

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

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Negotiating Group on Subsidies
and Countervailing Measures

COMMUNICATION FROM INDIA

The following communication has been received from India with the request that it be circulated to members of the Group.

The Tokyo Round Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade was designed to ensure that the use of subsidies does not adversely affect or prejudice the interests of any signatory and that the application of countervailing measures does not unjustifiably impede international trade. However, the Agreement itself had left unresolved a number of problems which were reflected in ambiguities and deficiencies in the provisions. Over the past eight years or so these shortcomings have proved to be the starting points for non-observance of the letter and spirit of the rules over the use of countervailing measures. The negotiations must address these problems appropriately.

The following proposals need to be considered:

Determination of Injury

Article 6 of the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade elaborates the concept of injury and inter alia enumerates the factors to be taken into account in determining it. However, it does not give much guidance for determining the point at which the degree of injury is to be regarded as material. One of the parties has diluted the concept of material injury considerably by interpreting it as some thing more than inconsequential, immaterial or unimportant. As a result, positive findings of material injury have been made even in cases in which the share of the market is a fraction of one percent. The practice of cumulation of imports for the purposes of determining material injury has made the position worse and has exposed exports of developing countries to vexatious investigations. Negotiations should, therefore, arrive at an understanding on a minimum market share or a threshold of market penetration below which there would be a presumption of absence of material injury.

Countervailable Subsidies

There is no consensus on the circumstances under which export incentives and other programmes of Government assistance to enterprises constitute countervailable subsidies. While financial contribution by Government is a necessary pre-requisite, this should not imply that such contribution per se makes the practice a countervailable subsidy. Compensatory payments which merely offset a handicap should not be countervailable. Reimbursement of difference between the international price and the domestic price of products and services used in the production of exported goods is an example of such compensatory payments.

Contribution by Government for enabling financial institutions to extend export credit at rates different from those at which credit is made available for other purposes, should not be deemed to be a countervailable subsidy as long as the credit is given at rates equal to or above the rates prevalent in international capital markets. On the same

principle, rebate of prior stage cumulative indirect taxes should not be treated as counter-
available subsidy whether or not such taxes have been levied on goods and services physically incorporated in the exported product. Article VI of GATT states that no product can be subject to countervailing duty by reason of the exemption of such product from taxes or duties borne by the like products when destined for consumption in the country of origin. This provision clearly suggests that rebate of taxes on auxiliary material (e.g., energy, fuel, lubricants, packing, stationery), durable capital goods (e.g., machinery buildings, vehicles) and services (e.g. transport, advertising) cannot be treated as countervailable subsidies. Incentives given to enterprises to enable them to overcome locational disadvantages should also be non-countervailable. Negotiations should be held to arrive at understandings in this regard.

Consultations

Article 12 of the Tokyo Round Agreement provides for bilateral consultations between signatories whenever a signatory has reason to believe that an export subsidy is being granted or maintained by another signatory in a manner inconsistent with the provisions of the Agreement. There is no similar provision in respect of countervailing duties. Where a signatory believes that a countervailing duty has been imposed in manner inconsistent with the provisions of the Agreement, it has to raise the matter first in the Committee on Subsidies and Countervailing Measures. This deficiency needs to be rectified.