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MEMORANDUM

NATIONAL SECURITY COUNCIL

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INFORMATION

November 4, 1982

MEMORANDUM FOR WILLIAM P. CLARK

FROM: DOUGLAS McMINN

SUBJECT: Status of Negotiations for a Bilateral Subsidies Agreement with Mexico

Negotiations over the past year and a half have been held with Mexico, aimed at reaching a bilateral subsidies agreement. The United States and Mexican negotiators have now come close to agreement on mutually acceptable language for an agreement. This agreement would provide Mexico with the injury test in U.S. countervailing duty cases in exchange for Mexico undertaking some discipline in its subsidy programs. The injury test is very important to the Mexicans because it makes a positive countervailing duty finding on Mexico's imports more difficult to obtain under U.S. law. Two issues in the agreement remain to be resolved:

-- The extent of discipline that would be required of Mexico with respect to its credit financing program (FOMEX); and

-- Whether Mexico will give serious consideration to signing the international Subsidies Code.

The Mexican Government has indicated to us that if no agreement is signed by November 15, 1982, the negotiations may be held up indefinitely as a result of the change of their Administration. The new de la Madrid Government takes office on December 1, 1982.

State, Commerce, Treasury and a part of USTR would like to move ahead in the negotiations to attempt to reach a settlement. However, some opposition to the agreement has surfaced in USTR on both substantive and philosophic grounds. In addition, Congressmen Gibbons and Frenzel have requested oversight hearings (during the lame duck session) on the Administration's export subsidy commitment policy. Concerns in the private sector over our ongoing negotiations with Mexico and Peru are thought to

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BY LM NARA DATE 4/22/25

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have prompted the hearings. Commerce Secretary Baldrige has asked that a CCCT meeting be held as soon as possible to review the progress, problems and next steps vis-a-vis the bilateral agreement with Mexico. I think it is important that we not delay policy-level consideration of this agreement. A strong bilateral export subsidies agreement would provide more stability in our trade relationship with Mexico and go a long way toward reducing frictions created periodically on both sides of the border on this issue. I will keep you up-to-date on our progress within the government and with the Mexicans.

I've attached a brief summary of the principal points of the draft bilateral subsidies agreement.

Attachment

cc: Henry Nau
Norman Bailey
Alfonso Sapia-Bosch
Roger Fontaine

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PRINCIPLE POINTS OF THE PROPOSED BILATERAL SUBSIDIES AGREEMENT

- CEDI (Direct Export Subsidy Program) -- The Mexicans agreed to suspend the list of products eligible to receive the CEDI during the life of the agreement (three years from the date of signing).

- Preferential Pricing -- The Mexicans agreed to declare that the program of preferential pricing for basic petrochemical products will not be used to promote exports.

- CEPROFI (Tax Credit Program) -- The U.S. and Mexican teams agreed to remove any specific provision referring to CEPROFI since this would be covered by the standstill provision that refers to any and all GOM programs that might constitute export subsidies.

- Suspension of CVD Cases -- The Mexicans have agreed to the USG language which states that CVD cases can only be suspended in accordance with U.S. law.

- Dispute Settlement -- The Mexicans have agreed to the USG language which specifies a 30-day timeframe for reaching a mutually acceptable solution to a dispute between the parties regarding the operation of the agreement. The Mexicans wish to remove the USG language which refers to restoring the balance in achieving a mutually acceptable solution.

- Subsidies Code Accession -- The USG continues to insist that Mexico give objective consideration to accession to the Subsidies Code prior to the termination of this agreement.

- Dual Exchange Rate -- The USG has put the Mexicans on notice that it considers the dual exchange rate to be a potential export subsidy. No specific language has been agreed to in the draft text.

- FOMEX -- The GOM and the USG continue to disagree as to the discipline which would be required of the Mexicans regarding their preferential export financing scheme. The USG language would require Mexico to modify the interest rates on the pre-export and export financing programs of FOMEX.

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McMinn 4
Mexico

National Security Council
The White House

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83 AUG 9 P8: 51

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Executive Secretary	1		
John Poindexter	2	X	
Bud McFarlane		✓	
Jacque Hill	3	✓	
Judge Clark	4	V	I
John Poindexter			
Executive Secretary			
NSC Secretariat			
Situation Room			

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cc: VP Meese Baker Deaver Other ____________

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(Date/Time)

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5169

MEMORANDUM

NATIONAL SECURITY COUNCIL

INFORMATION

August 8, 1983

MEMORANDUM FOR WILLIAM P. CLARK

FROM: DOUGLAS W. McMINN

SUBJECT: Subsidies Agreement with Mexico

Bill Brock has sent you, Ed Meese and James Baker a memorandum concerning our negotiations with Mexico on a bilateral subsidies agreement (Tab I). Brock has been informed by the Mexicans that a principal objective for them at the meeting of our two Presidents on August 14, will be to gain approval of such an agreement.

Brock's memo is a "heads-up" in preparation for the de la Madrid meeting. It is Bill's view that it will be virtually impossible to conclude an acceptable accord prior to the President's Mexican visit. Moreover, given the U.S. domestic political sensitivity of this issue, he advises against President Reagan's personal involvement at this time.

I fully support Bill Brock's views on the subsidies issue. We do need a bilateral agreement with Mexico -- it is in both our countries' interests. However, we do not want to act before we're ready or able to deliver. Based on the differences still existing in the current draft texts of an agreement and based on the fact that we have not yet consulted with our Congress, we should avoid getting the President stuck in this "tar baby". The President should be positive about the need to reach an acceptable agreement, but non-commital at this juncture in the negotiations.

State and Commerce Departments concur in this view.

Sapia-Bosch, Fontaine and North concur.

Attachment
Tab I Brock's memo dtd 7/22/83

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83 JUL 25 P3: 02

THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON
20506

July 22, 1983

MEMORANDUM FOR: William P. Clark
Edwin Meese III
James A. Baker III

FROM: William E. Brock

SUBJECT: Subsidies Agreement with Mexico

In advance of the President's visit to Mexico in August, we have completed two days of consultations with trade and economic officials from the Mexican government. During those discussions, the Mexicans informed us that a principal economic objective for the August meeting will be a presidential-level commitment on a bilateral subsidies agreement. I believe it will be nearly impossible to conclude any accord prior to the Presidential visit which would be politically acceptable in the United States. Moreover, given the domestic sensitivity of this issue, I would advise against President Reagan's personal involvement in any final pact. Instead, we should confine the presidential discussion to our overall trade relations, expressing our desire to maintain an open U.S. market, and attempt to work with the Mexicans on subsidies on a technical level over the coming months.

At the present time, Mexican articles are not entitled to receive an injury test in U.S. countervailing duty cases. Unless Mexico undertakes obligations substantially equivalent to the GATT Subsidies Code, it cannot be designated as a country under the agreement and thereby receive the benefit of an injury test.

During the fall of 1982, the United States and Mexico held intensive discussions to develop a mutually satisfactory subsidies agreement. In the course of the private sector and Congressional consultations required by law, we decided that the draft text developed by both sides would be domestically unacceptable. At the same time, the Mexicans suspended talks, indicating a preference for concluding an agreement soon after the inauguration of President de la Madrid. We received a new Mexican proposal only last week, and it appears no more acceptable than the draft text previously rejected by our advisors.

As currently written, the new Mexican draft can be expected to provoke strong Congressional opposition to our overall commitments policy governing the subsidy practices of developing countries. Earlier this year, I received the attached correspondence from members of the Senate Finance Committee's Trade Subcommittee stating their opposition to a weak agreement. In response, they have received assurances that they will be consulted closely during the course of any subsidies negotiations with Mexico. The scenario proposed by the Mexicans for final agreement by mid-August would prevent us from fulfilling this commitment and would therefore jeopardize the chances for acceptance of any bilateral understanding.

I believe that an agreement imposing meaningful discipline on Mexican subsidy practices would be useful. However, any attempt to negotiate an accord in haste would create serious adverse reactions, particularly from those members of Congress whose support we will need for approval of legislation, including the Caribbean Basin Initiative, IMF replenishment and renewal of the Generalized System of Preferences.

I therefore urge that we avoid any Presidential action involving subsidies at the August 14 meeting and proceed more slowly on developing a politically defensible agreement.

Attachment

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United States Senate

COMMITTEE ON FINANCE
WASHINGTON, D.C. 20510

May 11, 1983

The Honorable William E. Brock
U.S. Trade Representative
Executive Office of the President
Washington, D.C. 20506

Dear Bill:

We are writing to express our concern regarding the potential negotiation with Mexico of a bilateral agreement involving their export subsidy practices. In particular, we are concerned that any such agreement in no way depart from the stated intentions of Congress with respect to our subsidy commitment and countervailing duty policy.

Recognizing the importance of our bilateral relations with Mexico, we remain convinced that it would be contrary to our national interest--as well as that of the Mexican economy--to reach any agreement that sacrifices long run U.S. trade policy objectives and principles for a political "quick-fix" in the short term. In this regard, we cannot abandon longstanding objectives, which this Administration and its predecessors have shared, to obtain the elimination of unfair competition from uneconomic foreign subsidies, including commitments to their phase out and elimination by developing countries. The granting of an injury test under the countervailing duty law continues to be our only real leverage to achieve the elimination of these trade-distorting practices.

In this context, we were extremely disappointed with the commitments under discussion with Mexico late last year. Certainly no level of "compensation" or "offsets" could serve as a substitute for our key policy objectives of gaining Mexico's adherence to the rules and disciplines of the international trading system under GATT, including the Subsidies Code. At a time when the Administration is attempting to bring together in a cohesive policy framework the trade and financial factors that influence international economic relations, imposing disciplines through the IMF and simultaneously allowing for digressions in a subsidies agreement makes little sense. Of particular concern in this regard is the potential sanctioning of Mexican export financing terms, including short term financing, that would be considered illegal under the MTN Subsidies Code.

At a time when Mexico's financial difficulties and the devaluation of the peso make the resumption of export subsidies unlikely and unwise in the near term, we question the need to rush into any agreement. Moreover, the credibility of U.S. laws dealing with unfair trade practices is unlikely to withstand another bilateral agreement perceived to place foreign policy interests beyond the law and over the interests of the American economy.

For these reasons, we believe it is vital that any agreement reached with Mexico pertaining to their subsidy practices conform precisely to our basic objective of eliminating foreign subsidies. That can best be achieved through Mexico becoming a signatory to the Subsidies Code and making a commitment thereunder. In any event, consultations with members of the Subcommittee on International Trade prior to any action with respect to Mexico are certainly in order.

Thank you for your consideration.

Sincerely,

John C. Danforth	Lloyd Bentsen
Bill Bradley	John Heinz
Charles E. Grassley	Steven D. Symms
David L. Boren	David Pryor
George J. Mitchell	Max Baucus

cc: George P. Shultz, Secretary of State
Donald T. Regan, Secretary of Treasury
Malcolm Baldrige, Secretary of Commerce

William V. Roth

David Durenberger

John H. Chafee

Daniel Patrick Moynihan

11

U.S. GOVERNMENT PRINTING OFFICE:1978—256-966

FORM CD-14 (2-76) Prescr. by DAO 214-2 U.S. DEPT. OF COMM. TRANSMITTAL SLIP	DATE 11/15/82
TO: Doug McMinn	REF. NO. OR ROOM, BLDG. Rm. 365 OEOB
FROM: Betsy Stillman	REF. NO. OR ROOM, BLDG. Rm. 3028

ACTION

☐ NOTE AND FILE	☐ PER OUR CONVERSATION
☐ NOTE AND RETURN TO ME	☐ PER YOUR REQUEST
☐ RETURN WITH MORE DETAILS	☐ FOR YOUR APPROVAL
☐ NOTE AND SEE ME ABOUT THIS	☒ FOR YOUR INFORMATION
☐ PLEASE ANSWER	☐ FOR YOUR COMMENTS
☐ PREPARE REPLY FOR MY SIGNATURE	☐ SIGNATURE
☐ TAKE APPROPRIATE ACTION	☐ INVESTIGATE AND REPORT

COMMENTS: I thought you might be interested in the attached. It's Commerce's current thinking regarding a U.S.-Mexico subsidies agreement. We have provided a copy to USTR, Treasury, State, and Labor.

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DRAFT

INTRODUCTION

During the Technical Secretariat meeting of the Joint Commission on Commerce and Trade in July 1983, the United States and Mexican delegations exchanged views regarding Mexico's July draft proposal for a bilateral subsidies agreement. The following summarizes the general areas of disagreement we identified during those talks:

File Mexican Subsidies Agreement

1) No commitment on preferential pricing for energy products.

2) No commitment on short-term pre-export or export financing.

3) No mention of the Subsidies Code.

4) No clause for provisional application of the injury test.

5) Retroactive application of the injury test.

6) No standstill provision.

7) Mexico's requirement that the United States grandfather all those programs not expressly identified in the agreement.

8) Limitation of consultations only in the event that Mexico reintroduces the CEDI.

Attached is a paragraph-by-paragraph analysis of Mexico's July proposal for a U.S.-Mexico subsidies agreement. This analysis includes draft language for USG going-in, fallback, and bottom line positions (TAB C). In drafting these provisions, we have attempted to address the October 1982 bracketed text, the subsequent USTR draft language which was never presented to the Mexicans, and congressional and private sector concerns. We have based our proposal on the Mexican July proposal wherever possible. Also included is a draft memorandum of understanding which we believe could substitute for any explicit reference in an agreement to Mexico's Subsidies Code accession (see TAB D).

In light of Mexico's proposal, private sector views, and USG concerns, we have drafted two going-in positions. Option 1 contains language which refers explicitly to the GATT Subsidies Code. Option 2 removes any such reference, except for the Subsidies Code accession clause which we have drawn from the October 1982 draft text (see TABs A and B).

If we table option 1 as a going-in position, the question is what message we will be sending to the Mexicans. In their July proposal, the GOM evidenced some movement toward our objectives thus

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demonstrating a serious effort to conclude a mutually acceptable accord. Our option 1 language shows no movement at all on the USG's part to accomodate one of Mexico's prime concerns. Therefore, the Mexicans could conclude that we are not serious about resolving this issue.

Option 2, on the other hand, shows our good faith effort to accomodate a basic Mexican concern. However, we must be concerned about the signal we may be sending to the private sector by avoiding specific reference to the Code throughout the entire document.

Attachments: Draft U.S.-Mexico Agreement on Subsidies and Countervailing Duties - Going-In Position: Option 1 (TAB A)

Draft U.S.-Mexico Agreement on Subsidies and Countervailing Duties - Going-In Position: Option 2 (TAB B)

Analysis of Draft U.S.-Mexico Agreement on Subsidies and Countervailing Duties (TAB C)

Memorandum of Understanding: Going-In Position (TAB D)

Prepared by: B.Stillman/ITA/IEP/WH/OCA/MD/4465/9/15/83/#IEWHCAMX112

TAB A 14

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Draft U.S.-Mexico Agreement on
Subsidies and Countervailing Duties
Going-In Position: Option 1

1. The Government of the United Mexican States and the Government of the United States of America agree to establish through the present understanding a mutually acceptable framework concerning the treatment of subsidies and countervailing duties and measures. For purposes of this agreement both parties recognize that Mexico is a developing country and that incentive programs are legitimately available instruments of developing countries' economic policy.

CEDI

2. The Government of Mexico affirms that its export incentive program, the Certificados de Devolucion de Impuestos (CEDIs) was discontinued with respect to all products as of August 25, 1982. The Government of the United Mexican States will, for the duration of this agreement, continue the suspension of the granting of CEDIs to any products, and will not replace the CEDI program with one that is substantially similar or reinstitute the issuance of CEDI certificates in a modified form.

PREFERENTIAL PRICING FOR ENERGY AND BASIC PETROCHEMICAL PRODUCTS

3. The Government of Mexico affirms that the program of preferential prices for basic petrochemical products was terminated on November 30, 1982. The Government of Mexico will not replace

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this program with one that is substantially similar or reinstate the granting of preferential prices for basic petrochemical products which will have the purpose or effect of being an export subsidy. The Government of the United Mexican States also undertakes that the program of preferential pricing for energy is not, and will not have the purpose or effect of being an export subsidy.

PREFERENTIAL PRE-EXPORT AND EXPORT FINANCING PROGRAMS

4. With regard to pre-export and export loans with a maturity of two years or less, the Government of the United Mexican States undertakes to modify the interest rates of its preferential pre-export and export financing programs so as to ensure that the Government of Mexico will not grant pre-export and export financing at rates below which it actually has to pay for the funds so employed (or would have to pay if it borrowed on international capital markets in order to obtain funds of the same maturity and denominated in the same currency as the pre-export and export financing).

With regard to medium- and long-term loans (2-10 year maturities), the Government of the United Mexican States undertakes to modify the interest rates of its preferential pre-export and export financing programs so as to ensure that they are consistent with Article 9 of the Agreement on Interpretation and Application of Article VI, XVI and XXIII of the General Agreement on Tariffs and Trade (the "Subsidies Code") as interpreted by item (k) of the Illustrative List of Export Subsidies annexed to the Subsidies Code, and as further interpreted by the Subsidies Code Committee of Signatories.)

DEVELOPMENT AND OTHER PROGRAMS

5. The Government of the United Mexican States affirms that no elements of Mexico's development program (nor of any other program not referred to in this agreement) are inconsistent with Article 9 of the Subsidies Code.

The Government of the United States of America affirms that as of the date of the signing of this agreement it has not found any elements of Mexico's development program, other than those referred to within this agreement, to be inconsistent with Article 9 of the Subsidies Code.

STANDSTILL

6. During the term of this agreement, the Government of the United Mexican States will not institute any new export subsidy program, or increase the level of any export subsidies. The Government of the United Mexican States understands that if it reactivates or

modifies the currently-suspended CEDI program, or otherwise takes action inconsistent with Paragraphs 2,3,4,5, or 6 of this Agreement, effective on the date of any such action Paragraph 7 of this Agreement shall no longer apply as between the United States of America and the United Mexican States. No determination of material injury shall be required in any United States countervailing duty investigation of merchandise from Mexico in any CVD investigations initiated by the United States subsequent to the entry into force of this agreement and pending at the time the application of Paragraph 7 is withdrawn.

INJURY TEST

7. Mexico will be eligible to receive the injury test in countervailing duty investigations. The injury test will apply to all investigations pending at the time this agreement is concluded or initiated after that time. As required by United States law, the injury test will not apply to outstanding countervailing duty orders already in effect on the date this agreement is concluded. For purposes of the application of countervailing measures, there shall be no presumption that incentives granted by the Government of the United Mexican States result in adverse effects to the trade or production of the United States. Such adverse effects shall be demonstrated by positive evidence, through the formal investigation

procedures prescribed by applicable U.S. domestic law. With respect to all products to which the injury test will apply under the terms of this paragraph, no countervailing duties shall be imposed upon any product of Mexico unless the investigation determines that the effect of subsidization is such as to cause or threaten material injury to an established domestic industry, or is such as to retard materially the establishment of a domestic industry.

CVD LAW

8. No provision of this agreement shall be construed to prevent the United States from imposing countervailing duties consistent with Part 1 of the Subsidies Code, pursuant to its national law on products of Mexico receiving subsidies of any kind, export or otherwise.

CODE APPLICATION

9. Except as otherwise provided in this agreement, the rights and obligations of the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade shall be applicable as between the parties to this agreement. The United States has decided not to grant export subsidies inconsistent with the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade.

Consistent with Article 14 of the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade, it is recognized that Mexico is a developing country and that the Government of Mexico may adopt measures and policies to assist its industries, including those in the export sector, provided that it commits itself to reduce or eliminate export subsidies when the use of such export subsidies is inconsistent with its competitive and development needs, and further provided that export subsidies on industrial products shall not be used in a manner which causes serious prejudice to the trade or production of the other party to this agreement.

SUSPENSION OF CVD CASES

10. Subject to and in accordance with applicable U.S. national law, before a final determination of a subsidy is made, a countervailing duty proceeding may be suspended without the imposition of countervailing duties upon acceptance of mutually acceptable undertakings, following consultations where requested.

NULLIFICATION

11. Neither party to this agreement shall directly or indirectly take any action which nullifies or impairs the benefits accruing to the other party under this agreement.

NOTIFICATION/CONSULTATION

12. Either party may make a written request for information on the nature and extent of any subsidy granted or maintained by the other party.

The party from which such information is requested shall provide it comprehensively and as quickly as possible and shall be prepared upon request to provide any additional relevant information.

13. Any matter relating to the implementation of this agreement, excluding substantive discussions related to any U.S. countervailing duty proceeding, may be submitted to the U.S.- Mexico Joint Commission on Commerce and Trade.

14. This agreement shall remain in force for a period of 3 years from the date that it has been signed by both governments. Either one of the governments may terminate this agreement by a written notification to the other party 30 days in advance of the date it intends to do so.

CODE ACCESSION

15. The United States Government expects the Government of the United Mexican States to give objective consideration to accession

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to the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade prior to termination of this agreement.

Prepared by: B.Stillman/IEP/WH/MD/4465/9/15/83/IEWHCAMX56

TAB B 22

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Draft U.S.-Mexico Agreement on
Subsidies and Countervailing Duties
Going-In Position: Option 2

1. The Government of the United Mexican States and the Government of the United States of America agree to establish through the present understanding a mutually acceptable framework concerning the treatment of subsidies and countervailing duties and measures. For purposes of this agreement both parties recognize that Mexico is a developing country and that incentive programs are legitimately available instruments of developing countries' economic policy.

CEDI

2. The Government of Mexico affirms that its export incentive program, the Certificados de Devolucion de Impuestos (CEDIs) was discontinued with respect to all products as of August 25, 1982. 1he Government of the United Mexican States will, for the duration of this agreement, continue the suspension of the granting of CEDIs to any products, and will not replace the CEDI program with one that is substantially similar or reinstitute the issuance of CEDI certificates in a modified form.

PREFERENTIAL PRICING FOR ENERGY AND BASIC PETROCHEMICAL PRODUCTS

3. The Government of Mexico affirms that the program of preferential prices for basic petrochemical products was terminated on November 30, 1982. The Government of Mexico will not replace

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BY LM NARA DATE 4/22/25

this program with one that is substantially similar or reinstate the granting of preferential prices for basic petrochemical products which will have the purpose or effect of being an export subsidy. The Government of the United Mexican States also undertakes that the program of preferential pricing for energy is not, and will not have the purpose or effect of being an export subsidy.

PREFERENTIAL PRE-EXPORT AND EXPORT FINANCING PROGRAMS

4. With regard to pre-export and export loans with a maturity of two years or less, the Government of the United Mexican States undertakes to modify the interest rates of its preferential pre-export and export financing programs so as to ensure that the Government of Mexico will not grant pre-export and export financing at rates below which it actually has to pay for the funds so employed (or would have to pay if it borrowed on international capital markets in order to obtain funds of the same maturity and denominated in the same currency as the pre-export and export financing).

With regard to medium- and long-term loans (2-10 year maturities), the Government of the United Mexican States will maintain at all times the same interest rate structure as that applied under the OECD's arrangement on guidelines for officially supported export credits. An export credit practice which is in conformity with those provisions shall not be considered an export subsidy prohibited by this agreement.

DEVELOPMENT AND OTHER PROGRAMS

5. The Government of the United Mexican States affirms that no elements of Mexico's development program (nor of any other program not referred to in this agreement) constitute export subsidies inconsistent with the internationally accepted rules for the discipline of their use.

The Government of the United States of America affirms that as of the date of the signing of this agreement it has not found any elements of Mexico's development program, other than those referred to within this agreement, to be inconsistent with the internationally accepted rules for the discipline of their use.

STANDSTILL

6. During the term of this agreement, the Government of the United Mexican States will not institute any new export subsidy program, or increase the level of any export subsidies. The Government of the United Mexican States understands that if it reactivates or modifies the currently-suspended CEDI program, or otherwise takes action

inconsistent with Paragraphs 2,3,4,5, or 6 of this Agreement, effective on the date of any such action Paragraph 7 of this Agreement shall no longer apply as between the United States of America and the United Mexican States. No determination of material injury shall be required in any United States countervailing duty investigation of merchandise from Mexico in any CVD investigations initiated by the United States subsequent to the entry into force of this agreement and pending at the time the application of Paragraph 7 is withdrawn.

INJURY TEST

7. Mexico will be eligible to receive the injury test in countervailing duty investigations. The injury test will apply to all investigations pending at the time this agreement is concluded or initiated after that time. As required by United States law, the injury test will not apply to outstanding countervailing duty orders already in effect on the date this agreement is concluded. For purposes of the application of countervailing measures, there shall be no presumption that incentives granted by the Government of the United Mexican States result in adverse effects to the trade or production of the United States. Such adverse effects shall be demonstrated by positive evidence, through the formal investigation procedures prescribed by applicable U.S. domestic law.

With respect to all products to which the injury test will apply under the terms of this paragraph, no countervailing duties shall be imposed upon any product of Mexico unless the investigation determines that the effect of subsidization is such as to cause or threaten material injury to an established domestic industry, or is such as to retard materially the establishment of a domestic industry.

CVD LAW

8. No provision of this agreement shall be construed to prevent the United States from imposing countervailing duties consistent with its international obligations and pursuant to its national law on products of Mexico receiving subsidies of any kind.

SUSPENSION OF CVD CASES

9. Subject to and in accordance with applicable U.S. national law, before a final determination of a subsidy is made, a countervailing duty proceeding may be suspended without the imposition of countervailing duties upon acceptance of mutually acceptable undertakings, following consultations where requested.

NULLIFICATION

10. Neither party to this agreement shall directly or indirectly take any action which nullifies or impairs the benefits accruing to the other party under this agreement.

NOTIFICATION/CONSULTATION

11. Either party may make a written request for information on the nature and extent of any subsidy granted or maintained by the other party.

The party from which such information is requested shall provide it comprehensively and as quickly as possible and shall be prepared upon request to provide any additional relevant information.

12. Any matter relating to the implementation of this agreement, excluding substantive discussions related to any U.S. countervailing duty proceeding, may be submitted to the U.S.- Mexico Joint Commission on Commerce and Trade.

13. This agreement shall remain in force for a period of 3 years from the date that it has been signed by both governments. Either

one of the governments may terminate this agreement by a written notification to the other party 30 days in advance of the date it intends to do so.

CODE ACCESSION

14. The United States Government expects the Government of the United Mexican States to give objective consideration to accession to the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade prior to termination of this agreement.

Prepared by: B.Stillman/IEP/WH/MD/4465/9/16/83/#IEWHCAMX56

TAB C 29

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Analysis of Draft U.S.-Mexico Agreement on Subsidies and Countervailing Duties

PARAGRAPH 1

Mexican Proposal as of July 1983

The Government of the United Mexican States and the Government of the United States of America agree to establish, through the present understanding, a mutually acceptable framework for dealing with subsidies and countervailing duties and measures. For the purposes of this understanding both parties recognize that Mexico is a developing country and that the incentive programs are legitimate instruments of the economic policy of developing countries.

USG Proposed Language

The Government of the United Mexican States and the Government of the United States of America agree to establish through the present understanding a mutually acceptable framework concerning the treatment of subsidies and countervailing duties and measures. For purposes of this agreement both parties recognize that Mexico is a developing country and that incentive programs are legitimately available instruments of developing countries' economic policy.

Discussion

By deleting "the" in "the incentive programs" and substituting

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"legitimately available instruments" for "legitimate instruments," this paragraph would be virtually identical to that accepted by both negotiating parties in October 1982 and consistent with Article 14 of the Subsidies Code. Article 14 recognizes "that subsidies are an integral part of economic development programmes of developing countries." USTR's stronger draft text does not dispute this provision. Although Mexico employs the term "understanding" as opposed to "agreement," we need not insist on using the word "agreement" for purposes of this paragraph.

There are those in the private sector who argue that:

(1) Referring to Mexico as a "developing" country poses a latent problem since it is recognized that Mexico is in the advanced developed stage despite its present "short-term" economic problems; and

(2) The agreement should not contain any statements that Mexico is a developing country and that any such statements are contrary to the Administration's graduation policy.

We disagree with these arguments. Mexico is still considered a developing country, particularly in light of its current economic situation. It is unlikely that Mexico will join the ranks of the industrialized nations during the 3-year term of this agreement. Finally, the Mexicans insist upon assuming no stronger subsidies commitment than any other developing nation.

PARAGRAPHS 2 & 3 - CEDI AND PREFERENTIAL PRICING FOR ENERGY AND BASIC PETROCHEMICAL PRODUCTS

Mexican Proposal as of July 1983

The Government of Mexico notes that concerning its export incentive program, the Tax Reimbursement Certificates (CEDIS) were discontinued for any product as of the 25th of August 1982 and shall not be reestablished or substituted for other similar program and that the program of Preferential Prices for Basic Petrochemical Products, whose period for granting terminated on November 30, 1982, shall not be utilized for such purpose. Also, the Government of Mexico declares that any Preferential Price for Basic Petrochemical Products that has been granted prior to such date and that remains in force shall be maintained without conditioning to exportation until its due date.

USG Proposed Language Regarding CEDI

Going-In Position:

The Government of Mexico affirms that its export incentive program, the Certificados de Devolucion de Impuestos (CEDIs) was discontinued with respect to all products as of August 25, 1982. The Government of the United Mexican States will, for the duration of this agreement, continue the suspension of the granting of CEDIs to any products, and will not replace the CEDI program with one that is substantially similar or reinstitute the issuance of CEDI certificates in a modified form.

USG Bottom Line:

The Government of Mexico notes that its export incentive program, the Certificados de Devolucion de Impuestos (CEDIs) was discontinued with respect to all products as of August 25, 1982. The Government of the United Mexican States will, for the duration of this agreement, continue the suspension of the granting of CEDIs to any products, and will not replace the CEDI program with one that is substantially similar or reinstitute the issuance of CEDI certificates in a modified form.

Discussion

CEDI

We basically agree with Mexico's proposal. It meets USG and private sector requirements that Mexico's major export incentive program to date continue to be suspended during the life of the agreement. Our going-in position uses the word "affirms," a stronger word than "notes." The escape clause contained in the October 26, 1982 bracketed text, which drew objections from both the private sector and sources within the USG, no longer appears in the Mexican draft.

USG Proposed Language Regarding Preferential Pricing

Going-In Position:

The Government of Mexico affirms that the program of preferential prices for basic petrochemical products was terminated on November 30, 1982. The Government of Mexico will not replace this program with one that is substantially similar or reinstate the granting of preferential prices for basic petrochemical products which will have the purpose or effect of being an export subsidy. The Government of the United Mexican States also declares that the program of preferential pricing for energy is not, and will not have the purpose or effect of being an export subsidy.

USG Fallback Position 1:

The Government of Mexico undertakes, within 3 months from the effective date of this agreement, to eliminate the granting of all preferential prices for energy and basic petrochemical products which have the effect of being an export subsidy or whose purpose is to promote exports.

USG Fallback Position 2:

The Government of Mexico undertakes, within 6 months from the effective date of this agreement, to eliminate the granting of all preferential prices for energy and basic petrochemical products which have the effect of being an export subsidy or whose purpose is to promote exports.

USG Bottom Line:

The Government of Mexico undertakes, within one year from the effective date of this agreement, to eliminate the granting of preferential prices for energy and basic petrochemical products which have the effect of being an export subsidy or whose purpose is to promote exports.

Discussion

Under a provision of the Lopez Portillo Administration's National Industrial Development Plan, companies in a specified priority development zone are eligible, under certain conditions, to receive a 30 percent discount on their consumption of basic petrochemical products. These conditions include agreeing to export 25 percent of their product for a minimum of three years. To date, the Department of Commerce has not found that Mexican exports have received benefits under this provision. Nonetheless, the Department has noted that this appears to be an export benefit. To date, the Department has found preferential energy prices to constitute domestic subsidies.

The issue of Mexico's energy pricing policies is a highly sensitive one for U.S. industry. This became especially apparent during the CVD investigations of carbon black and anhydrous ammonia. The potential for preferential prices for energy and basic petrochemical products to be used as a major export subsidy requires Mexico to commit to their elimination. DAS Ann Hughes explained our need for assurances during the recent Technical Secretariat meeting of the U.S.-Mexico Joint Commission on Commerce and Trade (JCCT).

Since the Mexicans have indicated that their program of preferential prices for basic petrochemical products has been "terminated" as of November 30, 1982, they should have little difficulty accepting a commitment to eliminate this program. The last sentence of the Mexican draft regarding this issue requires clarification.

PARAGRAPH 4 - PREFERENTIAL PRE-EXPORT AND EXPORT FINANCING PROGRAMS

Mexican Proposed Language as of July 1983

The Government of Mexico has decided to modify the interest rates of the FOMEX programs regarding export financing in such a way so as to maintain the the same structure of rate of interest applied and recognized internationally in force in export credits officially supported, and consequently FOMEX loans shall not be considered as export subsidies.

USG Proposed Language

Going-In Position - Option 1:

With regard to pre-export and export loans with a maturity of two years or less, the Government of the United Mexican States undertakes to modify the interest rates of its preferential pre-export and export financing programs so as to ensure that the Government of Mexico will not grant pre-export and export financing at rates below which it actually has to pay for the funds so

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employed (or would have to pay if it borrowed on international capital markets in order to obtain funds of the same maturity and denominated in the same currency as the pre-export and export financing).

With regard to medium- and long-term loans (2-10 year maturities), the Government of the United Mexican States undertakes to modify the interest rates of its preferential pre-export and export financing programs so as to ensure that they are consistent with Article 9 of the Agreement on Interpretation and Application of Article VI, XVI and XXIII of the General Agreement on Tariffs and Trade (the "Subsidies Code") as interpreted by item (k) of the Illustrative List of Export Subsidies annexed to the Subsidies Code, and as further interpreted by the Subsidies Code Committee of Signatories.)

Going-In Position - Option 2:

With regard to pre-export and export loans with a maturity of two years or less, the Government of the United Mexican States undertakes to modify the interest rates of its preferential pre-export and export financing programs so as to ensure that the Government of Mexico will not grant pre-export and export financing at rates below which it actually has to pay for the funds so employed (or would have to pay if it borrowed on international capital markets in order to obtain funds of the same maturity and denominated in the same currency as the pre-export and export financing.

With regard to medium- and long-term loans (2-10 year maturities), the Government of the United Mexican States will maintain at all times the same interest rate structure as that applied under the OECD's arrangement on guidelines for officially supported export credits. An export credit practice which is in conformity with those provisions shall not be considered an export subsidy prohibited by this agreement.

Fallback Position 1:

With regard to pre-export and export loans with a maturity of two years or less, the Government of the United Mexican States undertakes, 3 months from the effective date of this agreement, to modify the interest rates of its preferential pre-export and export financing programs so as to ensure that the Government of Mexico will not grant pre-export and export financing at rates below which it actually has to pay for the funds so employed (or would have to pay if it borrowed on international capital markets in order to obtain funds of the same maturity and denominated in the same currency as the pre-export and export financing).

With regard to medium- and long-term loans (2-10 year maturities), the Government of the United Mexican States will maintain at all times the same interest rate structure as that applied under the OECD's arrangement on guidelines for officially supported export credits. An export credit practice which is in conformity with those provisions shall not be considered an export subsidy prohibited by this agreement.

Fallback Position 2:

With regard to pre-export and export loans with a maturity of two years or less, the Government of the United Mexican States undertakes, 6 months from the effective date of this agreement, to modify the interest rates of its preferential pre-export and export financing programs so as to ensure that the Government of Mexico will not grant pre-export and export financing at rates below which it actually has to pay for the funds so employed (or would have to pay if it borrowed on international capital markets in order to obtain funds of the same maturity and denominated in the same currency as the pre-export and export financing.

With regard to medium- and long-term loans (2-10 year maturities), the Government of the United Mexican States will maintain at all times the same interest rate structure as that applied under the OECD's arrangement on guidelines for officially supported export credits. An export credit practice which is in conformity with those provisions shall not be considered an export subsidy prohibited by this agreement.

Fallback Position 3:

With regard to pre-export and export loans with a maturity of two years or less, the Government of the United Mexican States undertakes, one year from the effective date of this agreement, to modify the interest rates of its preferential pre-export and export financing programs so as to ensure that the Government of Mexico will not grant pre-export and export financing at rates below which it actually has to pay for the funds so employed (or would have to pay if it borrowed on international capital markets in order to obtain funds of the same maturity and denominated in the same currency as the pre-export and export financing).

With regard to medium- and long-term loans (2-10 year maturities), the Government of the United Mexican States will maintain at all times the same interest rate structure as that applied under the OECD's arrangement on guidelines for officially supported export credits. An export credit practice which is in conformity with those provisions shall not be considered an export subsidy prohibited by this agreement.

Fallback Position 4:

The Government of the United Mexican States undertakes to modify the interest rate on its preferential pre-export and export financing programs as follows:

1) To adjust the interest rate on loans with a maturity of 2 years or less to 10 percent or three percentage points above the published New York Bankers' Acceptance Rate, whichever is higher.

2) On medium and long-term loans (2-10 year maturities) the same interest rate structure will be maintained at all times as that applied under the OECD's arrangement on guidelines for officially supported export credits.

On the basis of the conditions outlined in points (1) and (2) in the preceeding paragraphs, preferential pre-export and export credits will not be considered as export subsidies prohibited by this agreement.

Fallback Position 5:

The Government of the United Mexican States undertakes to modify the interest rate on its preferential pre-export and export financing programs as follows:

1) To adjust the interest rate on loans with a maturity of 2 years or less to a minimum rate of 10 percent and to maintain the minimum rate on such loans at no less than 4 percentage points below the equivalent London Inter Bank Offered Rate (LIBOR) when the LIBOR rises above 14 percent.

2) On medium and long-term loans (2-10 year maturities) the same interest rate structure will be maintained at all times as that applied under the OECD's arrangement on guidelines for officially supported export credits.

On the basis of the conditions outlined in points (1) and (2) in the preceeding paragraphs, preferential pre-export and export credits will not be considered as export subsidies prohibited by this agreement.

Discussion

The Subsidies Code requires that governments not grant export credits at rates below those which they actually have to pay for the funds so employed and includes a proviso for those adhering to the OECD Gentlemen's Agreement. While item (k) of the Code's illustrative list of export subsidies has been interpreted to apply to medium- and long-term loans only, our going-in options use the Subsidies Code standard as a benchmark for short-term financing as well.

Currently, we know that FOMEX pre-export (peso) loans may be made at an 8% maximum interest rate, and export loans at a 6% maximum interest rate. Our "going-in" position 1, which incorporates USTR's draft language (we have revised it to differentiate short-term from medium- and long-term financing), refers explicitly to the Subsidies Code. Even this language, stronger than the October 1982 draft text, was criticized by some in the private sector as too weak. One private sector advisor commented that Mexico should be required to charge interest rates for its preferential pre-export and export loans that are equal to the cost of money in international general commercial capital markets. While we believe that modification of Mexico's programs is necessary and appropriate, we do not believe that total elimination of preferential financing is necessary for an adequate subsidies commitment.

Our fallback positions use language which is consistent with the Subsidies Code without mentioning the Code explicitly. Fallback positions one through three require Mexico to phase out its program in accordance with the conditions contained therein. Fallback position four uses the World Bank export development loan to Mexico to establish a benchmark for interest rate discipline. Fallback position five uses the language of the October 1982 draft text, minus the "matching" clause. In all of our proposals, we have avoided the use of the term "FOMEX" and have opted for a more general description of the program. In light of Mexico's new export development plan, this removes some of the uncertainty surrounding the possible existence of new preferential export financing programs. In order to establish our bottom line, we should seek Treasury's advice as to whether the World Bank option is more beneficial to U.S. interests over the longer term than the LIBOR option.

On June 23, the World Bank approved an export development loan to the Government of Mexico at the "standard variable interest rate;" i.e., the World Bank's interest rate. This rate, which may fluctuate; i.e., change quarterly, is currently 10.47 percent. The World Bank will require that sub-loans of these funds to Mexican exporters be at three percentage points above the prevailing discount rate at which Bankers' Acceptances with 180-day maturities are traded in the New York market. On October 24, the rate given for "Bankers' Acceptances" for 180-day maturities, according to the Wall Street Journal, was 9.05 percent. Mexican exporters, therefore, would have had to pay 12.05 percent on October 24 for sub-loans of the World Bank funds. We understand that, all things being equal, the "standard variable interest rate" will be lower than Bankers Acceptances plus 3 percentage points.

Several observations can be made about the World Bank loan:

- It is consistent with the Subsidies Code in that loans to Mexican exporters are to be made at interest rates equal to and in fact higher than the cost of money to the Government.

- The World Bank loan, in terms of discipline, is currently stronger than that required in the October, 1982 bracketed text.

- The World Bank loan is no weaker than the requirements imposed by USTR's draft language.

Since the Mexicans agreed to the World Bank conditions, they should be willing to adhere to such conditions for the purposes of a subsidies agreement. Furthermore, these conditions would conform Mexico's subsidies commitment to the World Bank loan, thus obviating the need to deal with preferential export financing on two different tracks.

One note of caution is that discipline which rests on cost of money to the Government does not free Mexico from the imposition of countervailing duties on its preferential pre-export and export financing programs. The standard used in administering U.S. law is commercial interest rates. For this reason, combined with our requirements for Mexico to eliminate its other export subsidies, any of the positions contained in our proposed language would provide adequate discipline. We will be criticized for not requiring higher interest rate discipline on peso-denominated loans (pre-export financing), particularly when Mexico's Treasury Bill rate during the first quarter of 1983 was greater than 64 percent. More recently, our Embassy reports that the average cost of funds to the banks for September is estimated by the Bank of Mexico to be 57.78 percent compared to 58.23 percent in August and 58.73 percent in July. In countering this criticism, we could argue as follows:

1) Strong discipline will have been achieved with regard to nearly 80 percent of the preferential export financing programs (dollar-denominated loans and medium- and long-term loans). On the remaining 20 percent, we will have obtained some increase in the preferential interest rate. The Subsidies Code does not require LDC's to totally eliminate their export subsidies, only to discipline their use.

2) U.S. industry continues to be protected by the CVD law which employs commercial rates of interest as a benchmark for calculating the duties.

We have removed the matching clause from the October 1982 draft text. Our conceding to a standard below the cost of money to the government, particularly with respect to peso loans, is concession enough. Besides, Mexico's recent proposal does not include a matching clause.

We should not accept any language that states or infers that FOMEX or any other similar program is not an export subsidy. FOMEX is in fact an export subsidy, although perhaps not an export subsidy "prohibited by this Agreement" if all other conditions are met (see Item (k), Illustrative List of Export Subsidies, Subsidies Code). Furthermore, since at least 85% of FOMEX financing is short-term pre-export and export financing, we must ensure that Mexico assumes meaningful discipline over this program.

Mexico's proposal to adhere to internationally accepted standards for medium- and long-term loans is a positive step. Since Mexico itself proposed adherence to these standards, the GOM should have no difficulty adhering to them immediately.

PARAGRAPH 5 - DEVELOPMENT AND OTHER PROGRAMS

Mexican Proposal as of July 1983

The Government of Mexico and the Government of the United States note that up until the date of the signing of this Agreement, no

Mexican program for the promotion of its development, not expressly identified in this instrument, constitutes an export subsidy inconsistent with its development and competitive needs.

USG Proposed Language

Going-In Position - Option 1:

The Government of the United Mexican States affirms that no elements of Mexico's development program (nor of any other program not referred to in this Agreement) are inconsistent with Article 9 of the Subsidies Code.

The Government of the United States of America affirms that as of the date of the signing of this agreement it has not found any elements of Mexico's development program, other than those referred to within this agreement, to be inconsistent with Article 9 of the Subsidies Code.

Going-In Position - Option 2:

The Government of the United Mexican States affirms that no elements of Mexico's development program (nor of any other program not referred to in this agreement) constitute export subsidies inconsistent with the internationally accepted rules for the discipline of their use.

The Government of the United States of America affirms that as of the date of the signing of this agreement it has not found any elements of Mexico's development program, other than those referred to within this agreement, to be inconsistent with the internationally accepted rules for the discipline of their use.

Fallback Position:

The Government of the United Mexican States affirms that, as regards programs not referred to in this agreement, no elements of Mexico's development program, including its export development program, constitute export subsidies inconsistent with the internationally accepted rules for the discipline of their use.

The Government of the United States of America affirms that as of the date of the signing of this agreement it has not found any elements of Mexico's development program, other than those referred to within this agreement, to be inconsistent with the internationally accepted rules for the discipline of their use.

Bottom Line:

The Government of the United Mexican States notes that, as regards programs not referred to in this agreement, no elements of Mexico's development program, including its export development program, constitute export subsidies inconsistent with the internationally accepted rules for the discipline of their use.

The Government of the United States of America notes that as of the date of the signing of this agreement it has not found any elements of Mexico's development program, other than those referred to within this agreement, to be inconsistent with the internationally accepted rules for the discipline of their use.

Discussion

Mexico's proposal would have the USG "grandfather" any export subsidies that we have not yet discovered. This is unacceptable. Our proposed going-in language (USTR's draft language), i.e., option 1, would have Mexico's assurance that no elements of their government policies other than those referenced in the agreement are inconsistent with Article 9 of the Subsidies Code (option 2 removes specific reference to the Code). Our fallback position limits Mexico's commitment to its development program, but includes a reference to its recently announced export development program. Our "going-in" and fallback positions would essentially accomplish the same objective. Our bottom line position substitutes the word "notes" for affirms."

PARAGRAPH 6 - STANDSTILL

Mexican Proposal as of July 1983

The Government of Mexico has decided, in conformity with the guidelines established in the National Development Plan, to follow a realistic policy of rate of exchange that makes it unnecessary to establish any new program of export subsidies or to increase the general level of any of the export subsidies.

USG Proposed Language

Going-In Position:

During the term of this agreement, the Government of the United Mexican States will not institute any new export subsidy program, or increase the level of any export subsidies. The Government of the United Mexican States understands that if it reactivates or modifies the currently-suspended CEDI program, or otherwise takes action inconsistent with Paragraphs 2,3,4,5, or 6 of this Agreement, effective on the date of any such action Paragraph 7 of this Agreement shall no longer apply as between the United States of America and the United Mexican States. No determination of material injury shall be required in any United States countervailing duty investigation of merchandise from Mexico in any CVD investigations initiated by the United States subsequent to the entry into force of this agreement and pending at the time the application of Paragraph 7 is withdrawn.

Fallback Position:

The Government of Mexico has decided, in conformity with the guidelines established in the National Development Plan, to follow a realistic exchange rate policy. Therefore, during the term of this agreement, the Government of the United Mexican States agrees not to institute any new export subsidy program or increase the level of any export subsidies.

Bottom Line:

The Government of Mexico has decided, in conformity with the guidelines established in the National Development Plan, to follow a realistic exchange rate policy. Therefore, during the term of this agreement, the Government of the United Mexican states undertakes not to institute any new export subsidy program or increase the level of any export subsidies.

Discussion

A meaningful standstill commitment is essential, particularly in light of Mexico's new export development plan. Mexico's proposed language does not fulfill this need. Furthermore, the private sector and some sources in the USG believe that if Mexico takes any action inconsistent with this agreement, the agreement should automatically terminate. This sentiment is reflected in USTR's stronger draft proposal; i.e., the USG "going-in" position. Automatic termination, triggered by Mexico's violation of its subsidies commitment, is one concept that has gained support within the USG.

During the recent JCCT Technical Secretariat meeting, the Mexicans indicated some flexibility when they asked the USG to produce a counterproposal. Our going-in position would obviate the need for a dispute settlement mechanism since the two would seem to be incompatible for the formulation of a meaningful mechanism. Our fallback and bottom line positions would allow for a dispute settlement provision which includes an automatic termination clause (see paragraph 11). The difference between our fallback and bottom line positions is found in the words "agrees" and "undertakes".

PARAGRAPH 7 - INJURY TEST

Mexican Proposal as of July 1983

For the application of countervailing duties and measures, the Government of the United States shall recognize and grant Mexico the strict status of Most Favoured Nation, especially with regard to the injury test and will assure that no countervailing duties shall be imposed against imports from Mexico, unless there is demonstration through positive evidence of the existence of a subsidy, an injury and the determination that the effect of the investigated subsidy is such that causes or threaten to cause important injury to a domestic industry already established or that sensibly delays the establishment of a domestic industry.

USG Proposed Language

Mexico will be eligible to receive the injury test in countervailing duty investigations. The injury test will apply to all investigations pending at the time this agreement is concluded or initiated after that time. As required by United States law, the injury test will not apply to outstanding countervailing duty orders already in effect on the date this agreement is concluded. For purposes of the application of countervailing measures, there shall be no presumption that incentives granted by the Government of the United Mexican States result in adverse effects to the trade or production of the United States. Such adverse effects shall be demonstrated by positive evidence, through the formal investigation procedures prescribed by applicable U.S. domestic law. With respect to all products to which the injury test will apply under the terms of this paragraph, no countervailing duties shall be imposed upon any product of Mexico unless the investigation determines that the effect of subsidization is such as to cause or threaten material injury to an established domestic industry, or is such as to retard materially the establishment of a domestic industry.

Discussion

The beginning of Mexico's proposal highlights that country's hypersensitivity to being excluded from the injury test. In addition to our proposed language, we could account for Mexico's concern, if the GOM so insists, in a memorandum of understanding which states that Mexico will be treated no differently from any other country obtaining "country under the Agreement" status and thus the injury test. Our proposed language is nearly identical to that agreed upon by United States and Mexican negotiators in the October 1982 draft text.

Some in the private sector believe that the agreement should explicitly state that the injury test will not be applied to already existing countervailing duty orders. While it is clear that present U.S. law does not permit retroactive application of the injury test, we are making this requirement explicit in our proposed language in order to avoid any misunderstanding.

MEXICO'S PARAGRAPH 7

Mexican Proposal as of July 1983

Due to the fact that the exports of Mexican products affected by the application of countervailing duties has not necessarily caused or threatened to cause important injury to a domestic industry established in the United States after the date when this Agreement becomes effective, the Government of the United States shall not apply countervailing duties to the products whose investigations or final determinations have taken place before the signing of this Agreement, unless it is proven that the effect of those subsidies causes or threatens to cause an important injury to one of its industries or sensibly delays the establishment of a domestic industry.

Discussion

This provision in its entirety is unacceptable. U.S. law requires that the injury test be applied only to future investigations and investigations in progress at the time an agreement is signed. During the JCCT Technical Secretariat meeting in July 1983, the Mexican delegation indicated that they might agree to eliminate this provision from their proposal.

PARAGRAPH 8 - CVD LAW

Mexican Proposal as of July 1983

No rule in this Agreement shall be interpreted in such form that impedes to any of the parts to impose countervailing duties in accordance to its national legislation regarding products from the other party that receives export subsidies or any other kind thereof.

USG Proposed Language

Going-In Position - Option 1:

No provision of this agreement shall be construed to prevent the

United States from imposing countervailing duties consistent with Part 1 of the Subsidies Code, pursuant to its national law on products of Mexico receiving subsidies of any kind, export or otherwise.

Going-In Position - Option 2 and Bottom Line:

No provision of this agreement shall be construed to prevent the United States from imposing countervailing duties consistent with its international obligations and pursuant to its national law on products of Mexico receiving subsidies of any kind.

Discussion

This provision is an example of Mexico's attempt to reach a mutually satisfactory agreement with the United States. The October 1982 draft indicates that Mexican and U.S. negotiators had reached agreement on language much like that indicated in Mexico's new draft. In the fall text, however, Mexico had agreed to language which referred to Part 1 of the Subsidies Code.

The language contained in our going-in position duplicates the October 1982 draft text. Our bottom line, while removing explicit reference to the Subsidies Code, retains the concept of our international obligations.

A key element of this provision is Mexico's understanding of U.S. legal requirements to impose countervailing duties not only on export subsidies but also on domestic subsidies. In the past, Mexico has argued that domestic subsidies are exempt from U.S. law. The current Mexican proposal seems to reflect their acceptance of U.S. legal requirements.

PARAGRAPH 9 - CODE APPLICATION

Mexican Proposal as of July 1983

The United States of America has decided not to grant export subsidies that are inconsistent with this Agreement that threatens or cause material injury to the commerce or to the production of the United Mexican States, or that materially retards the establishment of a domestic industry in Mexico, nor to establish any new program of export subsidies. The Government of the United States recognize that Mexico is a developing country and as such could, when it so desires, adopt policy measures to support its industries including those in the export sector when the use of such export subsidies is consistent with its development and competitive needs.

<u>USG Proposed Language</u>

Going-In Position:

Except as otherwise provided in this agreement, the rights and obligations of the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade shall be applicable as between the parties to this agreement. The United States has decided not to grant export subsidies inconsistent with the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade.

Consistent with Article 14 of the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade, it is recognized that Mexico is a developing country and that the Government of Mexico may adopt measures and policies to assist its industries, including those in the export

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sector, provided that it commits itself to reduce or eliminate export subsidies when the use of such export subsidies is inconsistent with its competitive and development needs, and further provided that export subsidies on industrial products shall not be used in a manner which causes serious prejudice to the trade or production of the other party to this agreement.

Fallback Position:

We should eliminate this proposal entirely since paragraph 1 recognizes Mexico's need to identify itself as a developing country. Furthermore, paragraph 1 uses language which is consistent with the Subsidies Code without explicit reference to it.

Bottom Line:

The United States of America has decided not to grant export subsidies that are inconsistent with this Agreement, that threaten or cause material injury to the commerce or to the production of the United Mexican States, or that materially retard the establishment of a domestic industry in Mexico, nor to establish any new program of export subsidies.

It is recognized that Mexico is a developing country and that the Government of Mexico may adopt measures and policies to assist its industries, including those in the export sector, provided that it commits itself to reduce or eliminate export subsidies when the use of such export subsidies is inconsistent with its competitive and development needs, and further provided that export subsidies on industrial products shall not be used in a manner which causes serious prejudice to the trade or production of the other party to this agreement.

Discussion

Mexico's proposal reflects the GOM's need to avoid any reference to the Subsidies Code. We should argue that this provision is unnecessary. If Mexico insists, the language should be consistent with Article XIV of the Subsidies Code, as is paragraph 1 of this agreement. Our proposed "going-in" language is the same as that agreed to by U.S. and Mexican negotiators in October 1982. In light of certain private sector sentiments to avoid any reference to Mexico as a developing country, one reference to Mexico's needs as a developing country, particularly in the form of an opening paragraph, should suffice.

By eliminating any Subsidies Code application clause from an agreement, the question is whether the agreement would be a "substantially equivalent" one. It has been determined in the past that a "substantially equivalent" agreement should include the following key elements of the Subsidies Code: (1) common rules on countervailing duty procedures; (2) reciprocal subsidy notification obligations; (3) subsidy discipline, including an export subsidy commitment; (4) procedures for conciliation, dispute settlement, and countermeasures. Our proposals contain the first three elements. Our answer to the fourth elements is, in the first instance, automatic termination of the agreement if violated or, as a fallback, consultations within a specified time frame prior to automatic termination.

PARAGRAPH 10 - SUSPENSION OF CVD CASES

Mexican Proposal as of July 1983

Subject to and in conformity with the applicable national legislation of the United States, a procedure of countervailing duties could be suspended, before a final determination of a subsidy is carried out, when reaching mutually acceptable agreements, resulting from previously requested consultations.

USG Proposed Language

Subject to and in accordance with applicable U.S. national law, before a final determination of a subsidy is made, a countervailing duty proceeding may be suspended without the imposition of countervailing duties upon acceptance of mutually acceptable undertakings, following consultations where requested.

Discussion

We agree with Mexico's proposal. Our counterproposal simply contains editorial changes. Our proposed language is that which U.S. and Mexican negotiators accepted in October 1982.

PARAGRAPH ADDITION - NULLIFICATION

The Mexican draft of July 1983 does not contain a nullification or impairment provision.

USG Proposed Language

Neither party to this agreement shall directly or indirectly take any action which nullifies or impairs the benefits accruing to the other party under this agreement.

Discussion

This language was agreed to by U.S. and Mexican negotiators in October 1982. If Mexico insists, we could eliminate this provision since the concept is contained in the USG proposed standstill and dispute settlement provisions.

PARAGRAPH 11 - DISPUTE SETTLEMENT

Mexican Proposal of July 1983

In the event that the Government of Mexico introduce the Tax Reimbursement Certificates (CEDI), or that the Government of the United States grants a subsidy to exportation inconsistent with this Agreement, the part considered to be affected can request consultations with the other party.

If the parties are unable to reach a mutually acceptable solution, that could include an adequate compensation, at the end of 30 days following the initiation of the consultations, each party can, through a written notice to the other party, terminate the present Agreement, with 30 days in advance.

USG Proposed Language

See "Standstill" provision for going-in position.

Fallback Position:

In the event of a dispute between the parties concerning the operation of this agreement, either party may request consultations with the other party. If the parties are unable to achieve a mutually acceptable solution within 30 days of the request for consultations then either party may, after delivering a written notification to the other party 30 days in advance, terminate the present agreement. The Government of Mexico understands that if it reactivates or increases the level of any export subsidy covered by this agreement or institutes any new export subsidy, the United States will no longer apply the injury test in any United States countervailing duty investigation of merchandise from Mexico. No determination of material injury shall be required in any United States countervailing duty investigation of merchandise from Mexico in any CVD investigations initiated by the United States subsequent to the entry into force of this agreement and pending at the time the application of Paragraph 7 is withdrawn if the parties are unable to achieve a mutually acceptable solution within 30 days of a request for consultations.

Bottom Line:

In the event of a dispute between the parties concerning the operation of this agreement, either party may request consultations with the other party. If the parties are unable to achieve a mutually acceptable solution within 30 days of the request for consultations then either party may, after delivering a written notification to the other party 30 days in advance, terminate the present agreement. The Government of Mexico understands that if it reactivates or increases the level of any export subsidy covered by this agreement or institutes any new export subsidy, the United States, after delivering a written notification to the other party 30-days in advance, will no longer apply the injury test in any

United States countervailing duty investigation of merchandise from Mexico. No determination of material injury shall be required in any United States countervailing duty investigation of merchandise from Mexico in any CVD investigations initiated by the United States subsequent to the entry into force of this agreement and pending at the time the application of Paragraph 7 is withdrawn if the parties are unable to achieve a mutually acceptable solution within 30 days of a request for consultations.

Discussion

We have basic difficulties with the first paragraph of Mexico's proposal. First, it limits our right to consultations and dispute settlement and the right to terminate the agreement only in the event that Mexico reintroduces the CEDI. A dispute settlement provision should encompass all aspects of the agreement. Second, we wonder why the GOM would highlight reintroduction of the CEDI if the Mexicans weren't contemplating reintroducing it.

The 30 day deadlines included in the Mexican proposal are acceptable. The relevant difference between these deadlines and those agreed to in the October 1982 draft is the point from which to count 30 days for resolution of a dispute. The October 1982 draft says that the dispute must be resolved within 30 days of the request for consulations. The Mexican draft uses the initiation of consultations as the benchmark. For the sake of expediting the consultation process and consistency with the Subsidies Code, we should insist upon the date of "request" as the operating date.

Our proposed language also includes the USG requirement to automatically terminate the agreement should Mexico violate the agreement's conditions for discipline of its export subsidies. Our proposed language would make it mandatory, as opposed to discretionary, for the U.S. to terminate the agreement if such violation occurs and no resolution is found within the time frames specified.

PARAGRAPH 12 - NOTIFICATION/CONSULTATION

Mexican Proposal as of July 1983

Any of the parties can present a written request about information relative to the nature and the scope of any subsidy granted or maintained by the other party. The party to which that information has been requested, should provide it in detail and as expeditiously as possible and should be readily available to present, at the cited request of the other party any additional relevant information.

USG Proposed Language

Either party may make a written request for information on the nature and extent of any subsidy granted or maintained by the other party.

The party from which such information is requested shall provide it comprehensively and as quickly as possible and shall be prepared upon request to provide any additional relevant information.

Discussion

Mexico's proposal is acceptable. Our proposed language simply contains editorial changes. It is the same language that was accepted by both United States and Mexican negotiators in October 1982.

PARAGRAPH 13

Mexican Proposal as of July 1983

Any matter related to the operation of this Agreement can be forwarded, as mutually agreed, to the U.S.- Mexico Joint Commission on Commerce and Trade.

USG Proposed Language

Any matter relating to the implementation of this agreement, excluding substantive discussions related to any U.S. countervailing duty proceeding, may be submitted to the U.S.- Mexico Joint Commission on Commerce and Trade.

Discussion

"Any matter" concerns us if "any matter" also includes substantive discussions of countervailing duty proceeedings. USDOC advises that any detailed discussion of CVD cases should be avoided at all cost. Should such discussion take place, the petitioners in each case could legitimately complain that their rights have been prejudiced in that the Mexicans will be provided an additional extra-legal, political forum for discussion of a proceeding for which there are strict statutory guidelines and hearing requirements. In short, because of the many opportunities for legal challenge under this law, we must be absolutely certain to avoid any discussions in the JCCT which could be construed as reviewing the merits of a case and thereby compromising the integrity of the CVD process. We could probably live with Mexico's proposal if this caveat is understood. However, we cannot accept Mexico's "if mutually agreed" language, since either party to this agreement should be permitted to submit its concerns to the JCCT whether or not the other party agrees.

PARAGRAPH 14

Mexican Proposal as of July 1983

This Agreement will be in force for a period of 3 years, beginning on the date it is executed by both Governments. Either party can terminate this Agreement through written notification to the other party, with 90 days in advance from the date it is intended to be carried out.

USG Proposed Language

Going-In Position:

This agreement shall remain in force for a period of 3 years from the date that it has been signed by both governments. Either one of the governments may terminate this agreement by a written notification to the other party 30 days in advance of the date it intends to do so.

Bottom Line:

This agreement shall remain in force for a period of 3 years from the date that it has been signed by both governments. Either one of the governments may terminate this agreement by a written notification to the other party 60 days in advance of the date it intends to do so.

Discussion

In the October 1982 text, U.S. and Mexican negotiators agreed to a 30-day time period for written notification to terminate the agreement. In Mexico's present draft, that period has been extended to 90 days. We should pursue the 30-day time frame. Our bottom-line position reflects the 60 day time frame established in the Subsidies Code for withdrawal from the Code (see Part VII, Article 19, "Final Provisions", para. 8 of the Subsidies Code).

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PARAGRAPH RE: CODE ACCESSION

USG Proposed Language

The United States Government expects the Government of the United Mexican States to give objective consideration to accession to the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade prior to termination of this agreement.

Discussion

Mexico's draft proposal contains no reference to joining the Subsidies Code. While it is clear that the USG and the private sector expect Mexico to do so, it is equally clear that Mexico, for domestic political reasons, cannot accept any language that hints at the GATT. We might succeed in surmounting this basic difference in our perspectives through a memorandum of understanding rather than explicit reference to the Subsidies Code in an Agreement (see attached).

Prepared by: B. Stillman/IEP/WH/MD/4465/9/2/83/IEWHCAMX110

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TAB D
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MEMORANDUM OF UNDERSTANDING

TO: Lic. Hector Hernandez Cervantes,
Secretary of Commerce and Industrial Development
of the United Mexican States

FROM: Ambassador William Brock,
United States Trade Representative

Malcolm Baldrige, Secretary of
the United States Department of Commerce

SUBJECT: U.S.-Mexico Agreement on Subsidies and Countervailing Duties

In signing the U.S.-Mexico Agreement on Subsidies and Countervailing Duties, we wish the Government of the United Mexican States to understand that the United States Government will not renew this agreement beyond its three year duration unless Mexico has acceded to the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade.

Prepared by: B.Stillman/ITA/IEP/WH/MD/4464/9/15/83/#IEWHCAMX56

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