

GENERAL AGREEMENT ON

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TARIFFS AND TRADE

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Committee on Subsidies and
Countervailing Measures

REPLIES BY COLOMBIA TO QUESTIONS RAISED BY CANADA¹
CONCERNING THE COUNTERVAILING DUTY LEGISLATION OF COLOMBIA

(SCM/1/Add.29)

Question 1

Article 8 provides that, in the absence of any pertinent international treaty, the countervailing duty may be imposed on subsidized imports even where injury or threat of injury has not been demonstrated. Could Colombia please explain the need for such a provision?

Reply

This provision is included in the law because of the need to ensure reciprocity in the country's international relations. It is GATT membership that obliges countries to grant the injury test to products imported from another country. If a country is not bound by the General Agreement it could apply duties without the corresponding injury test. This provision seeks to ensure equitable and reciprocal treatment between countries in such an event. Article 8 explicitly provides the obligation to apply reciprocity taking into account whether in the exporting country or country of origin the test of injury or threat of injury to Colombian products would be required, bearing in mind the definitions, methodologies and administrative and law-supervision procedures that are or would be applied in the exporting country or country of origin to Colombian exports.

Question 2

Article 15 provides for an "ex officio" investigation. Could Colombia please explain the circumstances under which INCOMEX would initiate an ex officio investigation? Does Colombia view such a practice as an extraordinary occurrence?

Reply

The Colombian Government would initiate an ex officio investigation when it possesses evidence giving it grounds to presume the existence of the practice, of injury or threat of injury to the domestic industry, and of a causal relationship between the two.

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Colombia considers that this procedure should only be used in exceptional circumstances, since in the first instance action is to be taken by the domestic producers affected by the practice, and it is they who are in a position to know for certain whether they are being injured by the imports concerned by the practice.

Question 3

Article 16 (Initiation of the Investigation) provides for the initiation of an investigation "from the moment it can be proved that a dumped or subsidized operation has begun". Could Colombia please explain the meaning of this language? Is it related to establishing sufficient evidence of the existence of a subsidy and a causal link between the subsidized imports and the alleged injury?

Reply

An article of a legal text cannot be interpreted out of context. Throughout Decree 2444 of 1990 it is foreseen that to initiate an investigation relating to subsidized imports it is necessary to have reasons to believe that this unfair practice is occurring and that it is causing or threatening material injury to the domestic industry. This article merely reiterates what is established throughout the Decree.

Question 4

Article 17:7 (Complaint Requirements) requires that complaints contain an "indication of the evidence it is wished to adduce". Could Colombia please explain the meaning of this provision? Is the provision related to the need to establish a causal link between the subsidized imports and the injury alleged under Article 17:5?

Reply

Article 17:7 includes among the information that must be submitted for any complaint the requirement that the evidence that it is intended to adduce in the proceedings be mentioned; this therefore refers to evidence demonstrating the existence of the practice, the injury or threat of injury and the causal relationship between the two.

Question 5

Under Article 23 is it possible to impose provisional duties "at any time after the initiation", or does Colombia provide for or foresee a minimum period for investigation prior to the reaching of any preliminary determination?

Reply

Our legislation does not establish a mandatory period within which a provisional duty may be imposed. At any time after the initiation of an investigation, when the preliminary conclusion has been reached that

dumping or subsidization exists and that there is sufficient proof of the consequent injury or threat, a provisional duty may be imposed to avert the injury or threat of injury during the period of the investigation. To meet these requirements it is necessary to have advised the country and exporters that are accused, giving them a reasonable period in which to reply to the questionnaires sent to them in order to substantiate the grounds for the investigation and possibly disprove the complainant's allegations. Only once the information received from the country and the exporters under investigation has been evaluated is it possible to arrive at a preliminary affirmative determination justifying the imposition of a provisional duty.

Question 6

Article 28 speaks of final countervailing duties but there is no mention of a final determination of subsidization and of material injury. Could Colombia clarify the basis on which final duties would be imposed?

Reply

As already mentioned, a legal provision cannot be interpreted out of context, and since the articles of the Decree provide the bases for the determination of the subsidy and material injury, it does not seem important to reiterate them in this article.

Chapter III, Articles 6 and 7, of the Decree, provides the grounds for the determination of a subsidy. Articles 10 and 11 of the Decree establish the elements for the determination of injury or threat to domestic industry. In addition, Article 30 of the Decree explicitly states that the application of a countervailing duty shall not be greater than the amount of the subsidy found to exist. Finally, Article 28 provides that the Ministry, following the opinion of the Trade Practices Committee, may determine that the countervailing duty be less than the amount of the subsidy if such lesser amount is adequate to remove injury or threat of injury to the Colombian industry.