WORLD TRADE ORGANIZATION

TN/RL/W/57
10 February 2003

(03-0858)

Negotiating Group on Rules Original: English

EGYPTIAN PAPER CONTAINING QUESTIONS AND COMMENTS ON THE CONTRIBUTIONS SUBMITTED IN THE FRAMEWORK OF THE DOHA NEGOTIATIONS ON THE SUBSIDIES AND COUNTERVAILING MEASURES AGREEMENT

The following communication, dated 5 February 2003, has been received from the Permanent Mission of Egypt.

The current paper includes comments and questions on the recent US and EC contributions submitted in the framework of the negotiations conducted by the Negotiating Group on Rules on the Agreement on Subsidies and Countervailing Measures (hereinafter referred to as the "SCM Agreement").

1. Communication from the US: Special and dfferential treatment and the Subsidies Agreement (TN/RL/W/33)

The US contribution focuses exclusively on the question of the special and differential ("S&D") treatment of developing Members within the context of the SCM Agreement.

The US first provides an overview of the existing provisions of the SCM Agreement which grant developing Members S&D treatment. However, despite asserting the need to address the legitimate concerns of the developing world, the US adopts a very narrow interpretation of the S&D treatment provisions of the SCM Agreement by putting the emphasis on their temporary and limited nature.

The US also describes, and seems to consider as substantial, the *"accommodations"* made for the benefit of developing and lesser-developed Members in the Decision on Implementation approved at the Fourth Ministerial in Doha. Having described the *"numerous and substantial clarifications"* made to the SCM Agreement to the benefit of developing Members, the US then questions the necessity of examining the contributions and proposals put forward to guarantee and protect the interests of developing Members and, thus, raises the question of whether or not the existing S&D treatment provisions need further refinement.

In the second part of its contribution, the US details its position with respect to the negotiations conducted on the S&D treatment provisions of the SCM Agreement. The US rightly points out that subsidies can undermine the efficient allocation and utilization of resources and have trade distorting effects. Also, it mentions that the SCM Agreement is aimed at limiting the negative effects of subsidies. Moreover, the US indicates that subsidies cannot, as such, be used as a long-term development tool and should only be invoked to the extent necessary.

In this context, the US considers that S&D treatment provisions are not meant to be permanent and favours the integration of all Members, as soon as practicable, under the full disciplines of the SCM Agreement. Moreover, the US argues that it would not be fair to change the rules in the middle of the game for those countries which relied upon the rules as originally written. Finally, according to the US, the case in favour of subsidies generally overstates the benefits and understates the negative consequences of subsidies as instruments for promoting economic development.

In its contribution, the US does not take into consideration the concerns voiced by developing and least-developed Members. In particular, it fails to consider that all Members, regardless of their development status, are already bound by the provisions of the SCM Agreement and that the S&D treatment provisions only grant developing and least-developed Members limited rights. Also, the US does not take into account the needs of developing Members, one of the most important of which is flexibility. Indeed, the unstable economic situation of most Members requires them to have the possibility of waiving their obligations under certain circumstances. The fact that certain developing countries have, at present, the possibility of not having to resort to the S&D treatment provisions of the SCM Agreement, is not a sign that they will not have to invoke these provisions in the future and cannot justify the application of a unique and strict set of rules to all Members regardless of their specific situation.

2. Proposal by the EC: WTO negotiations concerning the WTO Agreement on Subsidies and Countervailing Measures (TN/RL/W/30)

(i) The SCM Agreement in practice

The proposal put forward by the EC first explains how the SCM Agreement was established on the basis of a "traffic light" system. At one end of the spectrum subsidies, e.g., export subsidies, are prohibited while at the other end, green subsidies, e.g., environment or research subsidies, were not actionable.

Question: - The EC claims that the non-actionable or "green" subsidy category has proven to be ineffective. Could the EC develop why it considers that these subsidies have "*proven to be ineffective*"?

(ii) Definition of subsidies

- Disguised subsidies

The EC considers that significant amounts of financial support are increasingly granted by governments for ostensibly general activities, which in fact directly benefit the production of certain products. The EC considers that these disguised restrictions have harmful effects on trade.

We understand the EC's concern but do not see how the so-called disguised subsidies could be distinguished from the other types of subsidies. Indeed, most subsidies are, by nature, destined for definite groups of beneficiaries and/or purposes although they are provided for in general public regulations. We believe that the distinction proposed by the EC is unnecessary and will neither clarify nor improve the SCM Agreement since disguised subsidies are already covered by its existing provisions.

Questions: - How does the EC intend to practically define disguised subsidies?
- Considering that so-called disguised subsidies can be of a very different nature, what type of uniform rules could be applied to them?

- State-controlled entities

The EC proposes to define the notion of state-controlled entities in order to avoid a circumvention of subsidy disciplines by entities acting under the covert direction of governments. We do not believe that the clarification sought by the EC is necessary considering the broad interpretation which can be given to the term "public body" of Article 1.1(a)(1) of the SCM Agreement. In *Canada – Dairy Products*, the Panels and Appellate Body evidenced that prohibited subsidies can even be provided by private entities within a public regulatory framework.

Question: - How does the EC propose to draw an objective line between public entities which should be considered part of governments and those which should not?

(iii) Local content subsidies

Considering the difficulty of challenging the local content subsidies of Article 3.1(b) of the SCM Agreement the EC proposes to consider every subsidy linked to the use or purchase of domestic industrial products, and thus in breach of Article III.4 of GATT 1994, as inconsistent with Article 3.1(b).

We do not believe that it is necessary to clarify the subsidies defined in Article 3.1(b) and to link this provision to Article III.4 since the terms of Article 3.1(b) do not raise any interpretation issues.

(iv) Export Financing

Item k of Annex I establishes that, as a general rule, Members must not finance exports at rates that are below the cost of funds. Item K also provides for a "safe harbour" - an export credit support is not considered as a prohibited export subsidy in the meaning of Article 3.1(a) as long as it is in conformity with a recognized and generally accepted international undertaking on official export credits. The proviso applies only to export credits and not to other types of export financing, i.e., export guarantees, risk premia, etc. Considering these limitations, the EC proposes to expand the scope of the safe harbour and, thus, to consider other types of export financing schemes compliant with the OECD Arrangement as non-prohibited export subsidy.

A series of questions arise from the EC proposals with respect to export credit, the first being: to which country would such an extension of the "safe harbour" benefit? As underlined in the document submitted by India, the introduction of such provision would, undoubtedly, not benefit developing Members but OECD countries which would gain additional flexibility for granting export financing and this, without temporary limitations.

In addition, the reference to the OECD Arrangement, which is an external Agreement, is problematic for Members which are not part of the OECD. Indeed, Members cannot be requested to comply with an agreement they have not agreed to. In the event that the "evolutionary interpretation" prevails, non-OECD Members could be in a situation where their legislation, in perfect compliance with WTO obligations, could suddenly be inconsistent with their obligations under the SCM Agreement because of a change to the OECD Arrangement.

For the above reasons we opposed the EC proposal but nevertheless would require the EC to clarify the following.

Question: - In its proposal, the EC takes note of the concerns of developing countries who have argued that they are not members of the OECD puts them at a disadvantage. How

does the EC propose to address the concerns of developing Members with regard to this issue?

(v) More effective notification rules

The EC claims that Members fail, to a large extent to regularly notify their subsidy schemes as required under Article 25 of SCM Agreement. Therefore, it is suggested to explore the possibility of penalizing partial or non-notification. This could be done, for example, through the establishment of an expedited WTO dispute settlement procedure.

We do not believe that the system proposed by the EC is necessary since the majority of Members ensure that their laws are notified to the WTO to the extent possible and reasonable. Also, we submit that the system proposed by the EC would be difficult to enforce. Finally, we do not consider that the EC's proposal falls within the scope of the mandate of the Negotiating Group on Rules as defined at the Doha Ministerial Conference.

Questions:
- Could the EC specify what has led it to consider that Members fail to a large extent to comply with their obligations under Article 25 of the SCM Agreement?
- What does the EC understand by partial or non-notification?

(vi) Subsidies and environment

The EC notes that certain subsidies may have a positive impact on the environment. In the light of the expiry of the "green box" (Article 8 of the SCM Agreement), the EC considers that it is necessary to consider how to approach subsidies aimed at the protection of the environment in the future.

For India, the extension of the "green box" would exclusively benefit developed countries since only these countries have the necessary financial reserves to address environmental needs. For Venezuela, on the contrary, non-actionable subsidies might be one of the tools necessary in order to implement certain development policies in the framework of the multilateral trading system.

In the light of the above considerations, it seems that the following questions need to be addressed prior to a further examination of this issue.

Questions:
- Which types of subsidies would be included in a new category of non-actionable subsidies?
- To which Members would such subsidies be available would benefit?
- How can this issue be addressed in such a way as to take into consideration Point 10.2 of the Decision on Implementation-Related Issues and Concerns which refers specifically to the need to examine *"measures aimed at achieving legitimate development goals such as regional growth, technology research and development funding, production diversification and development and implementation of environmentally sound methods of production"*?

(vii) Countervailing disciplines

Questions:
- The EC proposes to strengthen and increase the effectiveness of the rules set forth in the SCM Agreement. Does the strengthening of the rules imply the introduction of more precise obligations for countervailing discipline users?
- What measures are contemplated by the EC in order to reduce the cost of CVD investigation?

- Would the proposals envisaged by the EC provide identical rights and obligations for both developed and developing Members?

(viii) Special and Differential treatment

The EC and US have the same position with regard to the S&D treatment provisions of the SCM Agreement. The EC states that, as a principle, it believes that rules on subsidies should apply without exception. The EC is ready to consider positively S&D treatment provisions for developing Members, only if their application is limited to a strict period of time and following an agreement on rules for non-exempted countries.

As underlined in the Paper submitted by India on 10 December 2002 (TN/RL/W/40), we believe that the EC attempts to further constrict the policy options available to developing countries for subsidization necessary for achieving development objectives. Developing countries suffer from permanent structural disadvantages and require S&D treatment for their development.

Also, we think that the two-step approach of the EC, i.e., the decision to address the developing countries' concerns after rules applicable for all Members are agreed upon, is problematic for preserving the interests of developing Members. In a negotiation, a party cannot waive certain of its fundamental rights against the promise that its concerns will be addressed at a later stage. We are of the opinion, contrary to the EC, that the S&D treatment issues which are vital for developing countries should be settled before any other issues.

Questions:
- What would be included in the S&D treatment package proposed by the EC?
- Which types of Members would benefit from the S&D treatment provisions introduced or maintained?
- What does the EC consider as a *"strictly temporary period"?*