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Committee on Subsidies
and Countervailing Measures

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IMPLEMENTATION RELATED ISSUES REFERRED TO THE COMMITTEE BY MINISTERS

Replies from BRAZIL to Questions from CANADA and the UNITED STATES on Tired 80 Proposals

The following communication, dated 4 July 2002, has been received from the Permanent Mission of Brazil.

In this document, Brazil addresses the questions posed by Canada (doc. G/SCM/W/516) and the United States (doc. G/SCM/W/512) on certain aspects of the proposals related to tired 80.

Questions from Canada (G/SCM/W/516):

A. THE CHAPEAU OF ARTICLE 14:

Brazil is proposing that the chapeau of Article 14 should be amended to provide, among other things, that the amount of subsidy should be calculated on a "per exporter/producer basis". However, later on, Brazil is proposing rules for the use of sampling in countervailing duty investigations which, by its very nature, would result in some exporters/producers not receiving their own subsidy rate. This seems to set-up some contradictory obligations.

Could Brazil explain how these two proposals could be reconciled?

Reply

There is no contradiction in Brazil's proposal. The general rule should be the calculation of the amount of subsidy in terms of the benefit to each exporter under investigation. Nevertheless, there are cases in which the number of exporters under investigation is so large as to make such calculation impracticable. In those cases, the investigating authorities could use samples. This provision is already present in the AD Agreement. Furthermore, in order to avoid divergent practices among Members, it is important that the utilisation of a sample in a countervailing duty investigation follows specific criteria such as those mentioned in Article 6.10 of the Anti-Dumping Agreement.

B. ADDITIONAL GUIDELINES TO ARTICLE 14:

In Brazil's proposed subparagraph (g), reference is made to "the rules for the depreciation of the good in the industry concerned...". Could Brazil clarify the precise nature of

the "rules" that it has in mind? Is Brazil referring to depreciation rules used for income tax purposes in the exporting country or to GAAP (generally accepted accounting principles) in the country of export?

Reply

In subparagraph (g), Brazil is referring to depreciation rules in accordance with the generally accepted accounting principles of the exporting country.

(ii) Appropriate Denominator for the Calculation of Subsidy Amount

In Example 3, it appears that Brazil is allocating an export subsidy received in 1987 to subsidize exports to exports made in 1995, the period of investigation of the countervailing duty investigation. The allocation of the subsidy is being made on the basis of the useful life of assets. However, it is not clear from this example why Brazil is allocating this subsidy over time rather than expensing it in the year of receipt. It would be useful if Brazil could explain why this was done and whether Brazil has criteria as to when a subsidy should be expensed rather than allocated over time. It is understood that Brazil will allocate a subsidy over time when the use of the subsidy is for the acquisition of capital goods, but in this example, there is no apparent reason for the allocation. Please explain.

Reply

In example 3, the grant is tied to the acquisition of fixed assets to be used in the production of the good to be exported.

III. PROPOSALS RELATED TO "DE MINIMIS"

We continue to find this proposal very difficult to understand. It would be useful if Brazil could provide some concrete examples of what it is proposing in the context of both a retrospective and prospective duty enforcement system. For example, it would be interesting to obtain the Brazilian response to the following scenario which could arise in the Canadian prospective system of duty enforcement:

Canada conducts a countervailing duty investigation in respect of a certain chemical product from Country A and finds that there is an export subsidy and the amount of the subsidy is not "*de minimis*" (i.e. the amount of subsidy is greater than 1 per cent expressed as a percentage of the value of the subject goods exported during the period of investigation). An injury finding is made and definitive duties are put in place. The amount of subsidy for duty enforcement purposes is established at \$10.00 per tonne. There are two importers in Canada of the chemical product. Importer X purchases in very large quantities with few importations and, therefore, receives special volume pricing of \$800 per tonne. Importer Y purchases in smaller quantities but in more frequent importations so its price is \$1100 per tonne. However, over the course of a year, both importers end up purchasing the same overall quantity. On a percentage basis in respect of each importation, the subsidy in respect of Importer X is not *de minimis* while the subsidy in respect of Importer Y is *de minimis*. Therefore, is Brazil suggesting that we should not collect any countervailing duties on importations made by Importer Y, since the subsidy is *de minimis* in relation to the value of each importation?

Reply

The amount of a subsidy should be calculated per exporter. In a retrospective system, the actual duty to be collected is determined on the basis of the amount of the subsidy calculated for a

period after the imposition. To evaluate if this amount is "*de minimis*", the authority should consider the average export price for each exporter in the new period following the application of the duty. In Brazil's view, if this new amount of subsidy is "*de minimis*" no duty should be collected.

In a prospective system, the countervailing duty would be revised and if the new amount (calculated per exporter) is "*de minimis*" all the duty collected during the precedent period considered for the review should be refunded. If the duty corresponding to the new amount is lower than the duty previously applied, the excess should be refunded. Based on the result of the review, a new duty should be established for the future (zero if the amount is "*de minimis*").

In Brazil's view, the situation presented by Canada does not imply a procedure different than the one presented above. In that scenario, the authorities either "*ex officio*" or by request would conduct a review of the amount of subsidy and depending on its result there should be a refund to all importers of the product exported by the exporter for which *de minimis* or lesser amount of subsidy was found.

IV. PROPOSALS RELATED TO REVIEW PROCEDURES

(a) In paragraph 1, Brazil proposes that the "standing" test in SCM Article 11.4 be expressly linked to the initiation of expiry reviews as set forth in Article 21.3 of the SCM Agreement. In this context, could Brazil explain whether the authorities could initiate an expiry review on their own initiative when domestic industry has brought an application for a review but failed to demonstrate that they had satisfied the standing requirements?

Reply

Brazil understands that, in special circumstances, the authorities could initiate a review on their own initiative, even in the situation described by Canada. This situation could also arise in the initiation of an investigation.

(b) In paragraph 4, Brazil proposes that the SCM Agreement should contain more detail regarding the conduct of expedited reviews, particularly the time frame for the completion of such reviews. In this regard, Brazil makes reference to Article 9.5 of the Anti-dumping Agreement. It would be of interest if Brazil could also indicate if the other conditions outlined in Article 9.5 regarding the eligibility for an expedited review should also be adopted in the SCM Agreement for purposes of the conduct of expedited reviews. Also, Article 9.5 provides for the suspension of the levying of anti-dumping duties while an expedited review is being carried out. Would Brazil envisage the same procedure in respect of expedited reviews for countervailing duty purposes?

Reply

Brazil's proposal does not include criteria regarding eligibility for an expedited review neither provision for the suspension of the levying of anti-dumping duties.

Question from the United States (G/SCM/W/512):

It is our understanding that Article 19.3 covers exporters who had exports during the period of investigation, but whom were not actually investigated. (This is in contrast to "new shippers" – exporters who did not export during the period of investigation, but did export after the period of investigation.) Under US regulations, exporters not covered by the original

investigation may request an expedited review. For such reviews, US regulations provide that, under certain conditions, information from the original period of investigation may be used.

Is Brazil's proposal with respect to exporters that exported during the period of investigation, but were not covered by the original investigation, or does Brazil's proposal cover exporters that did not export during the period of investigation?

Reply:

The Brazilian proposal relates to two main issues: (a) how fast the investigating authorities respond to a request for an expedited review and (b) the duration of such a review. Future provisions clarifying the manner in which authorities should deal with both issues would apply to any exporter.

As to the type of exporters entitled to request an expedited review, the Brazilian proposal should be read in conjunction with other suggestion we have made regarding sampling. Since the latter would guarantee the exporter who exported during the period of investigation the possibility of requesting the determination of an individual amount of subsidy at the very outset of the investigation, it would be appropriate to reserve the right of requesting an expedited review for the new exporter ("new shipper").
