

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

Questions and Comments of the European Communities

The following communication, dated 6 April 2001, has been received from the Permanent Delegation of the European Commission.

As discussed during the informal meeting of the Committee on 2 April 2001, the European Communities submit the following questions concerning the submissions made with respect to the implementation-related issues referred to the Committee for examination. The European Communities recall that these questions are posed only for reasons of clarification in order to assist Members in their endeavour to address the problems identified, and do not prejudice their position on the substance of the submissions.

I. EXPORT COMPETITIVENESS: Paper submitted by Cuba, Dominican Republic, Honduras, India, Indonesia, Malaysia, Pakistan, Tanzania, Uganda and Zimbabwe (G/SCM/W/431/Rev.1, 20 March 2001)

Questions to Cuba, Dominican Republic, Honduras, India, Indonesia, Malaysia, Pakistan, Tanzania, Uganda and Zimbabwe

Articles 27.5 and 27.6 SCM Agreement have never been used and therefore important practical questions arise concerning the actual working of these provisions.

Q1. How is "world trade" defined? Does it include intra-Customs Union/FTA trade?

Q2. How long will be the reference period for re-entry, i.e. for how long does the share in world trade have to be below 3.25 per cent?

Q3. How long will the phase-out period be once the country has graduated back over 3.25 per cent?

II. AGGREGATE AND GENERALIZED RATES OF DUTY REMISSION: Discussion paper submitted by India (G/SCM/W/430, 9 March 2001)

Questions to India

Q4. We understand India to propose an average system of duty remission rates by industry category. The application of such aggregate rates could lead to payments even if no customs duties are paid by the exporter, i.e. if the exporter sources the inputs domestically.

While we understand from the Indian submission that in such a case the remission rates would be reduced, we are uncertain how this could be done in practice. We would think that it would have to involve identifying the source of inputs for the individual exporter concerned, something the proposed general system wants to avoid in the first place in its aim to alleviate the procedural burden. Can India please clarify this point?

Q5. We understand that under the system there would be no check that exporters which are more efficient than the industry-average receive higher remissions than customs duties actually paid. How could it be ensured that this does not result in excess remissions by individual companies?

Q6. Aggregate rates on a per-company basis based on historical company-specific data could very well guarantee that there is no excess remission if such data is regularly updated and subject to verification. Even if no such per-company system was in place, the government of the exporting country could prove on the basis of actual transactions that no excess remission had taken place in line with a proper duty drawback scheme. This is already provided for in Annexes II and III of the Subsidies Agreement.

Does India have any views on these points in the context of addressing any needs for simplified procedures under duty drawback schemes?

III. DEFINITION OF INPUTS CONSUMED IN THE PRODUCTION PROCESS: Papers submitted by Colombia (G/SCM/W/429, 7 March 2001) and India (G/SCM/W/430, 9 March 2001)

Questions to Colombia and India

Q7. Items (h) and (i) limit the exemption, remission and deferral of prior-stage cumulative taxes, and the remission or drawback of import charges, respectively, to inputs consumed in the production of the exported product. This limitation to "inputs consumed" allows a clear and verifiable link between input and output since it is based on quantities.

Could India and Colombia explain how such an intrinsic and conspicuous link could be established between capital goods and the exported product which would ensure that no excess exemption or remission of prior-stage cumulative taxes or import charges occurs?

Q8. Introducing a "value" element in the purely "quantity" based system of duty drawback/exemption schemes by linking depreciation of capital goods to export production not only represents a significant change in the nature of such systems but could also lead to serious practical difficulties. For example, how would the use of the capital good be measured?

Q9. How would, in practice, a certain portion of the use of the capital good be linked to a certain quantity of exported product?

Q10. Would the amount of exemption or remission of prior-stage cumulative taxes or import charges on the capital good remain constant per quantity of exported product? If yes, how would this be ensured in practice?

Q11. How would the apportionment of the use of the capital good between domestic and export production be conducted in practice to ensure that no excess remission occurs?

Question to Colombia

Q12. We understand the Colombian submission to argue that capital goods used in export production can already now be exclusively exempted from prior-stage cumulative indirect taxes under item (h) of Annex I of the SCM Agreement.

Can Colombia please clarify this point, in particular in view of the first sentence of item (h) which reflects the principle of equal treatment of exported products and products destined for domestic consumption. In this respect, does Colombia agree that, in order to avoid being considered an export subsidy, an exemption, remission or deferral of such taxes for capital goods must be a general one, regardless of whether the good is used for export or domestic production?
