

**UNITED STATES – CONTINUED DUMPING
AND SUBSIDY OFFSET ACT OF 2000**

Request for the Establishment of a Panel by Australia, Brazil, Chile,
the European Communities, India, Indonesia, Japan, Korea and Thailand

The following communication, dated 12 July 2001, from the Permanent Missions of Australia, Brazil, Chile, India, Indonesia, Japan, Korea and Thailand, and the Permanent Delegation of the European Communities, to the Chairman of the Dispute Settlement Body, is circulated pursuant to Articles 4.7 and 6 of the DSU.

On 21 December 2000 Australia, Brazil, Chile, the European Communities (EC), India, Indonesia, Japan, Korea, and Thailand, acting jointly and severally, each in the exercise of the rights accruing to it as a member of the WTO, requested consultations with the United States of America pursuant to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes, Article XXII:1 of the General Agreement on Tariffs and Trade 1994 (the "GATT"), Articles 17.2 and 17.3 of the Agreement on implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the "ADA") and Articles 7.1 and 30 of the Agreement on Subsidies and Countervailing Measures (the "ASCM") regarding the amendment to the Tariff Act of 1930 signed into law by the President on 28 October 2000 with the title of "Continued Dumping and Subsidy Offset Act of 2000" (the "Act") (WT/DS217/1).

Australia, Brazil, Chile, the EC, India, Indonesia, Japan, Korea, Thailand and the United States of America held consultations in Geneva on 6 February 2001. Unfortunately those consultations failed to resolve the dispute.

The express purpose of the Act is to remedy the "continued dumping or subsidisation of imported products after the issuance of antidumping orders or findings or countervailing duty orders". With that objective, the Act mandates the US customs authorities to distribute on an annual basis the duties assessed pursuant to a countervailing duty order, an anti-dumping order or a finding under the Antidumping Act of 1921 to the "affected domestic producers" for their "qualifying expenses" (these duties are referred to below as "offsets"). The "affected domestic producers" are the petitioners or interested parties who supported the petition. "Qualifying expenses" include the expenditure incurred with respect to "manufacturing facilities, equipment, acquisition of technology, acquisition of raw material or other inputs".

The Act leaves no discretion to the competent authorities. They must pay the "offsets" whenever the conditions stipulated in the Act are present. Therefore, the Act constitutes mandatory legislation, which can itself be subject to WTO dispute settlement procedures.

The "offsets" constitute a specific action against dumping and subsidisation that is not contemplated in the GATT, the ADA or the ASCM. Moreover, the "offsets" provide a strong

incentive to the domestic producers to file or support petitions for anti-dumping or anti-subsidy measures, thereby distorting the application of the standing requirements provided for in the ADA and the ASCM. In addition, the Act makes it more difficult for exporters subject to an antidumping or countervailing duty order to secure an undertaking with the competent authorities, since the affected domestic producers will have a vested interest in opposing such undertakings in favour of the collection of anti-dumping or countervailing duties. In the view of Australia, Brazil, Chile, the EC, India, Indonesia, Japan, Korea, and Thailand this is not a reasonable and impartial administration of the US laws and regulations implementing the provisions of the ADA and the ASCM regarding standing determinations and undertakings.

For the above reasons, Australia, Brazil, Chile, the EC, India, Indonesia, Japan, Korea, and Thailand consider that the Act is, in several respects, in violation of the following provisions:

- Article 18.1 of the ADA, in conjunction with Article VI:2 of the GATT and Article 1 of the ADA;
- Article 32.1 of the ASCM, in conjunction with Article VI.3 of the GATT and Articles 4.10, 7.9 and 10 of the ASCM;
- Article X (3)(a) of the GATT;
- Article 5.4 of the ADA and Article 11.4 of the ASCM;
- Article 8 of the ADA and Article 18 of the ASCM; and
- Article XVI.4 of the Marrakech Agreement establishing the WTO, Article 18.4 of the ADA and Article 32.5 of the ASCM.

By being inconsistent with the above provisions, the Act nullifies or impairs the benefits accruing to Australia, Brazil, Chile, the EC, India, Indonesia, Japan, Korea, and Thailand under the cited agreements.

In view of the above, Australia, Brazil, Chile, the European Communities, India, Indonesia, Japan, Korea, and Thailand hereby respectfully request that a panel be established by the Dispute Settlement Body pursuant to Articles 4.7 and 6 of the DSU, Article XXIII of GATT, Article 17.4 of the ADA and Article 30 of the ASCM and to this end further ask that this request for a panel be placed on the agenda for the next meeting of the Dispute Settlement Body to be held on 24 July 2001.
