

**INTERVENTION BY INDIA ON THE PROPOSAL BY THE EC  
CAPTIONED WTO NEGOTIATIONS CONCERNING THE WTO AGREEMENT  
ON SUBSIDIES AND COUNTERVAILING MEASURES (TN/RL/W/30)**

The following communication, dated 29 November 2002, has been received from the Permanent Mission of India.

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We thank the Communities for their submission TN/RL/W/30. As we have not had enough time to examine it in detail, our comments at this meeting would be preliminary in nature. We would be giving more detailed comments on certain aspects of this submission in the next meeting of NG Rules. We would also like to thank the EC for their introductory statement, wherein they informed Members about their strict policy on subsidies.

Mr. Chairman, this meeting is particularly difficult for us. We would have preferred to keep the deliberations of the Rules Negotiating Group at the technical level. However, the latest submission from the Communities has reluctantly forced us to depart from this. Given the nature of some of the suggestions made in this submission, it is inevitable that non-technical issues would now be the subject of deliberations of the Rules Group.

The Communities have sought to expand the scope of the so-called safe harbour, provided in the Illustrative List of Export Subsidies under item k Annex I of the ASCM. The proviso to item k applies only to interest rate provisions and at present does not apply to export guarantees, risk premia and matching. In short, the so-called safe harbour addresses certain types of export financing, while other types of export financing continue to remain prohibited export subsidies. In case the scope and coverage of the so-called safe harbour were to be expanded, it would result in other types of export financing not being considered a prohibited export subsidy as understood in terms of Article 3.1 (a) of the ASCM. This would increase the flexibility available to certain countries for giving such export subsidies.

The question which must then be addressed is- which are the countries that would benefit from such enhanced flexibilities? Clearly the countries that are participants to the OECD Arrangement on official support export credits. Developing countries would not stand to gain from any enhanced flexibility that may result from establishing consistent rules for all types of export financing. There cannot be a better example, than this, of an inverse S&D provision designed to benefit the developed countries.

It may not be out of place to mention that there is no commitment to phase-out the so-called safe harbour for export financing.

The submission from the Communities states the necessity to address the environmental dimension of subsidies and in particular, to consider how to approach subsidies aimed at protection of

the environment, following the expiry of Article 8 of the ASCM. This could perhaps result in making such subsidies non-actionable again. Which are the countries that would, in effect, make use of the flexibility for giving such subsidies? Clearly not the developing countries. Not because they are less concerned about protecting the environment, but from financial constraints which leave little resources for such subsidies being given after addressing development needs.

Mr. Chairman, the short point which we are making is that some of the suggestions from the Communities, if implemented in the form of new provisions to the ASCM, would clearly place a group of countries at an advantageous position compared to the developing countries, as far as the flexibility for giving subsidies is concerned.

We would now turn to certain other suggestions made by the Communities, to establish the unbalanced nature of the submission. It has been stated that a package of S&D treatment provisions for developing countries would be for a strictly temporary period and applicable in clearly defined circumstances. The attempt is to further constrict the policy options available to developing countries for subsidisation that is so necessary for achieving development objectives. Developing countries suffer from permanent structural disadvantages. It may therefore not be appropriate to consider an S&D package only for a temporary period.

In line with its earlier submission, the Communities have reiterated their two-step approach to addressing the developing countries' concerns after rules applicable for all members are agreed upon. We have, along with many other countries, opposed this approach. We again express our strong reservations against negotiations being undertaken along these lines. Any negotiated package would necessarily involve a balance of rights and obligations. The developing countries would be severely disadvantaged if they are asked to take on new obligations without any reassurance that their concerns would be satisfactorily addressed at the end of the negotiations after agreement on rules applicable to all countries. The negotiating process should show, to the extent possible, simultaneous progress on both these tracks-rules applicable to all Members and the S& D package.

Mr. Chairman, at the risk of repeating, we reiterate that there could be contrasting impact on developing countries and other countries if some of the suggestions from the Communities were to be implemented in the form of new disciplines. First, the OECD countries would gain additional flexibility for granting export financing, which may no longer remain prohibited. Second, certain countries, which would certainly not include the majority of developing countries, may again acquire the flexibility to give other types of subsidies which have little linkage with development. Third, there is no indication that these flexibilities would be available for a temporary period only. On the other hand the development policy options and flexibilities available to developing countries is sought to be restricted. There is even a threat that the S& D package would be temporary in nature. Is this not an ironical situation, in what is being referred to as the "Doha Development Agenda"?

We have in the past, at this forum, heard the professed commitment of the Communities to addressing and resolving the problems and concerns of developing countries. We had, in fact, at the last meeting of the Rules Negotiating Group, expressed the hope that this commitment would be translated into concrete action. In this context, the latest submission from the Communities has disappointed us and other developing countries immensely. This submission, in conjunction with the lack of progress in addressing developing countries' issues, is forcing us to draw just one conclusion-the Doha Development Agenda is a mere rhetoric, devoid of any substance and meaning for the developing countries that would be required to take on new obligations while rights would be acquired by certain limited group of countries for increasing their flexibility to give certain subsidies, some of which are at present prohibited.

The development dimension is clearly sought to be given a short shrift and subsequently jettisoned. In case the proposals from the Communities were to achieve fruition, then from the view

point of developing countries there would be a serious lack of balance between what such countries may be asked to concede and what they may be offered in return. This is certainly not what has been envisaged by the Doha Mandate on Rules which requires that the negotiations take into account the needs of developing countries.

Mr. Chairman, we have certain systemic concerns with regard to the suggestion by the Communities for establishing clear and consistent rules for all types of export financing, if these disciplines are in the first instance discussed and decided at the OECD or if the relevant OECD provisions are in some manner sought to be grand-fathered into the ASCM. The experience of the developing countries on this aspect has been far from satisfactory. The present provisions in respect of export credits has virtually grand-fathered some of the OECD provisions on export credits into the WTO. Consequently, the GATT membership at large, with the exclusion of a selected few member countries, had no role in negotiating this provision. We do not want a repeat of this unsatisfactory experience. Negotiations at the OECD is not an inclusive process as most of the developing countries are not party to such deliberations. We cannot have a situation wherein provisions of an Arrangement, which may have been or may in future be agreed to at the OECD by a limited few countries with the exclusion of an overwhelming majority of the WTO membership, are incorporated into the ASCM changing the rights and obligations of all the member countries. The developing countries are in effect being asked to waive their rights to negotiate provisions on export credits, if the scope of so-called safe harbour on export credits is expanded to include other forms of export financing in accordance with the OECD Arrangement.

Another concern regarding the OECD Consensus is that non-OECD countries are not aware of the details of the Arrangement. To illustrate, under what circumstances is "matching" permitted? How is Commercial Interest Reference Rate calculated? What constitute "market window" operations? The questions are many, but very little information is available to non-OECD countries regarding the provisions and working of the Arrangement on official support on export financing. It is patently unfair to expect non-OECD countries to agree to any further inclusion in the ASCM provisions of an Arrangement which was negotiated without their involvement and whose working is unknown to them.

In conclusion, Mr. Chairman, we strongly oppose the suggestions made by the Communities on export financing and the S&D package and consider these to be unbalanced, designed to restrict the policy options available to developing countries, while at the same time seeking to increase the flexibility of developed countries to grant subsidies. As it is the ASCM is tilted in favour of developed countries by the way it is structured, by defining subsidies based on non-specificity and by including under Article 8.2 broadly only those subsidies granted by developed countries. All these new proposals would only tilt the Agreement even more in favour of the developed countries.

Finally, Mr Chairman, my delegation has a question for the EC delegation. Does the strict policy on Subsidies of the EC, which the EC delegation outlined while introducing the paper apply only to industrial products or does it extend to agricultural products also.

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