

**INTERVENTION BY INDIA ON THE SUBMISSION BY THE
UNITED STATES ON SPECIAL AND DIFFERENTIAL
TREATMENT AND THE SUBSIDIES AGREEMENT**

The following communication, dated 10 March 2003, has been received from the Permanent Mission of India.

Mr. Chairman,

We thank the United States for its submission on S&D treatment provisions and the Subsidies Agreement.

We would like to briefly recall some of the important points made in this submission. First it has been stated that over time, all countries will be subject to a single set of disciplines. The US has also asserted that the goal is to completely integrate all Members under the full disciplines of the Subsidies Agreement. It is also the view of the US that that once a developing or lesser-developed country becomes export competitive in a product area, it is no longer in need of special and differential treatment. Based on certain economic arguments regarding the distortion caused by subsidies, the United States has questioned the appropriateness of S&D treatment provisions in the Subsidies Agreement.

We would like to give a substantive response to some of these issues.

It has been recognised in the preamble to the Marrakesh Agreement Establishing the WTO that there is a need for positive efforts designed to ensure that developing countries and especially the least developed among them secure a share in the growth in international trade commensurate with the needs of their economic development. The S&D treatment provisions are meant to ensure that equal rules do not apply to unequal players. If, as the United States asserts, a single set of disciplines were to apply to all WTO Member countries, then developing countries would be required to compete in a field that is tilted against them. It may not be difficult to speculate the adverse consequences for developing countries were they to be subject to a single set of disciplines- their insignificant share in global trade would be further eroded and the multilateral trading system may not be perceived by such countries as being a mutually advantageous system. The approach taken by the United States may eventually threaten the continued stake of developing countries in the multilateral trading system.

We would like to briefly recall the economic rationale for government intervention through export incentives and its role in positive economic development. Industry in developing countries are characterised by low level of infrastructure development, high cost of capital, prevalence of under-developed regions where industries may be reluctant to invest etc. The various export incentive schemes in developing countries are less in the nature of conferring an advantage to the exporters in such countries and more for the purpose of creating a level playing field, in view of the fact that their

competitors from the developed countries do not suffer from these disadvantages. It has therefore been recognised that governments have to assume a more active role in assisting the industry by creating a level playing field. S&D treatment provisions in the Subsidies Agreement should be seen in this context and not perceived as a bounty to the developing countries. These provisions are a structural need for developing countries in the multilateral trading system. It is a matter of disappointment that the United States has not touched upon this aspect.

The context in which the S&D treatment provisions were negotiated remain equally valid even today. However, what seems to have changed is more the political attitudes to S&D rather than the underlying reality. In general the disparity in per capita income between the developed and developing countries has actually increased since 1980 and many developing countries may have fallen in the category of "least developed".

Mr. Chairman, a question that needs to be addressed at this point is - why are several developing countries so agitated regarding the Subsidies Agreement and have requested for more meaningful S&D provisions?

In our view the ASCM has been patterned on legislation already in existence in developed countries and is tailored to meet their administrative, fiscal and other structures. There is therefore a need to make modifications in this agreement so that it is more in-tune with the developing countries' needs and priorities. A few illustrative examples are the following:

First, grant of official export credits by OECD countries has been permitted, while most of the other countries are prohibited from giving such credits.

Second, subsidies normally given by developed countries in the nature of financial contribution for research and development were designated as being non-actionable subsidies for five years. In this process the developed countries created a safe harbour for a substantial part of the activities on which the competitive strength of their firms rely. While this provision may have benefited developing countries in a few cases, rare as they may have been, it would not allow them exemption from countervailing duty action in case assistance were to be provided for the acquisition of technology, which is essential for developing countries. Such an exemption needs to be considered in the framework of S&D treatment provisions in the Doha Development Agenda.

Third, the Subsidies Agreement permits remission, exemption and deferral of prior stage cumulative indirect taxes on goods and services used in the production of exported products. While the prevalent system of VAT in most developed countries is suitable for meeting the stringent requirements of the Subsidies Agreement in this respect, problems faced by developing countries not having a VAT system have not been recognized and remission, exemption and deferral of indirect taxes have been countervailed and exporters penalised.

Fourth, developing countries have to impose customs duty on capital goods for meeting the exigencies of revenue generation. However they are not able to avail remission, exemption or deferral of such duties when the capital goods are used for production of products which are exported. Thus a level playing field is denied to the developing countries' exports as an element of customs duty paid on capital goods used gets reflected in the total cost of the exported products. On the other hand, developed countries' exports do not include such costs as the customs duty on capital goods is low or the capital goods are manufactured within their countries.

It may be relevant here to quote from Development, Trade and the WTO: A Handbook, a publication referred to by the United States. "In the light of experience with implementation following the Uruguay Round, the transition periods and threshold levels appear to have been excessively optimistic. It is obvious that the limited duration of the transition periods used to

reflect S&D concessions in many Uruguay Round agreements renders them both inadequate and inappropriate as a basis for building capacity for enhanced production and trade in low-income countries." While this publication has not identified the specific transition periods and threshold levels that in hindsight may appear to have been pegged at optimistic levels, it is India's view that the transition periods and the benchmarks specified in the ASCM could be considered to be appropriate illustrations. Some of the proposals by the developing countries seek modifications in the threshold levels.

On the issue of export competitiveness we emphasize that the Subsidies Agreement does not address situations wherein a country, which may have achieved export competitiveness, subsequently loses it. This is a genuine problem that needs to be addressed. Once the export competitiveness is lost, the country may again be in the need of S&D treatment. Such a concern cannot be ignored by the WTO Member countries. It is important to address the legitimate economic development needs of the developing world by agreeing to the proposal made by developing countries during the implementation process on issues relating to Articles 27.5 and 27.6 of the ASCM. Otherwise the provisions on export competitiveness would remain a one-way street.

Considerable part of the US submission has been devoted to economic distortions caused by subsidies. We would like to point out that the multilateral disciplines on subsidisation is not based solely on economic underpinnings. Selective use of arguments relating to trade distortions caused by subsidies are not convincing. If economic rationale was the sole basis of multilateral rules then the questions that India would like to ask are- what is the economic rationale for the safe haven from prohibition on export subsidies in respect of export credits for OECD countries? Can it be denied that export credits distort markets? What is the economic rationale for continuing with high agricultural subsidies?

We would also recall that "from an historical point of view the legislation relating to subsidies was flexible and adapted itself to the specific conditions of developed countries during the various stage of their development. One cannot, therefore, talk of an inviolable principle which is unalterable when the need arises" (Michael Rom 1968). Can the developed countries deny that they did not actively subsidise their production and exports in the past even when they were at a level of development that was much higher than where most of the developing countries find themselves today?

Mr. Chairman, we would now turn to the link between a robust export sector and economic growth in developing countries.

Technology improvement and productivity enhancement have been recognised as the key elements in economic development and the governments are generally eager to update the technology to realize the goal of economic development. Economists have shown that export promotion measures are definitely beneficial to developing countries in updating technology, improving productivity and stimulating employment (Xingshuo Yin 2000), thereby contributing to development objectives. It may be difficult to deny the positive impact on the economy of a developing country due to increased imports. In particular the emphasis by the United States on human capital development and technological change can also be achieved by developing countries through a robust export sector. We would like to remind the United States that export promotion incentives and EPZs have been an engine - among others - for industrialization and growth in the economy, when they have been given their proper place as a policy tool.

The United States has suggested that the Secretariat survey the literature on export subsidies and import substitution subsidy and make available to all Members the important academic work that has been done in this area. We are not certain what would be the purpose of such a survey. If further consideration is to be given to any literature survey, its scope should include the policies and export

and import substitution subsidies of US and other developed economies that may have been pursued by these countries in their economic development at a stage comparable to the stage of development of some of the present day developing countries.
