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Trilateral Industrial Subsidy Discussions

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TRILATERAL INDUSTRIAL SUBSIDY DISCUSSIONS

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Six proposals to build on the existing Agreement on Subsidies and Countervailing Measures (ASCM):

- **Prohibited Subsidies** (Article 3 of the ASCM)
- **Dark(er) Amber Subsidies** (Article 6)
- **Serious Prejudice** (Article 6.3)
- Notification (Article 25)
- External Benchmarks (Article 14)
- Public Body (Article 1)

PROHIBITED SUBSIDIES IN THE ASCM

- Prohibited *per se;* no requirement to show that the subsidy caused adverse effects
- Strictest subsidy rule, targeting the most trade-distorting subsidy types
- But only two subsidy types currently prohibited:
  - Subsidies contingent upon export performance
  - Subsidies contingent upon local content

TRILATERAL STATEMENT

Expand the prohibited category to include (paragraph 1):

- Unlimited guarantees
- Bailout subsidies, without a credible restructuring plan
- Subsidies to companies unable to obtain commercial financing operating in sectors in overcapacity
- Certain direct debt forgiveness

DARK AMBER SUBSIDIES IN THE ASCM

- For certain harmful subsidy types, the subsidizing economy had to show that the subsidy did **not** cause adverse effects or ”serious prejudice” (lapsed in 2000)
- “Serious Prejudice” is a type of harm that can be caused by a subsidy; Article 6.3 of the ASCM states there is serious prejudice when the effect of the subsidy has been to displace/impede imports/exports; price undercutting, suppression, depression or lost sales, etc.
- If serious prejudice is shown, the subsidy must be withdrawn or adverse effects removed

DARK AMBER/"SERIOUS PREJUDICE" IN THE ASCM (continued)

- Subsidies in the dark amber category:
  - Subsidies over five percent of sales or over 15 percent of financing for start-ups
  - Subsidies to cover operating losses of an industry
  - Subsidies to cover operating losses of a company, except for one-time adjustment
  - Direct forgiveness of debt (govt debt; grants to cover debts)

TRILATERAL STATEMENT

<u>Bring back a dark(er) amber category (paragraph 2):</u>

- “Large” subsidies (similar to five/15 percent rules)
- Subsidies that prop up uncompetitive firms preventing exit from market (*e.g.*, subsidies to cover operating losses of an industry)
- Subsidies creating massive manufacturing capacity, without significant private participation (new/darker)
- Dual pricing (*e.g.*, low domestic price, high export price) (new/darker)

TRILATERAL STATEMENT

Bring back a dark(er) amber category (cont'd):

- Like original dark amber, subsidizing economy must demonstrate that the subsidy did **not** cause adverse effects/serious prejudice
- Subsidizer must also show that there has been "effective transparency" with respect to the subsidy (new/"darker")
- If that cannot be shown, subsidizing economy must withdraw the subsidy (current rules would allow the subsidizer the option of removing the adverse effects as well) (new/"darker")

SERIOUS PREJUDICE IN THE ASCM

- As discussed, serious prejudice” is when the effect of a subsidy has been to displace/impede imports/exports; price undercutting, suppression, depression or lost sales, etc. (Article 6.3)

TRILATERAL STATEMENT

<u>Expand the concept of serious prejudice (paragraph 3):</u>

- Serious prejudice should be expanded to included instances in which the effect of the subsidy is to distort capacity (*e.g.*, the creation of new capacity that otherwise would not have been created).
- Serious prejudice should also explicitly include a "threat" of serious prejudice.

  -- In the countervailing duty/antidumping context, there exists a "threat" of injury concept (*e.g.*, injury or harm has not yet occurred but is imminent).

TRILATERAL STATEMENT

Remaining paragraphs (4, 5 and 6):

- *Notification* – counter-notification required; if no response subsidy is prohibited
- *External benchmark* – under what conditions can an investigating authority go outside the domestic market
- *Public body* – disagreement with the WTO Appellate Body; no need to show the entity "vested with governmental authority".

QUESTIONS/COMMENTS?