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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

Replies to Questions Posed by the UNITED STATES¹ Regarding the Notification of JAMAICA²

The following communication, dated 13 January 2000, has been received from the Permanent Mission of Jamaica.

Q1. Do the WTO Anti-Dumping (A-D) and Subsidies and Countervailing Measures (SCM) Agreements have the effect of national law in Jamaica?

Reply

The WTO (A-D) and (SCM) Agreements do not have the effect of national law in Jamaica. The Act is intended to give effect to the provisions of the Anti-Dumping Agreement and to "connected matters" which would include the Subsidies and Countervailing Measures Agreement.

Q2. The definition of an "interested party" in Section 2 of Jamaica's Customs Duties (Dumping and Subsidies) Act, 1999 ("the Act") is both broader and narrower than the definitions of "interested party" contained in Article 6.11 of the A-D Agreement and Article 12.9 of the SCM Agreement. For example, the Act's definition is broader in that it includes purchasers and users of products. The definition is narrower in that an "interested party" in the Act is not defined specifically to include a government. While both the A-D and SCM Agreements specifically allow Members to expand the list of interested parties, they do not state that the list may be narrowed. Is a government considered an "interested party" under Section 2 of the Act?

Reply

Jamaica intended to include a public interest factor in its determinations hence the inclusion of *purchasers* and *users*. By virtue of Section 25, a government is not excluded from the process.

Q3. Section 4(1)(a) of the Act states that the Jamaican Anti-Dumping and Subsidies Commission (Commission) may carry out an investigation "on the request of any person." Article 5.1 of the A-D Agreement and Article 11.1 of the SCM Agreement normally require that anti-dumping and countervailing duty investigations be initiated upon a written application

¹ G/ADP/Q1/JAM/1-G/SCM/Q1/JAM/1

² G/ADP/N/1/JAM/2-G/SCM/N/1/JAM/2

made “by or on behalf of the domestic industry.” How is Section 4(1)(a) of the Act consistent with Article 5.2 of the A-D Agreement and Article 11.1 of the SCM Agreement, which require that the application requesting initiation of an investigation be made “by or on behalf of the domestic industry”?

Reply

The Act is consistent with these obligations in the A-D and SCM Agreements. Jamaica is currently reviewing the Act to determine what changes, if any, should be made to clarify this section.

Q4. If information requested by the Commission “is not furnished to its satisfaction,” Section 4(6) of the Act permits the Commission to “make a finding as to such facts on the basis of the information available to it.” This standard leaves a great deal of discretion to the Commission as to when it may resort to facts available. What practices will the Commission follow to ensure consistency with Article 6.8 and Annex II of the A-D Agreement and Article 12.7 of the SCM Agreement?

Reply

Where information is not furnished to the Commission's satisfaction, the Commission intends to exercise the discretion granted to it in Section 4(6) of the Act. In doing so, it will follow the practices enunciated in the WTO's (A-D) Article 6.8 and Annex II, and (SCM) Article 12.7. Jamaica is currently reviewing its legislation with a view to determining whether it might incorporate a mandatory requirement that the Commission will follow WTO practices in these circumstances.

Q5. Section 7 of the Act also appears to give the Commission complete discretion to set the time limits within which information must be provided to it. Article 6.1.1 of the A-D Agreement and Article 12.1 of the SCM Agreement require that exporters, producers and interested Members be given at least 30 days in which to reply. Article 6.8 and Annex II of the A-D Agreement state that interested parties must be given a reasonable period of time to provide information before authorities may resort to facts available. See also Article 12.7 of the SCM Agreement. How is the Commission's discretion concerning time limits under Section 7 of the Act consistent with Article 6 and Annex II of the A-D Agreement and Article 12 of the SCM Agreement?

Reply

Section 7 of the Jamaican Act focuses on the Commission's general ability to obtain evidence. The Commission's discretion concerning time under Section 7(b) is addressed under Section 25 and will also be reflected in the Regulations.

Q6. Section 20(1) of the Act states that, where the Commission is of the opinion that sufficient information has not been furnished or is not available to determine the export price, that price shall be determined in such manner as the Minister may prescribe. See also Section 20(2) of the Act. Article 2.3 of the A-D Agreement appears to limit, to a greater extent, this discretion regarding when the export price may be considered unreliable and how the authorities are to construct the export price in such circumstances. How is the standard for determining the export price set forth in Section 20 of the Act consistent with Article 2.3 of the A-D Agreement?

Reply

Section 20(1)(2) is silent on the method which the Commission will use to construct the export price. However this will be addressed in the Regulations.

Q7. The Act does not provide for administrative reviews of anti-dumping or countervailing duty orders. Are such reviews available under the Act in accordance with Article 11 of the A-D Agreement and Article 21 of the SCM Agreement? If so, please provide details regarding how parties may seek such reviews, and the procedures involved.

Reply

At present, interested parties may petition the Commission for a review under Section 4(1)(b). It is anticipated that the details and procedures will be addressed in the proposed review and regulations.

Q8. Where does Jamaican law implement the requirements of Article 11 of the A-D Agreement and Article 21 of the SCM Agreement, which state that, in order to maintain anti-dumping or countervailing duties past five years, a finding must be made that dumping or subsidization would be likely to continue or reoccur in the absence of the duty?

Reply

Jamaican law is silent on this. Under the proposed review, it is intended to take consideration of Article 11 of (A-D) and Article 21 of the (SCM) Agreements.

Q9. Section 30 of the Act does not appear to require the Commission to provide any explanation for a determination to impose a definitive duty. How is this consistent with the requirements of Article 12.2.2 of the A-D Agreement and Article 22.5 of the SCM Agreement?

Reply

The Act is being reviewed to determine how best to reflect the requirements of the A-D and SCM Agreements.

Subsidies

Q10. The definition of subsidy in the Act largely mirrors Article 1 of the SCM Agreement, but does not include Article 1.1(a)(1)(iv) of the Agreement. The Act does not mention specificity or actionable and non-actionable subsidies. Instead, it appears to apply only to prohibited export subsidies as defined by the Act and in Article 3 of the SCM Agreement. Is the type of subsidy described in Article 1.1(a)(1)(iv) of the SCM Agreement included in the definition of subsidy in Section 2 of the Act?

Reply

- (a) On actionable and non-actionable subsidies – the intention of the Commission is to meet its WTO obligations by observing any distinction in subsidy programmes before it decides to initiate an investigation. Jamaica intends to address this point in its regulations.

- (i) On the definition of subsidy – the definition of "subsidy" is not restricted to "export subsidy". The type of subsidy described in Article 1.1(a)(iv) of the SCM Agreement is reflected in the definition of subsidy in Section 2 of the Act;
- (ii) Jamaica intends to fully reflect the definition of "subsidy" from the SCM Agreement and is reviewing its legislation to ensure that it reflects the definition.

Q11. How does Jamaica intend to treat specific actionable subsidies as defined in Articles 1.2, 2, and 5 of the SCM Agreement?

Reply

Assuming that the reference is to the requirement that subsidies be specific, as set out in Article 1.2 of the SCM Agreement, and the requirement that specific subsidies are actionable if they cause adverse effects pursuant to Article 5 of the SCM Agreement, Jamaica's Act reflects the principles of both sections, and Jamaica intends to honour its WTO obligations by observing any and all distinctions in relation to subsidies.

Injury

Q12. Section 2 of the Act defines "material injury" to mean "material injury to the production in Jamaica of like goods." The Act does not further specify the factors the Commission considers in making a material injury determination.

- (a) What factors does the Commission consider in making material injury determinations?
- (b) Where in Jamaican law or regulations are these factors provided and, if provided, are they consistent with the provisions of Article 3 of the A-D Agreement and Article 15 of the SCM Agreement?

Reply

The Act does not specify the factors the Commission considers in making a material injury determination. The Act is currently under review and it is anticipated that the factors set out in Article 3 of the (A-D) and Article 15 of the (SCM) Agreements will be included and regulations developed.

Q13. What producers does the Commission examine in determining whether there is "material injury to the production in Jamaica of like goods?"

- (a) How is Jamaica's practice in this respect consistent with the definitions of domestic industry in Article 4 of the A-D Agreement and Article 16 of the SCM Agreement?
- (b) Does Jamaica have any provision for excluding related parties from the domestic industry pursuant to Article 4.1(i) of the A-D Agreement and Article 16.1 of the SCM Agreement?

Reply

Section 22 of the Jamaican Act sets out the procedures and percentages of domestic producers which the Commission examines. It is anticipated that the definition of Domestic Industry and Related Parties will be addressed in the Regulations.

Q14. In an analysis of threat of material injury, how does Jamaica implement Article 3.7 of the A-D Agreement and Article 15.7 of the SCM Agreement which specify certain factors for the authority to examine in its analysis of threat, and require that the threat “must be clearly foreseen and imminent?”

Reply

Jamaica's Act refers to a category called "likely to cause material injury", which is similar to Threat of Material Injury. Under the proposed review, this aspect will be given consideration.

Q15. In order for the authorities to initiate an investigation, Section 22(c) of the Act requires that the evidence “disclose a reasonable indication that the dumping or subsidizing of goods has caused, or is likely to cause, material injury.” Article 5.3 of the A-D Agreement and Article 11.3 of the SCM Agreement require authorities to examine the adequacy and accuracy of the evidence provided in the application to determine whether there is sufficient evidence of injury to justify the initiation of an investigation. Does the Jamaican authorities’ determination that evidence in the application discloses a “reasonable indication” that dumping or subsidization of goods has caused, or is likely to cause, material injury constitute a determination that the evidence in the application is adequate, accurate and sufficient to justify initiation?

Reply

Section 22(c) of the Jamaican Act is intended to reflect the provisions of Article 5.3 (A-D) and Article 11.3 (SCM). This section is being reviewed with a view to making any clarification that may be appropriate.

Q16. Section 27 of the Act regarding preliminary determinations of dumping or subsidization does not mention making an injury determination. Similarly, Section 15 of the Act authorizes the imposition of provisional duties “[w]here the Commission makes a preliminary determination in respect of the dumping and subsidizing of imported goods.” How is this consistent with Article 7.1(ii) of the A-D Agreement and Article 17.1(b) of the SCM Agreement, which require preliminary affirmative determinations of both subsidy or dumping and injury to a domestic industry before provisional duties may be imposed? (See also Article 30 regarding final determinations.)

Reply

Jamaica does not intend that duties be imposed without making a prior injury determination. Section 11 of the Act indicates that duties will be imposed on all dumped or subsidized goods if the Commission has determined that the injury results from the dumping or subsidization. It is intended that the proposed review will make this clear in regard to preliminary determinations.

Q17. Section 11 of the Act states that duties will be imposed on all goods in respect of which the Commission “has made a finding that the dumping or subsidizing of such goods has caused, is causing, or is likely to cause material injury.” How is a determination pursuant to Section 11 of the Act that the dumping or subsidy “has caused” material injury in the past consistent with

the requirements of Article 3.5 of the A-D Agreement and Article 15.5 of the SCM Agreement which address current or prospective injury, but not material injury in the past?

Reply

References to "has caused material injury" refer to instances such as those set out in Sections 13(2)(b) and 14(2)(b). However, it is anticipated that the proposed review will address these Sections to make any clarification that may be appropriate.
