FOCUS WTO

VOL. 13 NO. 2

SUBSIDIES & COUNTERVAILING MEASURES

JULY-AUGUST 2011

INDIAN INSTITUTE OF FOREIGN TRADE

From the Director's Desk


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THE national governments have a sovereign right to formulate national policies for development of its people. Such policies may involve giving subsidized access to products and services. These subsidies can take diverse forms like education, medical care, promotion of manufacture, promotion of export, promotion of agriculture and rural development, ensuring livelihood security for small farmers. In WTO, there are certain disciplines governing those types of subsidies which are viewed to be artificially stimulating production in sectors where a country may not enjoy comparative advantage which in turn distorts international trade. Export subsidies are universally recognized to be trade distorting and hence the same are generally prohibited for industrial goods under the Agreement on Subsidies and Countervailing Measures (ASCM). ASCM also has disciplines on other forms of subsidies on industrial goods which are given by the government, not on universal basis but to only certain sectors or certain industries. Any WTO Member country whose domestic industry suffers injury on this account can take action within the WTO framework by either imposing an additional countervailing duty on imports of such products or by filing a complaint against the offending country in the WTO's Dispute Settlement Body.

WTO subsidy disciplines in the agriculture sector are somewhat different from those in the industrial sector. Under the Agreement on Agriculture (AoA), export subsidies are permitted for certain agricultural goods for those countries (mostly the European Union) which have inscribed them in their Schedule of Market Access commitments. There are certain permitted categories of unlimited domestic subsidies in agriculture sector, which in WTO jargon are said to be those subsidies falling under the Green Box, the Blue Box and the *de minimis* categories. The remaining subsidies, said to be falling under the Amber Box were subject to reduction commitments during the Uruguay Round negotiations. Presently there are no disciplines on subsidies for trade in services under General Agreement on Trade in Services (GATS).

The different types of discipline for subsidies in agriculture and industrial goods sector reflect the domestic policy realities of the industrialized economies. They have carved out disciplines to continue their existing subsidy regime in the agricultural sector whereas there are stringent disciplines against subsidy in the industrial goods sector as they are no longer major subsidizers in this sector. It is important to address these anomalies during the Doha Round negotiations. In fact, the issue of reduction of agricultural subsidies is one of the stumbling blocks in completing the Doha Round.

It is true that Developing Countries enjoy some special relaxation from the disciplines on subsidies both in the agriculture and the industrial goods sector. These include a right for certain countries to give export subsidies on industrial goods till the time their GNP per capita is less than US$1,000 (called 'Annex-VII countries' as this exception is provided under Annex VII of ASCM). However, such exemptions are not absolute. They are actionable when they cause material injury to domestic producers of another country. As seen from Indian experience, such actionability has been resorted to several times by the developed country members to impose a large number of countervailing measures against Indian export promotion schemes despite India enjoying the cover of Annex VII exemption. This raises the question as to whether the flexibilities are as meaningful as they were expected to be at the end of the Uruguay Round. Secondly, there is also the larger debate about the developed countries having reached present level of industrial development by using the same types of subsidies on industrial goods which they have now ensured to be categorized as prohibited under the WTO discipline on ASCM. However, this debate may not now be very relevant as commitments taken in WTO cannot be rolled back easily. It will be more pragmatic to seek some balance between subsidy disciplines in the agriculture sector with those in the industrial sector so that the major agriculture subsidizing countries in the developed world are restricted from distorting agriculture trade and permit a more level playing field for international trade in agriculture. It is also important for developing countries to tread cautiously in negotiating new disciplines on fishery subsidy so that they are accorded effective and meaningful special and differential treatment to subsidize their poor and marginal fishermen.

FOCUS WTO
Vol. 13 No. 2 • JULY-AUG. 2011

Editor: **Dr. Anil K. Kanungo** • Associate Editor: **Ms. B. Pankti** • Assistant Editor: **Madanlal**

Subsidies and Countervailing Measures in WTO

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The Uruguay Round introduced landmark trade liberalization into key sectors of the world economy. The thrust was to restrict the sector-specific government subsidies to production and exportations of almost all international trade goods. With the establishment of the WTO the agreement found considerable acceptance among developed and developing countries. However currently subsidies are still in operation and create imperfect competition in world market. This paper makes an attempt to deal the issues in detail and try to suggest the asymmetrical dimensions of the issue and how it is affecting developing countries.

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I. Introduction

IN Economics, subsidies are justified when there are market imperfections or there is presence of externalities. A good example of this can be investment in Research and Development (R&D) by private firms. Investment in R&D creates knowledge, which has public good properties. That means consumption of knowledge is non-rival in nature and non-excludable. So, the total benefit accruing to the society due to this activity is higher than the benefits received by the private body which is investing in R&D. Therefore, if the cost of R&D is borne only by the private body then it is unlikely to generate socially optimal level of R&D. So, there is a strong case for a government subsidy to ensure that R&D expenditure is done at the socially optimal level. Similarly, government subsidies to ensure food security and poverty alleviation are justified as they are socially desirable. However, there can be subsidies which are used to distort production and trade. Subsidies can make an exporter artificially more competitive and thereby can lead to unfair trade. Therefore, disciplining of certain types of subsidies are important but a blanket ban on subsidies is not warranted as there are legitimate and welfare enhancing uses of subsidies.

One of the basic objectives of the WTO agreement is to remove the distortions present in the international trade. It is recognized that certain subsidies are trade distorting in nature and in order to remove distortions in international trade, it is important to impose disciplines on these subsidies. To achieve this goal, the WTO has established a set of rules to govern subsidies and export incentives in its member countries. For non-agricultural products, subsidies and export incentives are governed by the WTO Agreement on Subsidies and Countervailing Measures (SCM). The WTO Agreement on Agriculture (AoA) disciplines the export incentives and subsidies given to the agricultural items. This paper gives an overview about the SCM Agreement and discusses some important issues relating to this agreement which are particularly relevant for India. This paper will also briefly discusses the agricultural subsidies and how these subsidies are treated differently from industrial subsidies in the WTO.

II. Overview of the Agreement on Subsidies and Countervailing Measures

The WTO SCM Agreement contains a definition of the term "subsidy". According to the definition, a measure must have

three basic elements to be considered as a subsidy. They are: (i) The measure must be a financial contribution, (ii) It should be made by a government or any public body within the territory of a Member or made by a private body on government direction, and (iii) The measure must confer a benefit. All three of these elements must be satisfied in order for a subsidy to exist.

Even if a measure is a subsidy within the meaning of the SCM Agreement, it is not subject to the disciplines of the SCM Agreement unless the concerned subsidy is a "specific subsidy". By *specific subsidy* the SCM Agreement means subsidies which are specifically provided to a region, an enterprise or industry or group of enterprises or industries. In other words, SCM will treat a subsidy as specific subsidy if the granting authority limits access to the subsidy to certain enterprises or certain regions. For example, if the Central Government grants a subsidy exclusively to a particular state, the subsidy would be a specific subsidy even if it is available to all enterprises of that state. However, if that state government gives subsidies to all enterprises of that state, the subsidy would not be termed as a specific subsidy.

When a subsidy is made widely available by the granting authority, it is presumed that such subsidies do not lead to distortions in the allocation of resources. The basic premise of the WTO SCM Agreement is that only subsidies, which distort the allocation of resources within the jurisdiction of a granting authority, should be subject to discipline. Thus, non-specific subsidies are exempted and only "specific subsidies" are subject to the SCM Agreement disciplines. There are number of "specificities" within the meaning of the SCM Agreement:

1. *Enterprise-specificity:* A government targets a particular company or companies for subsidization;
2. *Industry-specificity:* A government targets a particular sector or sectors for subsidization.
3. Regional specificity: A government targets producers in specified parts of it's the territory under its jurisdiction for subsidization.

Two categories of subsidies are defined as prohibited subsidies by Article 3 of the SCM Agreement. The *first* category consists of subsidies which are contingent on export performance and the *second* category consists of subsidies for use of domestic goods over imported goods ("local content subsidies"). These subsidies are deemed to be specific even if these are available generally to all sectors of industry.

All specific subsidies are actionable under the SCM Agreement.[1] But depending upon the trade distorting nature of specific subsidies, the SCM Agreement deals differently with prohibited subsidies and other types of specific subsidies. The SCM Agreement provides a graduated approach to disciplines on subsidies – closer a subsidy brings a product to the market, stricter the discipline. Thus R&D subsidies were earlier considered to be non-actionable, while export subsidies are generally prohibited.

According to the SCM Agreement, if a country grants or maintains prohibited subsidies, then other member countries can initiate remedial actions against the errant country. Article 4 of the SCM Agreement specifies the consultation and panel process. According to this Article, a complaining member can request consultations with the offending member. If the two members fail to reach a mutually agreed solution about the subsidy within a stipulated time period, then the matter is referred to the Dispute Settlement Board (DSB) of the WTO. If the dispute settlement procedure confirms that the subsidy is prohibited, it must be withdrawn immediately. Otherwise, the complaining country can take counter-measures based on the loss of trade suffered by the Complaining Party. However, authorization from DSB is required for the appropriate counter-measures.

However, for non-prohibited actionable subsidies, a Member country can initiate remedial measures only if it proves that subsidization by the other Member country has adverse effects on the complaining country's interests. There can be three types of adverse effects. *First*, there can be injury to a

BOX 1

CRITERIA FOR DETERMINING SERIOUS PREJUDICE

(SCM, Article 6)

The Agreement earlier clarifies that serious prejudice to the interest of another country shall be presumed to have occurred, *inter alia*, where:

- Total *ad valorem* subsidization of a product exceeds 5 per cent;
- Subsidies cover operating losses sustained by an industry;
- Subsidies other than one-time measures cover operating losses sustained by an enterprise; or
- There is direct forgiveness of debt by the government.

However, these provisions have lapsed since 2004. In order to establish that serious prejudice has actually occurred, the complainant must demonstrate that the effect of the subsidy is:

- To displace or impede imports from another member country into the subsidizing country;
- To displace exports to a third country market;
- Significantly to undercut or suppress prices in the subsidizing market;
- An increase in the world market share of the subsidizing country over its average share in the previous three years for the product or commodity benefiting from subsidy.

domestic industry caused by subsidized imports in the territory of the complaining Member. This can be the sole basis for imposing countervailing measures against the subsidized imports. *Secondly*, there is the issue of "serious prejudice". Serious prejudice usually arises as a result of adverse effects of subsidies in the market of the subsidizing Member or in a third country market (e.g., export displacement). Thus, unlike injury, it can serve as the basis for a complaint related to harm to a Member's export interests (Box 1 describes the criteria for determining serious prejudice). *Finally*, there is nullification or impairment of benefits accruing under the GATT 1994. Nullification or impairment arises most typically where the improved market access presumed to flow from a bound tariff reduction is undercut by subsidization.

Under the SCM Agreement, broadly two types of remedies are possible against actionable subsidies. The affected country can conduct its own investigation to establish that subsidized imports are causing material injury to its industry. Once this is established and the procedural rules of the SCM Agreement regarding the initiation and conduct of countervailing investigations are properly followed, then the affected country can unilaterally impose an extra duty (known as "countervailing duty") on subsidized imports that are found to be hurting domestic producers. Alternately, the country can use the WTO's dispute settlement procedure to seek the withdrawal of the subsidy or the removal of its adverse effects. However, if a serious prejudice claim has to be established, the complainant has to go through the panel process, as it requires multilateral action.

Table 1 summarizes the discussion.

TABLE 1

PROHIBITED, ACTIONABLE AND NON-ACTIONABLE SUBSIDIES

Type of Subsidy	Non-Countervailable Subsidies	Countervailable Subsidies	Remedies
Non Actionable Subsidies	a. For general infrastructure	……	……
	b. Non-specific subsidies	……	……
Actionable Subsidies	Specific but non-prohibited subsidies, if they do not cause adverse effects, i.e.: - No injury - Benefits not nullified or impaired - No serious prejudice caused	Specific but non-prohibited subsidies, if they do cause adverse effects	- Consultations - Dispute Settlement through WTO or Countervailing measures
Prohibited Subsidies		Export subsidies Local content subsidies	Dispute Settlement through WTO or Countervailing measures

Source: Adapted from UNCTAD (2000).

III. Developing Countries and the SCM Agreement

The Article 27.2 of the SCM Agreement exempts the developing countries with per capita income of less than US$1,000 from the prohibition of export subsidies. According to the WTO rules of 1995, the threshold was calculated in terms of current prices. However, concerns were raised that a country may cross the per capita income threshold of US$1,000 merely by having inflation. Hence, in the Doha Round, the WTO has adopted an alternative methodology which calculates the threshold in constant 1990 US dollars. Moreover, to graduate a country must reach or cross the US$1,000 threshold (measured in terms of constant 1990 US dollars) for three consecutive years.

India's per capita income is less than this stipulated limit and therefore, the WTO rules do not prevent India from subsidizing its exports. However, the SCM Agreement imposes two restrictions on the use of export subsidies by the developing countries. The first exception to the right to use export subsidies arises if a country reaches "export competitiveness" in a certain product. The SCM Agreement requires that the export subsidy on that product should be phased out over a period of eight years. According to the SCM Agreement, "export competitiveness" in a product exists if a developing country Member's exports of that product have reached a share of at least 3.25 per cent in world trade of that product for two consecutive calendar years. However, from the SCM Agreement it is not clear that if a country subsequently loses export competitiveness after achieving it for more than two years, whether the country becomes once again eligible to introduce export subsidies. There is also considerable

TABLE 2

CV INITIATIONS AND MEASURES: TOP 5 EXPORTING COUNTRIES FROM: 01-01-95 TO 31-12-2010

2A. Top Five Countries against whom there is maximum number of CV Initiations

India	China	Korea, Republic of	Italy	European Union	Indonesia	United States
48	43	17	13	12	12	12

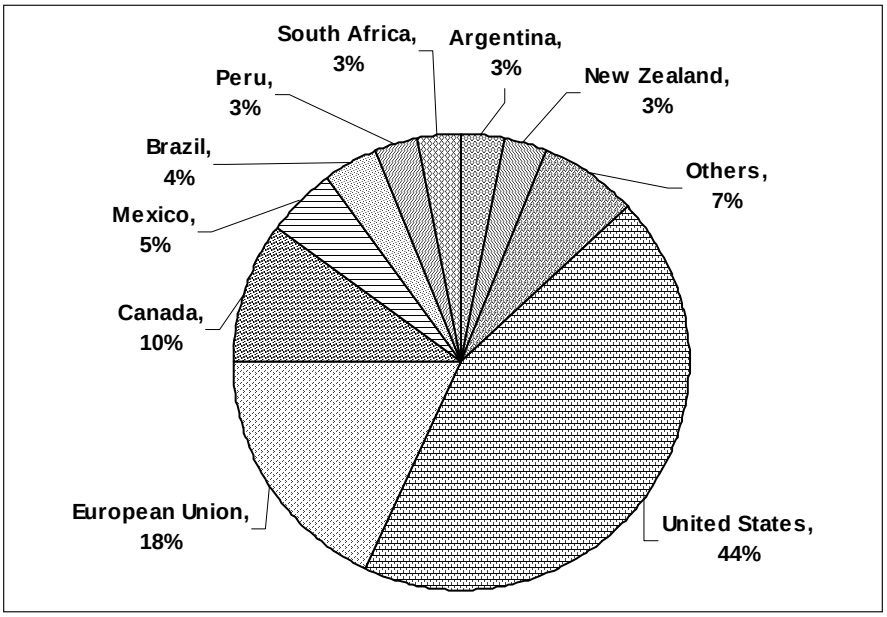
2B. Top Five Countries against whom there is maximum number of CV Measures

India	China	European Union	Italy	Brazil	Indonesia	Korea, Republic of
30	29	10	9	8	8	8

Source: WTO.

FIGURE 1

COUNTERVAILING MEASURES BY REPORTING MEMBERS (01-01-95 TO 31-12-2010)



Source: WTO.

TABLE 3

COUNTRIES THAT HAVE INITIATED OR IMPOSED CV MEASURES AGAINST INDIA (01-01-95 TO 31-12-2010)

	Brazil	Canada	European Union	South Africa	Turkey	United States	Total
Initiations	3	5	17	9	1	13	48
Measures	2	4	11	4	1	8	30

Source: WTO.

ambiguity about how a "product" is defined in terms of the SCM Agreement.[2]

It should be emphasized that even if the WTO SCM Agreement allows some developing countries to have export subsidies, this does not make the exports from these countries immune from the countervailing duties. If the conditions for imposing CVD are met, then other Member countries can impose countervailing measures on subsidized imports from the developing countries mentioned under Article 27.2. However, Article 27.10 and 27.11 allows certain *de-minimis* level (maximum permissible level) of subsidies for developing countries and for countries mentioned in Article 27.2.[3]

IV. The SCM Agreement and Its Impact on India

India is among the worst sufferers from countervailing duties among the WTO members. Since the inception of the WTO in 1995, 254 cases of countervailing measures have been initiated against exporting countries in the WTO. Among these 254 cases, 48 cases have been initiated against India. Similarly, among 158 countervailing measures taken against the WTO member countries, 30 have been against India. Tables 2a and 2b show the top 5 exporting countries against which maximum number of countervailing measures have been initiated or imposed.

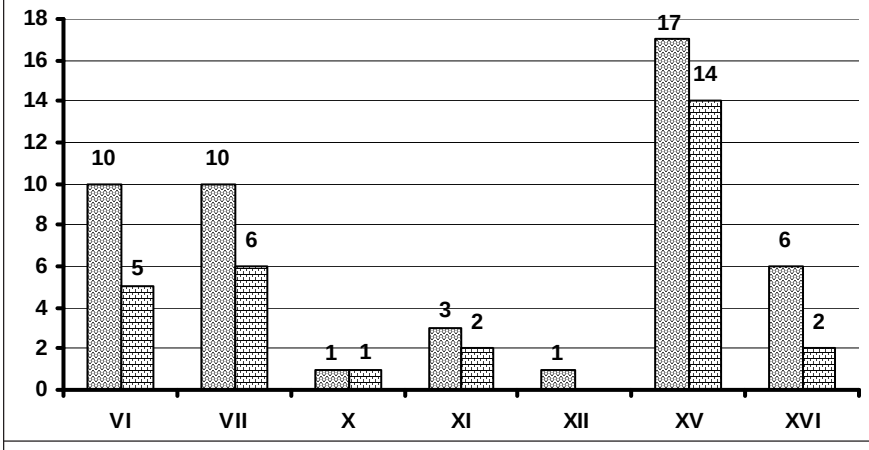
From the numbers shown above it can be calculated that about 19 per cent of all CV initiations measures have been against India. To put these figures into perspective, it should be mentioned here that India's share in global merchandise trade is only 1.3 per cent.[4] It is worth mentioning here that India has made only one CV initiation till date against any WTO Member. In 2009, an anti-subsidy probe against import of sodium nitrite from China was initiated.

If one looks at the reporting countries, it shows that developed countries are main users of CV measures in the WTO. Figure 1 shows that three countries, USA, Canada and the EU account for more than 70 per cent of total CVD measures undertaken by the WTO members (Figure 1). Six countries (Brazil, Canada, European Community, South Africa, Turkey and United States) have initiated CV measures against India and among these countries the European Union and the United States have imposed maximum number of CV measures against Indian exports (Table 3).

Sectoral analysis of CV measures against India shows that "Base Metals and Articles of Base Metals" has attracted maximum number of CV measures against India (Figure 2). These CV measures have been basically imposed against steel exports

FIGURE 2

SECTORAL DISTRIBUTION OF CV INITATIONS AND MEASURES AGAINST INDIA



Note: The section descriptions are as follows:

Section	Description
VI	Products of the Chemical or Allied Industries
VII	Plastics and Articles thereof; Rubber and Articles thereof
X	Pulp of Wood or of Other Fibrous Cellulosic Material; Recovered (Waste and Scrap) Paper or Paperboard; Paper and Paperboard and Articles thereof
XI	Textiles and Textile Articles
XII	Footwear, Headgear, Umbrellas, Sun Umbrellas, Walking-Sticks, Seat-Sticks, Whips, Riding-Crops and Parts thereof; Prepared Feathers and Articles made therewith; Artificial Flowers; Articles of Human Hair
XV	Base Metals and Articles of Base Metal
XVI	Machinery and Mechanical Appliances; Electrical Equipment; Parts thereof; Sound Recorders and Reproducers, Television Image and Sound Recorders and Reproducers, and Parts and Accessories of Such Articles

Source: WTO.

from India. India's exports of chemicals, plastics and textiles have also attracted CV measures in other WTO member countries.

It has been established that imposition of CVDs on exports from developing countries can create instability and uncertainty for these countries. UNCTAD (2000a) points out that the adverse impact of these measures on developing countries may be greater than the actual trade involved. Initiation of countervailing actions not only has an immediate impact on trade flows but it also reduces the size of the potential market as importers tend to seek alternative sources of supply. There is also evidence to suggest that in some cases countervailing measures were initiated only to harass and threaten the suppliers as there was prior knowledge that the outcome of the investigations are likely to be negative. Also the complexity of CVD and the WTO Dispute Settlement rules and procedures put significant strain on exporters and administrators of developing countries.

Because of these potential adverse effects of these trade defense measures allowed in the SCM Agreement, there is a feeling among developing countries that this agreement does not protect the interests of these countries. A proposal from India about the functioning of the SCM Agreement (TN/RL/W/4) suggests that as the industries in developing countries suffer from structural weaknesses, the state will have to play a more pro-active role in assisting the industry. It emphasizes the role of input subsidies in the industrialization process of developing countries and urges the WTO to take a more lenient view about industrial subsidies in developing countries. This proposal further argues that the S&D provisions given to developing countries have been inadequate to meet the concerns of developing countries. This proposal alleges that the benefits of the S&D concessions have largely been offset by imposition of too many countervailing duties against products originating in developing countries. Recent WTO data show that out of the 158 cases in which countervailing duty action was taken by various countries during the period 1 January 1995 to 31 December 2010, 114 cases were against developing countries. Considering the fact that the share of developing countries in world merchandise trade is less than 40 per cent, this is disproportionately high.

The Doha declaration promised to look into some of the concerns of developing countries about the SCM Agreement. The paragraph 28 of the Doha Ministerial Declaration says:

> "The ministers agreed to negotiations on the Anti-Dumping (GATT Article VI) and the Subsidies and Countervailing Measures agreements. The aim is to clarify and improve disciplines while preserving the basic concepts, principles and effectiveness of these agreements, and taking into account the needs of developing and least-developed participants.
>
> In the initial negotiating phase, participants will indicate which provisions of these two agreements they want clarified and improved in the next phase — including provisions disciplining trade distorting practices. The ministers mention specifically fisheries subsidies; they say participants should aim to clarify and improve WTO disciplines, taking into account the sector's importance to developing countries".

The Doha Implementation Decision has also looked into some of the difficulties faced by developing countries when implementing the current WTO Subsidies and Countervailing Measures Agreement. It has recognized some important issues like the need for certain subsidies for developing countries and allowing more time for some developing countries to phase out export-contingent subsidies. However, most of these issues are under negotiation and so far has not been implemented.

V. Anti-Dumping and Countervailing Duties: Similarities and Differences

While discussing the SCM Agreement, one should distinguish clearly between Anti-dumping Duties (AD) and Countervailing Duties (CVD). Sometimes AD and CVD are referred to at the same time. This is because they share a number of similarities and also many countries handle the two under a single law, apply a similar process to deal with them and give a single authority responsibility for

investigations. However, these are two different trade defense mechanisms available to the WTO members and are addressed by two different WTO agreements. If a company exports a product at a price lower than the price it normally charges in its own home market, it is said to be "dumping" the product. It is therefore a situation of international price discrimination. The Agreement on Implementation of Article VI of GATT 1994, commonly known as the Anti-Dumping Agreement (ADA), provides elaboration on the basic principles set forth in Article VI of GATT[5] to govern the investigation, determination, and application, of anti-dumping duties. The WTO Agreement on Subsidies and Countervailing Measures (SCM) on the other hand disciplines the use of subsidies, and it regulates the actions countries can take to counter the effects of subsidies. The fundamental difference between the two is while dumping is an action by a company, for subsidies, it is the government that acts either by granting subsidies directly or by requiring companies to subsidize certain customers.

Another important feature of AD and SCM is that the GATT agreement, as well as Indian laws allow that the injured domestic industry is permitted to file for relief under the anti-dumping as well as countervailing duties. However, simultaneous imposition of both countervailing and anti-dumping duties to compensate for the same situation of dumping or export subsidization is not allowed. Article VI.5 of GATT clearly specifies, "*No product of the territory of any contracting party imported into the territory of any other contracting party shall be subject to both anti-dumping and countervailing duties to compensate for the same situation of dumping or export subsidization*".

Exports from India have been targeted by both CVDs and anti-dumping duties in other WTO member countries. However, India has only used anti-dumping duties so far and has not used any CVDs against any WTO member country.

VI. The WTO Agreement on Agriculture (AoA)

Subsidies on agricultural goods are governed in the WTO by the rules of Agreement on Agriculture. There are significant differences in the way the SCM Agreement and the AoA deal with domestic and export subsidies. However, in case the subsidy on an agricultural product is found to be inconsistent with the AoA, action against it can be taken in accordance with the SCM Agreement.

AoA distinguishes between support programmes that stimulate production and trade directly, and those that are considered to have no or minimal impact on production or trade. The AoA does not impose restrictions on the later category. Support measures, which are exempt from reduction commitments, are categorized as Blue Box and Green Box subsidies. Production and trade distorting subsidies are classified as Amber Box subsidies and are subject to reduction commitments. AoA allows developed countries to have Amber Box subsidies up to 5 per cent of the value of agricultural production. This is called the "*de minimis*" level. Amber Box subsidies above the de minimis level come under reduction commitments. It was stipulated that developed countries should reduce their Amber Box subsidies from the base period level (1986-88) over a period of five years (1999-2000) by 20 per cent.

Reduction commitments of domestic subsidies proved to be least constraining during the implementation period of AoA. At the end of the implementation period, it is observed that almost all the countries have fulfilled their WTO commitments. However, it is also observed that most of the developed countries have managed to increase their total domestic support to the agricultural sector. This has been achieved through shifting of subsidies from the prohibitive Amber Box to the permissible categories of Blue and Green Boxes.

As far as export subsidies are concerned, the AoA stipulates that both the amount of export subsidies and quantities that receive export subsidies should be reduced over the implementation period. Though most of the WTO members have reduced export subsidies in the post Uruguay Round phase, its continued presence led to distortions in global markets. Agriculture is unique in this respect, as export subsidies are prohibited in the WTO in all other sectors. Also, unlike the SCM Agreement which allows export subsidy for poor developing countries, grant of export subsidy is prohibited under AoA. But as a Special and Differential

Treatment (S&D), AoA allows developing countries to have transport subsidies for exports of agricultural products. Export credit, which has a similar distortionary effect, is not disciplined under AoA. In the Uruguay Round agreement, export credit programmes were not specifically listed as subsidies subject to reduction commitments, but were given a special status that exempted them from such commitments.

The Agreement on Agriculture also contains a "due restraint" or "peace clause" (Article 13 of AoA). Peace Clause states that permissible domestic subsidies cannot be subject to countervailing duties during the implementation period, and that other ("amber") domestic support and export subsidies are subject to Countervailing (CV) action only if a determination of injury or threat thereof is established as per the Subsidies and Countervailing Measures Agreement. The "Peace Clause" provided special immunity to subsidy providers in AoA. However, the Peace Clause has expired in 2004 and many analysts are of the opinion that after the expiration of Peace Clause, many commodity-specific EC and US agricultural subsidies will be vulnerable to legal challenges (Steinberg and Josling, 2003).

The Doha Round of discussions on agriculture has hit repeated roadblocks and the treatment of different categories of subsidies is the main reason behind this. Developed countries have not yielded to the demands of developing countries to reduce and eliminate production and trade distorting subsidies.

VII. Conclusion

The discussion on subsidies and their treatment in the WTO show a distinct asymmetry about dealing with industrial and agricultural subsidies. Whereas industrial subsidies have been put under considerable discipline in the WTO, the rules are much more lenient towards agricultural subsidies. It is also ironical that while USA and EU are the two largest users of domestic support and export subsidies in agriculture, for non-agricultural goods, these two countries are the biggest users of countervailable measures in the WTO.

Many economists view this asymmetry as a fundamental problem with the prevalent multilateral trading system. For example, Stiglitz and Charlon (2004) are of the opinion that the new trade rules and domestic disciplines introduced in the WTO reflected the priorities and needs of developed countries more than developing countries.[6] According to them, many of these rules constrain developing countries' policy options and, in some cases, prohibit the use of instruments that had been used by developed countries at comparable stages of their development. Similar opinions have been expressed by Chang (2002) who argues that most developed countries, including USA and Britain, have actively used the so-called "bad" trade and industrial policies like infant industry protection and export subsidies during the earlier stages of their development. However, the WTO rules are preventing developing countries from using these practices during their catch-up period. Chang eloquently describes the situation by saying that developed countries are attempting to "kick away the ladder" by which they have climbed to the top, thereby preventing developing countries from adopting policies and institutions that they themselves used. Given the asymmetric treatment received by developing countries in the WTO, it is not surprising that multilateral trade negotiations are increasingly looking like an international stage for North-South confrontations. The negotiations under the Doha Development Agenda are currently on and in this round of negotiations the developing countries should emphasize and try to rectify the fundamental difference in approach taken by the WTO about agricultural and industrial subsidies.

NOTES

[1] The SCM Agreement, as it originally entered into force, contained a third category of specific subsidies called non-actionable subsidies. This category applied provisionally for five years ending 31 December 1999, and pursuant to Article 31 of the Agreement, could be extended by consensus of the SCM Committee. As no such consensus has been reached, the SCM Agreement no longer recognizes this category of subsidies.

[2] Creskoff and Walkenhorst (2009) say "It should be noted, however, that there is considerable uncertainty over the correct legal interpretation of the definition of a "product" in this context because of an apparent conflict in the three official texts of the SCM Agreement. In the English version of Article

27.6, a "product" is defined as a "section heading" of the Harmonized System Nomenclature, although the Harmonized System itself contains "headings" (4-digit tariff lines), and "sections" (groups of chapters). The Spanish and French versions refer respectively to "partidas" and "positions", both corresponding to the 4-digit HS level. The issue has been discussed in the SCM Committee, but no consensus view has emerged. It is much more likely that a given developing Member would reach export competitiveness in a product if a product is defined at the 4-digit HS level than if it is defined at the broader section level", p. 19.

[3] 27.10. Any countervailing duty investigation of a product originating in a developing country Member shall be terminated as soon as the authorities concerned determine that:

(a) the overall level of subsidies granted upon the product in question does not exceed 2 per cent of its value calculated on a per unit basis; or

(b) the volume of the subsidized imports represents less than 4 per cent of the total imports of the like product in the importing Member, unless imports from developing country Members whose individual shares of total imports represent less than 4 per cent collectively account for more than 9 per cent of the total imports of the like product in the importing Member.

27.11. For those developing country Members within the scope of paragraph 2(b) which have eliminated export subsidies prior to the expiry of the period of eight years from the date of entry into force of the WTO Agreement, and for those developing country Members referred to in Annex VII, the number in paragraph 10(a) shall be 3 per cent rather than 2 per cent. This provision shall apply from the date that the elimination of export subsidies is notified to the Committee, and for so long as export subsidies are not granted by the notifying developing country Member. This provision shall expire eight years from the date of entry into force of the WTO Agreement."

[4] *Source: Trade Profiles 2010*, World Trade Organization.

[5] Article VI of GATT 1994 authorizes the imposition of a specific anti-dumping duty on imports from a particular source, in cases where dumping causes injury to a domestic industry, or materially retards the establishment of a domestic industry.

[6] Stiglitz and Charlon use stronger language to denounce the use of WTO trade defense mechanisms as non-tariff measures by developed countries. They say: "*There are four important categories of non-tariff barriers: dumping duties, which are imposed when a country sells products below costs; countervailing duties, which can be imposed when a country subsidizes a commodity; safeguards, which can be imposed temporarily when a county faces a surge in imports; and restrictions to maintain food safety or avoid, say, an infestation of fruit flies. The advanced industrial countries have used all of these non-tariff barriers to restrict imports from developing countries when they have achieved a degree of competitiveness that allows them to enter their markets. Many of these measures are described as ensuring "fair trade," but from the perspective of developing countries they ensure "unfairtrade." They are evidence of the hypocrisy of the North*", p. 18.

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NEWS
(NATIONAL/INTERNATIONAL)

Food Security Law Could Push Up World Prices, Widen Subsidy Bill

THE proposed Food Security Act has the potential to stoke global food prices and significantly increase the country's food subsidy bill, officials and experts say.

The Government plans to introduce a legislation which aims to ensure food security for 75 per cent of the rural households and 50 per cent of the urban areas and includes both below poverty line and above poverty line families.

Experts say that in case there is a drought in future and procurement drops below the desired level, the Government may have to resort to imports to meet the commitment under the proposed Act and this is bound to trigger a sharp increase in global prices given the likely scale of the imports.

"Historically we have exported at low prices and imported at high prices. The global market keeps a close watch on production around the world and India is not a regular importer or exporter. So whenever India enters the global market, for example as they did in 2008, we had to import at high prices," said Vinod Kapoor, an independent trade expert.

Officials say the costs involved for running the scheme could also pose a serious challenge. They say monitoring and implementing the provisions of this gigantic plan would also prove to be a huge obstacle for the government machinery and put a huge strain on the procurement agencies.

This year the Government has procured record amount of grains but in the past ten years there have been times when the procurement was below expectations. While the option to mop up grains from the open market is available, it would put a huge strain and lead to market distortions. According to government estimates, the total requirement to implement the plan would be around 61 million tonnes.

Some experts suggest that providing cash compensation should be made an upfront provision in the legislation. Too much emphasis on wheat and rice may also hurt the process of diversification of agriculture, they argue.

(*The Times of India*, 25 July 2011)

Food Security Bill to Allow Cash Payment if Rains Fail

IN order to avoid imports of grain for implementing the proposed Food Security Bill in years when monsoon fails, the Government will include a provision in the Bill to allow beneficiaries to get cash instead of grain.

According to sources, the requirement of grain for the proposed food security cover would be 60 million tonne (mt), which is less than a third of the total production. The current procurement for the public distribution system and the buffer stocks is around 55 mt. The option of giving cash instead of grain would help the Government handle the situation of lower procurement because of failure of monsoon.

A panel headed by Prime Minister's Economic Advisory Council chairman C. Rangarajan had said earlier this year that the National Advisory Council (NAC) proposals covering a large section of the population under the Food Bill, if implemented, would have subsidy implications larger than the Council estimated. This would lead to an inevitable dependence on imports, a high-cost option, the Rangarajan panel had said. It added that the NAC

had underestimated the grain requirement for the ambitious programme and ignored the fact that if procurement was stepped up beyond a limit, it could lead to distortions in the open market. The Food Ministry concurs with these views of the panel.

"We are formulating a Bill which would take into account our storage capacities, besides incorporating some exigencies clause," said Food Minister K.V. Thomas.

An empowered group of ministers (EGoM) on food had approved the Food Bill which seeks to provide legal entilement of subsidized grain to more sections of the population, apart from those below the poverty line.

According to the Bill, 75 per cent of the rural households will get subsidized grain under the epochal law. Of these, 46 per cent households would be considered as "priority" category, and each person in these households will get 7 kg of grain a month at heavily subsidized prices — ₹2 per kg for rice, ₹3 for wheat and ₹1 for coarse grains. In case of urban centres, out of the 50 per cent of the total households to be covered under the scheme, 28 per cent would get "priority" status.

The EGoM had opted to tread the middle path between the NAC and PMEAC. The NAC wanted legal entitlement to be extended to 90 per cent of the rural households and 75 per cent of the urban households. The Rangarajan Committee had raised concerns over the availability of grain for such a cover.

(*The Financial Express*, 14 July 2011)

Subsidy Bill on Fuel, Food may Overshoot Budget Targets: Pranab

THE Centre's subsidy bill on fuel, fertilizers and food may overshoot budgeted targets for 2011-12, if crude oil prices do not come down, Finance Minister Pranab Mukherjee has warned.

For 2011-12, the Centre had estimated the petroleum subsidy bill at ₹23,640 crore, much lower than the level of ₹38,386 crore spent under this head in 2010-11. While the fertiliser subsidy for 2011-12 has been budgeted at ₹49,998 crore (₹54,977 cr), the food subsidy bill for 2011-12 is estimated at ₹60,573 crore (₹60,600 cr).

Many economy watchers had noted in March this year that petroleum subsidy provided for 2011-12 may not be adequate. But the Finance Ministry had defended its move stating that the amount provided at the budget estimate stage was higher than the level of ₹3,108 crore (BE) provided for 2010-11.

"We have to factor in the volatility of international commodity prices, especially fuel. Perhaps, our projected subsidy may have to increase if oil prices do not show any downward trend. Food, fertiliser subsidy is also increasing," Shri Mukherjee told reporters after addressing a board meeting of Nabard, which is entering into 30th year of its existence.

Austerity Measures

Incidentally, Shri Mukherjee was the Union Finance Minister when Nabard started its journey 30 years back. A higher subsidy bill may place some pressure on the Finance Minister in reining fiscal deficit at targeted 4.6 per cent of GDP for 2011-12.

To avoid wasteful expenditures and meet the revenue and fiscal deficit targets announced in 2011-12, the Finance Ministry introduced with immediate effect certain economy measures.

Now, Ministries will have to observe austerity measures in organizing conferences/seminars/workshops; purchase of vehicles and foreign travel. There will also be a total ban on creation of Plan and non-plan posts.

The only exception will be for new organizations which are set up during the course of the current year based on already approved schemes.

"I have announced austerity. The Prime Minister has accepted my note. I am interested to have some austerity measures to avoid wasteful expenditures, but not productive expenditures," Shri Mukherjee said. On the revenue front, he said that there was no cause for worry as there was "revenue buoyancy" and was moving on expected lines.

He also made it clear that he was not going to expand government borrowing despite likely higher payouts on subsidies.

"But surely, I am not going to expand borrowing. I will plan my borrowing in consultation with the RBI in a manner that private sector is not elbowed out," he said.

(*The Hindu Business Line*, 13 July 2011)

EU Extends, Expands Antidumping, Countervailing Measures

ON 5 May the Council of the European Union adopted regulations to extend the antidumping and countervailing duties that currently apply to imports of biodiesel originating in the US to imports of biodiesel consigned from Canada. The antidumping and countervailing duties have also been extended to apply to imports of biodiesel blends of fuel containing 20 per cent or less biodiesel by weight that originates from the US. In addition, the adopted regulations terminate the EU's investigation regarding biodiesel imports consigned from Singapore.

According to information posted to the Europa website, the definitive antidumping duty ranges from •0 to •198 per metric ton of biodiesel imported from the US. The countervailing duty ranges from •211 to •237 per metric ton.

Documentation sourced from Europa further states that the European Commission received a request from the European Biodiesel Board in June 2010 to investigate the possible circumvention of antidumping measures that had been established. The request alleged that US biodiesel-blended fuel containing 20 per cent or less biodiesel was being exported to Europe *via* Canada and Singapore. The request also alleged that a significant change in pattern of trade involving biodiesel exports from the US, Canada and Singapore had taken place since the duties and had been established, and that the remedial effects of the existing antidumping measure on the product concerned were undermined in terms of quality and price.

To complete its investigation, questionnaires were sent to biodiesel producers and exporters in the US, Canada and Singapore. According to information posted to the Europa website, interested parties were given the opportunity to make their views known in writing and to request a hearing. Those responding to the questionnaire included two Canadian companies, two companies based in Singapore, and three US companies.

The investigation concluded that US biodiesel did flow through Canada to Europe, effectively circumventing the required duties. This was not found to be true in Singapore, and that portion of the investigation was terminated.

The EBB issued a statement in support of the EU's actions on 9 May 2011. According to the EBB, the Council has adopted two anticircumvention measures as a result of the investigation. *First*, the definitive antidumping and countervailing duties have been retroactively extended to apply to biodiesel consigned from Canada since 13 August 2010. The maximum combined duty for antidumping and countervailing in this case will be •409,2 per metric ton. *Second*, the Council has retroactively extended the definitive antidumping and countervailing duties to all imports of US biodiesel below the 20 per cent threshold since 13 August 2010. For US companies already investigated in 2009 the combined per-company duties will apply, ranging from •213,8 to •409,2 per ton. Other US companies will be subject to the highest combined duty in proportion to the biodiesel content in the blend.

"The anticircumvention measures adopted by the Council represent a decisive move to ensure that the remedial effect of the EU duties on US biodiesel is fully maintained over time," said EBB Secretary General Raffaello Garofalo. "Operators should be aware that any future attempt to circumvent the existing duties can be investigated and remedied in the same way, with retroactive financial implications for the companies involved."

(http://biodieselmagazine.com)

Countervailing Reviews: Countering Subsidized Exports or Countering Subsidy Programmes?

THREE remedies are available to the domestic industry injured by international trade, two of which deal with unfair trade. The *first,* and most commonly used instrument, is anti-dumping, which is used against injurious dumping. The *second* instrument, which forms the basis of this Trade

Brief, is countervailing. Countervailing measures are used to counter the injurious effect of subsidized exports.

Following an investigation the International Trade Administration Commission (ITAC) in 2002 imposed countervailing duties on wire, rope and cable imported from India. On 19 January 2007, ITAC initiated an interim review of the countervailing duty against India, following acceptance of a properly documented application by an Indian exporter. The exporter alleged that one of the two subsidy programmes which had been countervailed in 2002 no longer existed and that the benefit of the other programme, the Duty Entitlement Passbook Scheme DEPB), had been reduced from 10 to 3 per cent. It alleged further that as the total benefit received by it amounted to less than 3 per cent, the countervailing duties against it had to be terminated as it was located in a country listed in Annexure VII(b) of the World Trade Organization (WTO) Agreement on Subsidies and Countervailing Measures (SCM Agreement).

In response the domestic industry submitted evidence that the decreased benefit under the DEPB was being increased and that there were now several other subsidy programmes available to the exporter. ITAC found that the scope of an interim review was limited to the specific programmes that had previously been countervailed and that it could not take into consideration any other programmes. In addition, it found that as the higher rates on the DEPB had not been promulgated or in effect during the period of review, such higher rate could also not be taken into consideration.

(http://www.tralac.org)

Africa's Experience with Anti-Dumping, Countervailing and Safeguards

THE financial crisis which started in mid-2007 due to turmoil in the financial sector and credit shortages has spread to other parts of the economy including a contraction in asset prices, demand and production. Trade has also been affected due to a decline in credit to finance imports and exports.

The deterioration in the global economy became evident in the second half of 2008 and the first quarter of 2009. Although world trade grew by 2 per cent over 2008, the current economic downturn has led to a decline in exports and imports for developed and developing economies since September 2008. The WTO Secretariat has adjusted its forecast for merchandise trade to a 10 per cent decline in volume for 2009. A factor which has attributed to the decline in trade is an increase in protectionist measures. Historical evidence suggests a strong link between an economic downturn and exchange rate shocks and the increase in use of contingent protection, like anti-dumping measures and safeguards.

Contingent protection measures are usually utilized in exceptional circumstances, however, during an economic crisis the implementation of these measures among trading partners can have adverse economic effects with few advantages which are generally used to justify their implementation. In the current financial climate governments are under pressure to adopt measures which restrict trade in order to protect their domestic industries, employment and income.

Although the G-20 countries have made a commitment to refrain from implementing protectionist measures, virtually all of these countries have turned to trade remedy policies in response to a demand for protection from import competition. The second quarter of 2009 has shown a dramatic increase in the utilization of import protectionist measures in comparison to 2008 with the spread of the financial crisis. In the second quarter of 2009, compared to the same time period in 2008, there has been an increase of 12.1 per cent in the initiation of investigations under trade remedy laws. With the increase of investigation in 2008 and the first and second quarter of 2009, it is expected that the increase in the implementation of final measures will continue to increase during the rest of 2009 and into 2010.

Although African countries have not been a major role player in the implementation of trade remedies and safeguards during the financial crisis, Willemein Denner says that African exports have been the subject of investigations and final

measures in the past. Exports from South Africa and Egypt have also been targeted in anti-dumping investigations and the imposition of final duties during the current global crisis. The data on Africa's experience on anti-dumping, countervailing and safeguards shows the following:

- Since 2000 until July 2009 African exports have been the subject of 2 per cent of the total anti-dumping investigations by all countries. South Africa (80%); Egypt (11%); Libya (4%); Algeria (2%) and Nigeria (2%) have been targeted by anti-dumping investigations during this time period.
- Anti-dumping investigations and final measures on African exports was the highest in 2001 and 2004 irrespectively. Since 2007 to the end of 2008 there has been an increase in the initiation of anti-dumping investigations and the implementation of final anti-dumping duties on export products from South Africa and Egypt.
- The African products mostly targeted by final anti-dumping measures are Base metals (65%); Chemical products (21%); Food, beverages and tobacco (4%) and Textiles and clothing (4%), since 2000 until the end of 2008.
- African exports have not been a main target for the implementation of countervailing duties, with only exports from South Africa, Zimbabwe and Côte d'Ivoire being targeted up to the end of 2001 with no countervailing duties imposed during the financial crisis.
- Egypt, Morocco and South Africa have implemented final safeguard measures. Egypt has implemented safeguards on Safety matches; Fluorescent lights and Powdered milk which have all expired, while the safeguard on Blankets only expires in 2011. Morocco applied safeguards to the importation of Bananas and Ceramic tiles of which both have expired, while the South African safeguard on Lysine was applicable until 2010.

(Global Anti-Dumping Database; *WTO World Trade Report (2009)*

(http://www.tralac.org)

Malaysia's Countervailing and Anti-Dumping Administration

THE purpose of establishing Malaysia's countervailing and anti-dumping legislation is to empower the Investigating Authority to take remedial measures against unfair trading by foreign manufacturers/exporters and to provide a framework for investigating allegations of injury caused by dumped or subsidized imports.

Malaysia's international rights and obligations in this area are governed by its membership in the WTO and of the WTO Agreements on Anti-Dumping and Subsidies & Countervailing Measures.

Dumping and Subsidies - Are You Affected?

If you are a producer/manufacturer or your activities are dependent on a Malaysian industry either directly or indirectly, or an exporter or an importer in Malaysia, then you need to know about dumping and subsidies to facilitate your understanding of Malaysia's countervailing and anti-dumping legislation.

If you are involved in a Malaysian industry, exporting to Malaysia or an importer in Malaysia, then you need to know about dumping and subsidies to facilitate your understanding of Malaysia's countervailing and anti-dumping legislation.

What is dumping?

Dumping occurs when the "export price" of the product in Malaysia is less than the "normal value" of the same or "like product" in the domestic market in the country of export or origin.

In other words, dumping is an international price discrimination whereby a company charges more in its home market than in the export market.

What is "export price"?

Export price is the price actually paid or payable for the "subject merchandise" (alleged foreign products that are sold in Malaysia at dumped prices). In cases where there is no export price or where it appears that the export price is unreliable because of association or a compensatory arrangement between the exporter and the importer

or a third party, the export price may be constructed on the basis of the price at which the subject merchandise is first resold to an independent buyer.

What is "subject merchandise"?

Subject merchandise means the class or kind of merchandise imported or sold for importation into Malaysia that is the subject of any countervailing or anti-dumping duty action under Act 504.

What is "like product"?

Like product means a product which is identical or alike in all respects to the subject merchandise, and may include any other product which has physical, technical or chemical characteristics, applications or uses that resembles those of the subject merchandise.

What is "normal value"?

Normal value is the price paid in the ordinary course of trade in the domestic market of the country of export. Sales used to ascertain normal value must be profitable and unaffected by any relationship between buyer and seller.

Nonetheless, where there are no sales in the domestic market of the exporting country or when such sales do not permit a proper comparison, normal value may be ascertained based upon:

- sales by the manufacturer/exporter to a customer in an appropriate third country; or
- the cost of production plus a reasonable amount for administrative, selling and general costs and profit. All the costs and profit normally calculated based on the actual data incurred by the manufacturer/exporter in the country of origin/export.

Note!!!

Inevitably, there are differences in the circumstances of export and domestic sales which affect price comparability such as the conditions and term of sales, taxation, quantities and physical characteristics. Therefore, in order to effect a fair comparison between the normal value and the export price, these differences are accounted for in each case on its merits. It is only after these adjustments have been made that there is a basis for fair comparison of the normal value and the export price which will normally be compared at the same level of trade and in respect of sales made at as nearly as possible the same time.

What is "dumping margin" and "anti-dumping duty"?

Dumping margin is the difference between the normal value and the export price. Anti-dumping duty usually is based on the dumping margin calculated. The equation is shown below:

DUMPING MARGIN (DM) = NORMAL VALUE (NV) - EXPORT PRICE (EP)

or

{as percentage (%) of export price}

$$DM = \frac{NV - EP \times 100 \text{ per cent}}{EP}$$

What is subsidy and countervailing duty?

Subsidization occurs when the government/public body of the exporting country or country of origin provides financial assistance to their domestic manufacturers/exporters that benefits directly or indirectly on the production, growth, processing, purchase, distribution, transportation, sales or export of products. The subsidy can be the result of any scheme, programme or practice provided or implemented by a government such as loans, grants and tax incentives. The measure is imposed to offset injury to the Malaysian industry from the effects of subsidized imports. The measure is in the form of imposing a countervailing duty.

What is "material injury"?

Material injury occurs when the Malaysian industry has suffered or is threatened with significant injury to its business or, the establishment of a Malaysian industry is adversely affected. There are many ways to demonstrate material injury sustained by the Malaysian industry but it is generally categorized into price effect, volume effect and profitability effect.

Price Effect - what does it mean?

The effect of dumped or subsidized imports on prices of the like product in the domestic market in

forms of price undercutting, price depression or price suppression. Price undercutting occurs when the dumped or subsidized imports undercut the selling price of the Malaysian industry's selling price.

Price depression occurs when the Malaysian industry is forced to reduce its selling price in order to compete with the dumped or subsidized imports. Price suppression occurs when the Malaysian industry is unable to raise its selling price in line with the increase in costs of production. In this context, the margin between costs and prices is reduced.

Volume effect - what does it mean?

The consequent impact of dumped or subsidized imports on the Malaysian market pertaining to economic factors such as volume injury in terms of loss or potential loss of sales volume or market share.

Profitability effect - what does it mean?

The effect of reduced profit which may result from downward pressure on prices, reduction in sales volume or the inability to absorb the increase in costs.

Note!!!

Apart from the above main factors, there are many relevant economic factors that may be considered in relation to the Malaysian industry. These may include a reduction in employment and wage levels, production levels, capacity utilization, forward orders, return on investment, cash flow, ability to raise capital, investment, increased inventory holding caused by decreased sales volume and pricing pressure.

It must be emphasized that the affected domestic industry must provide evidence to show that the material injury is caused by dumped or subsidized imports. For example, a decline in market share must be directly related to an increase in the market share of the dumped or subsidized imports.

What action may be taken?

Anti-dumping or countervailing measures may be imposed against dumped or subsidized imports when the Malaysian industry concerned can demonstrate that those dumped or subsidized imports had caused, or threaten to cause material injury to the domestic industry producing like products or had materially retarded the establishment of such industry.

How will this affect importers and manufacturers and exporters?

In advising importers and foreign manufacturers and exporters of the initiation of an investigation, the Investigating Authority will also distribute a set of questionnaires to acquire information such as export and import transactions. This information is required to be submitted within a certain period of time, usually within 30 days of the initiation notice. The Investigating Authority may then visit the premises of the importers and manufacturers and exporters to verify the information provided in response to the questionnaires.

Investigations involving the foreign manufacturers and exporters are concerned with assessing normal value and establishing whether dumping or subsidization exists, whereas investigations involving the importers are aimed at determining the export price and whether all costs are recovered in the sale of the imported products in the Malaysian market.

Who can submit an anti-dumping or a countervailing petition?

When a Malaysian domestic industry is of the view that there is evidence of subsidy and/or dumping and that the subsidy and/or dumping is causing injury, a written petition may be submitted to commence the process of a countervailing and/or an anti-dumping action to the Investigating Authority of MITI. It must be noted that mere assertions, unsubstantiated by relevant evidence, cannot be considered sufficient to meet the requirements of a properly documented petition.

Under the Malaysian legislation, a written petition must be filed by or on behalf of the domestic industry and should contain sufficient evidence of dumping (or in the case of a countervailing action, evidence of subsidized imports), injury and a causal relationship between the dumped (or subsidized) imports and the alleged injury.

In this context the petitioner must show that the petition is supported by the domestic producers whose collective output/production constitutes more than 50 per cent of the total production of the domestic producers expressing either support or opposition to the petition and the domestic producers expressing support to the petition amount to 25 per cent of the total production of the domestic industry.

What should be included in a written petition?

A written petition must provide information and sufficient supporting evidence of the following:

- the identity of the petitioner, its production volume and value.
- the identity of other domestic producers of the like product in Malaysia, their production volume and value.
- the 50 and 25 per cent rule mentioned and whether the petition is made by or on behalf of the domestic industry.
- a complete description of the alleged dumped import such as its physical & technical characteristics, usage & functions, manufacturing methods & technology, industry specifications, pricing, distribution & marketing and tariff classification.
- the name of the alleged country, that is, the exporting country or country of origin.
- the identity of each known foreign producer or exporter of the dumped or subsidized imports.
- the identity of the importers of the dumped or subsidized imports · estimate the normal value, export price and dumping margin or amount of subsidy.
- the evidence of injury suffered by the domestic industry and demonstrate how the dumped or subsidized imports have caused, or are likely to cause material injury or retard the establishment of such industry.
  - analysis on the evolution of imports volume of the subject merchandise. In this context indicate whether there had been a significant increase in dumped or subsidized imports either in absolute terms or relative to production or consumption in Malaysia.
  - analysis on the effect of the dumped or subsidized imports on prices of the like products in the Malaysian market, that is whether there has been significant price undercutting, price depression or price suppression.
  - analysis on the consequent impact of the dumped or subsidized imports on the domestic industry, that is, whether the domestic industry is suffering from the actual or potential decline in sales, market share, profit, output, productivity, return on investment or utilization of capacity and whether the domestic industry is suffering from the actual or potential negative effects on cash flow, inventories, employment or wages.

Note!!!

There are minor differences in the information required in an application for countervailing action. As normal value is only relevant to dumping, an application alleging subsidization need not show a normal value for the products. Instead the application needs to indicate how the subsidy operates and how much subsidy is provided on the products exported to Malaysia.

How does the investigation proceed?

Normally, the investigation has four phases:

- Pre-lodgement phase - during which applicants or petitioners prepare their submission.
- Filing of petition - *prima facie* inquiry in which the Investigating Authority determines whether the facts as presented, if proven would constitute a case.
- Initiation and preliminary investigation - the Investigating Authority considers whether the alleged products are dumped or subsidized and, if so, whether the dumping or subsidization is causing material injury to the domestic industry manufacturing the like product. An affirmative finding at this stage may lead to provisional measures being applied.
- Final investigation - the Investigating Authority determines whether a recommendation should be made for the imposition of definitive anti-dumping or countervailing duties.

An overview of the four phases are as follows:

Phase 1 (Pre-lodgement)

During the pre-lodgement phase, the potential applicant/petitioner may contact the officers of Trade Practices Section for assistance in understanding the requirements of a written petition.

Phase 2 (Filing of petition)

This is a *prima facie* phase. The Investigating Authority must examine the accuracy and adequacy of the evidence contained in the written petition and any other available information to determine whether in fact there is sufficient evidence to warrant the initiation of an investigation. The Investigating Authority is allowed 30 days to make a decision whether to accept or reject the petition. If the petition is accepted, the Investigating Authority must notify the petitioner and publicly announce the initiation of the investigation.

Phase 3 (Initiation and preliminary determination)

Following initiation, the Government shall carry out a full investigation of the alleged dumping or subsidy, material injury and causal link, and make a preliminary determination within 120 days (can be extended by another 30 days) from the date of the publication of the notice of initiation of investigation. During this preliminary investigation period, the alleged parties are given the opportunity to defend their interest by submitting the relevant data pertaining to the case.

Where there is an affirmative preliminary determination of dumping or subsidy consequent injury to a domestic industry, temporary duty known as provisional measures in the form of a bank guarantee or bank draft may be applied against the future importation of the products only if such a measure is considered necessary to prevent injury being caused during the period of investigation. Provisional measures shall not be applied for sooner than 60 days from the date of initiation of the investigation and the period of application of such measures should normally not exceed 4 months (can be extended by another 30 days).

Where there is a negative preliminary determination with regard to the existence on dumping or subsidization and injury, the Investigating Authority shall publish a notice stating the reasons for the negative determination.

Phase 4 (Final determination)

The Investigating Authority must make a final determination of dumping or subsidization and injury within 120 days from the date of the publication of the notice of preliminary determination. During the final investigation period, the Investigating Authority will carry out on-site verification visits of the alleged parties to verify the data submitted to ensure its accuracy and relevance. The investigation is intended to further establish and verify dumping, injury and causation to justify the application of definitive duty.

Where there is an affirmative final determination, a definitive duty will be imposed for a period of 5 years from the date of publication of the notice of final determination. Where there is a negative final determination, a notice stating the reasons for the negative determination and termination of investigation is published.

Undertakings – what does it mean?

There are provisions in the Malaysian legislation for the acceptance by the Investigating Authority of undertakings by manufacturers or exporters. An undertaking is an agreement by the alleged manufacturer or exporter to conduct its future export trade in such a manner that it will not cause injury to the domestic industry. Undertakings if offered can only be accepted after affirmative preliminary determination has been reached by the Investigating Authority.

In the case of subsidy, an undertaking is an agreement by the government of the exporting country to eliminate or limit the subsidy or take other measures concerning its effects on the Malaysian domestic industry.

Administrative Review – what does it mean?

Both the countervailing and anti-dumping duties will only remain in force as long as and to the extent necessary to counteract subsidies or

dumping which is causing injury to the domestic industry. In this regard, Malaysia's countervailing and anti-dumping administration provides for administrative review after at least one year has lapsed from the date of the publication of the imposition of the definitive duties. Administrative review may be sought in the following situations:

- where there are changed circumstances in the dumping margin or the amount of subsidy,
- where the duties imposed or undertakings are considered no longer necessary or otherwise be maintained.

(http://www.miti.gov.my)

The WTO Agreement on Subsidies and Countervailing Measures (ASCM)

THE ASCM, which came into force in 1995, established rules not only on how and when CVDs could be applied, but also on what kinds of potentially trade-distorting subsidies would be allowed, and what remedies were available to countries that felt they had been adversely affected by another country's subsidies.

Only two kinds of subsidy are prohibited by the ASCM (Article 2): export subsidies, and subsidies contingent upon the use of a domestically produced over imported goods. All other "specific subsidies", which are subsidies that benefit only particular companies or industries, are allowed, but actionable. "Actionable" means that if adverse effects can be demonstrated, the affected country can take one of several actions.

If the main concern of the complaining Member (the WTO does not use the word "country") is displacement of goods sold in its own market as a result of a non-prohibited subsidy, that Member may apply a countervailing duty. If the complaining Member's main concern is displacement of its exports in the subsidizing Member, or in a third country, by a prohibited or actionable subsidy, it may seek remedies through the WTO.

(http://www.globalsubsidies.org)

WTO: Beyond the Agreement on Agriculture - Safeguards

THE Agreement on Safeguards took effect with establishment of the World Trade Organization on 1 January 1995. It builds on the 1947 General Agreement on Tariffs and Trade (GATT), which allows members to impose temporary border control measures called safeguards if a surge of imports causes or threatens to cause serious injury to a domestic industry. An import surge justifying safeguard action can be a real increase in imports (an *absolute* increase); or it can be an increase in the imports' share of a shrinking market, even if the import quantity has not increased (*relative* increase).

The Agreement on Safeguards sets out criteria for assessing whether "serious injury" is caused or threatened, as well as the factors to be considered in determining the impact of imports on the domestic industry. When imposed, a safeguard measure should be applied only to the extent necessary to prevent or remedy serious injury and to help the industry to adjust. Where quantitative restrictions (quotas) are imposed, they normally should not reduce the quantities of imports below the annual average for the last 3 representative years for which statistics are available, unless clear justification is given that a different level is necessary to prevent or remedy serious injury.

In principle, safeguards are meant to apply to all suppliers, although the special and differential treatment provisions of the Safeguards Agreement exempt actions against developing countries with market shares of less than 3 per cent, unless the cumulative shares of developing countries is greater than 9 per cent . In the case of quotas, the agreement describes how they can be allocated among supplying countries, including in the exceptional circumstance where imports from certain countries have increased disproportionately quickly.

A safeguard measure should not last more than 4 years, although this can be extended up to 8 years, subject to a determination by competent national authorities that the measure is needed and that there is evidence the industry is adjusting. Measures imposed for more than a year must be progressively liberalized.

When a country restricts imports in order to safeguard its domestic producers, in principle it

must give something in return. The exporting country (or exporting countries) can seek compensation through consultations. If no agreement is reached, the exporting country can retaliate by taking equivalent action—for instance, it can raise tariffs on exports from the country enforcing the safeguard measure. In some circumstances, the exporting country has to wait for 3 years after the safeguard measure is introduced before it can retaliate in this way—i.e., if the measure conformed with the provisions of the agreement and if it was taken as a result of an absolute increase in the quantity of imports from the exporting country.

(http://www.ers.usda.gov)

WTO: Anti-Dumping, Anti-Subsidies and Countervailing Measures and Safeguards

THE World Trade Organization (WTO) agreement contains 3 principle trade defence instruments. These are the anti-dumping, anti-subsidy and safeguard instruments.

Anti-dumping is designed to allow countries to take action against dumped imports that cause or threaten to cause material injury to the domestic industry. Goods are said to be dumped when they are sold for export at less than their normal value. The normal value is usually defined as the price for the like goods in the exporter's home market.

Anti-subsidy measures allow importing countries to take action against certain kinds of subsidized imports. Broadly speaking, "subsidies" are defined as financial assistance from a government to a company or group of companies. Some types of subsidy (e.g. export subsidies) are prohibited under the WTO Agreement; others are "actionable", which means that an importing country has to demonstrate that the subsidized imports have caused damage to the domestic industry of the importing country.

Safeguards: The rationale behind both anti-dumping and anti-subsidy is that countries are entitled to take action in cases of unfair foreign competition. Safeguards carry no such accusation that the competition is unfair. Safeguards are designed to protect countries from unforeseen surges in imports that cause or threaten to cause serious injury to the domestic industry.

The WTO also provides a dispute settlement procedure for the resolution of disputes over the use of the instruments. The UK is party to all the WTO trade defence instruments, namely the Anti-Dumping Agreement, the Agreement on Subsidies and Countervailing Measures and the Agreement on Safeguards.

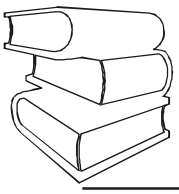
The purpose of all these agreements is to ensure consistency in the use of trade defence instruments by all WTO members. The UK attends the separate WTO committee on Anti-dumping measures, Subsidies and Countervailing measures and Safeguards, although the European Commission speak for the EU in these groups.

As a result of the WTO agreement at Doha in November 2001, there will be negotiations aimed at clarifying and improving disciplines under the Anti-Dumping and Anti-Subsidy Agreements. There will also be negotiations to address issues and concerns that have been raised by developing countries over the implementation of the existing instruments.

The Anti-Dumping Agreement

The Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, the Anti-Dumping Agreement (AD), governs the application of anti-dumping measures by Members of the WTO. Anti-dumping measures are unilateral remedies which may be applied by a Member after an investigation and determination by that Member in accordance with the provisions of the AD Agreement, that the dumped imports are causing material injury to a domestic industry producing the like product. Measures usually take the form of additional duties but occasionally take the form of an agreement by the exporters of the product in question not to sell that product below a certain price.

The Agreement sets out certain substantive requirements that must be fulfilled in order to impose an anti-dumping measure, as well as detailed procedural requirements governing the conduct of anti-dumping investigations and the imposition and maintenance of anti-dumping measures. ●



BOOKS/ARTICLES NOTES

BOOKS

Anti-dumping and Countervailing Measures: **The Complete Reference** by R.K. Gupta, Response Books, New Delhi, 1996.

IN its opening remarks, the publication says that with the opening up of economies in many parts of the world and globalization of markets, one has to face competition not only from units within the country, but also from those set up elsewhere who can push their goods in the world markets at much lower prices. With the lowering of customs tariffs, and gradual removal of non-tariff barriers, observation of fair trading practices has assumed far greater importance. While the domestic industry in the importing country has to protect itself from dumped or subsidized imports, the exporters need to safeguard their interests against undue protective measures taken by the importing countries.

The Agreement on Subsidies and Countervailing Measures, it says, provides for levying of countervailing duty to offset any bounty or subsidy granted directly or indirectly on the manufacture, production or export of a product in the country of origin or exportation, including any special subsidy to the transportation of a particular product.

The book provides basic information that may be useful to the domestic industry, importers, exporters and government officials in initiating investigations against dumped or subsidized imports.

It has been presented in nine chapters. Chapter I discusses the role of major stakeholders in an anti-dumping or countervailing investigation. Chapter II deals with the ingredients of injury and the link that is necessary to be established between the dumped imports and injury before taking an anti-dumping action. Chapter III focuses on various procedural obligations on the part of the investigating authorities. These are meant to ensure that the authorities do not act arbitrarily and in a protectionist manner. Chapter IV covers the procedure followed by Indian authorities to investigate causes of imports dumped into India. Chapter V deals with various protective measures which may be imposed in the form of price undertaking, a provisional duty in the form of a bond or cash deposit and definitive duties. Chapter VI studies subsidies which mean a financial contribution or any form of income or price support by a government or public body which confers benefits. Chapter VII deals with a host of countervailing measures followed by the US, the EC and the Indian authorities. Chapter VIII explains the provisions regarding Judicial Review Consultation and Settlement of Disputes under the Agreement on Implementation of Article VI of GATT 1994 and Agreement on Subsidies and Countervailing Measures. Chapter IX briefly discusses some important cases. The Chapter also highlights a case relating to countervailing investigation against exports of iron metal castings from India by the US. It gives an insight into the functioning of the US countervailing systems.

The publication has also two revised editions, brought out in 1998 and 2003.

Anti Dumping and Anti Subsidy Measures: Answers to Frequently Asked Questions, Directorate General of Anti-Dumping & Allied Duties, Ministry of Commerce & Industry, Government of India, April 2001.

THE publication is a booklet which aims to bring in one place the issues and the clarifications relating to the fundamental concepts and procedural provisions of anti-dumping and other measures. India, it says, is firmly committed to the principle of free and fair trade among nations. While a major step has been taken by India towards establishment of free trade

regime with the phasing out of Quantitative Restrictions on Imports, there is also a need to ensure fair trade. Depending upon the need, several anti-dumping, anti-subsidy, countervailing and safeguard measures have been invoked in the past. All these measures, it says, are in the nature of trade remedies, which the domestic industry could take advantage subject to the fulfilment of essential conditions and criteria as mandated under the law. The government has already put in place the requisite legal and institutional mechanism for administering these measures. However, various concepts and legal and operational aspects involved in these schemes need to be understood in the proper sense and in the right perspective.

Further, it says that under the existing WTO arrangement, and in terms of various provisions under the Customs Tariff Act of 1975 (as amended in 1995) and Rules framed thereunder, anti-dumping and allied measures constitute the legal framework, within which the domestic industry can seek necessary relief and protection against dumping of goods and articles by exporting companies and firms of any country from any part of the world. These measures have assumed a great deal of relevance in India in recent times in view of the scenario arising out of unfair trade practices adopted by some of our trading partners, especially in the post-QR phase.

The anti-dumping and allied measures, it says are complex legal disciplines which are often not within the easy comprehension of the trade and industry who are the users of these measures. To obviate this difficulty faced by large sections of the domestic industry, there is a need to explain the basic concepts, legal provisions and procedural aspects in clear and easy language for their benefit. This will facilitate the domestic industry to avail of these remedial measures in the wake of alleged dumping and of injury caused by unfair trade practices.

The booklet has been prepared in the form of a ready reckoner with the objective of disseminating information and generating public awareness on the subject of anti-dumping and allied measures. It provides a comprehensive explanation of the anti-dumping law and procedures in India.

WTO Anti-Dumping and Subsidy Agreements: A Practitioner's Guide to "Sunset" Reviews in Australia, Canada, the European Union, and the United States by Terence P. Stewart and Amy S. Dwyerm, Kluwer Law International, The Hague, 1998.

THE publication, at the outset, states that during the Uruguay Round of multilateral trade negotiations, member states agreed to establish a time limit for anti-dumping and countervailing duty measures. The new "sunset" provision requires member states to allow a measure to expire after five years from its imposition. Some member states such as the European Union (EU), Canada, and Australia already had comparable sunset requirements in existing legislation and did not have to make out substantial changes to their domestic legislation to implement the new sunset requirement. Other member states such as the US were required to modify their domestic legislation to incorporate the new sunset requirements.

Finally, the book makes a comparison of the procedural requirements and substantive consideration in the sunset review systems.

ARTICLES

Agriculture Subsidy, WTO and the South by Dr. A.C. Prabhakar, *India Quarterly*, Vol LIX, Nos. 3&4, July-Dec. 2003, New Delhi.

THE article makes a host of suggestions for the developing countries to safeguard their interests relating to agriculture. These are as under:

"Zero-tolerance" on Agricultural Subsidies

Developing countries should categorically make it clear that negotiations will move ahead only when the subsidies (under all boxes) are removed. The Agreement on Agriculture should wait till the subsidies in the West are grounded. Any agreement without the subsidies being removed will play havoc with developing countries' agriculture.

Restoration of Quantitative Restrictions (QRs)

Developing countries should demand restoration and special safeguard measures for

those countries which did not follow the QR route. In fact, the removal of subsidies should be linked with the removal of quantitative restrictions. That alone will provide the necessary safeguard for developing countries' agriculture and food security.

Multilateral Agreement against Hunger

Among the new issues, developing countries need to strive for inclusion of a Multilateral Agreement against Hunger. This should be based on the guiding principle of the right to food and should form the basis for all future negotiations. Such a multilateral agreement would ensure that countries would have the right to take adequate safeguard measures if their commitment towards the WTO obligations leads to more hunger and poverty.

Abuse and Discretion: The Impact of Anti-Dumping and Countervailing Duty Proceedings on Brazilian Exports to the United States
by Aluisio de Limacampos and Adriana Vito, *Journal of World Trade*, Vol. 38, No. 1, February 2004, Kluwer Law International, Geneva.

AGAINST the backdrop of availability of 14 years of statistical data, the article evaluates the impacts of AD and CVD investigations on imports of targeted Brazilian products. It also contains a set of answers to various questions frequently asked by Brazilian companies threatened with AD and CVD investigations.

The import statistics cover the period from 1989 to 2002 and include 33 investigations (21 AD and 12 CVD) involving 21 Brazilian products. As more than 70 per cent of the investigations are targeted at steel products, the article makes a detailed analysis to study the impact of AD and CVD on the exports of the steel sector.

The article further says that the theoretical work developed so far explain the behaviour of exports when subjected to AD and CVD investigation proceedings. Finally, it evaluates losses for the Brazilian exports when duties are not levied and, when levied, the losses, it says, can be enormous.

Institutional and Substantive Reform of the Anti- Dumping and Subsidy Agreements—Lessons from the Israeli Experience by Arie Reich, *Journal of World Trade*, Vol. 37, No. 6, December 2003, Kluwer Law International, Geneva.

AT the outset, the article states that the Doha Declaration put anti-dumping and countervailing duty law back on the negotiating table, despite earlier opposition by the United States. Member States have submitted various proposals, about various amendments of the existing provisions of the Anti-Dumping and Subsidies Agreements in relation to several procedural and substantive issues. None of them, it says, has raised the possibility of regulating the institutional setting of the AD and CVD procedures within the Member States.

The article further suggests some improvements in the procedural regulation. One of the improvements recommended relates to mandatory adoption of the "Lesser Duty Rule".

In its concluding remarks, the article says that in view of the fact that anti-dumping and anti-subsidy procedures and measures are on the rise, and that more and more countries adopt such procedures based on the WTO Anti-Dumping and Subsidies Agreements, it is exceedingly important that these agreements are amended so as to minimize the harm to international trade caused by their use, while at the same time, preserving them as a type of safeguard measure, that may encourage continued multilateral trade liberalization.

The Singapore Law on Anti-Dumping and Countervailing Duties by H.S.U. Locknie, *Journal of World Trade*, February 1998, Vol. 32, No. 1, pp. 121-138.

THE article has been presented in four parts. Part I describes the salient features of the new Singapore Law on Anti-dumping and Countervailing Duties known as "The Countervailing and Anti-dumping Duties Act 1996". The Act came into effect from 1 November 1996. The legislation was enacted to bring Singapore's law in relation to countervailing duties, subsidies and anti-dumping into conformity with requirements of the WTO Agreement. The new rules

and procedures laid down in the Act gives an added assurance and certainty to the local parties whenever an action is instituted. Part II deals with countervailing duties relating to subsidies. Parts III and IV discuss the main features of the Anti-dumping Act and various provisions which were adapted from Malaysia's Countervailing and Anti-dumping Act 1993.

Disciplining Subsidies within an EU-US Open Aviation Area by Richard Janda, *The Journal of World Investment & Trade,* Vol. 5, No. 4, August 2004, Geneva.

THE article makes an attempt to explore what sort of State aids regime can and should be included as part of an EU-US Open Aviation Area. Further, it identifies possible frameworks for disciplining subsidies within agreed Open Aviation Area. It proceeds on the assumption that the parties will not be able to adopt a full-blown subsidies code immediately and are likely to opt for a minimalist approach in a first-phase agreement. Nevertheless, the article seeks to track a path toward a more elaborate second-phase arrangement.

It has been presented in four parts. Part I reviews the sanctions that the EU and the United States could deploy unilaterally to address State aids. The very real prospect of unilateralism and a resulting trade war, it says, could undermine an Open Aviation Area and, in turn, becomes a principal rationale for disciplining State aids within the framework of an agreement. Part II examines governmental programmes that could attract retaliation. Part III proposes first-phase and second-phase subsidies frameworks for an Open Aviation Area, the former drawing principally on existing provisions in the US and EU bilateral agreements. Both proposals are on the side of minimizing institutional framework while seeking to reduce the possibility of unilateral measures either through the imposition of subsidies having adverse effects or through the adoption of countervailing measures.

The concluding part says that the issues concerning State aids can be addressed not only through provisions of an Open Aviation Area treaty that target them specifically but also by according a right of establishment and national treatment.

Sunset Reviews of Anti-Dumping and Countervailing Duty Measures: US Implementation of Uruguay Round Commitments by Terence P. Stewar and Amy S. Dawyer, *Journal of World Trade*, Vol. 32, No. 5, October 1998, pp. 101-136.

THE article provides a timely review of US sunset provisions and their compatibility with Uruguay Round commitments.

It has been presented in four sections. Section I gives a brief introduction of the passage of the General Agreement on Tariffs and Trade (GATT) Final Act embodying the results of the Uruguay Round of Multilateral Trade Negotiations (Final Act) which included an Agreement on Implementation of Article VI of the GATT 1994 (Anti-dumping Agreement) and an Agreement on Subsidies and Countervailing Measures (Subsidies Agreement), both of which provided a five-year automatic sunset requirement.

Section II discusses the sunset provisions and other procedural requirements in the anti-dumping and subsidies agreements. Section III deals with the implementing legislation for sunset reviews. The concluding Section provides a summary of the significant provisions of these above-stated agreements.

When the Peace Ends: The Vulnerability of EC and US Agricultural Subsidies to WTO Legal Challenge by Richard, Steinberg and Tim, Josling, *Journal of International Economic Law*, June 2003, 6(2), pp. 369-417.

IN its opening remarks, the article says that Article 13 of the WTO Agreement on Agriculture, known as the "Peace Clause", precludes most WTO dispute settlement challenges against a country that is complying with the Agreement's liberalization commitments – until 1 January 2004, when the Peace Clause comes to an end.

The article evaluates the strengths of the main legal theories likely to be used in challenging the EC and US agricultural subsidies after expiry of the Peace Clause, and employing economic techniques to apply the legal theories to economic data about agriculture trade. When the Peace Clause expires, many commodity-specific EC and US agricultural subsidies will be vulnerable to legal challenge under Article 6.3(a)-(c) and 6.4 of the WTO Agreement on

Subsidies and Countervailing Measures. The remedy would require that such subsidies be withdrawn or that appropriate steps be taken to remove their adverse effects.

It has been presented in four parts. Part I evaluates the strength of alternative legal theories. It begins by analyzing the Peace Clause, identifies the WTO agreements that will apply to agricultural subsidies upon expiry of the Peace Clause, and setting forth principles for interpreting those agreements – particularly in case of conflict between them. It then analyzes six alternative legal theories upon which a challenge to EC and US agricultural subsidies might be contemplated.

Part II argues that the only way to give meaning to the demonstration of causation demanded by the relevant SCM Agreement provisions, particularly in the light of the remedy contemplated by Article 7.8, is to employ regression analysis or equilibrium models of the relationships.

Part III presents the results of quantitative analysis. The analysis demonstrates significant relationships between specific EC and US agricultural subsidies.

In its concluding remarks, the article says that agricultural subsidies will enhance the bargaining power of non-subsidizing countries, which may demand "payment" in the form of further subsidy reduction commitments in exchange for extending the Peace Clause.

Subsidy, Polluter Pays Principle and Financial
by Hyung-Jin, Kim, *Journal of World Trade*, December 2000 34(6), pp. 115-142.

IN its opening remarks, the article says that subsidies have raised many questions in environmental policy. While many governments have often utilized subsidies as an environmental policy tool, there are questions as to whether such subsidies may actually achieve their intended purpose. In addition, subsidies given for purposes other than environment sometimes prove to have adverse environmental effects. Subsidies are also regulated in international trade policy, and the regulation of subsidy in environmental policy has an essential link with international trade policy. In this respect, there is an observation that subsidies related with environmental policy may be one of the most difficult issues in international trade policy.

Traditionally, subsidies, it says, have been understood as financial assistance of the government to the private sector. Recently, however, there have been efforts to understand subsidies in a wider context and to include those that do not fall within the traditional sense of subsidies. For example, there have been arguments that cost savings from differences of environmental standards among countries should be regarded as "subsidies" and subject to countervailing duties.

The article discusses the role of the Polluter Pays Principle (PPP) of the Organization for Economic Co-operation and Development (OECD) in analyzing the relationship between subsidies at the domestic level and those in the international context.

The article makes an attempt to identify subsidies at the domestic level which include financial assistance of the government to the private sector. Financial assistance of the government to the private sector, it says, may be given in the form of both spending of government funds (such as government investment in industry, government loans at preferential interest rates, government guarantees of loans by a private lender, and forgiveness of government debt), and giving up of government revenues (such as tax concessions, incentives or exemptions, and duty drawbacks).

Subsidies in the international context indicate financial assistance among countries. They may be given either directly from one government to another government or indirectly through an international institution.

In its concluding remarks, the article says that when environmental taxes are applied, firms generating externalities are imposed with a price on the pollution. This leads to a higher price of products produced by that firm and lower consumption of those products. On the other hand, in case of subsidies, firms are not imposed with a price on pollution; instead, they are given incentive in the reduction of pollution. This leads to a lower price of products and higher consumption of those products when compared with the case in which environmental taxes are imposed.

Export Subsidies in the Regional Aircraft Sector: The Impact of Two WTO Panel Rulings against Canada and Brazil by Oliver Stehmann, *Journal of World Trade*, December 1999, pp.97-120, Geneva.

THE article provides findings of WTO Panel Rulings relating to export subsidies granted by Canada and Brazil to promote their aircraft industries.

Giving a brief background of their aircraft industries (Canada and Brazil), the article says that Bombardier and Embraer dominate the multi-billion world market for regional jet aircraft. Given their importance both as an earner of export revenue and as a national employer as well as being a symbol of national pride, the governments of Canada and Brazil have taken an active role in the restructuring of their "national champions". They have also used external trade policy rules to defend their national industry interest. For a long period of time, both governments have accused each other of unfairly subsidizing their respective aircraft industries, thereby distorting competition in the world market.

After having failed to find a compromise bilaterally, Canada initiated a World Trade Organization (WTO) dispute settlement procedure against Brazil on 18 June 1996. It accused Brazil of granting export subsidies to Embraer under its Proex programme. Export subsidies are prohibited under the Agreement on Subsidies and Countervailing Measures (ASCM). In a response, Brazil requested WTO consultations with the Government of Canada on 10 March 1997.

Both sides thereafter tried to find a mutually acceptable solution. Bilateral negotiations culminated in an agreement between the Heads of State to appoint two independent mediators in January 1998. The mediators issued a report offering recommendations to resolve the issue on 17 April 1998. Although both governments endorsed the Report, they could not agree on implementing its recommendations. As they failed to reach a compromise at the highest political level, on 10 July 1998, Brazil and Canada simultaneously requested the establishment of a Panel under the WTO.

The article further makes an analysis of the Panel's decision, as confirmed by the Appellate Body on 2 August 1999. The EC put forward that Brazil's position did not take into account that the ASCM actually distinguishes three kinds of subsidies: prohibited subsidies, actionable subsidies and non-actionable subsidies. Brazil's approach would even declare certain non-actionable subsidies to be prohibited.

In particular, the article points out that Brazil had not established a *prima facie* case that the debt financing activities of the EDC would constitute a "benefit" within the meaning of the ASCM.

Finally, the article studies impact of the two Panel reports on the aircraft industry. The Panel's reasoning, it says, will render it more difficult to grant support to export-oriented industry in the future. Moreover, by relying on the share of exports in total production when establishing whether a subsidy is an export subsidy, the Panel's ruling will affect smaller economies, in particular. An aircraft manufacturer located in Canada will see a higher share of its aircraft being sold to foreign customers than an aircraft manufacturer based in the United States. Applying the Panel's reasoning could render the same subsidy granted to the Canadian producer (prohibited) export subsidy, it would turn out to be actionable in the case of the US manufacturer.

How the Expiry of the Peace Clause (Article 13 of the WTO Agreement on Agriculture) Might Alter Disciplines on Agricultural Subsidies

by Chambovey, Didier, *Journal of World Trade*, 36(2), Arial, 2002, pp. 305-352, Geneva.

AT the outset, the article says that in the Uruguay Round of negotiations, sets of rules and commit-ments governing the use of subsidies were negotiated and laid down in the legal text: the WTO Agreement on Subsidies and Countervailing Measures hereinafter the URAA. These agreements were designed to establish two different orders to suit the special case of agriculture for instance, export subsidies on industrial products are flatly prohibited for developed countries.

The article says, that the Peace Clause is not the only relevant provision addressing the relationship between the URAA and the other WTO Agreements. But it was undoubtedly an important cornerstone in the final deal worked out by the major players at the Uruguay Round. This provision created a presumption that, if a party complied with its commitments on domestic support and export subsidies, such subsidies would not cause serious prejudice in the sense of Article XV(1) of the GATT.

Against this background, it goes without saying that whether or not the Peace Clause will be extended very much hinges on, how the ongoing negotiations will progress. This issue is directly related to the possibilities of contesting agricultural subsidies by resorting to the WTO Dispute Settlement System. Should the negotiations on agriculture be stalled or not proceed at a pace satisfying the exporters by the end of 2003, the Peace Clause would most probably expire at that point.

Further, the article says that the exposure of agricultural subsidies to WTO challenges varies greatly across the different support categories. Opting for Green Box support appears to be the best way to lessen the likelihood of violation or non-violation complaints based on the trade effects of a subsidy. Indeed, it might be difficult to establish by persuasive evidence the trade effects of subsidies that do not provide price support to producers and meet other relevant requirements listed in URAA. In contrast, support tied to production, prices or the disposal of goods in the third country markets, as may be the case of Amber Box, Blue Box or export subsidies are more likely to affect trade patterns and produce adverse effects within the meaning of SCM Agreement Articles 5 and 6. However, this does not mean that an adequately substantiated complaint can be easily lodged in any such occurrence.

Fisheries Subsidies, the WTO and the Pacific Island Tuna Fisheries by Roaman Gryberg & Martin Tsamenyi, *Journal of World Trade*, Vol. 32, No.6, December 1998, pp. 127-146.

IN its introductory remarks, the article says that one of the few sectors of international trade that has remained largely unaffected by the new disciplines created by the Uruguay Round negotiations and the creation of the World Trade Organization (WTO) has been the fisheries sector. This has been a sector of international trade of considerable importance, particularly for the island States of the Central and Western Pacific and it is from their perspective that the question of fisheries subsidies is analyzed. Despite the existence of general obligations under Articles I and III of the General Agreement on Tariffs and Trade (GATT) as well as lesser WTO obligations, there remains a lack of clarity as to which of the GATT/WTO disciplines in the area of subsidies apply to the fisheries.

The existence of very substantial subsidies offered by the major fishing nations will mean that the developing countries of the Pacific islands which are the source of 45 per cent of the world's tuna, along with other developing coastal States, will need to pay particular attention to the emerging consensus at the WTO, bring the fisheries sector subsidies under much stricter discipline.

The article argues that while there is no dispute that the substantial subsidies offered by developed countries to their fishing fleets has contributed to increased effort, the question remains unanswered whether this pressure on fish stocks would be greatly diminished in the longer term in the light of increasing populations, incomes and fish demand. It also argues here that an end to subsidies will only relieve pressure on fish stocks in the medium term as subsidies are largely symptomatic of the larger problem of diminishing returns in an open access fishery which is caused by rising global income and population operating on a fixed stock of marine resources.

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DOCUMENTS

Committee on Subsidies and Countervailing Measures

SUBSIDIES

Replies to Questions from the UNITED STATES[1] Regarding the New and Full Notification of INDIA[2]

The following communication, dated 4 April 2011, has been received from the Permanent Mission of India.

Question 1

Please confirm that the submission in question contains a full notification of all specific subsidies provided at the central level by the Government of India for the years identified.

When does the Government of India expect to provide a full notification of all relevant programmes provided at the sub-central level for these years?

Reply

The notifications cover preferential tax exemptions to certain enterprises. The Central Government is in consultation with various Ministries/Departments to identify the programmes which may require to be notified.

The Central Government is also consulting State Governments to obtain details of their programmes which may qualify as subsidies within the meaning of ASCM.

PREFERENTIAL TAX POLICIES FOR CERTAIN ENTERPRISES

Question 1

Could the Government of India please identify the names and locations of the FTZs, SEZs and EPZs across India in which these incentives are available? Are there any FTZs, SEZs and EPZs within India in which these incentives are not available?

Are there any other incentives (tax-related or otherwise) available in these FTZs, SEZs, or EPZs? Please identify each additional type of incentive and, to the extent it meets the criteria for a subsidy, provide all the required information under the notification provision of Article 25 of the Subsidies Agreement.

Reply

List of SEZs is attached. The incentives are uniformly available irrespective of location.

Other facilities offered to the units in SEZs include the following:

- Duty free import/domestic procurement of goods for development, operation and maintenance of SEZ units.

[1] G/SCM/Q2/IND/15.

[2] G/SCM/N/IND/155.

- External commercial borrowing by SEZ units up to US$500 million in a year without any maturity restriction through recognized banking channels.
- Exemption from Central Sales Tax.
- Exemption from Service Tax.

Question 2

To the extent the tax incentives identified relate to central-government taxes within India, please explain what relationship these tax provisions have to sub-central taxes applicable in the regions in which these zones are located. For example, are there states within India that provide deductions or exemptions to state-level taxes for enterprises that qualify for the central-level tax incentives?

Reply

Income Tax Act under which certain exemptions are granted is a Central Act and is administered by the Central Government. The State governments have no jurisdiction over grant of any exemption under this Act.

Question 3

Please provide general information on the types of industrial sectors that are located in these zones and that are eligible for these tax incentives. Do textiles and apparel companies benefit from any of these programmes? Are there any industries or sectors excluded from eligibility to locate in these zones and/or from utilizing these tax incentives?

Reply

All industrial sectors including textile and apparel are eligible for exemptions/incentives.

Question 4

What is the total amount of benefits provided under each of the three programmes?

Reply

The total amount of benefit is not available.

LIST OF FUNCTIONAL SEZs

Sl. No.	Name of the SEZ	Location	Type
1	Kandla Special Economic Zone	Kandla, Gujarat	Multi product
2	SEEPZ Special Economic Zone	Mumbai, Maharashtra	Multi product
3	Noida Special Economic Zone	Uttar Pradesh	Multi product
4	MEPZ Special Economic Zone	Chennai, Tamil Nadu	Multi product
5	Cochin Special Economic Zone	Cochin, Kerala	Multi product
6	Falta Special Economic Zone	Falta, West Bengal	Multi product
7	Visakhapatnam SEZ	Vishakhapatnam, Andhra Pradesh	Multi product
State Govt./Private Special Economic Zones established prior to SEZ Act			
8	Surat Special Economic Zone	Surat, Gujarat	Multi product
9	Manikanchan SEZ, W. Bengal	Kolkata, West Bengal	Gems and jewellery
10	Jaipur SEZ	Jaipur, Rajasthan	Gems and jewellery
11	Indore SEZ	Pithampur Distt., Dhar (MP)	Multi product
12	Jodhpur SEZ	Jodhpur, Rajasthan	Handicrafts
13	Mahindra City SEZ (Auto ancillary), Tamil Nadu	Tamil Nadu	Auto
14	Mahindra City SEZ (Textiles), Tamil Nadu	Tamil Nadu	Apparel and fashion accessories

Sl. No.	Name of the SEZ	Location	Type
15	Nokia SEZ	Sriperumbudur, Tamil Nadu	Telecom equipments/ R&D services
16	Moradabad SEZ	Moradabad, UP	Handicrafts
17	Surat Apparel Park	Surat, Gujarat	Apparel
SEZs notified under the SEZ Act, 2005			
Andhra Pradesh			
18	APIIC Ltd, Jedcharla	Pollepally Village, Jedcharla, Mandal	Pharma
19	APIIC	Achutapuram, Visakhapatnam	Multi product
20	Brandix India Apparel City Private Ltd.	Achutapuram, Visakhapatnam	Textile
21	Ramky Pharma Cit Pvt. Ltd.	Mandal, Visakhapatnam	Pharmaceuticals
22	Hyderabad Gems SEZ Ltd.	Ranga Reddy District, Hyderabad Andhra Pradesh	Gems and jewellery
23	Divi's Laboratories Limited	Chippada Village, Visakhapatnam Andhra Pradesh	Pharmaceuticals
24	Apache SEZ Development India Private Limited	Mandal Tada, Nellore District Andhra Pradesh	Footwear
25	Parry Infrastructure Company Private Limited	Kakinada, Andhra Paredsh	Food processing
26	Sri City Pvt. Ltd.	Gollavaripalem, Andhra Pradesh	Multi product
27	Vivo Bio Tech Ltd., Medak Dist	Medak District, Andhra Pradesh	Bio-technology
28	APIIC, Naidupeta	Nellore, A.P.	Multi product
29	APIIC	Maddipadu and Korispadu, Prakasham A.P.	Building products
30	GMR Hyderabad International Airport Limted	Village Mamidipally, District Ranga Reddy, Andhra Pradesh	Aviation
Gujarat			
31	Essar Hazira SEZ Limited	Village Hazira, Taluka Choryasi, Gujarat	Engineering products
32	Mundra Port & Special Economic Zone	Gujarat	Multi product
33	Synefra Engg. & Const. Ltd. (Suzlon Infrastructure Limited)	Vadodara	Hi-tech engineering products and related services
34	Gujarat Industrial Development Corporation (Apparel)(GIDC)	Ahmedabad, Gujarat	Apparel
35	Reliance Jamnagar Infrastructure Ltd.	Jamnagar	Multi product
36	Zydus Infrastrucutre Pvt. Ltd.	Sanand, Ahmedabad	Pharmaceutical
37	Dahej SEZ Ltd.	Dahej	Multi product
38	Euro Multivision Pvt. Ltd.	Vill Shikra, Tal Bhachau	Conventional energy

Sl. No.	Name of the SEZ	Location	Type
Karnataka			
39	Biocon Limited.	Anekal Taluk, Bangalore, Karnataka	Biotechnology
40	KIADB (Textile)	Hasan, Karnataka	Textile
41	Quest SEZ Development Private Limited	Belgaum District, Karnataka	Precision engineering product
42	Synefra Eng. & Const. (Suzlon Infrastructure Limited)	Udupi Taluk, Karnataka	Hi-tech engineering products and related services
43	KIADB (Food)	Samudravalli, Sankalapura	Food processing
Maharashtra			
44	Serum Bio-pharma Park	Pune, Maharashtra	Pharmaceuticals & biotechnology
45	Maharashtra Airport Dev. Corporation	Mihan, Nagpur, Maharashtra	Multi product
46	Magarpatta Township Development and Construction Company Ltd.	Pune, Maharashtra	EH&S incl. information technology enabled
47	MIDC, Aurangabad	District Aurangabad, Maharashtra	Engineering & electronics
48	Wardha Power Company Pvt. Ltd.	District- Chandrapur, Maharashtra	Power sector
Tamil Nadu			
49	Flextronics Technologies (India) Private Limited	Sriperumbudur, Kancheepuram, Tamil Nadu	Electronics hardware and related services
50	SIPCOT	Sriperumbudur, Tamil Nadu	Electronics & telecom hardware and support services including trading and logistic activities
51	SIPCOT	Oragadam	Electronic hardware
52	SIPCOT	Gangai Kondan, Tirunelveli	Transport equipments
53	SIPCOT	Perundurai	Engineering
54	Synfera Construction Ltd. (Suzlon Infrastructure Ltd.)	Coimbatore	Hi-tech engineering sector
55	Cheyyar SEZ	Cheyyar	Footwear
Uttar Pradesh			
56	Moser Baer SEZ, Greater Noida	Greater Noida	Non-conventional Energy including solar energy equipments/cell

(www.wto.org G/SCM/Q2/IND/16 6 April 2011)

Committee on Subsidies and Countervailing Measures

SUBSIDIES

Questions Posed by the UNITED STATES regarding the New and Full Notification of INDIA[1]

The following communication, dated 3 February 2011, is being circulated at the request of the delegation of the United States.

General Note

The United States notes that, after several consecutive years of not submitting a subsidies notification, as required under Article 25 of the Agreement on Subsidies and Countervailing Measures (Subsidies Agreement), India has recently notified to the Committee on Subsidies and Countervailing Measures (the Committee) a central-government programme of preferential tax incentives related to Free Trade Zones, Special Economic Zones, and Export Processing Zones. In the introduction to its submission, India indicates that the submission constitutes India's notification of programmes granted or maintained at the central government level for the years 2004 through 2009.

The United States considers that the notification provisions under Article 25 of the Subsidies Agreement are a core component of the overall WTO subsidies disciplines and a fundamental obligation of WTO Members. In light of the importance of these transparency requirements, the United States poses the following questions to the Government of India:

Question 1

Please confirm that the submission in question contains a full notification of all specific subsidies provided at the central level by the Government of India for the years identified.

When does the Government of India expect to provide a full notification of all relevant programmes provided at the sub-central level for these years?

Preferential Tax Policies for Certain Enterprises

According to the Government of India's notification, the "Preferential tax policies for certain enterprises" programme provides various tax incentives to enterprises located in Free Trade Zones (FTZs), Special Economic Zones (SEZs) or Export Processing Zones (EPZs). Based on the brief description provided in the notification, these tax incentives appear to be tied to the export activities or revenues of enterprises in those zones.

Question 1

Could the Government of India please identify the names and locations of the FTZs, SEZs and EPZs across India in which these incentives are available. Are there any FTZs, SEZs, or EPZs within India in which these incentives are not available?

Are there any other incentives (tax-related or otherwise) available in these FTZs, SEZs, or EPZs? Please identify each additional type of incentive and, to the extent it meets the criteria for a subsidy, provide all the required information under the notification provision of Article 25 of the Subsidies Agreement.

Question 2

To the extent the tax incentives identified relate to central-government taxes within India, please explain what relationship these tax provisions have to sub-central taxes applicable in the regions in which these zones are located. For example, are there states within India that provide deductions or exemptions to state-level taxes for enterprises that qualify for the central-level tax incentives?

[1] G/SCM/N/IND/123, G/SCM/N/IND/155, G/SCM/N/IND/186

Question 3

Please provide general information on the types of industrial sectors that are located in these zones and that are eligible for these tax incentives. Do textile and apparel companies benefit from any of these programmes? Are there any industries or sectors excluded from eligibility to locate in these zones and/or from utilizing these tax incentives?

Question 4

What is the total amount of benefits provided under each of the three programmes?

(www.wto.org G/SCM/Q2/IND/15 10 February 2011)

Report (2010) of the Committee on Subsidies and Countervailing Measures

I. Organization of the Work of the Committee

1. This Report covers the period since the Committee's last annual report (G/L/906), that is, 20 October 2009 to 28 October 2010. During this period, the Committee held two regular and two special meetings, on 27 April and 28 October 2010. Pursuant to the Committee's decisions at its regular meeting in October 1998, the OECD and the ACP Group were invited on an *ad hoc* basis to attend these meetings. The Committee also held an informal meeting on 14 October 2010.

2. As of the beginning of the review period, Mr. Raimondas Alisauskas (Lithuania) was Chairman. At the regular meeting held on 27 April 2010, the Committee elected Mr. Robert Jui-song Fang (Chinese Taipei) as Chairperson and Ms Sylvie Larose (Canada) as Vice Chairperson.

II. Observership – International Intergovernmental Organizations

3. During the period under review, the requests of COMESA and the Gulf Organization for Industrial Consulting for observership in the Committee remained pending. These requests are the subject of ongoing consultations among Members.

III. Permanent Group of Experts

4. The Committee is required by Article 24.3 of the Agreement on Subsidies and Countervailing Measures ("SCM Agreement" or "Agreement") to establish a Permanent Group of Experts ("PGE"). The tasks assigned to the PGE by the Agreement are: to provide assistance to a Panel, on request, with regard to whether a measure is a prohibited subsidy; to provide a Member with confidential advisory opinions on the nature of any subsidy proposed to be introduced or currently maintained by that Member; and to provide the Committee with advisory opinions on the existence and nature of any subsidy.

5. As of the beginning of the period under review, the PGE had five members, Mr. Chang-fa Lo; Dr. Manzoor Ahmad; Mr. Zhang Yuqing; Mr. Jeffrey A. May; and Mr. Gérard Depayre. The term of Mr. Chang-fa Lo ended in Spring 2010 and the Committee, at its regular meeting on 27 April 2010, elected Mr. Akio Shimizu to replace him.

IV. Notification of Subsidies

6. *2009 new and full notifications*: In accordance with Article 25.1 of the Agreement and Article XVI of the GATT 1994, all Members were required to submit new and full notifications of subsidies by 30 June 2009. As of 28 October 2010, 37[1] Members had submitted such notifications. In addition, 13 Members had notified that they did not maintain any subsidies notifiable pursuant to these provisions. These notifications may be found in document series G/SCM/N/186/... . (A table indicating the status of 2009 notifications is reproduced in Annex A to this Report.)*

7. The Committee had decided at its special meeting of 7 May 2009 that the procedures adopted in April 2005 for the review of the 2005 new and full notifications (G/SCM/117) would also apply to the review of the 2009 new and full notifications.[2]

Pursuant to this decision, the Committee, at its special meetings held on 27 April and 28 October 2010, reviewed the 2009 new and full subsidy notifications of Argentina; Australia; Burkina Faso; Canada; Switzerland, Chile; Ecuador; European Union; Hong Kong, China; Honduras; Japan; Liechtenstein; Malawi; Malaysia; Nigeria; Norway; New Zealand; Thailand; Chinese Taipei; Ukraine; Korea; Kyrgyz Republic; Macao, China; Namibia; Paraguay; Qatar and Turkey.

8. *2007 new and full notifications:* As of 28 October 2010, 36[3] Members had submitted 2007 new and full subsidy notifications pursuant to Article 25 of the Agreement and Article XVI of the GATT 1994. In addition, 8 Members indicated that they did not maintain any subsidies notifiable under these provisions. These notifications may be found in document series G/SCM/N/155. (A table indicating the status of these 2007 new and full notifications is contained in Annex B to this Report.)*

9. At the special meeting held on 27 April 2010, the Committee reviewed the 2007 full and subsidy notifications of Ecuador; Guatemala and the United States.

10. (Annex C to this report demonstrates the periods covered by the last subsidy notifications made by Members.)*

11. Article 25.8 of the SCM Agreement stipulates that any Member may make a written request for information on the nature and extent of a subsidy granted or maintained by another Member, or for explanation why a specific measure is not considered as subject to the requirement of notification. These requests are circulated in document series G/SCM/Q2/... . Some of the questions presented to date pursuant to this provision remain unanswered.

V. Working Party on Subsidy Notifications

12. The Working Party on Subsidy Notifications did not meet during the review period.

VI. Notification and Examination of Countervailing Duty Laws and/or Regulations

13. As of 28 October 2010, pursuant to Article 32.6 of the Agreement and in accordance with a decision by the Committee, 93[4] Members had notified the Committee of their domestic countervailing duty legislation or made communications in this respect to the Committee (G/SCM/N/1 and Addenda). 32 Members had not, as yet, made notifications under Article 32.6 of the Agreement. (A table indicating the status of these notifications is reproduced in Annex D to this Report.)*

14. At the regular meetings held on 27 April and 28 October 2010, the Committee reviewed notifications regarding countervailing duty legislation of Brazil; Cambodia, Costa Rica; Japan; Norway; Croatia; Guyana and Bahrain. Written questions and answers regarding these notifications may be found in documents of the G/SCM/Q1/… series.

VII. Semi-annual Reports on Countervailing Actions

15. *Notifications for 1 July-31 December 2009:* As of 28 October 2010, 9 Members had notified countervailing actions taken during the period 1 July-31 December 2009. 36 Members had notified the Committee that they had not taken any countervailing action during this period. Sixty-five Members had not submitted a notification. These semi-annual reports were circulated in document series G/SCM/N/203. (The status of semi-annual reports is set out in Annex E to this Report.)*

16. *Notifications for 1 January-30 June 2010:* As of 28 October 2010, 7 Members had notified countervailing actions taken during the period 1 January-30 June 2010. 33 Members had notified the Committee that they had not taken any countervailing action during this period. Seventy Members had not submitted a notification. These semi-annual reports were circulated in document series G/SCM/N/212. (The status of semi-annual reports is set out in Annex E to this Report.)*

17. (A table summarizing notifications of new countervailing duty actions taken by Members during the period 1 July 2009 to 30 June 2010 and measures in force as of 30 June 2010 is reproduced in Annex F to this Report.)*

VIII. Reports on All Preliminary or Final Countervailing Duty Actions

18. Pursuant to Article 25.11 of the Agreement, Members are to report to the Committee without delay all preliminary and final countervailing actions taken. Guidelines for the information to be contained in these reports are set forth in G/SCM/3/Rev.1. During the review period, the Committee received reports of preliminary and final countervailing actions from Australia; Canada; China; the European Union; New Zealand; Peru; South Africa and the United States. (G/SCM/N/200, 201, 204-206, 208-210, 213-216). The Committee reviewed these reports of preliminary and final actions at its regular meetings in April and October 2010.

IX. Continuation of Extensions under Article 27.4 of the Agreement of the Transition Period for the Elimination of Export Subsidies

19. A General Council Decision adopted on 27 July 2007 (WT/L/691) lays down procedures whereby during the period 2008-2012 the Committee will continue to grant extensions under Article 27.4 of the Agreement of the transition period for the elimination of export subsidies. Among other things, this Decision states, in paragraph 1(f), that Members benefiting from such extensions shall submit an action plan as an integral part of their annual updating notification in 2010. At its regular meeting of 28 October 2010, the Committee conducted a review of the transparency and standstill requirements contained in this Decision as well as the action plans submitted by the Members concerned and agreed to continue for calendar year 2011 the extensions of the transition period that the Committee had previously granted for calendar years 2003-2010.[5]

X. Timeliness and Completeness of Notifications

20. As part of the Committee's efforts on "ways to improve the timeliness and completeness of notifications and other information flows on trade measures" in the context of the SCM Agreement, as requested by the Chairperson of the Trade Policy Review Body ("TPRB"), on 12 April 2010, the Chairman sent reminder letters to 89 Members that had not yet made their 2009 new and full subsidy notifications as of that date. He also circulated document G/SCM/W/546/Rev.1 dated 16 April 2010, providing an updated list of the state of compliance with various notification obligations under the SCM Agreement. The Committee continued its discussions on this matter at the regular meetings on 27 April and 28 October 2010.

XI. Export Competitiveness

21. At its regular meeting on 27 April 2010, the Committee considered the calculations made by the Secretariat, at the request of the United States, with respect to India's export competitiveness on some textile and apparel products.[6] At the regular meeting on 28 October 2010, the Committee discussed the issue of India's export competitiveness in textiles and apparel.

XII. Other Issues Discussed during the Period under Review

22. At its regular meeting on 27 April 2010, the Committee discussed India's request for clarification from the United States on determinations made in the administrative review of countervailing duty on imports of certain hot-rolled carbon steel flat products from India.

23. At the informal meeting held on 14 October 2010, the Committee discussed issues pertaining to the 2010 annual updating notifications received from Members benefiting, pursuant to the General Council Decision (WT/L/691), from extensions under Article 27.4 of the SCM Agreement of the transition period for the elimination of export subsidies.

24. In response to a query from the Chairman of the Working Group on Trade and Transfer of Technology, the Chairman sent a memorandum indicating that there had been no discussions, submissions or other developments in the SCM Committee since 2002 on the issue of trade and transfer of technology.

25. At the Committee's regular meeting on 27 April 2010, the Committee discussed the issue raised by Japan with respect to the feed in tariff programme of the province of Ontario, Canada.[7] At the Committee's regular meeting on 28 October 2010, Japan and Canada reported developments with respect to the ongoing consultations on this matter.

26. At its regular meeting on 28 October 2010, the Committee considered the concern raised by the United States with respect to the continuing failure of many Members to provide any subsidy notification and the deficiencies with respect to the timeliness and completeness of the subsidy notifications of other Members.

NOTES

* Annex A to F can be accessed from WTO website.

[1] The European Union is counted as one Member.

[2] The procedures provide that questions on a subsidy notification and answers to such questions should be submitted in writing in advance of the special meeting held to review the notification. Such written questions and answers can be found in the G/SCM/Q2/... document series.

[3] The European Union is counted as one Member.

[4] The European Union is counted as one Member. These 93 notifications do not include notifications submitted by Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, the Slovak Republic and Slovenia before these Members acceded to the European Communities.

[5] The Committee decisions continuing the extensions of the transition period for calendar year 2011 may be found in the following documents: Antigua & Barbuda (G/SCM/50/Add.8-51/Add.8); Barbados (G/SCM/52/Add.8-56/Add.8); Belize (G/SCM/57/Add.8-59/Add.8); Costa Rica (G/SCM/61/Add.8-62/Add.8); Dominica (G/SCM/63/Add.8); Dominican Republic (G/SCM/64/Add.8); El Salvador (G/SCM/65/Add.8); Fiji (G/SCM/66/Add.8-67/Add.8); Grenada (G/SCM/69/Add.8-71/Add.8); Guatemala (G/SCM/72/Add.8-74/Add.8); Jamaica (G/SCM/75/Add.8-78/Add.8); Jordan (G/SCM/79/Add.8); Mauritius (G/SCM/83/Add.8); Panama (G/SCM/84/Add.8-85/Add.8); Papua New Guinea (G/SCM/86/Add.8); St. Lucia (G/SCM/87/Add.8-89/Add.8); St. Kitts and Nevis (G/SCM/90/Add.8); St. Vincent and the Grenadines (G/SCM/91/Add.8) and Uruguay (G/SCM/92/Add.8).

[6] See, documents G/SCM/132 and Add.1 and Rev.1.

[7] See, documents G/SCM/136 and G/SCM/Q2/CAN/44.

(www.wto.org G/L/937 29 October 2010)

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ISSN 0972-2076

Printed and published by **Dr. L.D. Mago,** Registrar, for Indian Institute of Foreign Trade, B-21 Qutab Institutional Area, New Delhi-110016 at ImagePrint, Kirti Nagar, New Delhi-110015.