

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

Comments from Egypt on issues
raised by Brazil¹ and India²

The following communication was received on 11 January 2002 from the Permanent Mission of Egypt.

Article 14

- (a) Explicit legislation or regulation on method for calculating amount of benefit from subsidy (Brazil)

The introduction of Article 14 is clear enough to provide that the National Legislation or Implementing Regulations of the Member concerned and its applications to each particular case shall be transparent and adequately explained so that the investigation authority must provide the method used in calculations, which mean that there is no need for this proposal and we can ask about the purpose behind it.

- (b) Basis for calculating amount of benefit should be benefit of the recipient (Brazil)

This proposal is considered as an affirmative to what is provided in Article 14 of the Agreement and there is no need for more affirmation.

- (c) For the subsidy to exist duties foregone or not collected, benefit should have been received during the investigation period (India)

We disagree with this proposal as it is considered a restriction on the investigation authority.

- (d) Clarifications of Annex I item (H) and (I) (ii) and (iii) such that, where duty drawback remission or exemption of duties and import charges are countervailed, should be limited to the amount in excess of the amount levied on inputs consumed (India)

It is important to take into consideration this proposal because of the ambiguity which appears in the text of the Agreement regarding this point.

¹ G/SCM/W/464.

² G/SCM/W/462.

(e) Additional guidelines should be added to Article 14:

- Expenses incurred by recipient to obtain the subsidy should be deducted from amount of the subsidy (Brazil and India) and from amount of countervailing duty (India)

We agree with the first part of the proposal that these expenses must be deducted from the subsidy but it is not appropriate to deduct these expenses again from the countervailing measures since it has been deducted before from the subsidy.

- For subsidies not granted based on quantities of products, subsidy amount should be proportional amount of subsidy related to the quantity of product involved (Brazil)

We agree with this proposal, as it is consistent with the provisions of the Agreement.

- Subsidies used to acquire capital goods – subsidy amount calculated based on depreciation rules for the industry and the amount of product involved (Brazil)

We agree with this proposal as it is consistent with the articles and provisions of the Agreement.

(f) To determine average useful life of assets, depreciation information of individual recipient firms should be used (India)

We agree with this proposal as it is considered a fair and objective proposal.

(g) Sampling – introducing rules such as those in the AD Agreement (Brazil)

We agree with this proposal, however we shall keep in mind that the sampling principal was mentioned in Article 11.4.

(h) Clarify that 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 SCM Agreement or, alternatively, clarify whether calculating interest on a national basis instead of from the date the benefit was conferred is a reasonable method of calculating interest (India)

We agree with this proposal on the basis that it concentrates on the amount of conferred benefit.

Facts available

(a) Introduce provisions on use of “facts available” such as those in Annex II of the AD Agreement (Brazil)

(b) Clarify that all verifiable and timely submitted information should be taken into account, and that if a portion of information is not verifiable or timely submitted, facts available may be used for that portion of the information (India)

We agree with these two proposals because there are no detailed provisions for them in the SCM Agreement.

De minimis

- (a) Introduce in Article 19 a provision that no duty be collected where subsidy amount is *de minimis* (Brazil)

Article 11.9 provides the termination of the investigation in case the amount of subsidy is *de minimis* (less than 1 per cent), so there is no need for this proposal.

Review procedures

- (a) Introduce provision for assessment of degree of support for review requests (Brazil)

We disagree with this proposal as the current provision is more flexible, giving the investigating authority the right to make the review without any request from any party or by the request of any other interested party.

- (b) Introduce provision for notification of Members whose products are subject to review (Brazil)

We should ask Brazil about the reasons and purposes of this proposal, since it is referred to with the same meaning in Article 22.7.

- (c) Introduce a provision for prior consultation with affected Members before initiating a review, and during its course (Brazil)

We agree with this proposal to give the parties the opportunity to present their point of view and argument, and we propose to add this to Article 13 (consultation).

- (d) Introduce detail in Article 19.3 concerning expedited review of new exporters (Brazil)

This proposal does not provide a new subject and the current provisions in the Agreement are better in this context.

- (e) Review need for continued imposition of measure upon submission of positive information concerning procedural mistake or manifest error of appreciation by authorities (India)

We agree on this proposal to guarantee fairness and objectivity, and may add something practical to Article 21.1.

- (f) Clarify Article 21.2 to provide for automatic adjustment of countervailing duties for schemes withdrawn (India)

We disagree with this proposal, as any schemes withdrawn shall be subject to a review rather than any automatic adjustment.

Definition of domestic industry and injury analysis

- (a) Clarify “major proportion of the total domestic production”, and clarify whether defining domestic industry, as those who supported the petition cannot be construed as impermissible interpretation of the major proportion requirement (India)

We disagree with this proposal, since there is no need for any further explanation regarding this matter.

- (b) In determining likeness of products, account should be taken of differentiated nature of products even where they have closely resembling characteristics, *inter alia* through consideration of price comparison, substitutability and whether in direct competition (India)

We disagree with this proposal, as the definition stated in the AD Agreement is more appropriate.
