

WORLD TRADE ORGANIZATION

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**Committee on Subsidies
and Countervailing Measures**

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SUBSIDIES

Replies to Questions from Chile¹, the European Community², Japan³, Mexico⁴
and the United States⁵ Regarding the New and Full Notification of Argentina⁶

The following communication, dated 22 March 1999, has been received from the Permanent Mission of Argentina.

FREE ZONES

Questions from Japan

(a) Does Argentina consider that the exemption from the taxes on the export of consumer goods under the programme constitutes export subsidies within the meaning of Article 3.1(a) of the SCM Agreement?

Reply

No. Law No. 24,331 does not provide for the application of prohibited subsidies within the meaning of Article 3 of the SCM Agreement.

(b) That being the case, could Argentina provide the time schedule for phasing-out the export tax exemption under the programme?

(c) That not being the case, could Argentina explain that the export tax exemption under the programme does not constitute export subsidies within the meaning of Article 3.1(a) of the SCM Agreement?

Reply

Article 23 of Law No. 24,331 provides that, with the exceptions expressly provided for in the Law, *all provisions relating to tax, customs and financial matters, including criminal provisions, applying in the general customs territory shall apply in the Free Zones.*

¹ G/SCM/Q2/ARG/17.

² G/SCM/Q2/ARG/14.

³ G/SCM/Q2/ARG/18.

⁴ G/SCM/Q2/ARG/15.

⁵ G/SCM/Q2/ARG/16.

⁶ G/SCM/N/38/ARG.

The exemptions mentioned in Article 26 of Law No. 24,331 concern payment of domestic taxes levied on basic services provided within the Free Zone. These basic services – supply of drinking water, electricity, telecommunications, gas and sewerage – are the responsibility of the concessionaire operating the Free Zone. The concession is granted through a national and international call for tenders.

It should be stressed that the exemptions mentioned in the above paragraph apply to all enterprises based in the Free Zones, without distinction as to the type of activity or any other criteria apart from where they are based.

In addition, Article 30 of Law No. 24,331 states: *"No incentives shall be provided to the removal of goods from the free zone to third countries other than the incentives consisting of the refund of taxes actually paid when such taxes are refundable to exporters within the general customs territory. Incentives established in accordance with international agreements signed by the Argentine Republic shall also be applicable"*.

Hence, in response to the question on the specific issue of the Free Zone, the answer is that it does not fall within the meaning of Article 3.1 as regards the treatment of prohibited subsidies as defined by the WTO Agreement on Subsidies.

Questions from the United States

(a) Please explain what is meant by the "regional integration process".

Reply

This is presumably a reference to Article 4 of Law No. 24,331, second paragraph, which states: "The free zones shall function in accordance with national trade policy, shall contribute to the growth and competitiveness of the economy and shall be fully incorporated into the regional integration process".

This paragraph sets out general principles and objectives. Its purpose was to make it clear that the adoption of this instrument was intended to be consistent with the policy of establishing MERCOSUR, a process fully under way when the Law was adopted.

(b) Under which legislation was this subsidy granted?

Reply

The free zone regime is established by Law No. 24,331 itself, which has superior status within the ranking of normative texts of the Argentine Republic. In any event, the background authority is the Argentine Customs Code (Law No. 22,415 of 1981, still in force) through two articles, namely:

Article 590: "A free zone is an area within which goods are not subject to the normal control of the customs service and their entry and removal are not subject to the payment of taxes, with the exception of those paid for such services as may be provided, nor covered by prohibitions of an economic nature".

Article 591: "A free zone must be established by law".

Law No. 24,331 was enacted pursuant to the latter Article and in order to enable the regime to become operational, as it was only defined conceptually in the Customs Code.

Thus, in response to the question on this specific issue of the free zone, the answer is that it does not fall within the meaning of Article 3.1 regarding the treatment of prohibited subsidies as defined by the WTO Subsidies Agreement.

(c) Please describe what kind of services are rendered?

Reply

The services provided by the Free Zone concessionaire are set out in Article 20 of Law No. 24,331. The Article includes among the concessionaire's obligations that of carrying out infrastructure work and providing connections for basic services: provision of the basic services mentioned, namely, supply of water, lighting, gas, electricity, telecommunications, power, heating, refrigeration or any other type of service necessary for free zone operations and activities.

(d) What is the total amount or annual amount budgeted for this programme?

Reply

The exemption from payment of domestic taxes for the basic services provided by the free zone concessionaire is not a budgetary item.

Questions from Mexico

(a) What duration is established by Law No. 24,331 for the Free Zones Programme?

Reply

The Law does not establish any duration.

(b) Is any enterprise which does business in the Free Zones eligible to receive subsidies or must certain conditions be met and, if so, what are those conditions?

Reply

Article 21 of Law No. 24,331 establishes that "Users shall be national or foreign natural or legal persons entitled to carry out activities within the free zone against payment of an agreed price". No other requirement is laid down for eligibility for the treatment provided by the Law.

Questions from Japan and the European Union

(a) Does Argentina consider that exemption from the taxes on the export of consumer goods under the programme constitutes export subsidies within the meaning of Article 3.1(a) of the SCM Agreement.

(b) According to the policy objective in Argentina's notification, this programme appears to be contingent upon export performance. Could Argentina explain whether export activity is a condition to be eligible for benefits under this programme? If export activity is a requirement, could Argentina provide the table of how this programme will be phased-out?

Reply

Law No. 24,331 does not impose as a condition any type of requirement relating to export, which is one of the possible activities within the Free Zone.

The exemption from domestic taxes covers basic services provided by the Free Zone concessionaire to all enterprises, regardless of their type of activity.

(c) Pursuant to Law 24,331 of 1994, the Argentinean authorities can establish one free zone per province. Have free trade zones been set up in the 23 provinces?

Reply

No. At present only three free zones are in operation, in Buenos Aires, Tucumán and San Luis. The remainder are at one of the prior stages provided for by Law No. 24,331: tendering stage, construction stage etc.

(d) Could Argentina explain whether the Special Customs Area of Tierra del Fuego falls within this programme?

Reply

These are two separate and distinct regimes. The Special Customs Area of Tierra del Fuego was established by Law No. 19,640 of 1972. It should be noted that the initiation and approval of formalities relating to new projects under this regime has been suspended since 1989 when the Economic Emergency Act was passed. This suspension was extended by Decrees 505/95 and 1927/93.

The benefits granted under Law No. 19,640 in the past were extended only in the case of already covered and installed enterprises.

PATAGONIAN PORTS

Questions from the European Union and Chile

Argentina states that this programme will be gradually eliminated as from 31 December 1999. Can Argentina confirm that this programme will phased-out by 2003?

In notification G/SCM/N/3/ARG it is stated that the Patagonian Ports Programme will be terminated in the year 2007. However, the current notification indicates that the programme will be dismantled at a rate of one percentage point a year as from the end of 1999. Consequently, will this export subsidy be maintained beyond the year 2003?

Reply

With regard to the time-limit of 2003 that is mentioned, if this is a reference to Article 27.2 of the Subsidies Agreement, it should be pointed out that the Patagonian ports refund scheme does not fall within the terms of Article 3.1(a) of the Agreement. Hence, there is no obligation to eliminate it within eight years. It is a regional development programme.

The refund scheme for exports through Patagonian ports was established by Law No. 23,018 of 1983, with effect from 1984. The Law provided for different reimbursement rates according to the

port used, and established a phasing-out timetable based on reducing these rates by one percentage point annually as from 1 January 1995.

Law No. 24,490 adjusted the starting point for the phasing-out to bring it into line with its own provisions with regard to the original regime.

FORESTRY ACTIVITIES

Question from the United States

Under forestry activities, how long will Decree No. 711/95 and Act No. 24,857 remain in effect?

Reply

Decree No. 711/95 will remain in effect through the year 2000.

Law No. 24,857 concerns tax stability for the use of forests covered by Law No. 13,273 and does not include a termination date.

MINING SECTOR

Question from the United States

Regarding "Mining", please provide the form of subsidy for Decrees 554/81, 2,686/93 and 779/95.

Reply

Decree No. 554/81 is no longer in force: it was repealed by Law No. 24,196 (Official Journal of 24 May 1993).

Decree No. 2,686/93 establishing regulations under the Mining Investment Act No. 24,196 does not contain any provisions that would subsidize exports. It grants the necessary legal security in order to attract investment into the country. For this purpose it establishes tax stability guaranteeing that the rate of taxes levied on the investment may not be increased for a thirty-year period. When this benefit is granted there is no differentiation with respect to other production activities and it is not necessary to export in order to be eligible for it.

Decree No. 2,686/93 establishes the system of accelerated depreciation for goods used and acquired by a mining investor to carry out production activities.

Decree No. 779/95 does not involve an export subsidy. Under this Decree, which covers all production activities, the State finances the payment of value added tax on purchases of capital goods.
