

WORLD TRADE ORGANIZATION

RESTRICTED

G/ADP/Q1/PRY/2

G/SCM/Q1/PRY/2

10 October 1997

(97-4339)

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

Original: English

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

Questions from HONG KONG, CHINA to PARAGUAY¹

The following communication, dated 6 October 1997, has been received from the Hong Kong Economic and Trade Office.

Domestic legal status of the Anti-Dumping Agreement

According to the information provided by Paraguay in an earlier review exercise, the Anti-Dumping Agreement (the Agreement) forming part of the Uruguay Round Agreements has been ratified by Parliament and has the force of law in Paraguay. The Paraguayan authorities are bound to apply the Agreement provisions. [Ref. G/ADP/W/373-G/SCM/W/383].

Paraguay's present notification contains Decree No. 15.286 of 28 October 1996 designating the Ministry of Industry and Trade and the Ministry of Finance to implement Law No. 444/94 concerning the Agreement on Implementation of Article VI of the GATT 1994, and laying down the applicable procedures.

Questions

What is the legal status of the Agreement in the Paraguayan legal system? Is it superior to the domestic anti-dumping (AD) legislation? Which takes precedence in case of inconsistencies?

How are the provisions of the Agreement applied with force of law in Paraguay? More specifically, in the conduct of A-D proceedings, would the Paraguayan authorities take the Agreement as the primary source of legal authority? Or would they only refer to the Agreement as a supplement to the domestic A-D legislation or as a last resort?

Sales below costs

Article 4.4 of the Decree provides that sales at prices below per unit costs of production plus administrative, selling and general costs may be treated as not being in the ordinary course of trade by reason of price and may be disregarded in determining normal value only if the authorities determine that such sales are made (1) within a period normally one year but in no case less than six months;

¹G/ADP/N/1/PRY/2-G/SCM/N/1/PRY/2.

(2) in significant quantities, i.e. representing at least 20% of sales in transactions under consideration for the determination of the normal value; and (3) at prices which do not provide for the recovery of all costs within a reasonable period of time.

On the definition of "substantial quantities", Footnote 5 of the Agreement provides an alternate criterion, i.e. when the weighted average selling price of the transactions under consideration for the determination of the normal value is below the weighted average per unit costs.

Question

Would Paraguay clarify whether the alternate criterion as provided in Footnote 5 of the Agreement would be employed for determining whether sales below per unit costs are made in substantial quantities?

Determination of normal value in centrally-planned economies

Article 4.9 of the Decree provides that in the case of imports originating in centrally-planned economies, the normal value of a like product shall be determined on the basis of the sales value for domestic consumption, in the ordinary course of trade, of a like product to a third country with a market economy or, failing this, of its exports, or on the basis of such other criterion as the Ministry of Industry and Trade considers relevant to the circumstances. However, the selection of the country must not openly result in disadvantages for the producer or exporter of the country of origin.

Questions

- (a) Is there any general principle/guideline for the selection of a third country with a market economy? In what circumstances would Paraguay consider the selection of a third country may openly result in disadvantages for the producer or exporter of the country of origin?
- (b) Would Paraguay further elaborate on what "other criterion" would be considered relevant to the circumstances of determining the normal value in centrally-planned economies?

Determination of injury

Article 7.3 of the Decree states that the volume and effects of imports from or originating in more than one country under investigation may be considered cumulatively with a view to assessing the injury to the domestic industry, provided the margin of dumping is not *de minimis* and the volume of imports is not negligible.

Article 3.3 of the Agreement stipulates that the authorities may cumulatively assess the effects of imports from more than one country only if they determine that (a) the margin of dumping established in relation to the imports from each country is more than *de minimis* and the volume of imports from each country is not negligible and (b) a cumulative assessment of the effects of the imports is appropriate in light of the conditions of competition between the imported products and the conditions of competition between the imported products and the like domestic product.

Questions

- (a) Would Paraguay clarify whether it will assess *de minimis* dumping margin and "negligible" imports on the basis of each country or all countries involved as a whole?

- (b) Would Paraguay advise whether condition (b) of Article 3.3 of the Agreement would be taken into account in determining cumulation of imports from different countries for assessment of injury?

Confidential information

Article 14.5 of the Decree provides that evidence and information presented by each of the interested parties shall be brought to the attention of each of the parties involved, with the exception of information classified as confidential, which shall be treated as such by the Ministry of Industry and Trade.

Article 6.5 of the Agreement states that any information which is by nature confidential, or which is provided on a confidential basis by parties to an investigation shall, upon good cause shown, be treated as such by the authorities. Such information shall not be disclosed without specific permission of the party submitting it.

Questions

Would Paraguay provide details on the meaning of "confidential" information as stipulated in Article 14.5 of the Decree? Does it include information provided by interested parties on a confidential basis? Would such information not be disclosed without specific permission of the party submitting it?

Provisional measures

Article 16.4 of the Decree states that in no case shall the imposition of provisional measures be ordered sooner than six calendar days following the date of the publication initiating the investigation.

Article 7.3 of the Agreement provides that provisional measures shall not be applied sooner than 60 days from the date of initiation of the investigation.

Question

Would Paraguay clarify how its domestic legislation is consistent with the requirements of the Agreement?

National economic interest and public interest

Article 18.4 of the Decree provides that due consideration shall be given in assessing the case to national economic interests and the public interest, and to the information presented by the parties in that respect, including information presented by groups or associations of users and consumers. A determination not to impose measures may be made when it is concluded that such measures would result in material injury to the national economy.

Questions

How would the Paraguayan authorities make a determination of national economic interest and public interest? What could be the relevant considerations?

Newcomers review

Article 19.3 of the Decree provides for a review for the unrelated "newcomers".

Article 9.5 of the Agreement states that such a review shall be initiated and carried out on an accelerated basis, compared to normal duty assessment and review proceedings in the importing Member. No A-D duties shall be levied on imports from such exporters or producers while the review is being carried out. The authorities may, however, withhold appraisement and/or request guarantees to ensure that, should such a review result in a determination of dumping in respect of such producers or exporters, A-D duties can be levied retroactively to the date of the initiation of the review.

Question

Would Paraguay provide more details on how the newcomers review would be conducted in accordance with the obligations as provided for in Article 9.5 of the Agreement?

Key issues in the Anti-Dumping Agreement found silent in the Paraguayan A-D legislation

It appears that some provisions of the Agreement are not featured in the Paraguayan A-D legislation, or the relevant codification may not be adequate. Examples are as follows:

- Exchange rates (Article 2.4.1)
- Public notice of determinations (Article 12.2)
- Procedures for on-the-spot investigation (Annex I)
- Procedures regarding use of best information available (Annex II)

Questions

Would Paraguay clarify whether there are any specific domestic provisions reflecting the above Agreement provisions? If not, how would Paraguay ensure compliance with these Agreement provisions?