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GENERAL AGREEMENT ON TARIFFS AND TRADE

Committee on Subsidies and
Countervailing Measures

DRAFT GUIDELINES IN THE DETERMINATION OF SUBSTITUTION DRAWBACK SYSTEMS AS EXPORT SUBSIDIES

I

Drawback systems can allow for the refund or drawback of import charges on goods which are incorporated into another product and where the export of this latter product contains domestic goods having the same quality and characteristics as those substituted for the imported goods. Pursuant to paragraph (i) of the Illustrative List of Export Subsidies annexed to the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade (the Code) substitution drawback systems can constitute an export subsidy to the extent that they result in an excess drawback of the import charges levied initially on the imported goods for which drawback is being claimed.

II

In examining any substitution drawback system as part of a countervailing duty investigation pursuant to the Code, investigating authorities should proceed on the following basis:

1. Paragraph (i) of the Illustrative List stipulates that home market goods may be substituted for imported goods in the production of a product for export provided such goods are equal in quantity to, and have the same quality and characteristics as, the imported goods being substituted. The existence of a verification system or procedure is important because it enables the government of the exporting country to ensure and demonstrate that the quantity of goods for which drawback is claimed does not exceed the quantity of similar goods exported, in whatever form, and that there is not drawback of import charges in excess of those originally levied on the imported goods in question.

2. Where it is alleged that a substitution drawback system conveys a subsidy, the investigating authorities should first proceed to determine whether the government of the exporting country has in place and applies a verification system or procedure. Where such a system or procedure is determined to be applied, the investigating authorities should then examine the verification procedures to see whether they are reasonable, effective for the purpose intended, and based on generally accepted commercial practices in

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the country of export. To the extent that the procedures are determined to meet this test and are effectively applied, no subsidy should be presumed to exist. It may be deemed necessary by the investigating authorities to carry out, in accordance with Article 2:8 of the Code, certain practical tests in order to verify information or to satisfy themselves that the verification procedures are being effectively applied.

3. Where there are no verification procedures, where they are not reasonable, or where such procedures are instituted and considered reasonable but are found not to be actually applied or not applied effectively, there may be a subsidy. In such cases a further examination by the exporting country based on the actual transactions involved would need to be carried out to determine whether an excess payment occurred. If the importing country deemed it necessary a further examination would be carried out in accordance with paragraph 2 above.

4. The existence of a substitution drawback provision wherein exporters are allowed to select particular import shipments on which drawback is claimed should not of itself be considered to convey a subsidy.

5. An excess drawback of import charges in the sense of paragraph (i) would be deemed to exist where governments paid interest on any monies refunded under their drawback schemes, to the extent of the interest actually paid or payable.