

# GENERAL AGREEMENT ON

RESTRICTED

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## TARIFFS AND TRADE

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Committee on Subsidies and  
Countervailing Measures

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### RESPONSES BY THE UNITED STATES TO QUESTIONS SUBMITTED BY INDIA

#### Question

Section 701(c)(2)--Revocation of Status.--Under section 701(c)(2) of the Omnibus Trade and Competitiveness Act, 1988, the U.S. Government has the authority to revoke the status of any country as a country under the Agreement on Subsidies and Countervailing Measures, if such country does not honor the obligation it has assumed with respect to the USA or under the Agreement.

Which provision of the Agreement on Subsidies and Countervailing Duties does U.S. seek to rely upon to deny the benefits of the Agreement in pursuance of the above provision?

#### Answer

We note at the outset that the United States has not to date taken any action pursuant to section 701(c)(2). Thus, any comment on application of the section is necessarily hypothetical.

In any event, any action under section 701(c)(2) would be fully consistent with U.S. GATT and Code rights and obligations. For example, Article 19, paragraph 9 of the Code provides that "this Agreement shall not apply as between any two signatories if either of the signatories, at the time either accepts or accedes to this Agreement does not consent to such application." Article 14, paragraph 5 of the Code provides that developing countries "should endeavor to enter into a commitment to reduce or eliminate export subsidies when the use of such export subsidies is inconsistent with its competitive and development needs."

Section 701(c)(2) would simply allow the United States to exercise its rights in accordance with Article 19, paragraph 9 and Article 14, paragraph 5 of the Code, with respect to any obligations undertaken by a signatory in conjunction with those provisions.

#### Questions

Section 771(7)(C)(V)

What would be the volume of imports and market share of imports which would be regarded as negligible and what would be the discernible level of adverse impact for the purpose of these provisions?

### U.S. Response

19 U.S.C. section 1677(7)(C) provides that the Commission, in determining whether there is material injury or threat thereof to the U.S. industry, may cumulatively assess the volume and price effects of imports from two or more countries under investigation, provided that certain conditions indicative of cumulative impact, the so-called "hammering effect," are met. If the Commission determines that imports from a given country are negligible and have no discernible adverse impact on the domestic industry, it may exclude the imports from such country from its cumulative analysis. In making the decision whether to exclude such country's imports, the Commission must consider all relevant economic factors including whether the volume and market share of the imports are negligible, whether import sales transactions are isolated and sporadic, and whether the U.S. market for the like product is price sensitive by reason of the nature of the product, so that a small amount of imports could nonetheless result in price suppression or depression. "Negligible" is not further defined or quantified.

The negligible imports provision was added by the 1988 Act. Because the provision is relatively new, the Commission has not had extensive experience in its use. In Certain Telephone Systems and Subassemblies Thereof from Japan, Korea, and Taiwan,<sup>1</sup> the Commission noted that one respondent had argued against cumulating its imports with others because its imports were negligible, but the commission found that the imports were not negligible and determined to cumulate.<sup>2</sup> No criteria were stated in that determination for determining whether imports are negligible or what would be a discernible level of adverse impact.

### Question

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<sup>1</sup> Invs. Nos. 731-TA-426-428 (Preliminary), USITC Pub. 2156 (Feb. 1989). The particular volumes involved are business proprietary information, and cannot be disclosed.

<sup>2</sup> Id. at 33-34. The commission also discussed, but did not apply, the negligible imports provision in an investigation initiated prior to the 1988 Act, Industrial Belts from Israel, Italy, Japan, Singapore, South Korea, Taiwan, the United Kingdom, and West Germany, Invs. Nos. 701-TA-293 and 731-TA-412-419 (Final), USITC Pub. 2194 at 16-18 (May 1989).

## 2. Section 705(B)(4) - Retroactive Application

Under Section 705(B)(4), provision has been made for retroactive imposition of a countervailing duty to prevent recurrence of material injury caused by massive imports of merchandise over a relatively short time. What precisely would be deemed as a "relatively short period"?

### U.S. Response

In determining whether imports of the merchandise have been massive over a relatively short period, the Department of Commerce normally examines the volume and value of the imports, seasonal trends and the share of domestic consumption accounted for by the imports. The Department typically considers the period beginning on the date of initiation of the investigation and ending approximately three months later to constitute a "relatively short period." However, if the Department finds that importers or exporters had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, then it may look to a period of not less than three months from that earlier time. Occasionally, at the time of the final determination, the Department may also evaluate imports from the date of initiation up to the time of the preliminary determination (approximately five months), to determine whether there may have been a rush to import merchandise before such time as provisional measures had taken effect.

### Question

## 3. Section 771(5)(A)(ii)(I) - Definition of Subsidy

Under these provisions, subsidy has been defined to include domestic subsidies if provided or required by government action to a specific enterprise or industry or group of enterprises or industries whether publicly or privately owned and whether paid or bestowed directly or indirectly on the manufacture, production or export of any class or kind of merchandise. Specifically, provisions of capital, loans or loan guarantees on terms inconsistent with commercial considerations has been mentioned as a subsidy. What would be deemed as "inconsistent with commercial considerations"?

### U.S. Response

Put simply, the provision of loans or loan guarantees on payment terms or other terms more favorable than the investigated firm would otherwise have received from commercial sources within that

jurisdiction is typically viewed as being "inconsistent with commercial considerations." In the case of capital, the provision of equity to a firm by the government at a price higher than the market-determined price for the same form of equity would also be considered "inconsistent with commercial considerations." Determinations of inconsistency with commercial considerations are, of course, subject to the facts of each case, and will be affected by such factors as the nature of the alleged subsidy (e.g., short- versus long-term loans), the financial health of the firm, and the extent and nature of commercial activity within the country under investigation.