

# WORLD TRADE ORGANIZATION

G/SCM/Q3/COL/29  
13 November 2003

(03-6079)

Committee on Subsidies  
and Countervailing Measures

Original: Spanish

## SUBSIDIES

### Requests Pursuant to Article 27.4 of the Agreement on Subsidies and Countervailing Measures

#### Replies by COLOMBIA to Questions Posed by ECUADOR<sup>1</sup>

The following communication, dated 12 November 2003, has been received from the delegation of Colombia.

#### A. SIEX RELATING TO CAPITAL GOODS AND SPARE PARTS

**1. Could Colombia explain whether the phasing out of SIEX - which is to be carried out in accordance with WTO Decision G/SCM/94 and is regulated by Resolution 011 - covers programmes and operations concerning raw materials and inputs?**

##### Reply

The elimination of export subsidies for which an extension of the transition period was granted to Colombia on 13 December 2002, as stated in WTO Decision G/SCM/94, refers to the programme defined in accordance with paragraph 4 of the Decision, namely the Special Import-Export Systems for Capital Goods and Spare Parts; it does not refer to programmes or operations relating to raw materials and inputs.

**2. Could Colombia explain whether the phasing out of SIEX - which is to be carried out in accordance with WTO Decision G/SCM/94 and is regulated by Resolution 011 - covers in-bond processing programmes or operations?**

##### Reply

WTO Decision G/SCM/94 refers to the programme defined in accordance with paragraph 4 of the Decision, namely the Special Import-Export Systems for Capital Goods and Spare Parts. The phasing out which is to be carried out by Colombia does not include in-bond processing programmes or operations.

In-bond processing operations are defined in Article 71 of Colombian Foreign Trade Administration (Incomex) Resolution 1860 of 1999, as follows:

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<sup>1</sup> G/SCM/Q3/COL/26 & G/SCM/Q3/COL/27.

*"In-bond processing operations (maquila) means the operations carried out under Article 172 that use non-reimbursable imports, where the foreign contractor supplies the domestic producer, directly or indirectly, with 100 per cent of the foreign raw materials or inputs necessary to manufacture the export good, without detriment to the domestic raw materials or inputs that may be incorporated".*

The Article referred to in the definition is Article 172 of Decree Law 444 of 1967, which establishes those SIEX that concern exclusively raw materials and inputs.

**3. Could Colombia explain whether the phasing out of SIEX - which is to be carried out in accordance with WTO Decision G/SCM/94 and is regulated by Resolution 011 - covers authorized programmes in the oil and petroleum by-products sector, pursuant to Article 30 of Resolution 1860/99?**

Reply

Article 30 of Resolution 1860 of 1999 does not establish a SIEX for the oil and petroleum by-products sector. It merely sets out a procedure for demonstrating compliance with export requirements.

Consequently, since Colombian legislation does not provide for SIEX capital goods and spare parts programmes or operations specifically for the oil and petroleum by-products sector, Colombia's understanding is that the elimination of export subsidies for which Colombia was granted an extension of the transition period on 13 December 2002 – as stated in Decision G/SMC/94 – with respect to the programme defined in accordance with paragraph 4 of the Decision (i.e. the Special Import-Export Systems for Capital Goods and Spare Parts) concerns the Special Import-Export Systems for capital goods and spare parts of all sectors producing goods for export, including the oil and petroleum by-products sector.

Resolution 011 of 2003 therefore also encompasses the SIEX for capital goods and spare parts in the oil and petroleum by-products sector.

**4. If Colombia considers that the SIEX for raw materials and inputs, in-bond processing operations and operations in the oil and petroleum by-products sector are not covered by WTO Decision G/SCM/94 or by Resolution 011, could it explain why it considers that those SIEX do not involve prohibited export subsidies, extension of which should have been requested and authorized by the WTO in 2002?**

Reply

As explained above, the SIEX for capital goods and spare parts cover all production sectors, and have been both notified to the WTO and set out in Resolution 011 of 2003 as such.

Colombia does not consider the SIEX for capital goods and spare parts, or in-bond processing operations, to be covered by Decision G/SMC/94 or by Resolution 011 of 2003, because the illustrative list in the Agreement on Subsidies does not specify that programmes of this type are prohibited.

Hence, Colombia did not ask the WTO for an extension of the SIEX that relate solely to raw materials and inputs.

**5. Does Resolution 011 cover raw materials and intermediate goods used in the production or assembly of capital goods or spare parts that are to be used in the production of export goods, referred to in Article 77 of Resolution 1860/99 and Article 25 of Resolution 1964/01?**

Reply

Yes. The phasing out of the SIEX programmes for capital goods and spare parts covered by Resolution 11 of 2003 includes the phasing out of all authorized types of importation under the capital goods and spare parts programmes.

**B. FREE-ZONE REGIME (ZF)**

**1. Why did Colombia not include, in its request and initial notification to the WTO for approval of the extension of the Industrial Free-Zone Regime for Goods and Services (documents G/SCM/N/74/COL of 15 January 2002 and G/SCM/N/48/COL, G/SCM/N/60/COL and G/SCM/N/71/COL of 7 January 2002), its Export Processing Free Zones for Tourist Services or Tourist Free Zones, established pursuant to Article 1 of Decree 2233/96?**

Reply

Because there are no disciplines regarding services in the WTO SCM Agreement.

Paragraph 6 of Colombia's notification is clear in stating that "[t]he subsidy is granted to industrial users of **goods**, that is, to foreign or national legal persons legally established in Colombia with their own tax identification number and who carry out their activities - consisting in the manufacture, production, processing or assembly of **goods** for sale primarily on foreign markets - exclusively within the respective free zone". [emphasis added.]

**2. Why did Colombia not include its Special Economic Export Zones, as established in Law 677 of 2001, in its request and initial notification to the WTO for approval of the extension of the Industrial Free-Zone Regime for Goods and Services (documents G/SCM/N/74/COL of 15 January 2002 and G/SCM/N/48/COL, G/SCM/N/60/COL and G/SCM/N/71/COL of 7 January 2002), considering that Article 16 of Law 677 states that industrial projects in Special Economic Export Zones shall receive treatment equivalent to that accorded to industrial users of goods or services in Industrial Free Zones for Goods and Services?**

Reply

Law 677 of 2001 on Special Economic Export Zones is mentioned in paragraph C.4 of WTO document G/SCM/N/71/COL.

**3. Why does Colombia consider that Tourist Free Zones and Special Economic Export Zones do not constitute prohibited export subsidies, extension of which should have been requested and authorized by the WTO in 2002?**

Reply

There are no disciplines regarding services in the WTO SCM Agreement. Therefore, the Tourist Free-Zone regime is not subject to the disciplines in the SCM Agreement. This issue is dealt with under point 1.

As regards the Special Economic Export Zones, it will be recalled that these were notified by Colombia as indicated in paragraph C.4 of WTO document G/SCM/N/71/COL.

**4. Why did Colombia not include in its draft reform of the legislation on Free Zones the elimination of subsidies provided for in Article 57 of Decree 2233/96?**

Reply

Article 57 of Decree 2233/96 refers to Articles 54 and 322(k) of the Colombian Tax Code.

Article 54 of the Tax Code does not provide for any subsidy, since it merely states the non-application of income tax on operations involving payment but not earnings or income of legal persons established in industrial free zones.

Regarding Article 322(k) of the Tax Code and as indicated in the first series of responses, the draft law tabled before the Congress of the Republic provides that exemption from income tax and supplementary taxes and from the remittance tax on earnings from foreign markets sales, granted to industrial users of goods in the free zones, will remain in force until 31 December 2006.

**C. CLARIFICATION OF COLOMBIA'S RESPONSES TO THE QUESTIONS POSED BY ECUADOR<sup>2</sup>**

"By means of Resolution 11 of 2003, Colombia is phasing out all the components of the SIEX programme, including the deferred payment of VAT. There is therefore no need for measures in addition to those contained in this Resolution."

1. Resolution 11 of 2003 clearly states that SIEX benefits relating to capital goods and spare parts will cease on 31 December 2006. There will obviously be no new benefits in the form of deferred payment of VAT as of that date, when it will no longer be possible to import capital goods and spare parts under the programme.

2. We have reviewed the rules cited in Ecuador's request for clarification; Colombia considers that they fully coincide.

3. Concerning response No. 2, Colombia reiterates that the deferral of VAT on imports of capital goods and spare parts under the SIEX was notified as forming part of the subsidy (paragraph B.5 of document GSCM/N/71/COL) and is therefore subject to Decision G/SCM/94/COL.

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<sup>2</sup> G/SCM/Q3/COL/27.