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

Request for Consultations by Australia, Brazil, Chile,
the European Communities, India, Indonesia, Japan, Korea and Thailand

The following communication, dated 21 December 2000, from the Permanent Missions of Australia, Brazil, Chile, India, Indonesia, Japan, Korea and Thailand, and the Permanent Delegation of the European Communities, to the Permanent Mission of the United States and to the Chairman of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

On behalf of Australia, Brazil, Chile, the European Communities (the EC), India, Indonesia, Japan, Korea and Thailand, we, acting jointly and severally, each in the exercise of the rights accruing to it as a member of the WTO, hereby request 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), Article 17.2 and Article 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 on 28 October 2000 with the title of "Continued Dumping and Subsidy Offset Act of 2000" (the Act).

The express purpose of the Act is to remedy the "continued dumping or subsidization 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". 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 dispute settlement.

The "offsets" constitute a specific action against dumping and subsidization which 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 anti-dumping 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, the Act appears to be, in several respects, not in conformity with the obligations of the United States under the GATT, the ADA and the ASCM. In particular, the Act seems to be inconsistent with the obligations of the United States under:

- 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 appears to nullify or impair the benefits accruing to Australia, Brazil, Chile, the EC, India, Indonesia, Japan, Korea and Thailand under the cited agreements in the manner described in Article XXIII.1 (a) of GATT.

Furthermore, Australia, Brazil, Chile, the EC, India, Indonesia, Japan, Korea and Thailand are of the view that, whether or not in conflict with the cited Agreements, the Act may nullify or impair benefits accrued to Australia, Brazil, Chile, the EC, India, Indonesia, Japan, Korea and Thailand under those agreements and/or impede the attainment of objectives of those agreements in the manner described in Article XXIII.1 (b) of GATT.

In addition, Australia, Brazil, Chile, the EC, India, Indonesia, Japan, Korea and Thailand consider that the "offsets" paid under the Act constitute specific subsidies within the meaning of Article 1 of the ASCM, which may cause "adverse effects" to their interests, in the sense of Article 5 of the ASCM in the form of: (1) nullification or impairment of benefits of tariff concessions bound by the United States under the GATT accruing to Australia, Brazil, Chile, the EC, India, Indonesia, Japan, Korea and Thailand; and (2) "serious prejudice" in the sense of Article 6 of the ASCM.

We reserve the rights to raise additional claims and legal matters regarding the legislation during the course of the consultations.

We look forward to receiving your reply to this request from Australia, Brazil, Chile, the EC, India, Indonesia, Japan, Korea and Thailand to setting a mutually convenient date for these consultations.

Statement of available evidence provided for in Article 7.2 of the ASCM

The evidence of subsidization and adverse effects available to Australia, Brazil, Chile, the EC, India, Indonesia, Japan, Korea and Thailand consists of:

- The text of the "Continued Dumping and Subsidy Offset Act of 2000";
 - The schedule of tariff concessions bound by the United States under Article II of GATT.
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