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**General Council**

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**PREPARATIONS FOR THE 1999 MINISTERIAL CONFERENCE**

Proposals Regarding the Agreement on Subsidies and Countervailing Measures  
in terms of Paragraph 9(a)(i) of the Geneva Ministerial Declaration

*Communication from India*

The following communication, dated 7 June 1999, has been received from the Permanent Mission of India.

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**Issues**

1. There are serious imbalances in the Agreement on Subsidies and Countervailing Measures. The subsidies commonly used by developing countries for their industrialization and development have been included in the actionable or prohibited category, while those used by developed countries are in the non-actionable category. This is evidently not fair, particularly when viewed in the context of the fact that the subsidies presently being used by developing countries are exactly what were previously used as instruments of development by the developed countries of today. This demonstrates that these initiatives are indispensable for developing countries, especially those with small and vulnerable economies. These subsidies can enable developing countries to strengthen their industrial sector and diversify their exportable product, thereby becoming active participants in international trade. Where used, measures such as these have had extremely effective results in the creation of new industries, the attraction of foreign investment, the creation of direct or indirect jobs, the improvement of trade balances, as well as the development of less advantaged areas, all of which have contributed progressively towards greater economic development and social stability.

2. Developing countries also need to be provided a special dispensation as far as the provisions of Article 11:9 is concerned, so that subsidy investigations are started only if the subsidies being provided by developing countries are above a revised minimum threshold. Similarly the *de minimis* level for initiating countervailing action should also be increased. Annex VII of the Agreement also needs to be suitably amended to ensure that a developing country is excluded from the Annex only after its GNP has been above the level for a continuous period of three years and not just a one-time attainment as presently provided.

**Proposals**

3. Subsidies used by developing countries for development, diversification and up-gradation of their industry and agriculture are actionable under the Agreement. Article 8:1 of the Subsidies Agreement dealing with non-actionable subsidies should therefore be expanded to include subsidies referred to in paragraph 3:1 of the Agreement when such subsidies are provided by developing-

country Members, so that action cannot be taken against them either through the dispute settlement route or through the countervailing duty route.

4. Aggregate and generalized rates of duty rate remission should be allowed in case of developing countries even though the individual units may not be able to establish the source of their inputs.

5. Export credits given by developing countries should not be considered as subsidies so long as the rates at which they are extended are above LIBOR.

6. Developing countries should be allowed to neutralize the cost escalating effect of taxes collected by government authorities at different levels i.e. the taxes such as sales tax, octroi, cess, etc. which are not refunded, without these being termed as subsidies.

7. Article 11:9 should be modified to provide an additional dispensation for developing countries, in as much as that any subsidy investigation shall be immediately terminated in cases where the subsidy being provided by a developing country is less than 2.5 per cent *ad valorem*, instead of the existing *de minimis* of 1 per cent presently applicable to all Members.

8. Any countervailing duties should be restricted only to that amount by which the subsidy exceeds the *de minimis* level, when action is being contemplated in case of products from developing countries.

9. The present *de minimis* level of 3 per cent below which countervailing duties may not be imposed for developing countries, needs to be increased (Article 27:11). Countervailing duty investigations should not be initiated or, if initiated, should be terminated, when imports from developing countries are less than 7 per cent of the total imports irrespective of the cumulative volume of imports of the like products from all developing countries.

10. The prohibition of using export subsidies under Article 27:6 should become applicable to a developing country only after its export levels in a product have remained over 3.25 per cent of world trade continuously for a period of five years. Furthermore, an automatic inclusion provision should be added in Article 27:6 to enable developing countries to reintroduce export subsidies once the share of their export of a product decreases to a level below 3.25 per cent of world trade.

11. There should be a provision in Annex VII of the Agreement to the effect that a developing country will be excluded from the Annex only if its GNP per capita continues above the critical level mentioned in the Annex for a continuous period of three years. Also there should be a provision in the Annex that a developing country will be automatically re-included if its GNP per capita falls below this critical level.

12. Article 27:3 of the Agreement allows a developing country to grant subsidy for the use of domestic products in preference to imported products (defined in Article 3:1(b) of the Agreement). There should be a clarification in Article 27:3 that it is applicable notwithstanding the provisions of any other agreement.

13. The definition of "inputs consumed in the production process" (footnote 61) needs to be expanded to include all inputs, not just physical inputs, which may have contributed to the determination of the final cost price of the exported product.