

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

Replies of INDIA to Questions from the UNITED STATES¹

The following communication, dated 18 May 2001, has been received from the Permanent Mission of India.

India would like to thank the United States for its efforts in presenting comments and seeking further clarifications with respect to India's proposal set forth in G/SCM/W/430 regarding the aggregate and generalized rates of remission of import duties and the definition of inputs consumed in the production process. India hereby seeks to give clarifications on various issues raised by the US.

I. PROPOSAL CONCERNING AGGREGATE AND GENERALIZED RATES OF REMISSION OF IMPORT DUTIES

- (a) **However, assuming that the goals of burden reduction could be satisfied and balanced with the need for an acceptable degree of transparency and accuracy to be maintained, an important issue still seems to remain. That is whether the extent of over rebate should be considered on a company-specific or aggregate, industry-wide basis.**

Comments of India

The Indian proposal envisages simplification to the extent that remission of import charges would be based not on the actual amount of input consumed but on the basis of the statistical norm. This would obviate the need for maintaining detailed costing records. As the statistical norms would be based on a representative sample of industry as a whole involving details of various inputs used for the manufacture of a particular product, hence the extent of duty remission should not be considered on a company specific basis, rather it should be considered on an aggregate industry wide basis.

- (b) **Our concern with India's proposal is that, even on an industry-wide basis, India's methodology likely would result in an over rebate. Under India's proposal, the aggregate rate of duty remission would be calculated on the basis of the input utilization rates of a large number of surveyed companies, across which production efficiency is likely to vary, perhaps considerably. Then, to the**

¹ G/SCM/W/445.

extent that the exporters in an industry tend to be the most efficient companies, the aggregate rate of duty remission proposed by India would exceed the actual, average rate of tax incidence for exporters, i.e., result in an overrebate, because the aggregate rate of duty remission (based on both relatively inefficient non-exporters and relatively more efficient exporters) will reflect an input utilization rate higher, on average, than that of (the relatively more efficient) exporters. Statistical sampling techniques are not the answer, here, as the problem is one of identifying and surveying the correct population of companies, which is all exporters, not producers, of the export good in question. [Note: In a more complicated situation, importers, producers and exporters might be distinct and separate units. In that case, all three groups collectively make up the relevant population: the importers have the data on duties paid; the producers have data on inputs actually used; and the exporters have data on exports and duties remitted.]

Comments of India

The United States has raised two points. First, to the extent that the exporters in an industry tend to be the most efficient companies, the aggregate rate of duty remission proposed by India would exceed the actual average rate of tax incidence for exporters and result in an over rebate. This assertion appears to be a generalization, which need not necessarily apply in respect of exporters in various industries. A more important aspect is that the exporting companies often tend to produce a better quality product which may also use greater amount of the inputs. India has clarified that while individual producers may vary in efficiency and production techniques, the overall industry average would take into consideration such variations so that overall there is no excess duty remission.

Second, the United States suggests that sampling techniques are not the answer here and the problem is one of identifying and surveying the correct population of companies, which is of the exporters of the export good in question, and not the producers. It is emphasized that the aggregate and generalized rate of remission of import duties crucially depends on statistical information based on a representative sample of the industry as a whole. In case the sample is confined to only the exporters then the resulting data would not give a reasonably accurate picture of the concerned industry. Further more in a dynamic situation where some producers who might not have exported in any earlier years may become exporters subsequently and vice versa, it would be difficult to establish the appropriate population if the suggestion of the United States were to be followed. Difficulties regarding the composition of the population would also arise from situations where the exporter is different from the producer. Whereas the Indian proposal which is based only on the survey being conducted of the producers is less complicated. Hence if the data collection is confined to only the exporters a representative industry wide information would not be available and there would be difficulties regarding composition of the population.

- (c) **The United States is also concerned about the possibility of over rebate in the context of adjusting the aggregate rate for the extent to which imports are used in the production of the export good in question. India has not yet explained how the aggregate rate of duty remission would be adjusted in this regard. On what basis does India propose making this adjustment, from which sources or companies would data be collected, and what would be the actual mechanics of the adjustment?**

Comments of India

As has been pointed out in paragraph 2.8 of the Indian proposal G/SCM/W/430 after obtaining the amount of input required for manufacture of a given quantity of the exported product the value of the input required can be determined by multiplying the said quantity of the input material with the international prices of the input. In order to ensure that there is no excess remission of import charges, the international price of the input could be the lowest of the actual transaction prices available with the customs authorities. The remission of import charges would then be calculated by applying the applicable rate of customs duties.

II. PROPOSAL CONCERNING INPUTS CONSUMED IN THE PRODUCTION PROCESS - INDIA

- (a) **The United States remains concerned about problems associated with defining a capital good and allocating depreciation across time and across the multiple products that a company may produce.**

Comments of India

“Capital Goods means any plant, machinery, equipment or accessories required for manufacture or production, either directly or indirectly, of goods including those required for replacement, modernization, technology upgradation including research and development or expansion”. Depreciation across time would be governed by the generally accepted accounting principles. In respect of multiple products that a company may produce, the rate of depreciation allowed on capital goods for the purpose of duty remission would be based on the proportion of annual production resulting from the use of capital goods which is subsequently exported.

- (b) **For example, with respect to allocations of depreciation across time, while it is true that a country's Generally Accepted Accounting Principles (GAAP) typically include depreciation schedules, national tax codes often allow accelerated depreciation that bears no relation to accounting useful life. In such cases, accelerated depreciation could result in an overrebate of taxes and competitive advantages early in the life of the capital good that might not be fully offset later in the life of the capital good, after the capital good is fully depreciated (for tax purposes).**

Comments of India

For the purpose of remission or drawback of import charges on capital goods the depreciation used would be an amount based on details in the financial statement based on GAAP.

- (c) **These concerns, most of which would persist even in the case of a tax exemption granted to a company that produces for export only, highlight the difficult problem of minimizing the negative impact of taxes on export competitiveness, while at the same time guarding against rebates that would unfairly confer a competitive advantage upon exports.**

Comments of India

The Indian proposal guards against rebates by linking the use of capital goods to a certain quantity of a exported product which would be based on the following factors viz. customs duty paid on the capital goods, rate of depreciation allowed on the capital goods and the proportion of the actual production resulting from the use of capital goods which is subsequently exported. No unfair

competitive advantage would be conferred upon exports as the idea is to provide a level playing field to the exporters. Furthermore, this does not confer an unfair advantage on exports in view of the fact that while such exporters have to pay customs duty on capital goods those in other countries either have the facility of procuring indigenously manufacture capital goods or importing these at a very low rate of customs duty.
