

**SECOND CONTRIBUTION BY CUBA AND VENEZUELA TO THE NEGOTIATING  
GROUP ON RULES EXPANDING ON THE PROPOSAL  
CONCERNING NON-ACTIONABLE SUBSIDIES**

The following communication, dated 10 July 2003, has been received from the Permanent Missions of Cuba and Venezuela.

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The content of this paper does not fully reflect the views of the proponents, nor should it be regarded as their final position on all or any one of the elements discussed below. The overall purpose is to introduce new elements and considerations with a view to further developing the proposal set out in paragraph 10.2 of the document on Implementation-Related Issues and Concerns and document TN/RL/W/41 and rendering it more specific. Clarification and improvement of the relevant provisions on non-actionable subsidies in the Agreement on Subsidies and Countervailing Measures (SCM Agreement) could benefit the entire multilateral trading system and the developing country Members in particular.

**1. Need for the SCM Agreement to contain a set of different rules for the benefit of WTO developing country Members**

At the Fourth Ministerial Conference in Doha, the Ministers adopted a proposal recognizing the importance of the design of the WTO rules from a development perspective. Paragraph 10.2 of the document on Implementation-Related Issues and Concerns sets out four legitimate development goals – regional growth, technology research and development, production diversification, and implementation of environmentally sound methods of production. The Members might treat measures taken in pursuit of any one of these goals as non-actionable if adopted by WTO developing and least-developed country Members.

Non-actionable subsidies are one of the cornerstones of the SCM Agreement and should be one of the tools available to the developing country Members for implementing certain development policies, including the structural transformation of their economies within the framework of the multilateral trading system. Nevertheless, upon expiry of the corresponding transition period, the provisions of Article 8 of the SCM Agreement lapsed, although, if suitably designed, they could constitute one of the most relevant tools for development and its sustainability as one of the mainstays of the Agreement. Today, and in subsequent stages of these negotiations, the Members might be able to achieve this.

The SCM Agreement recognizes the part played by subsidies in development and there is no disputing or denying their importance in the industrialization process, as the WTO's most developed country Members – including those having undergone such a process in the not too distant past – have experienced.

In this regard, we should like to raise a few questions, and the responses could be shared among the Members for our future meetings.

*Is it possible to transform a country's economic fabric and in particular to change production patterns using the existing rules and disciplines of the SCM Agreement, without resorting to means other than new market access opportunities, transition periods, capacity building and technical cooperation?*

*Is there merit in maintaining non-actionable subsidies, and especially measures aimed at achieving legitimate development goals such as regional growth, technology research and development, diversification of production, and implementation of environmentally sound production methods, for the benefit of WTO developing country Members?*

Enhancing opportunities for market access and a greater international flow of goods and services on the global market, as aspects of the trade dimension in the strict sense, could provide a sound basis for economic growth and the generation of wealth. Capacity building, technical cooperation and the use of transition periods could help developing and least-developed country Members to become more familiar with the WTO Agreements, Understandings, rules and disciplines and thus meet their obligations and exercise their rights; to frame, implement and improve their domestic legislation; and generally to participate more effectively in the multilateral trading system. There is a need for greater clarity, however, and the WTO rules and disciplines, and the SCM Agreement in particular, should be improved in order to make it easier for our countries to pursue certain development goals – especially those geared towards transforming their economic fabric.

If the developing and least-developed country Members are to change their production patterns and be able to increase value-added production, certain types of measure will be necessary as adjuncts to, for example, enhanced market access opportunities for products – typically commodities – of special interest to them. If the SCM Agreement genuinely serves to achieve development goals, and not only economic growth in the strict sense of the trade dimension, then it would be necessary to maintain a set of rules and disciplines for the benefit of the developing and least-developed country Members, of which they could avail themselves to promote the structural transformation of their economies, while maximizing and supplementing the benefits of trade liberalization.

## **2. Brief review of the SCM Agreement's existing provisions on non-actionable subsidies**

Both paragraph 10.2 of the document on Implementation-Related Issues and Concerns and the proposal in document TN/RL/W/41 refer to the agreement by the Ministers in Doha that the Members should treat measures taken under four legitimate development goals as non-actionable.

Three of these legitimate development goals broadly correspond to the three existing categories of non-actionable subsidies provided in Article 8 of the SCM Agreement.

The Ministers' mandate also refers to a new category of non-actionable subsidies in addition to the categories already provided in the SCM Agreement, i.e. production diversification, which constitutes a legitimate development goal under which measures could be considered as non-actionable.

The existing categories in the SCM Agreement are of key importance for the developing and least-developed country Members inasmuch as they are legitimate development goals. Under the traffic-light approach, which is part of the architecture of the Agreement, non-actionable subsidies should be considered to be those having minimal or negligible trade effects.

Technology research and development funding is one of the most crucial issues for the developing and least-developed country Members. The Members of this Organization stand at different levels of technological development and technology is not openly and freely available to all Members or all of their respective firms. The global economic shift away from traditional production factors towards essentially knowledge-, technology- and innovation-based economies means that the developing and least-developed country Members need measures that will enable them to increase value-added production; to promote the creation of dynamic sectors in their domestic economies; and to bridge the technological divide between them and other, developed country Members. The development of new, technology value-added products and new processes entails risks and calls for the provision of incentives. We might add that in the developing and least-developed countries, the "application" of new technologies or processes is often as important as the "development" of new technologies and processes in building supply capacity and in diversifying production.

Non-actionable measures aimed at promoting regional growth as a legitimate development goal could be a prime tool for generating employment and combating poverty problems that frequently beset disadvantaged regions in the developing and least-developed countries.

Measures taken to implement or develop environmentally sound methods are legitimate development goals, for they are indissociably linked to sustainable development goals, environmental concerns and poverty reduction. The WTO developing and least-developed country Members have no means of ensuring environmental protection and require more extensive support for the implementation of measures that facilitate the application or development of environmentally sound production methods and processes.

Application of the measures taken under any one of the three existing categories of non-actionable subsidies in the SCM Agreement, under the terms specified in the relevant provisions, would have required satisfying a whole series of conditions that were impossible to fulfil. Failure to issue notifications under these provisions might have been due, *inter alia*, to the high ceilings and benchmarks established for each category and their current design, which assumes that Members interested in this type of subsidy possess the resources for implementation.

Another noteworthy point is the potential conflict between the need to avoid greater distortions in international trade and the legitimate interests of the developing and least-developed country Members – one of which is the necessary transformation of their economic fabric.

***Are there alternatives that would make it possible to apply the existing categories of non-actionable subsidies, in such a way as to promote legitimate development goals, while maintaining observance of the rules and disciplines and the effectiveness of the provisions of the SCM Agreement?***

We believe that it is possible to maintain non-actionable subsidies aimed at achieving legitimate development goals, for the exclusive use of developing and least-developed country Members and duly supplemented by proper rules and disciplines in the SCM Agreement, and that this could help achieve a suitable balance between the conflicting interests mentioned above – including the requisite legal security – on the one hand, and the preservation and strengthening of the rules, disciplines and core concepts of the SCM Agreement, on the other.

The following are suggestions for consideration in the negotiations that would permit the application of non-actionable measures in the existing categories in Article 8 of the SCM Agreement:

- To remove or lower the ceilings or benchmarks specified for each category of non-actionable subsidies in Article 8 of the SCM Agreement;

- to amend the wording of some of the provisions of Article 8; for instance, the "assistance" provided in each of the three categories set out in the Article (direct allocation of funds) could be supplemented by other forms of financial contribution or support by a government body.

### **3. Incorporation in the SCM Agreement of a new category of non-actionable subsidies aimed at achieving legitimate development goals**

Notwithstanding the discussion on clarification and improvement of the existing provisions on non-actionable subsidies in the SCM Agreement, paragraph 10.2 of the document on Implementation-Related Issues and Concerns and document TN/RL/W/41 state that the Members should consider as being non-actionable measures taken in pursuit of certain legitimate development goals, one of which is diversification of production. While the categories mentioned in the preceding section may broadly correspond to the categories in the SCM Agreement, diversification of production is a new concept and a form of legitimate development goal under which measures should not be treated as actionable.

In the long run, trade policy should contribute to the development of an economy's supply capacity. Such development should not be left entirely in the hands of market forces. The shifting of resources and production factors from one sector to another demands sufficient financial resources, skilled manpower, market predictability and readiness on the part of investors to make investment decisions. Markets in developing and least-developed country Members are either non-existent or highly imperfect, however, which means that they have to be created or their flaws corrected. The labour and capital markets usually have difficulty in channelling resources from one sector or industry to another – not to mention other types of constraint.

There are other aspects to be considered as well. First of all, priorities in respect of each of the four legitimate development goals could be weighted differently from one developing or least-developed country Member to another. On the other hand, measures taken in pursuit of a specific goal could serve to foster the other legitimate development goals. Diversification of production, for example, could be of key importance and a topmost priority in a country's development policy, perhaps overriding the regional growth objective. Measures to strengthen small- and medium-sized enterprises could nevertheless provide meaningful support for other legitimate development goals, such as regional growth and diversification of production.

A few examples of comprehensive measures that could be taken in pursuit of the production diversification goal are listed below:

- Measures to promote domestic manufacturing capacity in high value-added or technology-intensive sectors.
- Measures to stimulate the application, transfer and development of local technology and innovation.
- Measures to promote small- and medium-sized enterprises inasmuch as they contribute to employment generation.
- Measures to support and promote closer coordination and links between producers, parties on the demand side and academic institutions.

***How could a new category of non-actionable subsidies be incorporated in the existing rules and disciplines of the SCM Agreement?***

Several avenues could be explored with a view to incorporating diversification of production, for example, in the existing categories in the SCM Agreement for the benefit of developing and least-developed country Members.

A new category of non-actionable subsidies, considered as furthering legitimate development goals, might for instance be incorporated in the SCM Agreement together with an indicative list of non-actionable measures, in the form of a new Annex to the Agreement.

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