

**Committee on Subsidies
and Countervailing Measures**

Original: English

**IMPLEMENTATION-RELATED ISSUES REFERRED
TO THE COMMITTEE BY MINISTERS**

Questions from the United States to Brazil¹ and India²

The following communication, dated 14 January 2002, has been received from the Permanent Mission of the United States.

US QUESTIONS TO BRAZIL

Tiret 80 Proposals Involving ASCM Article 14 and *De Minimis* (G/SCM/W/464, G/SCM/W/465)

1. *That the “chapeau” of Article 14 of the SCM be interpreted to require Members to include in their national legislation or implementing regulation any methods used by the investigating authorities to calculate the amount of the benefit to the recipient (G/SCM/W/464, paras. 4 & 5).*

- (a) To what extent would Brazil’s proposal require a change to the ASCM? If a change to the agreement is not required, please explain, in Brazil’s view, how this proposal should be effectuated.
- (b) Please explain the context and background behind this proposal. For example, please describe any actual instances where Article 14 was interpreted “in a restrictive way,” leading to non-transparent and arbitrary methods of benefit calculation.
- (c) What is the relationship, in Brazil’s view, between the evidence and procedure provisions of Article 12, Article 21, and Article 22 and the chapeau of Article 14?

2. *That the calculation of the amount of the benefit be based on the benefit to the exporter (G/SCM/W/464, paras. 4 & 6).*

- (a) To what extent would Brazil’s proposal require a change to the ASCM? If a change to the agreement is not required, please explain, in Brazil’s view, how this proposal should be effectuated.
- (b) Please explain the context and background behind this proposal and provide specific examples of subsidy practices and how their treatment would differ under this proposal from treatment under other approaches.

¹ G/SCM/W/464.

² G/SCM/W/462.

3. *Expenses incurred by the exporting company in order to obtain the subsidy (e.g. administrative charges) should be deducted from the amount of the subsidy. Export taxes that are applicable to the operation object of the subsidy shall also be deducted from the amount of the subsidy (G/SCM/W/464, para. 7(e)).*

- (a) To what extent would Brazil's proposal require a change to the ASCM? If a change to the agreement is not required, please explain, in Brazil's view, how this proposal should be effectuated.
- (b) Please provide a detailed list of the types of deductions/expenses which should be deducted under this proposal.
- (c) Please describe under what circumstances an investigating authority should be required to make certain deductions from the subsidy amount?
- (d) Please explain the meaning of the phrase: "applicable to the operation object of the subsidy"?
- (e) Please discuss any differences between Brazil's proposal and that suggested by India in paragraph 23 of India's Tired 80 submission (G/SCM/W/462).

4. *For subsidies not granted based on quantities produced, exported or transported, the subsidy amount shall be calculated by determining the corresponding proportion of the subsidy amount that is related to the production, sale or export of the good (G/SCM/W/464, para. 7(f)).*

- (a) To what extent would Brazil's proposal require a change to the ASCM? If a change to the agreement is not required, please explain, in Brazil's view, how this proposal should be effectuated.
- (b) Please explain the context of and circumstances behind this proposal, for example, by describing any actual instances where subsidies were not calculated in proportion to production, sale or export of the good.
- (c) Please explain how the phrase "is related to" should be interpreted?
- (d) Please provide a more detailed explanation of the type of calculation proposed, including different examples reflecting different factual scenarios.

5. *In case the subsidy is granted to acquire capital goods, the amount of the actionable subsidy shall be calculated according to the rules for depreciation of the good in the industry concerned and with the volume of production, sale or export of the product (G/SCM/W/464, para. 7(g)).*

- (a) To what extent would Brazil's proposal require a change to the ASCM? If a change to the agreement is not required, please explain, in Brazil's view, how this proposal should be effectuated.
- (b) Under this proposal, would the depreciation rules be applicable in instances other than where a subsidy is granted to acquire capital goods (e.g., large, one-time debt forgiveness, or the provision of equity capital not necessarily related or tied to, capital goods)? If not, what evidence should an investigating authority require to establish whether subsidies were used to acquire capital goods?

- (c) If the depreciation rules proposed by Brazil were to be applied with respect to other subsidies, what are those other types? If a very small subsidy is provided, and it is related, or tied to, capital equipment, should the benefit still be allocated over the relevant depreciation period?
- (d) Often there is a difference between the depreciation rules for accounting purposes and the depreciation rules for tax purposes. Please explain whether, in Brazil's view, one is preferable over the other?
- (e) How should investigating authorities address instances where the industry standard depreciation rules reflect extraneous tax policy considerations (e.g., accelerated depreciation) rather than the actual expected physical life of the assets?
- (f) Under what circumstances should investigating authorities be allowed to use company-specific depreciation rates? Should the authorities be allowed to use company-specific rates if they differed from the industry rates?
- (g) How should investigating authorities address circumstances in which there are no set rates for the particular industry at issue?

6. *Introduce sampling rules similar to those in the Antidumping Agreement where the number of exporters under investigation is so large as to make a determination impracticable. (G/SCM/W/464, para. 8).*

Is it Brazil's view that the SCM does not allow for sampling in CVD investigations?

7. *Introduce provision in Article 19 establishing that no duty will be collected where the subsidy amount is de minimis (G/SCM/W/464, para. 12 - 14).*

Given the lack of express language in the ASCM regarding this issue, provide a more detail explanation as to how, in Brazil's view, the proposal could be effected by means of "interpretation of lacunae in the text of the Agreement."

US QUESTIONS TO INDIA

Tiret 80 Proposals Involving ASCM Article 14 and De Minimis (G/SCM/W/462, G/SCM/W/466, and G/SCM/W/470)

1. *The SCM Committee should clarify the provisions of the ASCM in Annex I (items h and i), Annex II and Annex III so that any remission, exemption or drawback of duties and import charges to the extent of those levied on inputs consumed is not countervailed and only the amount of remission, exemption or drawback of duties and import charges in excess of those levied on inputs consumed may be treated as a countervailable subsidy (G/SCM/W/462, para 14).*

- (a) The proposal appears to presume that the "excess" amount of remission, exemption or drawback is calculable. In many instances, however, this is not the case, or can only be done with great difficulty. Please discuss how the ASCM provisions regarding remission, exemption or drawback of duties should be applied in situations where the amount of excess is either not calculable, or can only be calculated with great difficulty and significant additional burden to the investigating authority and other parties involved.

- (b) In India's view, is it not appropriate to countervail the entire amount of a payment made by a government to an exporter where, although such payment is nominally described as "remission, exemption or drawback of duties", the government has not examined the type and/or amount of inputs consumed in the manufacture of exported merchandise and the taxes or import charges levied on such inputs in order to ensure a correlation between the payment and such taxes, or import charges?

2. *The SCM Committee should clarify that the addition of an amount for interest on the benefit conferred during the investigation period is not in conformity with the object and purpose of the ASCM. In the alternative, the SCM Committee should clarify whether calculation of the interest amount on a notional basis instead of calculating it from the date the benefit was conferred is a reasonable method of calculating interest (G/SCM/W/462, para 16).*

- (a) Please explain in more detail and by way of concrete examples, India's objectives with this proposal. In particular, please explain what is meant by "calculation of the interest amount on a notional basis instead of calculating it from the date the benefit was conferred."
- (b) Please provide concrete examples of actual cases in which this practice has been applied.

3. *The SCM should clarify that while determining the average useful life (AUL) of the asset, the depreciation used for allocating the benefit should be based on the information available with the individual firms receiving the subsidy. (G/SCM/W/462, para 18).*

- (a) To what extent would India's proposal require a change to the ASCM? If a change to the agreement is not required, please explain, in India's view, how this proposal should be effectuated.
- (b) Please clarify whether India is proposing an AUL based on the normal depreciation of assets in the industry concerned as suggested in G/SCM/W/462, para 17, or based on the information available with the individual firms receiving the subsidies as suggested in G/SCM/W/462, para 18.
- (c) If India is proposing an industry based AUL:
 - (i) Under what circumstances should investigating authorities be allowed to use company-specific depreciation rates if it differed from the industry rates?
 - (ii) How should investigating authorities address circumstances in which there are no set rates for the particular industry at issue?
 - (iii) How should investigating authorities address instances where the industry standard depreciation rules reflect extraneous tax policy considerations (e.g., accelerated depreciation) rather than the actual expected physical life of the assets?
- (c) If India is proposing an AUL that is company-specific:
 - (i) Under what circumstances should investigating authorities be allowed to use an industry-wide depreciation rate if it differed from the company-specific one?

- (ii) How should investigating authorities calculate the AUL if the company had significant changes to its depreciation schedules during or immediately prior to the investigation, e.g., asset write-downs?
- (iii) Often there is a difference between the depreciation rules for accounting purposes and the depreciation rules for tax purposes. Please explain whether, in India's view, one is preferable over the other.
- (d) In India's view, to what other types of subsidies should the depreciation rules be applied (e.g., large, one-time debt forgiveness, or the provision of equity capital not necessarily related, or tied to, capital goods)?
- (e) If a very small subsidy is provided, and it is related, or tied to, capital equipment, should the benefit still be allocated over the relevant depreciation period?

4. *The ASCM Committee should clarify that for a subsidy to be deemed to exist under Article 1.1(a)(1)(ii) of the ASCM, the exporter concerned should have received the benefit of duty foregone or not collected during the period of investigation (G/SCM/W/462, para 21).*

- (a) To what extent would India's proposal require a change to the ASCM? If a change to the agreement is not required, please explain, in India's view, how this proposal should be effectuated.
- (b) Please describe in greater detail when the benefit would accrue to the exporter under India's proposal.
- (c) Are there any instances where India believes that the benefit can reasonably be assumed to accrue before it is actually received? For example, if all exporters are automatically entitled to receive 10 per cent of the value of their exports in the form of a government grant, would it be reasonable to calculate the amount of the benefit as 10 per cent of the exporter's export sales?

5. *The SCM Committee should review Article 14 of the ASCM and recommend certain deductions from the subsidy amount which should be mandatorily taken into consideration by the investigating authorities while determining the level of countervailing duty. The SCM Committee should also clarify that such adjustments as required by the countervailable scheme should be taken into account while determining the amount of subsidy. (G/SCM/W/462, para 23).*

- (a) To what extent would India's proposal require a change to the ASCM? If a change to the agreement is not required, please explain, in India's view, how this proposal should be effectuated.
 - (b) Please describe under what circumstances an investigating authority should be required to make certain deductions from the subsidy amount.
 - (c) India has provided a list of the types of expenses to be deducted. Is the list of proposed deductions intended to be exhaustive or merely illustrative? Are there any circumstances under which these or similar expenses should not be deducted or should all expenses incurred in obtaining the subsidy always be deducted?
 - (d) Please discuss any differences between India's proposal and that suggested by Brazil in paragraph 7(e) of Brazil's Tires 80 submission (G/SCM/W/464).
-