules/disciplines in respect of prohibited subsidies and countervailing duties. However, the practical difficulty of Members' recourse to these provisions and the lapse of the deemed serious prejudice provision at the end of 1999 point to shortcomings in the Agreement. The importance of access to third country markets, especially for Members with relatively small domestic markets and for certain specialized industries, suggests a need to consider a more viable serious prejudice remedy. The lapsing of the non-actionable subsidies category at the end of 1999 has compromised the so-called traffic light framework of the SCM Agreement. WTO Members will need to consider whether

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this framework remains viable and whether a non-actionable subsidy category should again be pursued.

Canada's preference has been to support generic subsidy disciplines rather than a sectoral approach. The issue of fisheries subsidies has been specifically referred to in the Ministerial Declaration, and Members must consider whether they should address the subsidies issues on a sectoral basis or whether these sector-specific issues are more appropriately addressed under generic rules/disciplines. Canada remains concerned about efforts to fragment subsidy disciplines on a sector-by-sector basis. In tackling sectoral subsidy issues, the first question to be asked is whether the SCM Agreement is deficient in some way in providing an effective means to address the trade-distorting effects of subsidies in that sector. In assessing whether there is a need for new sector-specific subsidy rules/disciplines, the logical approach, in Canada's view, is to examine an identified sectoral issue in the light of generally applicable rules/disciplines to determine the extent of any deficiency in existing rules.

Anti-Dumping and Countervailing Duties

We have witnessed the proliferation of anti-dumping and countervailing duty actions among Members as traditional barriers to trade are reduced. Canada believes that improvements and clarifications to the rules governing dumping and subsidy investigations and the application of such measures are required in order to achieve greater convergence in interpretation and to prevent unnecessary restrictions on trade, while ensuring that these measures provide an effective, predictable remedy to deal with the injurious effects of dumped and subsidized imports.

Among the areas that would benefit from clarification are rules/disciplines pertaining to the initiation of investigations; transparency and procedural fairness; the calculation of dumping margins and amounts of subsidy; injury determinations; anti-dumping and countervailing duty enforcement; the consideration of the broader public interest; and the review of existing anti-dumping and countervailing measures.
