

WORLD TRADE ORGANIZATION

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Committee on Anti-Dumping Practices
Committee on Subsidies and Countervailing Measures

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NOTIFICATION OF LAWS AND REGULATIONS UNDER ARTICLES 18.5 AND 32.6 OF THE AGREEMENTS

Questions from KOREA to GUATEMALA¹

The following communication, dated 24 April 1997, has been received from the Permanent Mission of Korea.

Q.1. Article 17 (Termination of the investigation)

Article 17 of the notified law stipulates that "the investigation shall be terminated if it is determined that the margin of dumping is *de minimis*".

However, Article 5.8 of the WTO AD Agreement provides a more specific provision according to which the margin of dumping shall be considered to be *de minimis* if this margin is less than 2%, expressed as a percentage of the export price.

How does the Guatemalan authority determine *de minimis* margins?

Q.2. Article 36 (Duration of definitive measures)

Article 36 stipulates that any definitive anti-dumping or countervailing measures shall be eliminated within the period of five years from the date of imposition of the provisional measure or, failing such, the final resolution.

On the other hand, Article 11.5 of the WTO AD Agreement clearly stipulates that the provisions of a five-year duration shall *mutatis mutandis* apply to price undertakings.

Could Guatemala clarify whether or not Article 36, as it is, can be applied to the price undertakings accepted under Article 30 of the country's legislation?

¹G/ADP/N/1/GTM/2-G/SCM/N/1/GTM/2.

Q.3. Article 39 (Conciliation meeting)

This Article reads that "at any stage" of the investigation conciliation meetings may be held *ex officio*, or at the request of a party, in order to achieve a direct settlement, including price undertakings.

However, Article 8.2 of the WTO Agreement stipulates that price undertaking shall not be sought or accepted from exporters unless the authorities of the importing country have made a preliminary affirmative determination. How can Guatemala explain the difference between its own legislation and the WTO Agreement?

It is hoped that this Article of the country's legislation shall in no way threaten any interested party, or prejudice the consideration of any case before any preliminary affirmative determination is reached.

Q.4. Article 45 (Suppletive application)

Article 5 (Purpose of the procedure) of the notified legislation stipulates comprehensively that such measures shall be imposed "... in accordance with the criteria set out in the WTO Agreement".

However, we are of the opinion that the Guatemalan legislation should stipulate more clearly that "... in cases not covered by these provisions, State Parties may apply on a supplementary basis, the provisions and principles of the WTO Agreements, in addition to those of the Central American Integration, etc.".

We would be interested to hear the view of the Guatemalan authorities on this matter.