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Emergence of measures on countervailing duties: An analysis

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Abstract
Subsidies present thorny problems for the international trading system. The legitimate activities of governments inevitably affect the economic position of firms within their jurisdictions, yet the perception sometimes arises that government programs confer an unacceptable advantage on those firms. The controversial task of determining which sorts of government activities create unacceptable advantages, and what to do about them, has occupied an important place on the agenda of the WTO/GATT system since its inception. This paper provides an introduction to the emergence of measures on Countervailing Duties and issues that bear the regulation of subsidies and countervailing measures.

Keywords: countervailing duties, subsidies, WTO, anti-dumping

Introduction

The Uruguay Round of General Agreement on Tariffs and Trade (GATT) [1] Negotiation formed an important new World Trade Organization (WTO) [2] Agreement on Subsidies and Countervailing Duties. It also established separate rules for agricultural subsidies in the WTO Agreement on Agriculture, and took some minimal steps toward addressing subsidies issues in services industries within the General Agreement on Trade in Services ("GATS") [3]. The disparaging term "Dumping" describe the practice of selling a product in one national market at a lower price than it is sold in another national market [4]. Dumping therefore, is price discrimination between national markets. Anti-dumping duties are tariffs imposed by an importing country on imports of a product that has been dumped into its domestic market by some exporting firms [5]. Subsidies present thorny problems for the international trading system. The legitimate activities of governments inevitably affect the economic position of firms within their jurisdictions, yet the perception sometimes arises that government programs confer an unacceptable advantage on those firms. The controversial task of determining which sorts of government activities create unacceptable advantages, and what to do about them, has occupied an important place on the agenda of the WTO/GATT system since its inception [6].

WTO and GATT on Anti-Dumping duties, Countervailing duties and Subsidies

The number of Multilateral and Plurilateral are important and basic building blocks of WTO, each dealing with different matter of Trade and Services. These agreements collectively seek international reform in multilateral trade, ensuring to establish free trade among the nations In this regard, WTO has inter alia ensured that constant efforts are put by its member nations to reduce tariffs, seek substantial reduction of trade barriers and elimination of discriminatory treatment in international trade and further that these are equally applied to all its trading partners under the most-favoured nation treatment [7]. As a corollary to these efforts, member nations at the WTO, have signed agreements such as the Agreement on implementation of Article VI of GATT, 1994 (more popularly called as the Anti-dumping Agreement), the Agreement on subsidies and countervailing measures and so also the Agreement on safeguards [8]. In fact, WTO has supported and even advocated these exceptions, rather it can be said that WTO has intentionally supported these exceptions. These exceptions have drawn their force from the WTO for the reason that where WTO upholds the principle of free trade. Article VI of GATT, 1994 and so also GATT, 1947, lays down the principle for levy of anti-dumping duty [9].

- **Prohibited subsidies: Red Subsidies:** Article 3 of the SCM Agreement [10] puts in the prohibited category two subsidies that cause the maximum distortion to trade, namely export subsidies and subsidies on the use of domestic over imported goods. As noted earlier, a presumption is created that these subsidies are specific subsidies within the meaning of the Agreement. Members are mandated not to grant or maintain these subsidies.

Remedies against prohibited subsidies

In order to understand the full implication of prohibition of export subsidies it is necessary to look at the remedies available to a WTO Member against another Member using such subsidies. Article 4 of the ASCM [11] provides for the affected Member to raise a dispute in such cases. Where a complaint has been made the full procedures of the Dispute Settlement Understanding (DSU) [12] apply, involving the stages of consultation, panel proceedings, appellate review, and surveillance and, in appropriate cases, authorisation of countermeasures.

- **Actionable subsidies: Amber Subsidies:** All specific subsidies other than those that are prohibited fall in the

category of actionable subsidies. The substantive obligation in respect of such subsidies are contained in Article 5 [13] of the ASCM, which also stipulates that the provision does not apply to agricultural products that are governed by the provisions of the Agreement on Agriculture.

Remedies against actionable subsidies

As in the case of prohibited subsidies, the ASCM provides for an accelerated dispute settlement process in the event of adverse effects being caused to the interests of other Members by way of injury to domestic industry, or nullification or impairment, or serious prejudice [14].

- **Non-actionable subsidies: Green Subsidies:** All subsidies that are not specific are not actionable. In addition, initially Article 8 of the ASCM had provided that certain categories of specific subsidies would also be non-actionable.

Non-action ability implied that they could not be proceeded against either under Part III [15] of the ASCM (remedies under Article 7) [16] or under Part V [17] (imposition of countervailing duties). Nonspecific subsidies remain non-actionable by virtue of Article 2 [18] of the ASCM.

The Countervailing Measures

Countervailing measures are a unilateral remedy applied by a Member only after investigating the case in accordance with the criteria laid down in the SCM Agreement. To be able to impose countervailing duty the Member country must establish the following three substantive aspects: (a) that the imports are subsidised (b) that an injury is caused to the domestic industry and (c) that there exists a causal link between the subsidised imports and the injury [19]. There is well laid out procedure to be followed in the conduct of countervailing investigations and the imposition of countervailing measures. Failure to respect either the substantive or procedural requirements can be taken to dispute settlement and can form the basis for the invalidation of the measure. All countervailing duties normally have a life of not more than 5 years. If there is a change in the extent of subsidy or in the injury to domestic industry, a case can be made for the review of CVDs within reasonable period of time. If no review takes place within five years all CVDs must automatically terminate, and any case for the imposition of CVDs has to be made afresh [20]. The Member will thus have the ability either to impose countervailing duties or to obtain remedies available in Articles 4 [21] or 7 [22] of the ASCM.

Special and Differential Treatment (S&DT) with respect to CVDs Developing country

Members whose exports are subject to countervailing duty investigations are given special and preferential treatment. An investigation regarding a product originating in a developing country Member is immediately terminated if:

(a) The subsidy level does not exceed de minimise level which is 2 or 3 per cent instead of 1 per cent, as is the case with the developed country Member. For Annex VII Members, of which India is one, the de minimise level is 3 per cent; [23]

(b) The volume of subsidised exports represents less than 4 per cent of the total imports of the like product in the importing Member country, 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 total imports of the like product in the importing Member [24].

c) Article 27.2 [25] provides that the prohibition of export subsidies does not apply to the LDCs and poor developing countries Members listed in Annex VII. Annex VII mentions the least-developed countries designated as such by the United Nations, which are Members of the WTO. It also enumerates some of the low-income countries, which were original Members of the WTO, and stipulates that they would be covered by the exemption until their per capita income had reached $1000 per annum. At the Doha Ministerial Meeting an agreement was reached in principle that the Members listed in Annex VII would remain eligible for the exemption until their GNP per capita reached US $ 1,000 in constant 1990 dollars for three consecutive years [26].

d) In respect of other actionable subsidies developing country Members have been given immunity from remedies against "serious prejudice" [27]. Article 27.9 provides that countermeasures may be authorised against them only if there is nullification or impairment of a tariff concession or other obligations under GATT 1994 as a result of such a subsidy in such a way as to displace or impede imports from another Member into the market of the subsidising country Member or if injury to a domestic industry in the market of an importing country occurs. Thus action can be taken developing countries only for actionable subsidies falling under Articles 5(a) and 5(b) not 5(c) [28].

e) Originally the Article 27.9 provided that for the egregious subsidy practices listed in Article 6.1 disputes could be raised against developing country Members also. Even in such cases, Article 27.8 provided that the presumption of serious prejudice did not apply, and it had to be demonstrated by positive evidence that adverse effects had indeed been caused. The expiry of Article 6.1 has had two legal consequences for the application of Part III (actionable subsidies) to developing countries. First, the special treatment of developing countries in respect of presumption of serious prejudice has disappeared, and indeed has become unnecessary; as the provision on presumption has itself disappeared. Second, and quite independently of the provision on presumption, the list of measures in respect of which serious prejudice applied earlier to developing country Members (in Article 27.9) has also disappeared [29]. Thus, after the expiry of the life of Article 6.1 on 31 December 1999, developing country Members cannot be proceeded against for serious prejudice at all [30].

In the *Indonesia—Automobiles dispute* [31] the panel had found that the EEC had demonstrated by positive evidence that certain measures taken by Indonesia had indeed caused serious prejudice to its interests. But that case was decided in 1998, at a time when Article 6.1 was still valid. Even in that case the Panel had clearly pronounced that ordinarily the ASCM did not provide any remedy against serious prejudice caused by developing countries [32].

Safeguards measures

Safeguard measures are meant to be temporary measures that are used in the face of increased levels of imports that have seriously injured or threaten to seriously injure a country's domestic industry. A country's imposition of safeguard measures is regulated by GATT Article XIX and the Safeguards Agreement [33].

The difference between anti-dumping duties and safeguard measures is that the former may only be imposed when foreign exporters are engaged in anti-competitive practices while the latter may be imposed on exporters that have a 'fair' competitive advantage. It is not that the safeguards are non-discriminatory measures, as they are equally applied to all the trade partners [34].

Anti-dumping and countervailing duties –Similarities and differences

While discussing the SCM agreement, one should distinguish clearly between Antidumping 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 defence mechanisms available to WTO members and are addressed by two different WTO Agreements [35]. Dumping, in reference to international trade, is the export by a country or company of a product at a price that is lower in the foreign market than the price charged in the domestic market. As dumping usually involves substantial export volumes of the product, it often has the effect of endangering the financial viability of manufacturers or producers of the product in the importing nation. 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 [36]. 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, 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 [37].

Another important feature of AD and SCM is that the GATT agreements 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 antidumping duties to compensate for the same situation of dumping or export subsidization is not allowed. Article VI.5 of GATT clearly specifies that 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 [38].

Article 16 Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, and Article 24 on Agreement on Subsidies and Countervailing measures and Article 13 on Agreement on Safeguards provides for the formation of respective committees under each of the agreements. 1. Committee on Anti-Dumping Practises under Article 16 Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994. Committee shall be comprised of representative from each of the member Countries. The WTO Secretariat shall act as the secretariat of the committee [39]. The committee shall elect its own Chairman and shall meet not less than twice a year or as envisaged by the agreement at the request of any member [40]. The committee shall have the power to set up such subsidiary bodies as appropriate for its functioning. Committee and subsidiary body under it may seek information from any source it may deem appropriate but it shall inform the member country from whose jurisdiction the information is collected. Member shall report without delay all preliminary and final dumping action taken to the committee [41].

Subsidies can play an important role for countries which are developing and also for transformation of centrally-planned economies to become market economies. Considering this, WTO has laid down the time table for the manner of their continuance or elimination. In this regard, WTO provides exemption from disciplines on prohibited export subsidies to least-developed countries and to developing countries with less than $1,000 per capita GNP. As regards, developing nations having higher per capita, they were given time until 2003 to get rid of their export subsidies and until 2000 for eliminating import-substitution subsidies (i.e. subsidies designed to help domestic production and avoid importing). However, least-developed countries were given time until 2003 for seeking elimination of import-substitution subsidies. The reduction in import subsidization and export subsidies is subject to provisions of Articles 27.5 and Article 27.6 of the ASCM regarding export competitiveness. Under ASCM, countries are generally prohibited from granting export subsidies. However, there are certain exceptions to this general prohibition. Under Article 27.2 of the ASCM, the prohibition shall not apply to certain countries included in Annex VII of the Agreement. These countries are permitted to provide export subsidies. As India is one of the countries included in Annex VII, it can provide export subsidies. The flexibility to an Annex VII country for providing export subsidies on a product is contingent on the country concerned not having reached export competitiveness in that product. In case export competitiveness in a product has been reached, Article 27.5 of the ASCM requires that the export subsidies on it be phased out over a period of eight years [42].

After the phase-out period, the country concerned would be prohibited from granting export subsidies on the product concerned. However, the flexibility to grant export subsidies on other products, which have not reached export competitiveness, would not be affected by some other product having reached export competitiveness [43]. Article XIX of GATT, 1994 and so also GATT, 1947, lays down the provisions with respect to safeguards [44]. WTO allows a member nation to restrict imports of a particular product when the domestic industry is injured or threatened with injury to be

caused by the surge in imports of any product into its country. However, to justify any action (referred to as 'safeguard'), by the member nation against such surge in imports, the injury would need to be serious. In order to seek implementation of Article XIX and to provide the manner and use of safeguard measures, member nations at WTO have entered into an agreement called the Agreement on Safeguards. However, the WTO discourages its member nations from entering into bilateral negotiations outside the auspices of GATT either by adopting to restrain exports 'voluntarily' or by agreeing to other means such as sharing of markets, etc. The WTO agreement sets out the criteria for assessing whether "serious injury" was caused or threatened to be caused and the factors which must have been considered in determining the impact of imports on the domestic industry [45]. The surge in imports may be considered to be either real increase in imports i.e. absolute increase in value or volume or it may be a relative increase in imports i.e. say an increase in the share of imports in a market which is shrinking. WTO provides that any safeguard measure when imposed should be applied only to the extent necessary, so as to prevent or give remedy to the serious injury which has been caused or is threatening to cause. Further, when quantitative restrictions (quotas) are imposed, the measure should be such as which would not normally reduce the quantities of imports below the annual average for the last three representative years, unless clear justification is given that a different level is necessary to prevent or remedy serious injury [46]. The WTO agreement sets out the requirements for conducting safeguard investigations by national authorities. In this regard, it emphasizes the national authorities to be transparent and to follow established rules and practices, avoiding thereby, any arbitrary methods in safeguarding the interest of domestic industry. Further, the authorities conducting investigations have to announce publicly when hearings are to take place and provide other appropriate means for interested parties to present evidence [47].

Conclusion

The WTO legal system does a good job in ensuring that unanticipated subsidy programs do not frustrate the reasonable expectations associated with negotiated trade commitments. It also embodies a sensible prohibition on export subsidies in goods markets outside of agriculture, a prohibition that might usefully be extended to agriculture and services sectors in the years to come. The system is far less successful in addressing domestic subsidies. Its criteria for determining which government programs are actionable or countervailable are highly imperfect from an economic standpoint, and the challenges associated with efforts to a better job are vast. It is by no means clear that general principles to sort unacceptable from acceptable domestic subsidy programs can be devised and administered successfully. A better strategy in the end may be to embrace the approach of the Agriculture Agreement, which treats domestic subsidies as a topic of negotiation and allows nations to agree to reduce them product-by-product.

References

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8. David Palmeter and Petros C. Mavroidis, Dispute Settlement In The World Trade Organization: Practice And Procedure, 11 (2nd edn., 2004).
9. Ibid.
10. Appellate Body Report, Canada – Aircraft, para. 167, Article 3.1(a) prohibits any subsidy that is contingent upon export performance, whether that subsidy is contingent "in law or in fact". The Uruguay Round negotiators have, through the prohibition against export subsidies that are contingent in fact upon export performance, sought to prevent circumvention of the prohibition against subsidies contingent in law upon export performance. In our view, the legal standard expressed by the word "contingent" is the same for both de jure and de facto contingency. There is a difference, however, in what evidence may be employed to prove that a subsidy is export contingent. De jure export contingency is demonstrated on the basis of the words of the relevant legislation, regulation or other legal instrument. Proving de facto export contingency is a much more difficult task. There is no single legal document which will demonstrate, on its face, that a subsidy is "contingent…in fact…upon export performance". Instead, the existence of this relationship of contingency, between the subsidy and export performance, must be inferred from the total configuration of the facts constituting and surrounding the

granting of the subsidy, none of which on its own is likely to be decisive in any given case.

11. If a red-light subsidy is granted, it may be subject to the remedies for red-light subsidies (Article 4). Furthermore, the remedies for red-light subsidies may be invoked in parallel with countervailing measures; however, with regard to the effects of a particular subsidy in the domestic market of the importing member, only one form of relief (either a countervailing duty or the defined remedies) shall be available.
12. In 1994, the WTO members agreed on the Understanding on Rules and Procedures Governing the Settlement of Disputes or Dispute Settlement Understanding (DSU) (annexed to the "Final Act" signed in Marrakesh in 1994).
13. Article 5 provides that no Member should cause, through the use of actionable subsidies, adverse effects to the interests of other Members, i.e. (a) material injury in the sense of the CVD track; (b) nullification or impairment of benefits accruing directly or indirectly to other Members under the GATT 1994; (c) serious prejudice, including threat thereof, to the interests of another Member.
14. Ibid
15. In Part III under Actionable subsidies Article 5 covers the concept of adverse effects while Article 6 discusses serious prejudice. Article 7 is the mirror provision of Article 4 in discussing the multilateral remedies against actionable subsidies.
16. Domestic supports are divided into “yellow” (subject to elimination) and “green” (not subject to elimination) categories. (b) The following policies are deemed “green” as long as certain conditions are met: - Research, promotion, education, inspection, and other general services. - Infrastructure services for agricultural areas and rural communities; creation of markets for agricultural products.

    -Public stockholding for food security purposes. - Domestic food aid. - Decoupled income support. (i.e. that directly linked to production) - Income insurance and safety-net programmes. - Relief from natural disasters. - Structural adjustment assistance provided through producer retirement, resource retirement, and investment aid programmes. - Payments under environmental programmes. - Payments under regional assistance programmes.

    “Blue” categories include direct payments under production restriction plans as long as the following conditions are met.

    -Payments are based on fixed area and yield (subsidy payments for idle fields under the EU Common Agriculture Program).

    -Payments are made on 85% or less of base level of production (the deficient payment system under the US Agriculture Act of 1990(abolished by the US Agriculture Act of 1996)). - Livestock payments are made on a fixed number of head (incentives for the bovine sector under the EU Common Agriculture Program).

    (c) All programmes not considered to be “green” are included in an “Aggregate Measurement of Support (AMS),” which is to be reduced by 20 percent over a period of 6 years. The AMS represents the amount of market price support, non-exempt direct payments, or any other subsidy not exempted from the reduction commitment provided by a given country. They are concluded using the fixed external reference price, based on the years 1986 to 1988. The AMS expresses the extent of protection given to agricultural products. Specific guidelines are set for individual basic items, with nonspecific supports measured in aggregate monetary amounts. But it is not required to include product-specific domestic support, which does not exceed 5 percent of the total value of its domestic production, in the calculation of total AMS.
17. Part IV under Non-actionable subsidies Article 8 provides that subsidies, which are not specific, are non actionable. It furthermore exempts certain environmental, R&D and regional subsidies, even though they are specific; however, multilateral remedies remain open.
18. Article 2: Specificity :2.1 In order to determine whether a subsidy, as defined in paragraph 1 of Article 1, is specific to an enterprise or industry or group of enterprises or industries (referred to in this Agreement as "certain enterprises") within the jurisdiction of the granting authority, the following principles shall apply:

    (a) Where the granting authority, or the legislation pursuant to which the granting authority operates, explicitly limits access to a subsidy to certain enterprises, such subsidy shall be specific.

    (b) Where the granting authority, or the legislation pursuant to which the granting authority operates, establishes objective criteria or conditions[2] governing the eligibility for, and the amount of, a subsidy, specificity shall not exist, provided that the eligibility is automatic and that such criteria and conditions are strictly adhered to. The criteria or conditions must be clearly spelled out in law, regulation, or other official document, so as to be capable of verification.

    (c) If, notwithstanding any appearance of nonspecificity resulting from the application of the principles laid down in subparagraphs (a) and (b), there are reasons to believe that the subsidy may in fact be specific, other factors may be considered. Such factors are: use of a subsidy programme by a limited number of certain enterprises, predominant use by certain enterprises, the granting of disproportionately large amounts of subsidy to certain enterprises, and the manner in which discretion has been exercised by the granting authority in the decision to grant a subsidy.[3] In applying this subparagraph, account shall be taken of the extent of diversification of economic activities within the jurisdiction of the granting authority, as well as of the length of time during which the subsidy programme has been in operation.

    2.2 A subsidy which is limited to certain enterprises located within a designated geographical region within the jurisdiction of the granting authority shall be specific. It is understood that the setting or change of generally applicable tax rates by all levels of government entitled to do so shall not be deemed to be a specific subsidy for the purposes of this Agreement.

    2.3 Any subsidy falling under the provisions of Article 3 shall be deemed to be specific.

2.4 Any determination of specificity under the provisions of this Article shall be clearly substantiated on the basis.

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21. Article 4 of ACSM: 1.A Party applying a bilateral safeguard measure shall consult with the other Party in order to mutually agree on appropriate trade liberalising compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the safeguard measure. The Party shall provide an opportunity for such consultations no later than 30 days after the application of the bilateral safeguard measure.
    2. If the consultations under paragraph 1 do not result in an agreement on trade liberalising compensation within 30 days after the consultations begin, the Party whose goods are subject to the safeguard measure may suspend the application of concessions with respect to originating goods of the applying Party that have trade effects substantially equivalent to the safeguard measure. The applying Party's obligation to provide compensation and the other Party's right to suspend concessions under this paragraph shall terminate on the date the safeguard measure terminates.
    3. The right of suspension referred to in paragraph 2 shall not be exercised for the first 24 months during which a bilateral safeguard measure is in effect, provided that the safeguard measure conforms to the provisions of this Agreement.
22. Article 7: Remedies: 7.1 except as provided in Article 13 of the Agreement on Agriculture, whenever a Member has reason to believe that any subsidy referred to in Article 1, granted or maintained by another Member, results in injury to its domestic industry, nullification or impairment or serious prejudice, such Member may request consultations with such other Member.
    7.2 A request for consultations under paragraph 1 shall include a statement of available evidence with regard to (a) the existence and nature of the subsidy in question, and (b) the injury caused to the domestic industry, or the nullification or impairment, or serious prejudice caused to the interests of the Member requesting consultations.
    7.3 Upon request for consultations under paragraph 1, the Member believed to be granting or maintaining the subsidy practice in question shall enter into such consultations as quickly as possible. The purpose of the consultations shall be to clarify the facts of the situation and to arrive at a mutually agreed solution.
    7.4 If consultations do not result in a mutually agreed solution within 60 days, any Member party to such consultations may refer the matter to the DSB for the establishment of a panel, unless the DSB decides by consensus not to establish a panel. The composition of the panel and its terms of reference shall be established within 15 days from the date when it is established.
    7.5 The panel shall review the matter and shall submit its final report to the parties to the dispute. The report shall be circulated to all Members within 120 days of the date of the composition and establishment of the panel's terms of reference.
    7.6 Within 30 days of the issuance of the panel's report to all Members, the report shall be adopted by the DSB unless one of the parties to the dispute formally notifies the DSB of its decision to appeal or the DSB decides by consensus not to adopt the report.
    7.7 Where a panel report is appealed, the Appellate Body shall issue its decision within 60 days from the date when the party to the dispute formally notifies its intention to appeal. When the Appellate Body considers that it cannot provide its report within 60 days, it shall inform the DSB in writing of the reasons for the delay together with an estimate of the period within which it will submit its report. In no case shall the proceedings exceed 90 days. The appellate report shall be adopted by the DSB and unconditionally accepted by the parties to the dispute unless the DSB decides by consensus not to adopt the appellate report within 20 days following its issuance to the Members.
    7.8 Where a panel report or an Appellate Body report is adopted in which it is determined that any subsidy has resulted in adverse effects to the interests of another Member within the meaning of Article 5, the Member granting or maintaining such subsidy shall take appropriate steps to remove the adverse effects or shall withdraw the subsidy.
    7.9 In the event the Member has not taken appropriate steps to remove the adverse effects of the subsidy or withdraw the subsidy within six months from the date when the DSB adopts the panel report or the Appellate Body report, and in the absence of agreement on compensation, the DSB shall grant authorization to the complaining Member to take countermeasures, commensurate with the degree and nature of the adverse effects determined to exist, unless the DSB decides by consensus to reject the request.
23. GOI, Agreement on Subsidies and Countervailing Measures/Anti-dumping Agreement: Proposals on Implementation related issues and concerns, Prepared by Ministry of Commerce, Government of India, N. Delhi (2002).
24. Ibid.
25. Export subsidies given by developing countries that are in conformity with the provisions of the SCM Agreement, although not prohibited, are still actionable by other Members. If another Member has recourse to the dispute settlement machinery against the measure, adverse effect will have to be demonstrated by positive evidence as in the case of actionable subsidies for all Members. In case of a positive finding the developing country Member concerned does not have compulsorily to eliminate the measure but instead it may only take appropriate steps to

remove the adverse effect.
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