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**Committee on Subsidies
and Countervailing Measures**

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FOLLOW-UP QUESTIONS AND COMMENTS CONCERNING PROPOSALS ON IMPLEMENTATION-RELATED ISSUES REFERRED TO THE COMMITTEE IN THE 15 DECEMBER 2000 DECISION OF THE GENERAL COUNCIL

Questions from the United States

The following communication, dated 8 May 2001, has been received from the Permanent Mission of the United States.

Technical Paper and Proposal Regarding Article 27.6 of the Agreement - Honduras

The United States presents the following questions and comments as an initial reaction to the replies given by Honduras and the Dominican Republic, on behalf of the co-sponsors of the proposal set forth in G/SCM/W/431/Rev.1, during the informal meetings of the Committee on Subsidies and Countervailing Measures on 1 and 3 May. As indicated by the US delegation in those meetings, the United States continues to study the proposal and the explanations provided, and reserves the right to submit further questions and comments at a later stage of the Committee's consideration. Moreover, the United States provides these questions and comments without prejudice to its ultimate views (whether of a technical or policy nature) on the desirability or not of this or any similar proposal.

What is the basis for the proposed five-year period for determining export competitiveness? If it is simply that the proposed five-year period corresponds to the length of many transition periods in the WTO agreements, what exactly were your findings from surveying the agreements? The United States agrees that "export competitiveness" should be measured on a basis that reasonably reflects the attainment of genuine competitiveness in world markets, as opposed to its resulting from temporary conditions of market volatility. But given that all developing country Members other than those referenced in Annex VII were provided eight years to phase out their export subsidies, a period which ends on 1 January 2003, we question the practical value of establishing a five-year period for determining competitiveness. In this regard, is it envisaged that this proposal would apply only with respect to developing country Members referenced in Annex VII?

The provision which would allow developing country Members to re-introduce export subsidies in the event that export competitiveness is lost appears to be predicated on the belief that the Subsidies Agreement is intended to sanction or encourage the use of export subsidies by developing country Members in order to achieve and maintain export competitiveness. What is the basis for this belief in the Subsidies Agreement?

Proposal Concerning Aggregate and Generalized Rates of Remission of Import Duties¹ - India

The United States presents the following questions and comments as an initial reaction to the replies given by India during the informal meetings of the Committee on Subsidies and Countervailing Measures on 1 and 3 May with respect to its proposal set forth in G/SCM/W/430 regarding aggregate and generalized rates of remission of import duties. As indicated by the US delegation in those meetings, the United States continues to study the proposal and the explanations provided, and reserves the right to submit further questions and comments at a later stage of the Committee's consideration. Moreover, the United States provides these questions and comments without prejudice to its ultimate views (whether of a technical or policy nature) on the desirability or not of this or any similar proposal.

First, as we understand it, the primary stated aim of India's proposal is to reduce reporting and information- and data-carrying burdens on companies. The United States is prepared to review constructively suggestions for achieving this goal, *provided* that this can be achieved without an undue loss of transparency or accuracy. That said, we are unsure that the suggestions outlined by India would ultimately have the effect of lessening the administrative, data-gathering and reporting burdens. For example, in its responses to questions from Switzerland, Canada, the EC, and the United States, India explains that: (i) a large number of companies would be surveyed; (ii) the survey would be supplemented by on-site verifications at selected companies; (iii) such information would be analyzed (and therefore presumably collected and verified) on an ongoing basis; and, (iv) in the case of capital goods, *company* data on machine operating time by product, export and domestic sales turnover data, machine-specific depreciation data, and trend data on import sourcing would ensure accurate apportionment of the duty incidence on capital goods to the exports in question. (We note that item (ii) suggests that *all* companies would have to maintain detailed data records, since each would have to be ready for an on-site verification, if selected.) We appreciate that India has suggested these elements in an effort to reassure Members about their transparency and accuracy concerns, but it still leaves us sceptical that the goal of reducing burdens would be achieved.

However, assuming that the goals of burden reduction could be satisfied and balanced with the need for an acceptable degree of transparency and accuracy to be maintained, an important issue still seems to remain. That is whether the extent of overrebate should be considered on a company-specific or aggregate, industry-wide basis.

Our concern with India's proposal is that, even on an industry-wide basis, India's methodology likely would result in an overrebate. Under India's proposal, the aggregate rate of duty remission would be calculated on the basis of the input utilization rates of a large number of surveyed companies, across which production efficiency is likely to vary, perhaps considerably. Then, to the extent that the exporters in an industry tend to be the most efficient companies, the aggregate rate of duty remission proposed by India would exceed the actual, average rate of tax incidence for exporters, *i.e.*, result in an overrebate, because the aggregate rate of duty remission (based on both relatively inefficient non-exporters and relatively more efficient exporters) will reflect an input utilization rate *higher*, on average, than that of (the relatively more efficient) exporters. Statistical sampling techniques are not the answer, here, as the problem is one of identifying and surveying the correct population of companies, which is all exporters, not producers, of the export good in question. [Note: In a more complicated situation, importers, producers and exporters might be distinct and separate units. In that case, all three groups collectively make up the relevant population: the importers have

¹ Throughout these questions and comments, unless noted otherwise, the term "exporter" means a producing unit that exports and pays duties on imported inputs used to produce the exported product.

the data on duties paid; the producers have data on inputs actually used; and the exporters have data on exports and duties remitted.]

The United States is also concerned about the possibility of overrebate in the context of adjusting the aggregate rate for the extent to which imports are used in the production of the export good in question. India has not yet explained how the aggregate rate of duty remission would be adjusted in this regard. On what basis does India propose making this adjustment, from which sources or companies would data be collected, and what would be the actual mechanics of the adjustment?

Proposal Concerning Inputs Consumed in the Production Process - India

The United States presents the following questions and comments as an initial reaction to the replies given by India during the informal meetings of the Committee on Subsidies and Countervailing Measures on 1 and 3 May with respect to its proposal set forth in G/SCM/W/430 regarding inputs consumed in the production process. As indicated by the US delegation in those meetings, the United States continues to study the proposal and the explanations provided, and reserves the right to submit further questions and comments at a later stage of the Committee's consideration. Moreover, the United States provides these questions and comments without prejudice to its ultimate views (whether of a technical or policy nature) on the desirability or not of this or any similar proposal.

The United States remains concerned about problems associated with defining a capital good and allocating depreciation across time and across the multiple products that a company may produce.

For example, with respect to allocations of depreciation across time, while it is true that a country's Generally Accepted Accounting Principles (GAAP) typically include depreciation schedules, national tax codes often allow accelerated depreciation that bears no relation to accounting useful life. In such cases, accelerated depreciation could result in an overrebate of taxes and competitive advantages early in the life of the capital good that might not be fully offset later in the life of the capital good, after the capital good is fully depreciated (for tax purposes).

These concerns, most of which would persist even in the case of a tax exemption granted to a company that produces for export only, highlight the difficult problem of minimizing the negative impact of taxes on export competitiveness, while at the same time guarding against rebates that would unfairly confer a competitive advantage upon exports.

Proposal for the Amendment of Footnote 61 of the Subsidies Agreement - Colombia

The United States presents the following questions and comments as an initial reaction to the replies given by Colombia during the informal meetings of the Committee on Subsidies and Countervailing Measures on 1 and 3 May with respect to its proposal set forth in G/SCM/W/429. As indicated by the US delegation in those meetings, the United States continues to study the proposal and the explanations provided, and reserves the right to submit further questions and comments at a later stage of the Committee's consideration. Moreover, the United States provides these questions and comments without prejudice to its ultimate views (whether of a technical or policy nature) on the desirability or not of this or any similar proposal.

We understand the distinction Colombia is making between a system that rebates prior-stage taxes on export and a system that exempts prior stage taxes on imports (of the input), as well as Colombia's claim that the latter system obviates the need for a calculation system because it precludes overrebates.

We note that item (h) covers only prior-stage cumulative indirect taxes, not import charges and not VAT. However, Colombia's paper in sections 2 and 3 refers both to indirect taxes and import taxes. Does Colombia's proposal cover both, or just indirect taxes? Is Colombia's proposal limited to tax exemptions and the first part of item (h)? The proposal refers to deferrals, as well as exemptions. By "deferral," do you mean a delayed exemption, *i.e.*, an exemption that is contingent upon export?

We agree that the scope of the first part of item (h) is seemingly broad, arguably covering capital goods used in the production of an exported good. And, as Colombia's paper appears to note, the first part also is clear in allowing a rebate or exemption of indirect taxes on capital good imports used to produce a good for export, but only to the extent that such rebates or exemptions are allowed on capital goods used to make products like the exported good that are sold domestically. Would Colombia please elaborate on its proposal to meet the requirements of the first part of item (h) by means of "structured incentives for export companies whose production is intended partly but not exclusively for the international market"? How would this work and what structured incentives does Colombia have in mind? Would specialized capital good imports used to produce for export only qualify under the first part of item (h)? If so, on what basis?

Would export-only companies qualify for a tax exemption on capital good imports under Colombia's proposal? If so, on what basis? If not, would such an exporter – as Colombia sees it – qualify under part two of item (h), if footnote 61 covered capital goods?
