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ON TARIFFS AND TRADE

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Committee on Subsidies and Countervailing Measures

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REPLIES BY COLOMBIA TO QUESTIONS SUBMITTED BY CANADA¹
CONCERNING THE COLOMBIAN ANTI-DUMPING AND
COUNTERVAIL LEGISLATION

(SCM/1/Add.29/Rev.1, dated 27 September 1993)

The following communication, dated 22 April 1994, has been received from the Permanent Mission of Colombia.

QUESTION:

What is intended by the reference in Article 2 to measures which "restore the conditions of competition distorted by a subsidy"?

ANSWER:

Exporters of subsidized products are considered to have an economic advantage over domestic producers precisely because of the aid they receive, which upsets the balance in the conditions of competition; countervailing duties are therefore applied to offset any bounty or subsidy granted, directly or indirectly, on the manufacture, production or export of a product, in accordance with Article VI(3) of the General Agreement.

QUESTION:

What does the term "aid" in Article 7 refer to; i.e. grants, loans, guarantees? Elaborate on what is meant by "aid".

ANSWER:

Aid is a broad term that covers any support, direct or indirect, which has economic effects, granted to an entity or an individual by the State, on the production, manufacture, transport or export of goods.

QUESTION:

Indicate the purpose and composition of the Trade Practices Committee referred to in Article 14.

¹SCM/W/304

ANSWER:

The Trade Practices Committee is a technical body composed of high-level representatives from various State departments and agencies. Its main purpose is to examine final determinations in investigations into unfair foreign trade practices and to make appropriate recommendations to the Ministry of Foreign Trade. It ascertains whether final duties are warranted and appropriate and gives its recommendation as to whether they should be applied. It follows the same procedure for statements of intent. The Committee is also responsible for authorizing the extension of time-limits of investigations where necessary.

Its members are:

- The Deputy Minister of Foreign Trade, who is also the Chairman.
- The Director of the Colombian Institute of Foreign Trade (INCOMEX).
- A representative of the Foreign Trade Management Council (Director of Taxes and National Customs - DIAN).
- The Director-General of Negotiations of the Ministry of Foreign Trade.
- The Deputy Minister or Deputy Director of the body most closely linked to the affected industry, in the opinion of the Chairman of the Committee.
- An advisor of the Foreign Trade Management Council.

QUESTION:

The legislation reproduces some of the key elements of the Anti-Dumping Code but does not address a number of key procedural issues. For example, the legislation does not deal with the use of price undertakings, the imposition and collection of duties (including recourse to provisional measures), the review of dumping and injury determination, or the retroactive application of duties. In addition, a number of key concepts are not given precise definitions (e.g. what is a reasonable level of profit and GS & A, how does one determine if sales are in the ordinary course of trade?).

ANSWER:

Colombian legislation does not deal specifically with price undertakings, but generally speaking these are covered, as regards procedure and operation, by the Article governing statements of intent.

As to the assertion that Decree No. 150 of 1993 does not deal with the imposition and collection of duties, we consider it to be unfounded since they are dealt with thoroughly in Article VI of the Decree.

In Colombian law the retroactive application of duties is possible only in the event of massive imports or non-compliance with statements of intent, in accordance with Article 18. As a rule, payment of provisional duties is replaced by the lodging of securities and these are realized as soon as it is established that retroactive duties are to be imposed.

The review of final determinations will be regulated by INCOMEX.

Article 5, No. 2, refers to "a reasonable amount ... for profits" and goes on to state that, as a general rule the addition for profit shall not exceed the profit normally realized on sales of products of the same category in the domestic market of the country of origin. In view of the diversity of means

of production and products, and market fluctuations, it is not possible to fix exact figures to indicate what is meant by a reasonable level of profit; instead, the characteristics of the product and market conditions will have to be examined in each case.

With regard to how it is determined whether sales are made in the ordinary course of trade, Chapter II, "DEFINITIONS", of Decree No. 150 of 1993 defines the ordinary course of trade as follows:

"ORDINARY COURSE OF TRADE: Transactions between independent parties, or between associated parties or parties who are bound by a compensatory arrangement, provided that the prices and costs are comparable to those in trade between independent parties".

QUESTION:

In order to ensure the transparent administration of its anti-dumping system, does the Colombian Government intend to publish rules or regulations providing more detailed information relating to the elements cited above?

ANSWER:

Yes. The Colombian Foreign Trade Institute (INCOMEX) has prepared draft regulations to cover many of the procedural aspects not dealt with specifically in Decree No. 150 of 1993, and to speed up its implementation and procedures. The regulations will be made public as soon as the domestic legislative process is completed.

QUESTION:

Article 10 of the Colombian legislation lists most of the factors found in Article 3 of the Anti-Dumping Code but fails to specifically require an examination of profits. Could the Colombian Government explain such an omission?

ANSWER:

In listing the factors to be taken into account in the examination of threat of injury, Article 10 states clearly that the factors mentioned in the previous Article are to be considered. Article 9, "INJURY INVESTIGATION", refers in paragraph 1.2, *inter alia*, to profits as a factor to be examined in determining injury.

There is no need for Article 10 to mention profits, since it refers expressly to Article 9.

QUESTION:

Article 14 of the Colombian legislation provides that the initiation of an investigation may be requested by "any domestic producer". The legislation does not specify, as required by Article 5.1 of the Anti-Dumping Code, that an investigation "shall normally be initiated upon a written request by or on behalf of the industry affected". How does the Colombian legislation comply with the Code requirement that the representativeness of the domestic petitioners be verified by the competent investigating authority before the initiation of an investigation?

ANSWER:

Articles 23 to 26 of Decree No. 150 of 1993 refer to the initiation of the investigation and to the complaint.

Article 25 provides that INCOMEX may initiate proceedings when requested to do so by domestic producers representing a major proportion of domestic industry who consider themselves injured by imports carried out in unfair conditions. This constitutes the requirement of the representativeness of the petitioner, who must represent the domestic industry producing the goods affected.

Representativeness is verified in the Register of Domestic Producers kept by the Department of Domestic Production and Exportable Supply of INCOMEX.

Article 26 sets out the complaint requirements and specifies in line 2 that a request for investigation into unfair trade practices must be submitted in writing.

QUESTION:

How does Colombian legislation comply with Article 7 of the Code which deals with price undertakings, specifically:

- (a) **Under the Code, parties may agree to price undertakings at any time during the investigation. Why does Colombian legislation require that parties wait until after the preliminary determination?**
- (b) **Colombian legislation does not specify the duration of price undertakings. Will there be regulations specifying when price undertakings will be reviewed?**
- (c) **Could the Colombian delegation clarify whether the sunset provisions also apply to price undertakings?**

ANSWER:

- (a) Colombian legislation considers that price undertakings may be agreed only after the imposition of provisional duties, because it is not until this stage of the investigation that there is certainty about dumping and injury and their causal relationship, and that measures are needed to offset the practices deemed actionable. This prevents agreements from being concluded when there are no real grounds for them, for example when there is insufficient evidence of dumping, injury or their causal relationship.
- (b) Colombian legislation does not specify dates for the duration or review of price undertakings. However, since these are corrective measures they remain in effect for as long as the conditions that gave rise to them are maintained. The legislation therefore allows the undertakings to be reviewed at the request of a party when it is deemed that the harmful effects of the unfair practice have ceased, that the undertakings have not been complied with, or for any other valid reason.
- (c) Yes. Since they are corrective measures, there is no reason to continue them once the harmful effects of the unfair practice have ceased.