WORLD TRADE ORGANIZATION

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PROPOSALS ON IMPLEMENTATION RELATED ISSUES AND CONCERNS

Agreement on Subsidies and Countervailing Measures/
Anti-Dumping Agreement

Submission by India

Paragraph 12 of the Ministerial Declaration of the fourth Ministerial Conference of the WTO provides for implementation issues being addressed under the specific negotiating mandate provided in paragraph 28 of the Declaration. The proposals being made by India are not intended to be taken as exhaustive and India reserves its rights to make any additional proposal, including those in respect of implementation concerns being examined by the Committee on Anti-Dumping Agreement and the Committee on Subsidies and Countervailing Measures , as it may consider necessary.

A. AGREEMENT ON SUBSIDIES AND COUNTERVAILING MEASURES (ASCM)

Tirets 66, 70, 71, 75, 76 and 79 of document JOB (01)/152/Rev.1 dated 27 October 2001

The Marrakesh Agreement Establishing the WTO has recognized the need for positive efforts designed to ensure that developing countries and the least developed countries secure a share in the growth in international trade commensurate with the needs of their economic development. Furthermore, the WTO Members have, in provisions of Article 27, recognized that subsidies may play an important role in economic development of developing countries.

There are several disadvantages faced by industries in developing countries as compared to their counterparts in developed countries. Many of the export products in developing countries are produced by labour intensive, small and medium enterprises. Imposition of countervailing duties or even the threat of imposition of such duties has a serious adverse impact on the functioning of such units including fall in production, large unemployment, decline in incomes and increase in poverty levels. The high cost of capital, low level of infrastructure development, inadequate integration and organization of the economy, poorly developed information networks are characteristics of industry in developing and least developed countries. It has been recognized that the state has to assume a more active and positive role in assisting its industry.

In order to offset the many disadvantages that developing and least developed countries suffer from, the ASCM has provided for certain special and differential treatment for such countries. The experience since the establishment of the WTO has shown that these S&D provisions have been inadequate to meet the concerns of developing countries. To illustrate, although provisions of Article 27.10 and Article 27.11 provide for certain *de minimis* levels of subsidization and negligible level of volume of subsidized imports below which the countervailing duty investigation is required to be terminated in respect of a product originating in a developing country, these have been inadequate in ensuring that developing countries secure a share in the growth in international trade. This is in part due to the imposition of countervailing duties against products originating in developing

countries in a large number of cases. Out of the 67 cases in which countervailing duty action was taken by various countries during the period 1 January 1995 to 30 June 2001, more than 65 per cent was against developing countries. This is disproportionate in relation to the share of such countries in international trade.

Provisions of Article 27.3 provide exemption from the prohibition of paragraph 1(b) of Article 3. This exemption from the prohibition is now available only for least developed country Members. It needs to be recognized that subsidies contingent upon use of domestic over imported goods is crucial to the process of industrialization and development of developing countries and any prohibition on such use would further disadvantage these countries. It is of considerable importance that such subsidies continue to be given notwithstanding the provisions of any other agreement in the WTO acquis.

It is therefore essential that the provisions of Article 27 be re-evaluated so as to address the needs of developing countries regarding subsidies. Some proposals in this regard are below.

Proposal:-

A new provision to be added in Article 27.10 to provide for countervailing duties on imports from developing countries being restricted only to that amount by which the subsidy exceeds the *de minimis* level;

Article 27.10 (b) shall be amended to provide for countervailing duty not being imposed in the case of imports from developing countries where the total volume of imports is negligible, i.e. 7 per cent of total imports;

Article 27.2 shall be amended so that the prohibition in Article 3.1 (a) does not apply to export subsidies granted by developing countries where they account for less than 5 per cent of the f.o.b. value of the product;

Article 27.11 shall be amended to provide for the *de minimis* level of subsidization below which countervailing duty shall not be imposed in case of imports from developing countries being raised above 3 per cent;

Article 27.3 shall be amended so that the prohibition of paragraph 1(b) of Article 3 shall not apply to developing country Members. The reference to expiry of this flexibility after five/eight years from the date of entry into force of the WTO Agreement shall be deleted. It should also be clarified that the provisions of the amended Article 27.3 shall be applicable notwithstanding the provisions of any other agreement in the WTO acquis.

B. ANTI-DUMPING AGREEMENT

Recent years have seen increasing resort to anti-dumping actions. In a number of cases investigations are started even in cases where the industry claiming injury has not been able to produce, before the investigating authorities, satisfactory evidence of dumping or injury. New investigations have often been started on the same products immediately after the termination of an investigation. This is particularly true of exports of developing countries which are being subject to more and more anti-dumping and countervailing measures. The frequent use of anti-dumping actions against exports from developing countries by major trading countries has become a matter of serious concern. The uncertainty and restrictiveness of these measures have created trade disruption affecting not only particular consignments but also longer-term trade in the targeted product. Benefits from trade liberalization have been considerably neutralized by the unfair use of anti-dumping measures,

including back-to-back anti-dumping investigations on the same products which have frustrated the expectations created during the Uruguay Round.

The lack of clarity in certain provisions has compounded the problem, including the fact that Article 15 of the Agreement is practically inoperative. Moreover, certain provisions, particularly those relating to *de minimis* dumping margin and the threshold volume of imports below which no anti-dumping duty shall be levied, need to be revised in view of the changed global trade and economic scenario, especially for exports from developing countries.

The proposal being made by India also needs to be viewed in the context of the Marrakesh Agreement Establishing the WTO which has recognized the need for positive efforts designed to ensure that developing countries and the least developed countries secure a share in the growth in international trade commensurate with the needs of their economic development. However, it cannot be denied that the share of developing countries in international trade has not shown any appreciable increase over the past years. This has, in part, been due to the imposition of anti dumping measures against imports originating in developing countries. During the period 1 January 1995 to 30 June 2001, more than 60 per cent of the definitive measures imposed were against developing country imports. Increasing the *de mininmis* dumping margins, enhancing the negligible volume level, removing the requirement of cumulation, mandatory application of the lesser duty rule while taking anti dumping action against developing country imports could be some of the ways in which the objective of the WTO for "positive efforts designed to ensure that developing countries and the least developed countries secure a share in the growth in international trade" could be achieved. The on-going negotiations have been considered by many including important functionaries in the developed world and the WTO Secretariat to be a "Doha Development Agenda". If this is to acquire meaning and not remain mere rhetoric Member countries need to favourably consider the following proposals which had been submitted by many developing countries even earlier.

Proposal

The existing *de minimis* dumping margin of 2 per cent of export price below which no anti-dumping duty can be imposed (Article 5.8), needs to be raised to 5 per cent for imports from developing countries.

The major users have so far applied this prescribed *de minimis* only in newly initiated cases, not in review and refund cases. It is imperative that the proposed *de minimis* dumping margin of 5 per cent is applied not only in new cases but also in refund and review cases.

The threshold volume of dumped imports which shall normally be regarded as negligible (Article 5.8) should be increased from the existing 3 per cent to 5 per cent for imports from developing countries. Moreover, the stipulation that anti-dumping action can still be taken even if the volume of imports is below this threshold level, provided countries which individually account for less than the threshold volume, collectively account for more than 7 per cent of the imports, should be deleted.

The lesser duty rule shall be made mandatory while imposing an anti-dumping duty against imports from developing-country Member by any developed-country Member.