

# WORLD TRADE ORGANIZATION

RESTRICTED

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## **Committee on Subsidies and Countervailing Measures**

### **MINUTES OF THE SPECIAL MEETING HELD ON 27 JULY 2001**

Chairman: Mr. Remo Moretta (Australia)

1. The Committee on Subsidies and Countervailing Measures held a special meeting on 27 July 2001.
2. The purpose of the meeting, as set forth in WTO/AIR/1596, was to continue the discussion of the implementation-related issues referred to the Committee in the 15 December 2000 decision of the General Council.
3. The Chairman recalled that under the procedures agreed by the Committee in February, at the end of the month the Chairman would be submitting a Chair's report to the General Council on the Committee's work on the implementation-related issues referred to it. He had convened this formal meeting to give Members an opportunity to express their views on the record, which would greatly assist him in preparing his report.
4. The Chairman informed the Committee that on 25 July he had attended a meeting called by the General Council Chairman, Mr. Harbinson, who had been seeking clarification from the Chairs of various bodies as to their plans for reporting back on the implementation issues referred to them in the General Council's 15 December 2000 decision. Mr. Harbinson had been particularly concerned that such reports be submitted in time to be taken into consideration at a General Council Special Session on Implementation that would be held probably in very early October. Mr. Harbinson had indicated that this Committee's internally-established reporting deadline of end-July fit very well into his wishes for reporting by subsidiary bodies to that Special Session.
5. The Chairman noted that the General Council was expected to refer one additional implementation-related tirect -- Tirect 80, a review of the provisions of the Agreement regarding countervailing duty investigations -- to the Committee the following week, with a reporting deadline of the end of September. Thus, the Committee would need to take up work on that new tirect, if referred, after the summer break. The Chairman suggested that the Committee make some contingency plans for how to conduct the work on the expected new tirect, thus avoiding the need for a further special meeting the following week for purely procedural purposes, should the referral be made as expected.
6. Because the topic covered by Tirect 80 was quite broad and the issues that Members might raise under it almost certainly would be quite technical, the Chairman recommended that the Committee continue its current procedure of basing its implementation-related work primarily on written submissions from Members. The Chairman proposed on that basis that, should the referral be made as expected, Members wishing to raise specific countervail-related matters for focused consideration by the Committee should submit to the Secretariat no later than 27 August short papers

identifying the particular relevant provisions of the Agreement, describing briefly the implementation-related concerns or problems related thereto, and proposing any solutions.

7. The Chairman further proposed that the Committee hold three meetings – 11, 18 and 28 September – to consider the expected new tiret, and noted that these meetings could be used as well to try to make further progress on the issues that had been referred to the Committee in December 2000.

8. The Committee so decided.

9. Turning to the first of the three implementation-related issues that had been before the Committee for several months – export competitiveness -- the Chairman recalled that at the Committee's most recent informal meeting (a summary of which he had circulated by fax at the request of Members - attached), a theme that had emerged was that some Members found it useful to consider the two elements of the proposal in G/SCM/W/431/Rev.1 separately. That is, on the one hand the basis for establishing export competitiveness, and on the other hand a possible mechanism to re-allow export subsidization if export competitiveness was lost. For some Members the second issue appeared to raise more questions and complications than the first, and they had suggested dealing with the two elements sequentially, first seeing whether a consensus could be arrived at regarding the basis for establishing export competitiveness, and after that continuing the detailed consideration of possible conditions for re-introduction of export subsidies after a loss of export competitiveness.

10. A range of views had been expressed on the first element, the basis for establishing export competitiveness. Proponents sought a change from two consecutive years to five consecutive years, and argued that the definition of "product" in Article 27.6 should be understood as a "section" of the Harmonized System nomenclature. Other Members, including those who had indicated that they might have some flexibility regarding the number of years for establishing export competitiveness, had generally indicated that an extension to five years would be too long, but that they might be able to envision a compromise somewhere between 2 and 5 years. Some of these Members also had indicated that they believed the correct interpretation of the definition of product in Article 27.6 was as a 4-digit "heading" in the Harmonized System, and that in any case for them this would be an indispensable underlying assumption or condition of any potential agreement on an extension of the period for establishing export competitiveness. Thus, while the Chairman had noted quite encouraging signs of a certain degree of flexibility in respect of that first element, he also noted that a number of important questions and issues remained open.

11. On the second element, a number of general issues had been identified concerning the necessity or wisdom of establishing a framework to cover the situation of loss of export competitiveness. While a number of Members were sympathetic to the point made in the original proposal that there might be a gap in Agreement in the event of loss of export competitiveness, others had concerns that trying to fill that gap -- by allowing the re-introduction of export subsidies -- ran counter to one of the fundamental goals of the Agreement, namely to eliminate export subsidies. Some Members viewed the approach under discussion as in fact encouraging the use of export subsidies as an instrument to achieve export competitiveness. Moreover, there were significant differences of view as to whether countries other than those in Annex VII would be eligible for any solution in respect of loss of export competitiveness.

12. In addition to those general concerns, a significant number of detailed questions and issues had been posed concerning some of the specific ideas and proposals that had been raised in regard to the second element, both the Swiss proposal concerning basic criteria for determining loss of export competitiveness and consequent re-allowance of export subsidization, and more recently the EC "stop-the-clock" idea. Of particular concern for some Members was the apparent potential under the latter idea for almost infinite maintenance of export subsidization, at a relatively high level, even

where the export competitiveness threshold had been surpassed numerous times; the implications for the system of symmetry or asymmetry in the periods for establishment and loss of export competitiveness; and the issue of transparency, both as to the initial existence and amount of export subsidization, and as to levels and phase-outs of export subsidization after reaching export competitiveness.

13. The delegate of the Dominican Republic, on behalf of Cuba, the Dominican Republic and Honduras, thanked the Chairman for his efforts to make progress on the implementation-related issues, and for his summary of the most recent informal meeting of the Committee, which the delegations considered to be a factual presentation of all points that had been raised there. He recalled that according to the decision taken by the Committee on 9 February 2001 on procedures for consideration of the implementation-related issues, a group of delegations had submitted document G/SCM/W/431/Rev.1, in which they set forth the specific issues and their proposal on export competitiveness, and then had submitted document G/SCM/W/443 with replies and comments on questions submitted by the Australia; Canada; the European Communities; Hong Kong, China; Japan; Switzerland; and the United States. Subsequently they had submitted G/SCM/W/448 with further clarifications requests by the United States, and G/SCM/W/456 addressing issues contained in the informal Chairman's paper dated 11 June 2001. Throughout that process, the delegations for which the delegate of the Dominican Republic was speaking had shown flexibility in respect of most of the issues. While understanding the concerns voiced by other delegations, the delegate of the Dominican Republic noted that certain delegations had not shown the same flexibility and understanding for the difficulties which developing countries experienced. The delegations on whose behalf he spoke felt that their proposal had been enriched by the proposals of Switzerland and the European Communities. The delegate of the Dominican Republic thanked those delegations for showing the constructive spirit needed to continue the discussion. The appropriate combination of the original proposal and the Swiss and EC proposals might provide the basis for a solution.

14. Nevertheless, the delegate of the Dominican Republic wished to reiterate those points in respect of which the group of delegations for which he spoke could not go beyond the flexibility they had already shown, as to do so they would give up rights under the Agreement:

- (a) They could not accept the proposal would refer only to countries listed in Annex VII, since Article 27. 5 and 27.6 included all developing countries;
- (b) They could not accept that the definition of product in Article 27.6 be a four digit HS heading, since the English text of the Agreement, which was the language in which it had been negotiated, referred to "section heading" which meant a series of chapters;
- (c) They could not accept symmetry in the periods for reaching and then losing export competitiveness. As they had indicated, export competitiveness could be lost in one day in an unexpected manner, while reaching export competitiveness could take several years of effort. The situations were different and therefore they could not be dealt with in the same fashion.

15. The delegate of the Dominican Republic reiterated the proposal that Article 27.6 be extended from 2 to 5 years, since the 2-year period was not enough to determine whether export competitiveness really had been reached.

16. The delegate of the Dominican Republic thanked the Chairman for his efforts, and was confident that the Chairman's final report would be balanced in the same manner as his informal summaries of discussions had been to date. At the same time, the delegations were disappointed that the Committee had not been able to reach a positive recommendation to resolve this implementation problem. The delegations hoped that in the time remaining it would be possible to arrive at a

satisfactory conclusion and that they could look forward to satisfactory results at the upcoming Ministerial Conference.

17. The delegate of the United States thanked the delegate of the Dominican Republic and the other delegations for their efforts in the implementation exercise, which required significant effort and commitment of time. The United States also appreciated the Chairman's summary, which constituted a useful and constructive document. The delegate of the United States noted for the record that his delegation's participation and discussion of the implementation-related issues had been of a technical nature and should not be considered as necessarily reflecting any endorsement of any of the proposals. Secondly, the United States' general approach to the implementation issues was to ensure that no proposal would undermine the basic orientation of the Agreement in respect of export subsidies. In the view of the United States, those were the most distortive subsidies, which could lead to a very substantial misallocation of resources. The substance of the WTO prohibition on export subsidies and the general obligation in the Agreement to eliminate them formed the heart of the Subsidies Agreement and must be preserved under any outcome that might be reached.

18. Turning more specifically to the question of export competitiveness, the United States agreed with the characterisation in the Chairman's summary that the two sets of proposals under review were separate and distinct proposals, and should be considered as such. The United States viewed them as mutually exclusive; it could not envisage a situation in which there would be a lengthening of the period for determining export competitiveness, and a mechanism for either "stop-the-clock" or re-entry under Article 27.5.

19. Regarding the period for determining export competitiveness, the United States continued to be very open to discussing that issue and would do so very constructively during the meetings in September. That issue had not been adequately discussed, and there were still several areas that needed to be addressed. For example, extending the period could result in export competitiveness never being achieved, which in essence would read that provision out of the Agreement.

20. Regarding the proposals associated with the framework under Article 27.5 and ideas on "stop-the-clock" and re-entry, the United States believed that there had been much useful and interesting discussion, and appreciated the efforts of the Swiss and EC delegations to offer creative options and responses to the proposals that had been made. The discussion at the most recent informal meeting of the Committee had revealed that the issues regarding such a mechanism or framework might be very complex and could have significant implications that would have to be explored fully. The United States would approach further discussions of this issue with that in mind.

21. The delegate of Switzerland thanked the Chairman for his efforts, and for his summaries of the whole informal process. Switzerland attached great importance to all three issues which had been referred to the Committee by the General Council and had tried to work constructively in moving the discussion forward. Switzerland had done so not because it would benefit from any of those issues but because the issues merited a fair and open approach, as they were very high on the agenda for many developing countries Members, and it was important to show seriousness in tackling those concerns. However, if principles and disciplines of the Subsidies Agreement would be weakened, Switzerland would have concerns. The discussion so far had been fruitful, and had helped Switzerland to understand the special challenges the developing countries were facing in the area of subsidies. Switzerland's initial reactions to all proposals under the three items, which remained valid, had been circulated to the Committee in document G/SCM/W/433.

22. Concerning export competitiveness, Switzerland had felt from the beginning that a solution might be possible and desirable in respect of both of the concerns that had been raised under that tirit: first, the extension of the time-period for establishing competitiveness; and second, addressing the

issue of resumption of export subsidization after a loss of competitiveness. Switzerland's position in respect of this proposal had been circulated in G/SCM/W/450.

23. In Switzerland's view, as a general rule, once export competitiveness had been reached or reached again, export subsidies had to be phased out. That said, on the first issue Switzerland could agree to an extension of the time-period necessary to establish export competitiveness in Article 27.6. Secondly, a resumption of export subsidies was acceptable if export competitiveness was lost, as Switzerland considered the Agreement to be silent on that point. For the possibility of resumption, Switzerland felt that the following criteria would need to be met: the loss of export competitiveness would need to be for a period of at least two years, and the share in the world trade of the product (which in Switzerland's view was defined as a four-digit heading of the HTS) would need to fall below 3 per cent. In that respect, Switzerland did not completely agree with the Chairman's summary in which he had signalled a general acceptance that the threshold should remain at 3.25 per cent in both directions, given that previously, many Members seemed to have accepted the 3 per cent for the downward direction. Switzerland was interested, as an alternative solution regarding time periods, in the symmetry argument which had many merits for the beneficiaries of such a resumption possibility. Switzerland was open to working on that or other solutions on that issue.

24. Switzerland also could work on the "stop-the-clock" understanding as proposed by the EC. That is, as soon as export competitiveness was reached again, the remaining phase out period would be at the disposal of the country to eliminate all export subsidies. If the remaining period was less than two years, nevertheless two years would be available. If export competitiveness was lost after the phase out period, the concept of reinclusion would allow the entitled Members to resume providing export subsidies if they so wished. It seemed to Switzerland from the previous meeting that common ground had been found for two years as the time-period for phasing out those subsidies. Regarding the number of times resumption of export subsidies would be allowed, an open approach could be taken, taking into account the long time periods they were considering there in practical terms. Regarding the level of subsidies, Switzerland could agree on the reference to the level of subsidization just prior to the loss of export competitiveness, as no obligation could be found in the Agreement on how an actual phase-out process must be shaped.

25. Regarding transparency obligations Switzerland proposed that in the case of resumption an obligation to immediately notify the Committee should be incorporated in any eventual decision on the subject in order to facilitate monitoring. Finally, as a necessary condition for Switzerland of any eventual Agreement to a framework on export competitiveness, the resumption possibility would need to be restricted only to the developing country Members referenced in Annex VII of the Agreement. Switzerland had explained their legal grounds for this view in their earlier submissions.

26. It seemed to Switzerland that a solution on this issue was possible, and that progress in the implementation process should be achieved. Switzerland hoped that its listing of points would be helpful in pointing toward a possible framework for a mutually agreed solution regarding the implementation of Article 27 taking into account the percentage share of exports of individual developing country Members.

27. The Chairman clarified that in his summary of the previous meeting, he had referred to 3.25 per cent as a possible acceptable basis for determining loss of export competitiveness because some Members had expressed non-acceptance of 3 per cent. That said, clearly the Committee had not taken any decision to that effect.

28. The delegate of Australia thanked the Chairman for the efforts he had put into the discussion of the implementation proposals before the Committee. Australia had put considerable effort into considering and analyzing the export competitiveness proposal along with the other implementation

proposals before the Committee, and to all associated documents that had been provided, including the Chairman's latest summary.

29. Australia's comments concerning the implementation of Article 27 of the SCM Agreement, where Australia had some concerns, were made in the context of technical discussions and were without prejudice to any future conclusions on this issue.

30. On the specifics, in Australia's view the application of the export competitiveness provision in Article 27.6 and the amendment of the criteria to extend the period from 2 to 5 years, was moot for non-Annex VII countries beyond the end of the 8-year phase-out period for export subsidies. Australia considered that that provision was unlikely in practice to apply to non-Annex VII developing countries given that the eight year period was coming to an end. Australia considered that at the end of the 8-year implementation period, Article 3.1 (a) applied to developing countries. For Annex VII countries, as there was no export subsidy prohibition as provided under Article 27.2 (a), the right to maintain export subsidies was foregone once export competitiveness was reached, and the subsidy was required to be phased out over 8 years under Article 27.5. There was a presumption in the SCM Agreement that export subsidies were the most egregious form of subsidy that necessarily caused serious trade effects to other WTO members. The thrust of the SCM Agreement was not to increase the level of export subsidization. That issue had to be addressed in any phase-out of subsidization, whether or not export competitiveness had been lost. As Australia had noted before, the core principles of the Agreement needed to be upheld, namely that the levels of export subsidization should not be increased nor should the phase-out period for export subsidies be expanded. Article 27.5 and Article 27.6 needed to be read in the context of Article 27. Australia considered that it was crucial to address those core principles when considering the questions put by the Chair, namely, the basis for determining export competitiveness, on the one hand, and the question of what happens to a country that loses export competitiveness after having reached it, on the other hand.

31. Australia disagreed with the view previously expressed in discussions that there was no obligation in the SCM Agreement for progressive elimination of export subsidies or equal annual instalments. The *Brazil - Aircraft* panel had examined the provisions of Article 27.4 and the issue of the "progressive" phase out of export subsidies. On this point Australia had some concerns with the Chairman's summary.

32. Australia was mindful of the purpose of Article 27 of the SCM and its recognition that subsidies might play an important role in economic development programmes of developing countries. Australia questioned, however, whether subsidies for economic development purposes were permitted to be contingent on export indefinitely for Annex VII countries.

33. Australia did not consider that the phase-out periods provided under Article 27.5 were additional to the overall phase-out period which commenced from the date of entry into force of the WTO Agreement or that they allowed circumvention of the clear obligation of the SCM to phase out export subsidies over eight years. Article 27.5 suggested that the eight-year phase-out period for Annex VII countries occurred at any point once competitiveness was reached. The fact that Article 27.5 indicated that Annex VII countries must phase out export subsidies once export competitiveness was reached reinforced the Agreement's prohibition on export subsidies.

34. For Australia, some flexibility might be possible in the application of the Agreement in terms of treatment for Annex VII countries. However, as Australia had stated on many occasions in the informal discussions, once export competitiveness was reached for Annex VII countries, they could not increase their subsidization, and under the provisions of Article 27.5 would have to phase out their export subsidies over a period of eight years.

35. Australia considered that to have unlimited cessation and resumption of subsidization was contrary to the thrust of the SCM and would in effect be encouraging unlimited export subsidization. It was for that reason that it considered the EC's "stop-the-clock" proposal worthy of further discussion, as it would cap subsidization and not expand in effect the phase out period of eight years.

36. Australia believed that the relevant provisions within the Agreement were difficult to assess without some core data and without establishing some minimum information for transparency purposes. It was difficult to assess claims and counter-claims over the issue of the 3.25 per cent deeming level for export competitiveness if Members had no sense of what the impact of this deeming level was.

37. The delegate of Saint Lucia stated that her presence and intervention were predicated on certain areas of interest to the Committee's deliberations, which had arisen in the most recent Special Session of the General Council on Implementation concerning Tired 68. The discussion in the General Council had suggested that the Committee Chairman would report on the matter pertaining to the use of export subsidies by developing countries taking into account the percentage share of exports of individual developing country Members' products in import markets and global trade. The Committee Chairman's summary of the most recent meeting, however, focussed on the issues of export competitiveness defined in terms of 3.25 per cent of world trade for two consecutive calendar years, in particular regarding the length of time for defining competitiveness, as opposed to the much broader issues raised, which were of crucial importance to her delegation. Therefore, Saint Lucia was seeking clarification as to whether or not the deliberations of the Committee had in fact been more extensive than reflected in the Chairman's summary, or whether as suggested by the representative of the Dominican Republic that summary was indeed a factual representation of the matters that had been discussed.

38. In the view of Saint Lucia, the SCM Agreement was designed to remove, and/or provide remedies for, the most distortive use of subsidies. Criteria which would take into account the percentage share of exports of individual Members' products in import markets and in global trade would respect the fundamental approach of the Agreement to the treatment of subsidies. Therefore, Saint Lucia was disappointed that that issue appeared not to have been explored in the Committee's debate. Had the terms of reference from the General Council to the Committee covered that broader concern, St. Lucia would have presented a written submission to the Committee mirroring that which Saint Lucia and Jamaica had presented to the General Council in the course of the previous year's informal consultations on implementation. Therefore, if this issue was part of the Chairman's remit, Saint Lucia would produce a paper to enrich the discussion; if it was not part of his remit the delegation of Saint Lucia would like a clarification to that effect.

39. The Chairman stated that Tired 68 had never been referred to the Committee. Rather, the Committee had had three issues referred to it: first, export competitiveness; second, footnote 61 in relation to the incorporation of capital goods as inputs consumed in the production process; and third, duty drawback. If, however, the General Council referred Tired 68 to the Committee, the Committee would take it up.

40. The delegate of Canada thanked the Chairman for his summary of the discussion from the most recent informal meeting, which Canada considered accurately and comprehensively reflected the discussion held. The discussion demonstrated that Members had indeed taken a constructive approach to the issues at hand. In respect of export competitiveness, Canada agreed that the SCM Agreement was unclear regarding what happened if a Member lost export competitiveness in a product, and Canada was willing to take efforts to clarify the situation. However, the purpose of the SCM Agreement was to discipline trade distortive subsidies and Canada wanted to ensure that any agreement on that proposal would take that into account. More specifically, Canada remained open to further discussion on the period for determining export competitiveness as well as the criteria for the

loss of export competitiveness. However, there would need to be a limit to the number of times a given Member could be allowed to re-introduce export subsidies, and a limit on the level of subsidization that would be permitted. In that respect the most recent informal discussions had raised a number of issues and concerns that would need to be further explored, including the issue of transparency which should be an integral part of any future decision. Concerning some of the elements of the proposal, Canada considered that a working assumption underlying the outlined framework would need to be that a product for purposes of Article 27.5 would be at the four-digit level of the HS. In addition, Canada considered that only the Members listed in Annex VII and which met the criteria for inclusion in Annex VII would be eligible. Lastly, with respect to the symmetry question, Canada continued to believe that the time-period for determining export competitiveness should be the same as the time-period for determining loss of export competitiveness.

41. The delegate of Chile thanked the Chairman for his summary, as it helped to focus attention on certain aspects. In Chile's view, the basis of the Agreement was that export subsidies distort trade and therefore that developing countries not listed in Annex VII would need to eliminate them by 2003. In connection with Annex VII, Chile wanted to be clear that any decision they would take would be conditional and subject to the present status of Annex VII and Article 27. If there were a future change in Article 27 and Annex VII, any decision the Committee might have taken on the issue of export competitiveness would need to be reconsidered. As to the issue of reaching or losing export competitiveness, Chile could be flexible in terms of symmetry, and for the period could consider something less than five years. Regarding the EC's "stop-the-clock" idea, Chile would need to conduct a technical analysis of how the concepts of "symmetry" and "extension" would relate to the EC proposal.

42. The delegate of New Zealand stated that the Chairman's summary of the discussions at the most recent informal meeting was essentially accurate and effectively encapsulated the range of thinking that was on the table, and also fairly reflected the range of New Zealand thinking in relation to the issues before the Committee. New Zealand was happy to explore the range of implementation-related issues on subsidies in a constructive manner, and had been doing so in recent months. New Zealand was prepared to show a sufficient degree of flexibility, particularly in relation to the period of determining export competitiveness, but would be most uncomfortable to see any marked lessening of the disciplines that were specifically contained in the Agreement, particularly Article 27. In that regard New Zealand considered that no solution on loss of export competitiveness should go beyond the "stop-the-clock" on the phase-out period. In other words, it should neither set the clock back to zero nor allow an increase of export subsidies above the level to which they had been phased down. In relation to the question of Annex VII countries that had been raised, New Zealand agreed with Switzerland and others that the framework and the discussions they were focussing upon in relation to Article 27 concentrated on Annex VII countries. The delegate of New Zealand suggested that the Chairman's summary of the previous meeting be attached to the formal minutes because most members referred to it indicating whether they generally agreed with the thrust of the Chair's summary of discussion.

43. The Chairman stated that he intended to do so, to allow a comprehensive reading.

44. The delegate of the European Communities stated that the summary was accurate and sufficiently exhaustive and was a good reflection of what had been said. It was understood that the summary had to be seen in conjunction with the written submissions made. In addition the EC understood that the Chairman would add the summary to the minutes.

45. The delegate of India thanked the Chairman for his work on the issues under discussion, and also thanked the delegations of Switzerland and the EC for their helpful suggestions in trying to find solutions to those issues. Having said that, India associated itself with the statement made by the representative of Dominican Republic, and reiterated that India had shown flexibility with regard to



suggestions made by Members on time periods and conditions for reinclusion of countries in that category. However, India would not commit itself to any restrictive interpretation of the phrase "section heading of the Harmonized System Nomenclature" as it appeared in Article 27.6. In India's view, "section heading" denoted a group of chapters of the HS nomenclature.

46. The delegate of Mexico thanked the Chairman for his summary of the discussion at the most recent informal meeting, and for his efforts to try to find solutions. In general concerning the proposals on export competitiveness as well as on the inclusion of capital goods in the definition of inputs, first, having attentively followed the discussions, and the arguments put forward by the proponents and other delegations, Mexico continued to be concerned that the proposals in question might undermine the basic disciplines of the Agreement, particularly the basic principle on which the Agreement was based, namely, that export subsidies distorted trade and might cause injury to the trade interests of Members, for which reason they were prohibited outright or should be eliminated gradually over a specific period or once a suitable export competitiveness was reached.

47. Second, since the proposals were to be seen in the context of the implementation review, Mexico considered that that should not and could not lead to a basic change or modification of the Agreement or to the balance of the rights and obligations of Members enshrined therein, particularly with respect to those Members that had carried out the necessary changes in order to bring their policies into line with the Agreement's disciplines. Without prejudice to that position and with the purpose of participating constructively in that debate, Mexico had carefully studied the technical and practical aspects of the proposals. From Mexico's analysis a number of questions had not yet been resolved. Specifically with respect to the proposal on export competitiveness, Mexico had a number of questions regarding the practical viability of the "stop-the-clock" mechanism that had been suggested to determine what would happen once competitiveness was reached but then lost again. Regardless of these technical complications, Mexico wanted to put clearly on the record that it was not convinced of the economic grounds of the proposal. As far as the second element of that proposal was concerned, the idea that a Member could reach competitiveness and lose it again for an unlimited number of times, and therefore could indefinitely maintain export subsidies, continued to cause Mexico difficulties. Additionally, the proposal should not be considered in isolation; rather, any decision that might be taken in that regard should be a function of whatever was decided regarding the proposal that had been put forward on Annex VII.

48. There were still a number of unresolved issues in respect of the proposals under discussion, and without prejudice to its position regarding the essence of those proposals, Mexico was ready to continue participating in discussions to determine whether there were solutions to the problems that had been identified, so long as Members did not lose sight of the goals of the Agreement, and so long as its disciplines were not undermined.

49. The delegate of Brazil thanked the Chairman for his summary of the discussions, which reflected what had happened in the most recent meeting, and built on the discussions at other meetings as well. The delegate of Brazil also thanked the delegations that had submitted elaborations of the original proposal, especially Switzerland and the EC. The "stop-the-clock" mechanism was very interesting, and on the basis of that mechanism Brazil had been doing some modelling in capital to see how the original proposal for the extension from 2 to 5 years and the re-entry suggestions would fit into that sort of mechanism. It was more complex than the example cited in the EC proposal, and it was raising some doubts on how the mechanism would work in practice. Brazil was prepared to share some of those doubts with the rest of the plenary as the discussions evolved in September. Since the proposal had a link with the situation of Annex VII countries, Brazil had some difficulties in taking it into account in isolation from other proposals that were being discussed in other fora in the context of implementation. Brazil agreed with Chile and others that there was a link between the two exercises. Brazil saw that there remained some divergence in the plenary on the coverage of the beneficiaries of the proposals, i.e., whether it would affect only Annex VII countries or all developing countries.

50. The delegate of Costa Rica thanked the Chairman for his summary which had been very useful. Costa Rica's intervention should not be interpreted as approval or disapproval of any of the proposals. Rather, Costa Rica wanted to contribute to the debate and clarify some points. First, the export competitiveness proposal was considered by Costa Rica in a broad context taking into account all the negotiations on the issue, and its final position would depend on the overall balance that was found. Therefore, the document on implementation presented by the Chairman should be viewed in conjunction with other proposals being examined in other bodies. If proposals were to be accepted it would be important to limit the number of times an industry could require protection again and again. The mechanism suggested by the EC was a good one in that it would limit the number of years over which a Member would be entitled to such protection, and it also involved the presumption that the protection should be eliminated gradually over eight years once competitiveness was regained, with only a limited further period if export competitiveness was lost again. Furthermore, Costa Rica agreed that those who would benefit from the proposal would be those currently in Annex VII. In addition, because those Members were entitled to an eight-year period to eliminate protection, five years for establishment of export competitiveness would be excessive, bearing in mind that protection might be reintroduced if export competitiveness was lost.

51. The delegate of Japan stated first that extension of the period for determining export competitiveness from two years to five years obviously would require amendment of the Agreement and that issue went beyond the scope of implementation. Second, regarding the basis for determining export competitiveness, in previous meetings Japan had proposed an idea for additional flexibility in a case where trade share temporarily exceeded 3.25 per cent due to short term instability. One example would be to introduce a statistical method to account for the effects of such short term fluctuations. Third, concerning the situation after a loss of export competitiveness, in Japan's view further discussion was needed.

52. The delegate of Malaysia thanked the Chairman, and delegations for proposals. Unfortunately there was no consensus in the Committee's discussions. Malaysia believed some changes could be made to the Chairman's summary of the previous meeting to make it more balanced. It did not come out clearly that proponents had presented proposals in writing, and had given written answers to questions, as the delegates from India and Dominican Republic had noted. Concerning the proposal, Malaysia noted first that proponents had clearly said that they were unwilling to adopt any narrow definition of the phrase "section heading" in Article 27.6. As far as the proponents were concerned, "section heading" in Article 27.6 of the Subsidies Agreement meant a group of chapters, and that should be added. Second, on page 3 under the second bullet point, it was stated that the proposal had been discussed on the basis that it would be applicable only to Annex VII countries. For Malaysia, this did not appear clear in that context, as under the second bullet the discussion was limited to the EC paper on "stop-the-clock", but Malaysia had categorically stated that any solution on Article 27.6 should be applicable to all developing countries, as in Malaysia's view that Article was so applicable.

53. The Chairman stated that his summary of the previous meeting did not refer to the issue of the meaning of "section heading" as that issue had not been raised at that meeting. His report to the General Council of course would cover those issues because it would need to be comprehensive of all of the discussions. The Chairman also drew Members' attention to the first paragraph of the summary, "General", which stated that his report to the General Council would need to be read in conjunction with the proposals and all papers related to them. It was implicit that those were the proponents' proposals and papers, and those of the other Members of the Committee, not just Chairman's papers.

54. The delegate of the United States stated that his delegation United States did not recall that there had been any kind of informal consensus on the trigger point for the eight-year phase out period, mentioned in the Chairman's summary at page 2 under the first bullet point.

55. The Chairman noted that his report to the General Council would be under his own responsibility, and his feeling was that the idea concerning the trigger point was broadly acceptable, but he had refrained from using the word "consensus".

56. The delegate of Thailand thanked the Chairman for his summary. Thailand was not convinced that the export competitiveness proposal, if agreed by Members, would concern only countries that were at that time included in Annex VII.

57. The Chairman thanked Members for their clear identification of the elements concerning export competitiveness where they could show more flexibility and the elements that were unacceptable to them. The discussion had been fruitful, and he was encouraged that a number of delegations had expressed a willingness to continue discussing the export competitiveness issue, with some suggesting possibilities for a solution to be found. Generally Members had been constructive and open-minded on the issues, while noting the fundamental principles of importance to a number of delegations, including the integrity of certain rules as they were currently drafted. That said, it appeared that the export competitiveness issue possibly could move forward with some further work in September. He thus proposed that the Committee return to it in September, along with any other issues that the General Council might forward to them in the meantime.

58. The Committee so agreed, and took note of the statements made.

59. Turning to the proposals on capital goods (footnote 61 of the Agreement), the Chairman recalled that Colombia had submitted two proposals, the first of which sought an interpretation or amendment of footnote 61 to include capital goods as an input consumed in the production process. In response to a question that the Chairman had posed to India several meetings before, India had indicated that it could associate itself with this original proposal by Colombia. The second proposal by Colombia took another approach to the same issue, namely that Members would agree to refrain from dispute settlement action or countervailing action in respect of tax and duty exemptions, deferrals and under one scenario remissions on capital goods used to produce exported goods. Under two of the scenarios outlined by Colombia, all Members could take advantage of that treatment, while under the third scenario, only developing country Members could do so. The Chairman noted that in the summary of the previous week's meeting, he had omitted the fact that one Member, Thailand, had indicated support for the principle in Colombia's amended proposal, as well as a preference for the third scenario in that proposal.

60. The Chairman recapped the evolution of the Committee's discussion of the capital goods proposals. A number of Members had expressed various technical difficulties with Colombia's original proposal. In particular, those Members generally did not agree with Colombia that footnote 61, or items (h) and (i) of the Illustrative List of export subsidies, were ambiguous. For them, the allowance permitted under those items for exemptions, deferrals and remission of prior cumulative indirect taxes and import charges on inputs consumed in the production process represented a clear carve-out from a general rule, and the cross-reference in that context to footnote 61 made clear that capital goods were not included. Some Members also were concerned that under Colombia's original proposal there could be excessive amounts of tax exemption or deferral on particular exported goods. Concerning footnote 61 itself, some Members had indicated that for them the language defining its scope was clear, and the absence of a reference to capital goods was a deliberate result of explicit negotiations on that subject, and not an oversight by negotiators. In that regard, Members had indicated in particular that the word "catalysts" in footnote 61 did not lend itself to an interpretation that would include capital goods. Also in that respect, some Members had indicated that while they could not agree to amendment of footnote 61 as an implementation issue, they would be prepared to consider such a proposal in the broader context of a possible negotiation.

61. The Chairman recalled that on the basis of those reactions to its original proposal, Colombia had submitted its revised proposal. Colombia had made clear that in presenting its revised proposal it was not departing from the original proposal. Colombia maintained that both proposals addressed what Colombia saw as a lack of legal clarity in the text of the Agreement, and simply approached that problem from two different angles.

62. The Chairman also recalled that concerns that remained open in respect of Colombia's second proposal included (1) whether accepting the proposal would require amendments to Members' domestic legislation, which some saw as problematic, particularly outside the context of implementing the results of a more comprehensive negotiating round; (2) a degree of discomfort on the part of some Members with the idea of being unable even to initiate dispute settlement consultations in respect of measures described in Colombia's revised proposal; and (3) whether Colombia envisaged the stand-still that it proposed as being permanent or temporary. In that regard, the view was expressed that as a permanent measure such a standstill would be difficult to accept, while as a temporary measure, e.g., during a negotiation, the issue would need to be addressed horizontally, rather than by the Committee.

63. The delegate of Colombia thanked the Chairman and the Secretariat for their efforts with the view to fulfilling the mandate remitted to the Committee from the General Council, and emphasized that the mandate pursuant to the decision of the General Council dated 15 December 2000 contained two elements. The first was to examine the treatment of inputs consumed and in general the question of import levies, and the second was that the analysis be carried out in conformity with the specific needs of the developing countries. On the basis of that mandate the delegation of Colombia had submitted the documents G/SCM/W/429, 442, 449, and 455. Those documents in addition to analysis presented two types of proposals to resolve the implementation problem in question. Those proposals suggested interpretations on the basis that there was an absence of clarity in the provisions that had been analysed.

64. Three elements of the debate needed to be borne in mind. First, there was a consensus in the Committee as to the need for developing countries to acquire capital goods under positive conditions, because this was indispensable for them in improving their competitiveness. Second, it was concluded that there were a number of fiscal and other limitations in developing countries which prevented them from making use of instruments which were used by developed countries to address that situation. Third, after technical debate the conclusion was reached that as regards capital goods, the Agreement stipulated a series of treatments in the light of the customs levy which included customs charges and direct taxes, and, thus, set forth different alternatives under the Agreement for achieving fiscal neutrality. It was important to bear in mind the statements made by developing countries to the effect that the implementation proposal tried to resolve an important problem. Colombia noted the concerns expressed by a number of Members regarding the possible implications of its proposals, and also noted the constructive approach to its second proposal, namely that it could be analysed in the General Council as a horizontal issue. In conclusion, Colombia considered the technical debate to have been exhausted and was fully confident that the Chairman's report would give a thorough in-depth presentation of that debate.

65. The Chairman thanked Colombia for its contributions and constructive participation in the debate, and emphasized that his report to the General Council would be comprehensive and would take into account the various issues raised and the positions of Members and clarifications provided.

66. The delegate of the European Communities thanked the Chairman for his report and noted regarding Colombia's statement that although Colombia had said that certain qualifications, reasons and motivations had been agreed, his delegation did not think anything had been agreed or concluded by the Committee, but rather that views had been expressed. The delegate of the EC was not aware

with regard to footnote 61 that there was any consensus thus far on any conclusion or motivation or reasoning.

67. The delegate of Colombia clarified that she had never used the word "consensus" in her statement regarding either her proposal or the scope of the footnote 61. She had referred to the fact that that Committee had discussed the point remitted to it by the General Council and particularly the specific needs of the developing countries, which was a basic part of the mandate. In that regard, within the Committee they had advanced the question of necessity. As there were many difficulties of a fiscal and other nature in making available to exporters capital goods under competitive conditions, the Committee had had an in-depth discussion of that matter which had led to the conclusion that the specific need existed, and that developing countries had limitations in that regard.

68. The Chairman thanked Colombia and did not think that anyone could deny that capital goods were required and that they had had an exhaustive discussion and proposals on how to consider them as consumed in the production process. The form in which these issues had been put forward in the various proposals seemed to have attracted a great deal of comment and debate, which would be reflected in his report as accurately as possible.

69. The Committee took note of the statements made.

70. Turning to India's proposal under footnote 61, the Chairman again recalled India's indication that it could associate itself with Colombia's original proposal in respect of interpreting or amending footnote 61 to include capital goods. Thus, to a certain extent the comments and summary just presented would cover India's position as well as Colombia's. That said, India's proposal in respect of capital goods remained on the table. That proposal would be based on industry-wide average rates of depreciation for capital goods used in the production of exported products. In addition to the questions of interpretation raised by that proposal, a number of technical concerns had been identified in the Committee's discussions of it. In the main, these had had to do with issues of transparency and accuracy. Members had questioned the ability of an industry-wide averaging system to accurately capture the extent of depreciation of capital equipment associated with particular volumes of particular exported goods. In that regard, it was noted that accounting standards including for depreciation might vary for tax and other purposes, and from one industry, or even one company, to another. Thus, it would be very difficult in practice to verify that excessive amounts of depreciation, and thus excessive amounts of tax exemption, were not being attributed to exported goods. Concern also was expressed that any multilateral approach to capital goods would need to be able to be applied by all WTO Members, and in that regard Members doubted whether the system proposed by India could be implemented, in practice, by all Members. The Chairman asked whether India wished to modify its original proposal by associating itself fully with Colombia's original capital goods proposal.

71. The delegate of India stated that India had made a proposal to amend footnote 61 on inputs consumed in the production process to take into consideration the imperatives of revenue generation for many developing countries. While India had submitted a separate proposal on inclusion of capital goods in the definition of inputs consumed in footnote 61, it also had indicated its association with the proposal by Colombia as it felt that that issue arose out of a lack of legal clarity in the Agreement. India would have liked Members to appreciate that given the narrow tax base prevalent in certain developing countries, and on the grounds of equity, it might perhaps not be feasible to immediately choose the alternative of lowering import duties on capital goods. In India's view, there would be no level playing field for exports originating in such developing countries if their export prices bore an element of import charges paid on capital goods used for the manufacture of exported products. India was disappointed to note the highly restrictive interpretation given by some Members which in India's view failed to address their general implementation concerns.

72. The Chairman stated that whether the Committee had three capital goods proposals on the table or just two, the concerns identified with respect to Colombia's original proposal also applied to that of India. Noting the statements made by both Colombia and India in respect of those issues and the importance they attached to them, the Chairman would of course ensure that his report to the General Council was comprehensive and reflected all sides of the debate. The Chairman thanked Members for participating constructively in the discussion on that issue.

73. The Committee took note of the statements made.

74. Turning to the last proposal before the Committee, India's proposal on duty drawback, the Chairman recalled that India proposed a system whereby individual companies claiming drawback would not have to maintain or produce records showing the amounts of imported inputs used in producing the goods that they exported and the amounts of duties paid thereon. Rather, under the proposed system, industry-wide average rates of utilisation of imported inputs, and the respective duty incidence, would be established for each exported product. Those averages would then form the basis of duty drawback payments to companies in each industry.

75. The Chairman noted that Members had raised a number of technical questions and issues concerning that proposal, including many questions as to the accuracy, transparency and verifiability of the proposed system. In particular, Members pointed out that efficiency varied from company to company, and with it the actual utilisation of imported inputs. Moreover, in a given industry producing for export, there might be some companies that used no imported inputs at all but those companies nevertheless would be eligible for drawback payments under the proposed system. In addition, it was noted that the question of drawback primarily arose in the context of countervailing duty investigations, where the exact specification of the product definition was established in the petition, meaning that it would not be possible to calculate averages, in advance, for every potential product specification that might be the subject of a countervailing petition. By the same token, if calculations of the type described had to be performed only once a petition was filed, this would be too time-consuming to fit within the timeframe of a countervailing investigation.

76. The Chairman noted that a number of Members had indicated that any system based on averaging across companies, industries or sectors would not be acceptable, as there would be no way to assure that excessive amounts of drawback were not being paid to individual companies. Thus, only company-specific calculations were deemed by those Members to be acceptable in terms of the rules of the SCM Agreement.

77. The Chairman recalled that Members had indicated a considerable willingness to discuss simplified approaches to duty drawback that could be applied by individual companies, i.e., averaging or aggregation methods for individual companies, so that those companies would not have to prove that a given individual imported part or component had been physically incorporated into a given unit of an exported product. In that regard, the Chairman had felt that it would be of benefit to all Members to share summarized information about their individual duty drawback schemes, and in particular, about the kind of record-keeping that was necessary in order for a company to claim duty drawback, including in particular summarizing or averaging that was permitted. The Chairman thanked those Members that had provided such summaries, which he believed that they had helped to increase all Members' understanding of that very technical area, and might have generated some useful ideas for India.

78. The Chairman noted that at a previous meeting, India had indicated that it might be able to pursue the question of the treatment of duty drawback in countervailing duty investigations bilaterally with interested Members. At the previous meeting, India and the EC had indicated that they had had some bilateral contacts in that regard, and that due to the nature of the issues, the involvement of

technical experts was needed. In view of those ongoing discussions, India had requested that the Committee put its duty drawback proposal to the side for the time being, and return to it in September.

79. The delegate of India thanked all delegations who had shared information on duty drawback systems. He noted that India's proposal had been made to take into consideration the problems faced by small production units which in many developing countries faced difficulties in maintaining detailed costing records to account for the exact quantity of inputs consumed in the production process and which were, therefore, not able to make use of their rights under the SCM Agreement.

80. India had proposed the system of aggregate and generalised rates of remission of duties based on a rather rigorous system of devising statistical norms for calculating the inputs consumed in the production process. India believed that it had satisfactorily replied to the questions raised by Members relating to the sample on which the average amount of input consumed would be calculated, how the proposed system of remission of duties would work, what adjustments would be made, how variations in product characteristics would be taken into consideration, the nature of on-site verification etc. As those replies were on record of the Committee it was not necessary to repeat them.

81. While India was disappointed that no consensus had been achieved in this matter, in the spirit of constructive engagement it had already indicated its acceptance of the offer of the EC to discuss in greater detail the problems faced by their exporters, especially the practice of countervailing in full any benefit which their duty drawback and remission schemes might confer. India welcomed similar detailed discussions with other Members, if they so desired, to find some solution to the problem before the next meeting of the SCM Committee. India, however, did not consider this implementation concern to have been resolved merely by the fact that it had agreed to engage in further discussions with interested Members.

82. The Chairman thanked all Members for their input on the duty drawback issue over the course of the meetings. It was very encouraging that interested Members were pursuing the questions that motivated the proposal in an effort to find solutions, and he looked forward to hearing back from India in September. The Chairman informed that his forthcoming report to the General Council on the duty drawback proposal would indicate the current status, and his final report at the end of September would provide an update based on what India reported to the Committee in September.

83. The Committee took note of the statements made.

84. The Chairman thanked Members for their participation and for their clear statements of position on the various issues that remained before the Committee. The discussion had been of enormous benefit to him, and would ensure that his report to the General Council was as complete and informative as possible. He believed that the discussion also had helped the Committee to identify areas where there seemed to be scope for further progress and hopefully solutions after some additional work in September.

85. The Chairman noted that he would be transmitting his report to the General Council Chairman on 31 July, and would at the same time circulate it to the Committee for the information of Members.

86. The Committee took note of the Chairman's statement.

87. The meeting was adjourned.

## ANNEX

### **Chairman's Summary of the Discussion at the 20 July 2001 Informal Meeting of the SCM Committee**

#### Revised

#### **General:**

In respect of the need under the agreed procedures to provide a Chair's report to the General Council by the end of this month, I indicated my intention to provide on my own responsibility a factual report of the Committee's discussions, along the lines of the statement made to the General Council on 8 May 2001 (reproduced in Job(01)/68), describing proposals received, ideas explored in respect of possible solutions, any agreement that might have been reached concerning solutions, and, for any of the issues for which no solution had been identified, a description of all of the issues raised and the positions expressed. The report would of course need to be read in conjunction with the proposals and all papers related to them, summaries and non-papers that I have provided, and any formal records of Committee discussions. In my view, the report needs to be complete and informative, to enable the General Council to have a clear and full understanding of the work done in respect of the issues that it had referred to the Committee, for its own ongoing work on implementation issues.

#### **Export Competitiveness:**

Following the 22 June meeting, I had sent to Members by fax a written version of the summary that I had made at the meeting concerning the quite lengthy and interactive discussion that had taken place of the four proposals before the Committee. That summary had addressed one-by-one the bullet points in the my 11 June non-paper concerning export competitiveness, and had addressed as well the points raised in the questions at the end of that non-paper, including the EC's "stop-the-clock" idea raised at that meeting. The EC had brought this idea into the discussion in response to questions raised at the end of the non-paper concerning what would happen if a country lost export competitiveness either during, or after the end of, its eight-year phase-out period, i.e., for how long and how many times would the country in question have the possibility of re-introducing export subsidies following a loss of export competitiveness? At the meeting, most delegations had welcomed this suggestion from the EC and had indicated that they were willing to use it as the basis for further consultations, once it was received in writing. After the meeting, the EC had submitted a paper describing in more detail how the stop-the-clock idea might operate (G/SCM/W/457).

I noted that the Committee's recent consideration of the export competitiveness issue had consisted of quite detailed discussions of the framework for a possible solution. Firstly, the Committee started from the Swiss proposal which had suggested several conditions and parameters that the Swiss delegation wanted the Committee to take into account in trying to address the concerns raised by the proponents. Secondly, the Committee continued on the basis of my 11 June non-paper, which compiled elements from the Swiss proposal as well as additional elements and considerations that had been put forward subsequently by some delegations. Thirdly and finally, the Committee had considered the EC's stop-the-clock idea.

In spite of the detailed nature of the most recent discussions, I suggested, given points expressed during his recent informal consultations, that Members step back from the details and recall two main points. First, although discussion had increasingly focused on the details of a potential solution, it needed to be recalled that a number of delegations had emphasized that their participation in such detailed discussions was without prejudice to their final positions in respect of the export competitiveness issue and any solution thereto. Second, I noted that some delegations had recalled that there were and always had been two distinct elements to the export competitiveness proposal



originally tabled by the group of 10 delegations in document G/SCM/W/431/Rev.1: (1) the basis for determining export competitiveness, on the one hand, and (2) the question of what happens to a country that loses export competitiveness after having reached it, on the other hand. While these elements had become increasingly intertwined in the detailed formulations of possible solutions discussed, it was clear that for some delegations they remained both separate and separable. In particular, some delegations had indicated that they might ultimately have more flexibility in respect of one of these elements than in respect of the other.

Main points discussed at the 20 July meeting on the basic proposal in G/SCM/W/431/Rev.1

- General: Several Members expressed concerns about weakening the principles of the SCM Agreement, and worried about transforming a system of phasing out export subsidies into one in which they were treated as a tool with which to gain export competitiveness. Certain Members expressed the concern that the combination of lengthening the two-year period for determining export competitiveness and introducing flexibility concerning the phase-out of export subsidies would effectively write out of the Agreement the obligation for Annex VII developing countries to remove their export subsidies. Finally, some Members suggested that, as the issue of allowing reintroduction of export subsidies seemed to raise many more questions and complexities than the question of the period for establishing export competitiveness, perhaps the two issues could be dealt with sequentially.
- Period for determining export competitiveness – The proponents continue to propose a change from two to five years. Other Members have indicated that they may have some flexibility in respect of this element, but perhaps for an extension to something less than five years.
- Possibility to resume export subsidization after loss of export competitiveness – Some Members see this as an issue where clarification would be useful, due to the Agreement's silence on this point. Other Members have indicated that of the two elements of the basic proposal, this is the one on which they have less flexibility. Some argue that this second point would effectively free countries from an export subsidy phase-out obligation, and some note that the most complicated and technical questions and concerns that have arisen in the Committee's discussions have been in respect of this element of the possible framework under consideration.
- Criteria for loss of export competitiveness – There seems to be general agreement that if there were to be the possibility to resume export subsidization, there would need to be a minimum period of consecutive years below the export competitiveness threshold (share of world trade in the product) for the country to be deemed to have lost export competitiveness. In this regard, most delegations have suggested a minimum of two years. Some Members argue that there would need to be symmetry with the period for establishing export competitiveness; if a two year period was decided on for loss of export competitiveness, then there should be no change to the two years specified in the Agreement for establishing export competitiveness. Likewise, if there was an agreement to extend the specified two years for establishing export competitiveness, the same period should apply for determining loss of export competitiveness. Proponents have argued against such symmetry, noting that export competitiveness can be lost much more rapidly than gained, and have suggested five years for establishing export competitiveness, and two years for establishing its loss.
- What threshold? Most recent discussions have assumed that the 3.25% threshold would apply for both reaching and losing export competitiveness.
- Automatic recalculation two years after loss of export competitiveness – There seems to be no disagreement with the suggestion that the Secretariat would automatically recalculate the share of world trade in the product two years after the loss of export competitiveness.

- Trigger for eight-year phase out period – It was suggested that the eight-year phase out period would only begin upon an initial determination/calculation that export competitiveness had been reached, regardless of whether export competitiveness had in fact been reached before the period on which the calculation was based. This seemed broadly acceptable to a number of delegations as an element in the framework being discussed.

Main points discussed at the 20 July meeting concerning the EC stop-the-clock paper:

- Approach to the discussion - A number of Members reiterated that they wished to be constructive, and thus were prepared to discuss the stop-the-clock idea in detail, but that their participation in the discussion was without prejudice to their position in respect of the export competitiveness proposal or any of the elements thereof that the Committee was considering.
- Countries covered by the framework under discussion – Proponents disagreed with the view expressed in the EC paper that the framework under discussion would apply only to Annex VII countries, but otherwise could discuss on the basis of the paper. A number of other Members indicated that for them, the limitation to only Annex VII countries was a necessary condition of any eventual agreement to a framework on export competitiveness. Some delegations also indicated that any decision that might be taken in respect of export competitiveness would need to be revisited if any changes to either Article 27 or Annex VII were agreed in other fora.
- Possible duration of export subsidization - Certain Members expressed concern that under the stop-the-clock proposal there might be an endless loop of export subsidization, in particular if a country were to fluctuate above and below the export competitiveness threshold even for extended periods, so long as those periods were less than the minimum periods for reaching and losing export competitiveness. It was noted in this regard that perhaps a change from two years to some longer period for establishing export competitiveness might address this concern, in the sense that the longer the period for establishing export competitiveness, the less the need there might be for having a "re-entry" mechanism, as a longer period would make the system react more slowly, thus leading to fewer exits and re-entries. A further point noted here was that symmetry of the periods for establishing and losing export competitiveness might be the most appropriate way to deal with this question. The point also was made in this regard that, during the longer period under consideration for establishment of export competitiveness, Members could continue to discuss methods to prevent such ad infinitum entry and exit from export subsidies.
- Level of subsidy: Several members requested clarifications of the idea that resumed levels of export subsidies should not be "excessive," and were unclear on how, and by whom, this appropriate level of subsidy could be determined. The proponents on export competitiveness disagreed that there should be any such limitations, noting that the Agreement does not establish such limits. The view was expressed that the reference to a non-excessive level of subsidization in the EC's stop-the-clock paper seemed to be premised on the assumption that developing country Members subject to the eight-year phase-out period would be phasing out their subsidies in a progressive manner over that period, rather than keeping them fully in place for the whole period and only removing them, in their entirety, at the end of the period. It was noted that the latter scenario might be more probable than the former, especially as the Agreement does not require developing countries to progressively phase out their export subsidies. Thus, some Members noted such a cap would operate as an incentive to maintain maximum levels of export subsidies throughout the phase-out period. The EC, as originator of the stop-the-clock idea, expressed flexibility regarding the level of subsidization, and could probably accept simply a reference to the level of subsidization just prior to the loss of export competitiveness, rather than trying to identify an appropriate or non-excessive level.

- Transparency/Monitoring: Some Members noted that a system such as the one outlined in the stop-the-clock paper would require detailed monitoring to function properly. In this regard, there was at present a lack of basic transparency concerning Members' subsidies, given the poor compliance with the Article 25.2 subsidy notification requirement. The question was raised whether some additional transparency requirement would need to be established, as it might be evident from a calculation pursuant to Article 27.6 that a country had reached export competitiveness in a product, while there might be no information as to whether that product was benefiting from export subsidies. In this regard, the provisions of Article 25 were recalled, and in particular Article 25.8 which provides for requests for information concerning subsidies. The question was raised whether these provisions would be adequate for monitoring any export competitiveness system that might be established. In addition, the idea of a statistical measurement of market volatility was suggested, as a possible means to respond to the basic concern underlying the original proposal, namely that countries might erroneously be identified as having reached export competitiveness, purely on the basis of relatively short-term market volatility.

### **Capital Goods Proposals**

I recalled that at the 22 June meeting, the discussion of Colombia's revised proposal (G/SCM/W/455), had been very preliminary as the paper had only just been received. I also recalled that Colombia was proposing that Members agree to refrain from taking dispute settlement and countervailing action under three alternative scenarios. The first scenario covered tax and duty exemptions, remissions and deferrals by any Member on capital goods used in the production of export goods. The second scenario covered only such tax and duty exemptions and deferrals, and not remissions, also for all Members. The third scenario covered such tax and duty exemptions and deferrals, and not remissions, for developing country Members only. I further recalled that Colombia had submitted this proposal because Members had found Colombia's original proposal, which would have involved either an interpretation or an amendment of footnote 61 to include capital goods, to be difficult to accept. For some Members, no interpretation that would include capital goods would be possible, while it might be possible to consider an amendment, but only in a broad negotiating round, and not outside such a context.

I also recalled that India had made a proposal to treat capital goods as an input consumed in the production process, that I had previously asked Colombia and India whether they could rationalize or coordinate their proposals, and that India's initial reaction was that the approach taken in Colombia's proposal might not address all of India's concerns. At the 22 June meeting, India had indicated that it was continuing to reflect on the views that had been expressed by other Members in respect of its proposal.

Main points discussed at the 20 July meeting:

#### Colombia's reformulated proposal

- One Member expressed its support for this proposal by Colombia, and its preference for the third scenario outlined therein.
- Some Members emphasized that footnote 61 uses clear and negotiated language to describe a limited exception to a general rule. As such, for them the issue could not be dealt with by interpretation or other agreement, but should be tackled in the context of a broader round of negotiations.
- Some Members indicated, as they had noted at the 22 June meeting, that they would have difficulties with the reformulated proposal because of its implications for their domestic

legislation, with some indicating that it would require actual amendment of their domestic legislation.

- Some Members expressed discomfort concerning the approach described in the reformulated proposal, as it would prevent them from even initiating dispute settlement consultations on the measures covered by the proposal. Certain Members indicated that they were more comfortable discussing on the basis of Colombia's original proposal than the reformulated one.
- Disagreement remained as to whether this issue could be addressed as an implementation question. For Colombia, the issue was based on lack of legal clarity in the Agreement, and thus should be treated as an implementation issue. In this regard, Colombia explained that its reformulated proposal did not represent a departure from the viewpoint of its original proposal.
- For certain Members, Colombia's proposal of a standstill on countervailing investigations and dispute settlement would be difficult to maintain as a permanent measure. If some sort of standstill were envisioned during broad negotiations, these Members considered that this would be a horizontal issue, and as such could not be tackled by Committees, but would need to be considered by the General Council.

#### India's proposal

- In response to my question from an earlier meeting as to whether it would be possible for India and Colombia to rationalize their capital goods proposals, India indicated that it could associate itself with Colombia's original proposal on capital goods.

#### **Duty Drawback**

Concerning the proposal from India for a system of aggregate and generalized rates of duty remission, based on industry-wide averages, rather than company-specific data, I recalled my request at recent meetings that Members briefly describe their own duty drawback systems, in order to see what sort of simplified or aggregated data they might use. The delegate from Thailand read a statement concerning Thailand's system, a copy of which is attached for the information of Members.

I also noted that at the 22 June meeting, when this proposal was discussed, India had indicated that it would be prepared to discuss with interested Members the treatment of duty drawback in countervailing duty investigations. At the 20 July meeting, India indicated that discussions among interested Members were ongoing, and that in view of the technical nature of the problem, India and some other Members were of the view that experts with countervail experience would need to be involved. India noted, however, that it was not abandoning its implementation proposal concerning duty drawback, but asked the Committee to put that proposal aside for the time being, in view of the ongoing discussions among interested Members, and to return to it in September.

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