

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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Committee on Subsidies and
Countervailing Measures

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QUESTIONS SUBMITTED BY THE UNITED STATES ON THE LEGISLATION OF COLOMBIA

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1. Article 1 of Decree 2444 states that "individuals must show a legal interest in order to request the initiation of administrative proceedings or to take part in them ...". In the Handbook of Complaint Procedures, it defines the term "legal interest" as being, "in this case, relationship between the interested party and the injury or the threat of injury resulting from unfair trade practices." Could this definition be further clarified? In particular, does the reference to "in this case" limit the definition provided to the context of those parties qualified to submit a complaint? In what other ways may a "legal interest" be established?
2. Article 6 of Decree 2444 states that "[a]n import is considered as having been subsidized when the production, manufacture, transport or export of the imported good or of its raw materials and inputs has received directly or indirectly any bounty, aid, premium, or subsidy from the government of the country of origin or of export or from its public or semi-public agencies" (emphasis added). In what manner would the Colombian authorities determine whether, how and to what degree a subsidy bestowed on a raw material or input resulted in a subsidy to the final-stage good?
3. Article 9 of Decree 2444 states that a like product which is not identical to the product under consideration may still be "like" if it has "characteristics mostly resembling those of the product under consideration, taking into consideration elements such as its nature, quality, use and function". Is this definition a mistranslation, insofar as the definition found in the Subsidies Code speaks of characteristics "closely" resembling, or was some other meaning intended?
4. What is the difference in the evidentiary requirements for the evaluation/acceptance of a complaint, as provided for by Articles 17 and 20, and for the initiation of an investigation pursuant to Article 21? Is it correct that Colombian authorities are required to give public notice of a decision to initiate an investigation, but not of a decision to accept a complaint?
5. Are there any explicit statutory or regulatory provisions to limit the duration of provisional measures, consistent with Article 5:3 of the Subsidies Code?

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6. Article 27 indicates that "INCOMEX shall report the results of the investigation to the Trade Practices Committee. The latter shall form its opinion thereon. Once that opinion has been given, the Ministry of Economic Development shall adopt the appropriate decision by a resolution stating the reasons therefor ...". Could these different levels of authority be more specifically explained? For example, can the Trade Practices Committee change the outcome of the investigation or merely affirm or reject the outcome presented to it? Or does authority of this kind reside with the Ministry of Economic Development? Can either of these two bodies alter aspects of the decision, even if the outcome is accepted?

7. The second paragraph of Article 27 states that "[t]he resolution shall state the conditions governing the duration of the duties imposed, where appropriate." Please elaborate.

8. Article 28, paragraph 2 seems to refer generally to the acceptance of undertakings, but it also refers to situations in which duties less than the margin of dumping may be collected or be collected only from one specified date to another. Are these to apply within the context of a price undertaking? Please explain.

9. Article 29 provides for the limited, retroactive assessment of duties in critical circumstances, as provided for by the Subsidies Code. However, in introducing this section, it indicates that such duties would be assessed on the basis of the "best information available". Please explain the meaning of this reference as it applies to critical circumstances, and why was it considered necessary to indicate explicitly that the best information available would be used?

10. The final paragraph under Article 30 states that, "[u]ntil the Trade Practices Committee decides otherwise, INCOMEX shall monitor continuously the behaviour of imports of goods that have been subject to dumping or subsidy investigations". What would be the objective of such monitoring? What is meant by "the behaviour of imports"?

11. The introductory section of the Handbook of Complaint Procedures indicates that information submitted by the domestic industry in connection with and support of a complaint "should be substantiated ... by means of verifiable evidence and analysis". Does this mean that the information contained in the complaint is somehow actually verified before a complaint is accepted? If so, how is such verification accomplished?