

## INDIA'S REPLIES TO QUESTIONS FROM THE UNITED STATES<sup>1</sup> ON ITS SUBMISSIONS (TN/RL/W/4 AND TN/RL/W/26)

The following communication, dated 5 May 2003, has been received from the Permanent Mission of India.

### India's Replies to Questions from the United States (TN/RL/W/34) on its submission (TN/RL/W/26)

**India** *Proposals on Implementation-related Issues and Concerns: Agreement on Subsidies and Countervailing Measures/Anti-Dumping Agreement* (TN/RL/W/4, 25 April 2002)

**Q1.** India links developing countries' inability to secure an increased share of international trade to the imposition of anti-dumping measures against imports from developing countries.

Could India please explain the basis for its statement that anti-dumping actions have prevented it and other developing countries from securing a share in the growth in international trade?

#### Reply

For the majority of developing countries, exporting to developed markets requires the attainment of export competitiveness and high quality standards as also effective marketing. Also, exporting firms in developed country Members are generally significantly larger than exporting firms from developing country Members and, therefore, have a greater capacity to bear the costs of exploring new markets.

Further, products where developing countries have export strength are limited. Any adverse impact on one export product significantly affects the overall export effort. Potential exporters of other products will hesitate to explore export markets, as they will perceive anti-dumping duties as being one of the consequences of export success in developed country export markets.

In India's view it is also relevant in this context to take into consideration the fact that exporters from developing country Members face considerably more problems in responding to detailed anti-dumping questionnaires than those from developed country Members. These problems are attributable to the paucity of physical and human infrastructure, lack of financial and administrative resources and the less developed nature of accounting systems in developing countries. These problems have also restricted the ability of developing country exporters to respond promptly or appropriately in anti-dumping investigations, resulting in adverse findings.

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<sup>1</sup> TN/RL/W/25 and TN/RL/W/34

India's experience has been that its exports have been frequently subjected to anti-dumping and countervailing duty action which has led to a reduction if not complete cessation of the exports to the country concerned of the in respective products. In certain cases the very initiation of anti-dumping investigations chilled exports, although such investigations were subsequently terminated. In the absence of the anti-dumping action its exports would otherwise have continued to grow. Such experience is perhaps shared by other developing countries. It is therefore India's view that anti-dumping actions have prevented it and other developing countries from securing a share in the growth of world trade.

**Q2. India observes that from 1995 to the first half of 2001, 60 per cent of definitive anti-dumping measures imposed were against imports from developing countries. However, a significant percentage of those measures were imposed by developing countries. Moreover, the United States notes that in recent years a majority of anti-dumping investigations have been initiated by developing countries. The targets of many of these antidumping investigations by developing countries have been other developing countries.**

**Given this increased use of anti-dumping measures by developing countries, which would better serve development goals: reducing use of antidumping measures against developing country exports, including by other developing countries, or reducing dumping into developing country markets?**

Reply

India is of the view that resort to anti-dumping action by both developing as well as developed countries, when taken in violation of obligations under Anti-Dumping Agreement impedes trade and consequently developmental goals. It should however be recognised that the ability of a developing country to either withstand dumping action in its market or when it suffers unfair anti-dumping action overseas on its exports is extremely limited as compared to developed countries.

**Q3. India identifies a "changed global trade and economic scenario, especially for exports from developing countries", and states that revisions to the *de minimis* standard and negligible import volume are necessary to address this changed scenario. India offers detailed proposals.**

**(a) Would India please describe the specific changes to which it refers?**

**(b) How would revisions of *de minimis* and negligibility standards address problems caused by the changed scenario?**

Reply

During the Uruguay Round full-fledged commitments were taken on for the first time by the developing countries in the hope that they could increase their share in global trade. With the benefit of hindsight, it is now recognised that the gains from the Uruguay Round commitments were less than hoped for. In areas of particular interest to developing countries such as market access, the realised gains have been more limited than expected. It is this change in global trade and economic scenario viz. developing countries taking on full-fledged obligations for the first time and the gains hoped for from such commitments not being realised, that India referred in its submission.

The past seven years have also witnessed an increasing trend in resort by developed countries to anti-dumping measures against developing country imports. The absence of any meaningful increase in developing country exports may be due to a variety of factors including the adverse impact of trade remedial action imposed by developed countries on developing country exports.

Developed country markets are usually the largest export markets for the developing countries. The loss of a developed country market –which may seem a relatively minor event in the overall context of the export basket of a developed country Member or an export-oriented developing country Member –takes on a huge and oppressive dimension in the context of the developing country Member's export effort. It is in this context, in conjunction with the absence in increase in global share of developing country exports, that India has proposed a revision of *de minimis* margins and negligible volume benchmarks.

In India's view the raised *de minimis* margins and enhanced negligible volume would have a two-fold advantage. First, the exporters may not expend resources required for participating in the investigation, in those cases in which their export volumes are below the raised negligible volume benchmark. Second, there would be fewer cases of imposition of anti-dumping measures on exports from developing countries. This would have a positive impact on developing country exports and would have a demonstration effect on other domestic producers who may feel encouraged to make improvements in productivity so that they are also able to export a part of their production. This would facilitate the overall efforts of developing countries to increase their share in global trade.

**Q4. India proposes that Article 5.8 be amended to increase the *de minimis* level from 2 per cent to 5 per cent for imports from developing countries.**

- (a) Would India please explain in more detail the justification for this proposal?
- (b) What is the specific basis for the 5 per cent figure which India proposes as the appropriate *de minimis* standard?
- (c) Would India please explain how this proposal would address the problems of developing countries that it has identified?

**Q6. India proposes that, for developing countries only, Article 5.8 be amended to increase from 3 per cent to 5 per cent the threshold volume of dumped imports which should be regarded as negligible. In addition, India proposes that the stipulation that anti-dumping action can still be taken against a country whose volume of imports is below this threshold, provided countries which individually account for less than the threshold volume collectively account for more than 7 per cent of the imports, be deleted.**

- (a) Would India please explain in more detail the justification for this proposal?
- (b) In particular, how has India identified 5 per cent as the correct figure below which imports from an individual country should be considered negligible?
- (c) Would India agree that in many instances, dumped imports accounting for 5 per cent or less of total imports may cause significant injury to a domestic industry?
- (d) Would India agree that in many instances, dumped imports accounting for 7 per cent or less of total imports may cause significant injury to a domestic industry? If so, how does India justify deleting the cumulative 7 per cent threshold provision?

#### Reply

India would respond to questions 4 and 6 together.

In India's view, the thresholds specified in Article 5.8 have little scientific basis and are really an attempt to lay down "bright lines" in the Anti-Dumping Agreement to prevent arbitrary interpretations by investigating authorities and, at the same time, to avoid disputes. In India's view, the thresholds in Article 5.8 err on the side of caution in favour of the importing Member that wishes to protect its domestic industry.

The rationale behind India's proposal for enhancing the negligible volume thresholds in the case of developing country Members is that more flexible rules should apply to developing countries. Article 5.8 of the Anti-dumping Agreement specifies two thresholds that must not be exceeded if an investigation is to be terminated on the ground that the volume of dumped import is negligible:

1. The volume of dumped imports must be less than 3 per cent of imports of the like product; and
2. Countries that individually account for less than 3 per cent of the imports of the like products in the importing member should collectively account for less than 7 per cent of such imports.

Under Article 5.8, neither of these thresholds may be exceeded if investigations are to be terminated. India's proposal seeks to raise the 3 per cent threshold to 7 per cent in the case of developing country Members and to make the second inapplicable to them. Thus, when India stated that the cumulation requirement should not apply, India was only proposing that once a developing country Member is shown to have less than a 7 per cent share of total imports in the importing Member, the investigation should be terminated in respect of that developing country Member without applying collective thresholds of any kind, whether for imports from all countries that individually account for less than 3 per cent of total imports or for imports from developing country Members that individually account for less than 7 per cent of total imports in the importing Member.

For reasons stated in reply to various questions above, India is of the view that raising the *de-minimis* level from 2 per cent would help ensure that number of cases in which anti-dumping duties are imposed on developing country exporters is reduced and the adverse impact of such measures is, to a certain extent, made less harsh for developing countries. India is willing to engage constructively for reaching an agreement on the appropriate benchmark of raised *de-minimis* margin and negligible volume that would help in addressing the concerns expressed above.

**Q5. India proposes that the *de minimis* threshold should be extended to apply to all refund and review proceedings, as well as to initial investigations.**

**Given that in the review phase, unlike in the investigation phase, there has already been a finding of injurious dumping and, thus, exporters have prior notice that their pricing is subject to further scrutiny for dumping, is it appropriate to apply a more stringent standard for pricing by those exporters?**

Reply

India requests the US to clarify would it means by "is it appropriate to apply a more stringent standard for pricing by those exporters?"

**Q7. India proposes that the "lesser duty rule" in Article 9.1 be made mandatory when imposing an anti-dumping duty against imports from a developing country Member by any developed country Member.**

**(a) Would India please explain in more detail the justification for this proposal?**

- (b) **What methodologies would India recommend implementing for determining the duty necessary to remove the injury to the domestic industry?**
- (c) **Why should the mandatory lesser duty rule for imports from developing countries only apply in cases brought by developed countries?**

Reply

In India's view, the purpose of an anti-dumping measure is to address the injury caused to the domestic industry due to dumped imports. Otherwise protection may be accorded to the domestic industry beyond the injury that may have been caused by the dumped imports. In its submission (TN/RL/W/26) India has identified the issue of injury margins for negotiations in the second phase. India would like all investigating authorities to adhere to the lesser duty rule in furtherance of the desirability of this as already provided for in Article 9.1 of the Anti-Dumping Agreement. In any case the lesser duty rule should be made mandatory at least in the context of operationalising the Article 15 of the Anti-Dumping Agreement.

**SUBSIDIES AND COUNTERVAILING MEASURES**

**India** *Proposals on Implementation-related Issues and Concerns: Agreement on Subsidies and Countervailing Measures/Anti-Dumping Agreement* (TN/RL/W/4, 25 April 2002)

**Q1. India asserts that the threat and imposition of countervailing duties have serious adverse effects on developing country economies, including a fall in production, large unemployment, decline in incomes and increase in poverty levels.**

**Could India please explain the specific factual basis for this assertion?**

Reply

Industry in developing countries are characterised by low level of infrastructure development, high cost of capital, prevalence of under-developed regions where industries may be reluctant to invest etc. The various export incentive schemes in developing countries are less in the nature of conferring an advantage to the exporters in such countries and more for the purpose of creating a level playing field, in view of the fact that their competitors from the developed countries do not suffer from these disadvantages. It has therefore been recognised that governments have to assume a more active role in assisting the industry by creating a level playing field.

Technology improvement and productivity enhancement have been recognised as the key elements in economic development and the governments are generally eager to update the technology to realize the goal of economic development. According to economists it can be shown that export promotion measures like export subsidies are definitely beneficial to developing countries in updating technology, improving productivity and stimulating employment. (Xingshuo Yin 2000).

In recent years Export Processing Zones have become increasingly popular where incentives are offered by the government. Economists have generally noted the benefits of EPZs to the economy of the concerned country. There are many cases of catalyst and demonstration effects (Rhee, 1990, Rhee and Belot, 1992) on the host economy. They can contribute to building human capital through their demonstration and catalyst effects on the country entrepreneur pool. Also, an efficient, competitive zone is an industrial infrastructure that many countries lack. These effects, together with the labour training, may be the zone's lasting contributions to the country in which it operates. (Dorsati Madani 1999).

In view of the above it would be difficult to deny the positive impact on the economy of a developing country due to increased exports.

It has been India's experience that imposition of anti-dumping and countervailing duties has on various occasions led to closure of the business entities which were producing the subject goods, besides having adverse consequence for other industries supplying inputs to the affected industry. Due to such linkages, resort to anti-dumping/countervailing duty action by developed countries against developing country imports has led to adverse economic consequences in developing countries.

**Q2. India notes that characteristics of developing countries include high cost of capital, low level of infrastructure development, inadequate integration and organization of the economy, and poorly developed information networks.**

- (a) **Could India please explain how its proposals would specifically ameliorate the economic problems identified?**
- (b) **Could India please explain why these problems could not more appropriately be addressed directly? General infrastructure development, for example, can be achieved through direct government infrastructure investment, which is not restricted under the Subsidies and Countervailing Measures Agreement.**

#### Reply

India's submission had highlighted some of the constraints like high cost of capital, low level of infrastructure development, that are characteristics of industry in developing countries. India however, did not argue that these problems could be ameliorated by its proposals. Nevertheless as indicated in reply to question 1 above some success in exports can have a positive impact on other domestic production.

India agrees that general infrastructure development can be achieved through direct government intervention. However governments in developing countries may not have all the resources to invest in infrastructure which is capital intensive. Such governments may therefore be permitted to grant targeted incentives to compensate its industry for costs incurred due to the various bottlenecks as identified in India's proposal. These are particularly relevant as exporters from developing countries are in competition with manufacturers in countries not affected by such problems.

#### **Detailed Proposals:**

**Proposal 1: A new provision to be added in Article 27.10 to provide for countervailing duties on imports from developing countries being restricted only to that amount by which the subsidy exceeds the *de minimis* level.**

- (a) **Could India please explain in more detail the justification for this proposal and how it would meaningfully and directly address the economic problems of developing countries?**
- (b) **Is this proposal likely to encourage developing countries to subsidize their exports?**

**Proposal 2: Article 27.10 (b) shall be amended to provide for countervailing duty not being imposed in the case of imports from developing countries where the total volume of imports is negligible, i.e. 7 per cent of total imports.**

- (a) Could India please explain in more detail the justification for this proposal? In particular, what is the specific basis for proposing 7 per cent as the figure below which imports should be considered negligible?
- (b) Is it India's position that subsidized imports of 7 per cent or less can not cause adverse effects to the domestic industry of a Member?

**Proposal 3:** Article 27.2 shall be amended so that the prohibition in Article 3.1 (a) does not apply to export subsidies granted by developing countries where they account for less than 5 per cent of the f.o.b. value of the product.

- (a) Could India please explain in more detail the justification for this proposal? In particular, what is the specific basis for setting the level for export subsidies at 5 per cent of the value of the product?
- (b) Is it India's position that export subsidies are not trade-distortive?

**Proposal 4:** Article 27.11 shall be amended to provide for the *de minimis* level of subsidization below which countervailing duty shall not be imposed in case of imports from developing countries being raised above 3 per cent.

**What specifically would India propose as the revised *de minimis* level for developing countries? Would a different level apply to Members in Annex VII of the SCM Agreement?**

#### Reply

India would like to respond to questions on proposals 1-4 together.

As has been mentioned in replies to various questions above, developed country markets are usually the largest export markets for developing countries. The loss of a developed country market pursuant to the imposition of a countervailing duty has adverse consequences not only for the industry producing the relevant product but could also adversely affect other sectors of the economy. It is in this context, in conjunction with the absence in increase in global share of developing country exports, that India has proposed a revision of *de-minimis* subsidy margins and negligible volume benchmark.

In India's view, the thresholds specified in Article 27.10 and 27.11 have little scientific basis and are really an attempt to lay down "bright lines" in the Subsidies Agreement to prevent arbitrary interpretations by investigating authorities and, at the same time, to avoid disputes. In India's view, the thresholds in Article 27.10 and 27.11 err on the side of caution in favour of the importing Member that wishes to protect its domestic industry.

In India's view the raised *de minimis* margins and enhanced negligible volume would have a two-fold advantage. First, the exporters may not expend resources required for participating in the investigation, in those cases in which his export volumes are below the raised negligible volume benchmark. Second, there would be fewer cases of imposition of a countervailing duty measure on exporters from developing countries. India's proposal No. 3 has been made in the same spirit. Acceptance of these proposals would have a positive impact on developing country exports and would have a demonstration effect on other domestic producers who may feel encouraged to make improvements in productivity so that they are also able to export at least a part of their production. India does recognise that exports subsidies are trade distortive. But where they are meant to make up for the various handicaps faced by exports from developing countries by providing them a level

playing field, they become necessary. Developed countries should be willing to give positive consideration to these proposals made so that developing countries are able to achieve a share in global trade commensurate with the needs of their economic development.

It is the view of certain experts that :

“From an historical point of view the legislation relating to subsidies was flexible and adapted itself to the specific conditions of developed countries during the various stage of their development. One cannot, therefore, talk of an inviolable principle which is unalterable when the need arises” (Michael Rom 1968).

The above view remains equally valid today. In a Doha Development Agenda the developed countries should show sensitivity to these legitimate concerns and adapt the Subsidies Agreement accordingly.

**Proposal 5: Article 27.3 shall be amended so that the prohibition of paragraph 1(b) of Article 3 shall not apply to developing country Members. The reference to expiry of this flexibility after five/eight years from the date of entry into force of the WTO Agreement shall be deleted. It should also be clarified that the provisions of the amended Article 27.3 shall be applicable notwithstanding the provisions of any other agreement in the WTO acquis.**

- (a) **Is it India’s position that making the receipt of a subsidy contingent upon the use of domestic over imported goods is an appropriate economic development policy? Can India point to any economic literature which supports such a position?**
- (b) **Is it India’s position that making the receipt of a subsidy contingent upon the use of domestic over imported goods does not distort trade?**

#### Reply

India does not deny that making the receipt of a subsidy contingent upon the issue of domestic over imported goods distorts trade. As regards the appropriateness of the receipt of a subsidy contingent of use of domestic over imported goods as an economic development policy, the economic literature presents no clear answers. It is nevertheless pointed out that in a thesis on the rationales of import substitution industrialisation strategy (Liang Hong 1993) the general conclusion was that import substitution as an industrialisation strategy remains viable and may be of great importance for less developed countries that want to catch up economically with industrialised countries. As import substitution subsidy would be an important component of import substitution strategy, its relevance for developing countries cannot be over- looked. It would also be useful to know from the United States if it can confirm that such a policy has not been used at all in its economic development at a comparable stage of development to some of the present day developing countries.

#### India’s replies to questions from the United States (TN/RL/W/34) on its submission (TN/RL/W/26)

**Q1. India proposes that the options for identifying profit under Article 2.2.2 should be considered a hierarchy. What order of those options does India propose, and what is the rationale for that order?**



Reply

India has not proposed that there should be a hierarchy for identifying profits under Article 2.2.2. Instead, India has proposed that there should be a reasonability test for the profits used under options (i)- (ii) of Article 2.2.2

**Q2. India proposes deliberation on certain questions relating to the calculation of “injury margins”. What is an “injury margin”? India states that Article 3.4 lists 15 “injury parameters”. Would India please clarify its view of the connection between such “parameters” and the “injury margin”?**

Reply

The margin of injury may be defined as a quantification of the injury being suffered by the domestic industry due to dumped imports. One possible method of such a calculation is the difference between the landed value of the imported product and the fair selling price for domestic industry. India is willing to engage constructively in further refining this definition.

As indicated in India’s submission (TN/RL/W/26), the evaluation of injury factors is an exercise separate from injury margin determination. While the evaluation of injury factors is not aimed at obtaining a quantitative figure of injury being suffered by the domestic, calculating such a figure is the goal of margin of injury.

**Q3. India proposes more specific provisions on price undertakings, including establishing rules for identifying an appropriate price for an undertaking, defining “satisfactory” undertakings, and clarifying conditions as to when non-acceptance of price undertakings is permissible. Would such provisions change the essential nature of price undertakings as mutually agreeable settlements between exporters and the investigating Member? Is India proposing that there should be conditions under which exporters would be required to accept undertakings proposed by the Member? Should there be conditions under which exporters would be required to provide reasons when rejecting undertakings offered by a Member?**

Reply

India is of the view that its proposal to have more specific provisions on price undertakings would not change the essential nature of price undertakings. More specific provisions in this regard would add to the transparency of the process of submission and acceptance of undertakings. India is not proposing that there should be conditions under which exporters would be required to accept undertakings proposed by the Member. India is also not proposing that exporters would be required to provide reasons when rejecting undertakings offered by a Member.

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