WORLD TRADE ORGANIZATION

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Negotiating Group on Rules

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IMPROVEMENT AND CLARIFICATION IN ARTICLES 27.5 AND 27.6 OF THE ASCM REGARDING EXPORT COMPETITIVENESS

Submission by Egypt; India; Kenya; and Pakistan

The following communication, dated 15 May 2006, is being circulated at the request of the Delegations of Egypt, India, Kenya and Pakistan.

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1. In its earlier submissions[1] to the NGR, India had raised certain issues relating to the ASCM for improvement and clarification. This paper presents a textual proposal by a group of Members on one of the issues raised in these submissions, namely provisions relating to export competitiveness (Articles 27.5 & 27.6).

Issue

2. The flexibility available to developing countries, including Annex VII countries, to provide export subsidies to a product is contingent on export competitiveness not having been achieved in respect of that product. Article 27.6 of the ASCM provides that *'Export competitiveness in a product exists if a developing country Member's exports of that product have reached a share of at least 3.25 per cent in world trade of that product for two consecutive calendar years.'* Once export competitiveness in a product has been reached, export subsidies on it have to be gradually phased out, according to Article 27.5 of the ASCM. The provisions on export competitiveness, however, have two deficiencies. First, the provision does not take into consideration the possibility that export competitiveness might have been reached on account of temporary volatility in global trade. Second, there is no explicit provision in the ASCM to provide flexibility to grant export subsidies, in case export competitiveness is subsequently lost i.e. the export share of a country falls below the 3.25 per cent level again.

Proposal I - Appropriate period for achieving export competitiveness

3. The period of two years established in paragraph 6 of Article 27 of the ASCM is not sufficient to determine the export competitiveness, especially in view of the volatility of the international market. In order to ensure that export competitiveness is really reached and not because of any temporary volatility in global markets, one option could be to extend the two-year period to a longer period, which would be a reasonable time frame to ensure that a developing country has indeed reached a situation of export competitiveness in a given product. As an alternative to extending the two-year period for computation of export competitiveness, a system of moving average could be used. If a product has achieved 3.25 per cent share in world trade for two consecutive years, this should not be

[1] TN/Rl/W/4 (April 2002) & TN/RL/W/120 (June 2003).

taken as the sole basis for phasing out export subsidies. It should also be determined whether the 3.25 per cent share has been achieved by taking a moving average of the past [5] years. Thus, the system of moving average would be resorted to only after the 3.25 per cent share in global trade has been reached for two consecutive years. Moving average would be computed on the basis of exports not only of the current year, but also of the past few years, say [5] years. This would ensure that the 3.25 per cent benchmark for two consecutive years has not been achieved on account of volatility in global market for the product concerned or fluctuations in currency markets, but indeed represents competitiveness of the product.

How will it work?

4. Let us assume that the moving average of exports have to be calculated on the basis of five-year export trends. Let us further assume the percentage share in global exports under two scenarios for a product for the period 2006–11 is as shown in the table below. Under scenario I, the export shares are significantly lower than the 3.25 per cent benchmark in the period 2006–09. However, there is an upswing in the export share during 2010–11. Based on the historical trends under this scenario, it is possible that the upswing in the global export share is on account of temporary fluctuations. On the other hand, under scenario II, the share in global exports is close to the 3.25 per cent benchmark during the period 2006–09. The upswing in export share during 2010–11 appears to represent continuity in the historical trend in export share.

Example Illustrating Calculation of Moving Average Exports Share

Year	Percentage share in global trade: Scenario I	Percentage share in global Trade: Scenario II
2006	2.75	3.15
2007	2.55	3.35
2008	2.35	3.15
2009	2.45	3.22
2010	3.55	3.55
2011	4.25	4.25
Moving average for 2010	(2.75+2.55+2.35+2.45+3.55)/5 = 2.73	(3.15+3.35+3.15+3.22+3.55)/5 =3.28
Moving average for 2011	(2.55+2.35+2.45+3.55+4.25)/5 = 3.03	(3.35+3.15+3.22+3.55+4.25)/5 =3.50

5. It may be noted that under the existing provisions of the ASCM, the product concerned would have reached export competitiveness in 2011, as the 3.25 per cent benchmark for two consecutive years is reached in 2011. This would hold for both scenarios. If the system of moving average export share were to be used, however, export competitiveness would be reached only under scenario II in the year 2011. The above example illustrates how the system of moving average exports share would guard against export competitiveness being reached on the basis of temporary fluctuations in global exports.

Proposal II - Flexibility to reintroduce export subsidies, in case export competitiveness is lost

6. There is no explicit provision in the ASCM for automatic inclusion and, hence, the flexibility to provide (or continue to provide) export subsidies if later on the export share of a country falls below the 3.25 per cent level. Any provision on loss in export competitiveness would need to include the following elements: (i) criteria for determining loss in export competitiveness; (ii) period for determining loss in export competitiveness; (iii) period for which export subsidy would be permitted again; and (iv) phase-out period, in case export competitiveness is reached for the second time. During the discussion on this issue in the process of addressing implementation issues, one Member had suggested 'stop-the-clock' mechanism. Under this approach, if a developing country that had reached export competitiveness were to lose it during the ensuing phase-out period, the 'clock' for that phase-out period would be stopped until export competitiveness was again reached. After export competitiveness has been reached for the second time, the country concerned would have the remainder of its phase out period to complete the phase-out of its export subsidies on that product. If export competitiveness was lost after the end of the eight-year phase-out period, under the 'stop-the-clock' approach, the Member could re-introduce export subsidies on that product, and then would have two years to phase them out once export competitiveness was re-reached. The group believes this suggestion as a balanced solution to address the problem identified.

Textual Proposal I - Period for Achieving Export Competitiveness

Article 27

Special and Differential Treatment of Developing Country Members

27.5 A developing country Member which has reached export competitiveness in any given product shall phase out its export subsidies for such product(s) over a period of two years. However, for a developing country Member which is referred to in Annex VII and which has reached export competitiveness in one or more products, export subsidies on such products shall be gradually phased out over a period of eight years.

27.6 Export competitiveness in a product exists if a developing country Member's exports of that product have reached a share[2] of at least 3.25 per cent in world trade of that product for two consecutive calendar years. Export competitiveness shall exist either *(a)* on the basis of notification by the developing country Member having reached export competitiveness, or *(b)* on the basis of a computation undertaken by the Secretariat at the request of any Member. For the purpose of this paragraph, a product is defined as a section heading of the Harmonized System Nomenclature. The Committee shall review the operation of this provision five years from the date of the entry into force of the WTO Agreement.

[2] **To determine export competitiveness of a particular product, the share of that product in world trade shall be calculated on a multi-year [5] moving average basis for two consecutive years, *ie* calculating the moving average share of that product for each year of the two consecutive calendar years.**

Textual Proposal II - Flexibility to reintroduce export subsidies, in case export competitiveness is lost

27.X If a developing country Member that has reached export competitiveness once and then lost it again during the ensuing eight year phase out period, that phase out period would be stopped until export competitiveness was reached again. At that point, the Member would have the remainder of its eight year phase out period to complete the phase out of the export subsidies.

If export competitiveness is lost after the end of the eight year phase out period, the Member could reintroduce export subsidies on that product, and then would have two years to phase them out once export competitiveness is again reached.

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