

WORLD TRADE ORGANIZATION

G/SCM/Q3/PAN/11
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Committee on Subsidies and
Countervailing Measures

Original: Spanish

SUBSIDIES

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

Replies by PANAMA to Questions Posed by the UNITED STATES¹ and JAPAN²

The following communication, dated 23 April 2002, has been received from the Permanent Mission of Panama.

UNITED STATES

1. Under the Tax Credit Certificates (CAT) programme, one of the eligibility requirements is that the goods exported must have "a minimum share of 20 per cent in national content and national value added". Given this requirement, please comment on whether this programme constitutes a prohibited subsidy under Article 3.1(b) of the Agreement on Subsidies and Countervailing Measures.

Reply

The subsidy generated by the CAT programme is not a prohibited subsidy under Article 3.1(b) of the SCM Agreement, since the use of domestic goods is neither a sole requirement, nor one of several conditions for eligibility.

As stated in Article 6 of Executive Decree No. 5 of 8 February 1991, the provisions relating to the use of domestic raw materials for the calculation of the 20 per cent in national content and national value added only constitute one of the elements to be taken into account in determining those values. Consequently, the share of domestic raw materials in the calculation of the national value added is neither a requirement, nor a determining and indispensable factor for an enterprise's eligibility for the programme. The result of the calculation of the national value added will depend on the productive structure of the applicant enterprise and the specific weight for that enterprise of each one of the elements to be factored into the calculation.

Moreover, the use of imported raw materials neither disqualifies nor excludes an export product from the benefits of the programme. In fact, for the purposes of calculating the national value

¹ G/SCM/Q3/PAN/9.

² G/SCM/Q3/PAN/10.

added, any imported product which has undergone processing and has been incorporated in the product subject to the CAT will be counted at 35 per cent of its value.

Owing to the relative scarcity of domestic raw materials it is common, for a whole series of activities covered by the CAT, to use imported raw materials only, since this opens up the supply of raw materials and avoids operational difficulties. Examples of such activities are the manufacture of clothing, aluminium, cleaning products, beer, truck bodies, plastic products etc.

On the other hand, what is truly a prerequisite for eligibility is that the products should be exported and processed entirely or partly in the national territory, as stipulated in Article 2 of Executive Decree No. 5 of 8 February 1991, since the basic purpose of the programme is to generate manpower, increase the level of processing of products deriving from the beneficiary activities and to orient production towards the export market.

2. In light of the fact that the Official Industry Registry programme encourages use of domestic rather than imported goods, please comment on whether this programme constitutes a prohibited subsidy under Article 3.1(b) of the Agreement on Subsidies and Countervailing Measures.

Reply

The Official Industry Registry (OIR) programme is not a prohibited subsidy under Article 3.1(b) of the SCM because it does not encourage the use of domestic raw materials rather than imported goods. Indeed, it is not possible to benefit from the import tax exemption if domestic goods are used. Although the benefit is authorized providing domestic raw materials are not available in sufficient quantities, at an acceptable standard of quality and at the same or equivalent prices, this condition does not discourage the use of imported raw materials. On the contrary, rather than actually giving a preference to the domestic product, this provision provides an opportunity to significantly reduce the costs of importing the product which it would not otherwise be possible to import. Moreover, this opportunity is independent, and does not affect the granting of the other benefits under the programme.

3. Is it possible that the special funding programme under the Official Industry Registry will be implemented in the future? If not, please explain.

Reply

It is not possible, under the OIR programme, to implement the special funding at a preferential interest rate in the future because the only current benefits under that OIR are those which existed on 20 June 1995, upon publication of Law 28 on the universalization of tariff incentives. At that date, the implementation of the provisions of Article 14 of Law 3 of 1986 promoting the establishment of these special funding programmes had not yet taken place. Consequently, it has not been possible, since that date (June 1995), for any company to avail itself of the benefit because it does not exist and cannot be implemented through the instruments created by the OIR programme; in other words, since that date, it has been an eliminated benefit.

JAPAN

Tax Credit Certificate (CAT)

This regime seems to include a requirement for national content and national value added. Could Panama please explain its conformity with Article 3.1(b) of the ASCM?

Reply

The subsidy generated by the CAT programme is not a prohibited subsidy under Article 3.1(b) of the SCM Agreement, since the use of domestic goods is neither a sole requirement, nor one of several conditions for eligibility.

As stated in Article 6 of Executive Decree No. 5 of 8 February 1991, the provisions relating to the use of domestic raw materials for the calculation of the 20 per cent in national content and national value added only constitute one of the elements to be taken into account in determining those values. Consequently, the share of domestic raw materials in the calculation of the national value added is neither a requirement, nor a determining and indispensable factor for an enterprise's eligibility for the programme. The result of the calculation of the national value added will depend on the productive structure of the applicant enterprise and the specific weight for that enterprise of each one of the elements to be factored into the calculation.

Moreover, the use of imported raw materials neither disqualifies nor excludes an export product from the benefits of the programme. In fact, for the purposes of calculating the national value added, any imported product which has undergone processing and has been incorporated in the product subject to the CAT will be counted at 35 per cent of its value.

Owing to the relative scarcity of domestic raw materials it is common, for a whole series of activities covered by the CAT, to use imported raw materials only, since this opens up the supply of raw materials and avoids operational difficulties. Examples of such activities are the manufacture of clothing, aluminium, cleaning products, beer, truck bodies, plastic products etc.

On the other hand, what is truly a prerequisite for eligibility is that the products should be exported and processed entirely or partly in the national territory, as stipulated in Article 2 of Executive Decree No. 5 of 8 February 1991, since the basic purpose of the programme is to generate manpower, increase the level of processing of products deriving from the beneficiary activities and to orient production towards the export market.
