

WORLD TRADE ORGANIZATION

G/SCM/Q3/COL/23

24 October 2003

(03-5618)

**Committee on Subsidies
and Countervailing Measures**

Original: Spanish

SUBSIDIES

Requests Pursuant to Article 27.4 of the Agreement on Subsidies and Countervailing Measures

Responses to Questions Posed by Ecuador¹

The following communication, dated 23 October 2003, has been received from the Permanent Mission of Colombia.

Attached are the responses from the Colombian authorities to the questions posed by Ecuador last Thursday and circulated last Friday as document G/SCM/Q3/COL/22.

¹ G/SCM/Q3/COL/22.

A. SPECIAL IMPORT-EXPORT SYSTEM FOR CAPITAL GOODS AND SPARE PARTS (SIEX)

Colombia's 2002 notification regarding SIEX (document G/SCM/N/95/COL) makes no reference to the fact that the Colombian subsidization programme also provides for the deferred payment, over a period of five years, of the value-added tax (VAT) generated by imports of capital goods and spare parts and components intended for or used in the installation, expansion or relocation of the relevant production units to be used in the production of export goods, as stated in the notification made by Colombia for the years 1998, 1999 and 2000 (document G/SCM/N/60/COL).

Q1. Could Colombia explain what measures it is taking, independently of Resolution No. 011, with regard to the dismantling of subsidies granted under SIEX, particularly those relating to the deferred payment of VAT for a period of five years?

Response

By means of Resolution 11 of 2003, Colombia is phasing out all the components of the SIEX programme, including the deferred payment of VAT. There is therefore no need for measures in addition to those contained in this Resolution.

Q2. Could Colombia explain in more detail, and provide statistical data on, the amount of the benefit which Colombian exporters are receiving from the five-year deferment of the payment of value-added tax, as this information is missing from the notification for 2002, document G/SCM/N/95/COL?

Response

Deferral of payment of VAT ceased to constitute an export subsidy because of the evolution of the exchange rate, the lowering of inflation, changes in the conditions of access to financial resources in Colombia and the fact that VAT is paid when SIEX ends for the exporter concerned, at the representative market exchange rate on that day (Articles 88 and 89 of Decree 2685 of 1999). Therefore, the exporter's outlay in nominal pesos at the time VAT is paid is higher than the value, in nominal pesos, of VAT at the time of import, so there is ultimately no benefit within the meaning of the SCM Agreement.

That is why Colombia, in its notification of 30 June 2003, did not include information regarding deferred payment of VAT in the "statistics on the impact of the programme". Moreover, as indicated in the notifications presented, Colombia does not have any statistical information in this respect.

Q3. Could Colombia explain the second article of Resolution No. 011, which empowers the competent authorities to give annual approval to existing programmes or programme modifications applicable to capital goods and spare parts, up to the annual value of the subsidy notified by Colombia for 2000 to the Committee on Subsidies and Countervailing Measures?

Response

Decision G/SCM/94 states that Colombia commits itself "not to modify the programme at any time so as to make it more favourable, including as to the scope, coverage and intensity of benefits, than it was as at 1 September 2001, as specified in the full notification of the programme that accompanied the request for extension". The second article of Resolution 011 of 2003 guarantees that

there will be no increase in the subsidies granted in excess of the amount indicated therein and goes beyond the "standstill" commitment and the procedures laid down in document G/SCM/39.

Q4. Is it to be understood that the provision contained in the second article of Resolution No. 011 also covers the deferred payment, for up to five years, of the value-added tax on imports of capital goods, spare parts and components?

Response

Yes. See response to Q1.

Section 8 of Colombia's notification for 2002 (document G/SCM/N/95/COL) states that subsidies under the SIEX programme shall remain in force until 31 December 2006, in accordance with paragraph 10(i) of the Committee's Decision (document G/SCM/94). However, without prejudice to Colombia's rights under the aforementioned decision, what the latter says is that the transition period for the elimination of the export subsidies shall not *be extended* beyond 2006, provided that the Committee, in its review, verifies compliance with the phasing-out commitments accepted by Colombia and with the purposes and conditions set out in paragraphs 1(d) and 1(e) of the Procedures for Extensions (document G/SCM/39).

Q5. Could Colombia explain what subsequent measures it will take to phase out the SIEX in accordance with the commitments undertaken in document G/SCM/94?

Response

It is not necessary to take subsequent measures, since Resolution 011, in prohibiting the authorization of new programmes, ensures the conformity of Colombian legislation with the commitments undertaken by Colombia in Decision G/SCM/94.

Resolution 011 provides for exceptions to the conditions laid down in the first and second articles of the Resolution with regard to applications under the SIEX involving final export goods in the services sector.

Q6. Could Colombia provide details of what goods are included in the services sector and of the considerations justifying the exclusion of such goods from the Committee's Decision contained in document G/SCM/94?

Response

There are no disciplines regarding subsidies on the export of services. Therefore, such subsidies are not prohibited and are excluded from the commitments undertaken by Colombia in Decision G/SCM/94. The goods for the supply of export services to which the above question refers are those included in Article 6 of Decree 2331 of 2001 (attached).

B. FREE-ZONE REGIME (ZF)

Section 4 of the notification submitted by Colombia for the year 2002 (document G/SCM/N/99/COL) refers to a resolution, No. 1001, amending the free-zone regime.

Q7. Could Colombia provide the text of the above-mentioned resolution and explain to what extent, if at all, and without reference to the draft decree, the resolution conforms with the provisions of document G/SCM/93 of 17 December 2002?

Response

Resolution 1001 of 2002 regulates Article 2 of Decree 918 of 2001. This Resolution establishes the applicable technical criteria for including the investments made by user-operators in the free zones in the investment and development plans. Moreover, the Resolution applies to the free zone operators and not to exporters.

The text of Resolution 1001 of 2002 is attached.

Section 5 of Colombia's notification for 2002 (document G/SCM/N/99/COL) lists among other subsidies the non-application of the remittance tax on earnings from industrial activities carried out in free zones, a subsidy which is also included in the notification submitted by Colombia for the years 1998, 1999 and 2000 (document G/SCM/N/60/COL).

Q8. Could Colombia explain for what reason the draft Presidential Decree contains no measures for the phasing out of the subsidies granted under the free-zone (ZF) regime in relation to the non-application of the remittance tax on earnings from industrial activities carried out in free zones?

Response

The new draft law, as attached, includes the phasing out of the non-application of the remittance tax on earnings from industrial activities carried out in free zones.

Q9. Could Colombia provide details and statistical data on the amount of the benefit which Colombian exporters are receiving from the non-application of the remittance tax on earnings from industrial activities carried out in free zones, as this information is missing from the notification for 2002, document G/SCM/N/99/COL?

Response

Colombia does not have this kind of statistics.

Section 8 of Colombia's notification for the year 2002 (document G/SCM/N/99/COL) states that subsidies under the free-zone (ZF) regime shall remain in force until 31 December 2006, in accordance with paragraph 10 of the Committee's Decision (document G/SCM/93). However, without prejudice to Colombia's rights under the above-mentioned Decision, what the latter says is that the transition period for the elimination of the export subsidies shall not *be extended* beyond 2006, provided that the Committee, in its review, verifies compliance with the phasing-out commitments accepted by Colombia and with the purposes and conditions set out in paragraphs 1(d) and 1(e) of the Procedures for Extensions (document G/SCM/39). In this connection, Colombia has merely submitted a draft Presidential Decree for the reform of its legislation on free zones.

Q10. Could Colombia explain why, having failed to comply with the time-limits established in paragraph 10 of the Committee Decision (document G/SCM/93), which provides for the obligation to reform the relevant legislation by 30 June 2003, it prejudices the Committee's Decision regarding possible extension of the transition period for the elimination of subsidies under the free-zone (ZF) regime until 31 December 2006, as is clear from the draft Presidential Decree submitted?

Response

Paragraph 10 of the Committee Decision (document G/SCM/93) does not establish "the obligation to reform the relevant legislation by 30 June 2003". This paragraph establishes the obligation to "undertake" the reform by that date.

In accordance with paragraph 10(i) of Decision G/SCM/93, Colombia undertook the reform of its legislation on free zones before 30 June 2003. This led to the draft decree "Partially amending Decree 2233 of 1996" and the preparation of the draft law "On the adoption of measures to secure compliance with the commitments undertaken within the framework of the WTO" (attached).

Colombia reiterates its commitment to eliminate export subsidies in conformity with the commitments undertaken in Decision G/SCM/94.

ANNEXES

Article 6 of Decree No. 2331 of 2001 (Official Journal 44,608)

Article 6. Capital goods and spare parts. Under the special import-export system for services, capital goods and spare parts of the subheadings listed below may be imported for authorized services export projects:

8402190000	8403100000	8404100000	8404200000	8413701100	8413701900	8414100000
8414590000	8414802300	8416202000	8416203000	8416300000	8417200000	8418610000
8419509000	8419899900	8451100000	8451290000	8451300000	8471100000	8471300000
8471410000	8471490000	8471500000	8471601000	8471602000	8471609000	8471700000
8471800000	8471900000	8502131000	8517302000	8525201000	8525300000	8525101000
8802400000	8803100000	8803200000	8803300000	8803900000	9018110000	9018120000
9018130000	9018190000	9018901000	9021500000	9022120000	9022140000	9022190000
9022900000	9024100000	9024800000	9025111000	9025119090	9025191100	9025199000
9025803000	9025804900	9027 the whole of heading 9030, the whole of heading 9402901000.				

Paragraph. Subheading 9027909000 is not included in heading 9027 and subheadings 9030901000 and 9030909000 are not included in heading 9030.

Article 2 of Decree No. 918 (Official Journal 44,433)

Evaluation and follow-up. The Ministry of Foreign Trade shall periodically evaluate compliance with the investment and development plans presented by users-operators together with the application for the declaration of a free zone, particularly with respect to infrastructure, control systems and promotion and marketing programmes.

If as a result of the evaluation provided for in the preceding paragraph, it is determined that the initial investment commitments do not reflect the needs of the free zones to enable them to comply with the objectives and commitments assumed, the Ministry of Foreign Trade may review the investment and development plans or the leases entered into with the user-operators, as the case may be, and by mutual agreement with them, determine modifications to adapt them to requirements in respect of infrastructure, control systems and promotion and marketing programmes.

Such review shall take into account investments made in the free zones that were not included in the initial investment and development plans, with a view to their being considered under those plans in the event that they meet the criteria established for that purpose by the Ministry of Foreign Trade.

Paragraph. Recommendations for the modification of leases or initial investment and development plans presented by contractors shall in all cases be submitted to the Committee on Customs, Tariffs and Foreign Trade for consideration and subsequently to the Higher Council for Foreign Trade, for opinion.

Where the opinion is favourable and it is therefore necessary to modify the leases or initial investment and development plans presented by contractors, the size of the investments originally planned and the contractual balance shall be maintained.

Resolution 1001 of 2002 (Official Journal 44,900)

Establishing the applicable technical criteria for investments made by user-operators in the free zones and not included in the initial investment and development plans to be considered in the review of such plans.

The Minister of Foreign Trade

In exercise of her legal powers, particularly those conferred under Decree 918 of 2001, and
CONSIDERING:

That Article 5(3) of Decree 2233 of 1996 requires that a zonal development plan be attached to an application for the declaration of a free zone.

That as stipulated in Article 2 of Decree 918 of 22 May 2001, the Ministry of Foreign Trade shall periodically evaluate compliance with the investment and development plans presented by user-operators together with the application for the declaration of a free zone and if, as a result of the evaluation, it finds that the initial investment commitments do not reflect the needs of the free zones to enable them to comply with the objectives and commitments assumed, it may review the investment and development plans or the leases entered into with the user-operators, as the case may be, and by mutual agreement with them, determine modifications to adapt them to requirements in respect of infrastructure, control systems and promotion and marketing programmes.

That Article 2 of Decree 918 of 22 May 2001 also provides that such review shall take into account investments made in the free zones that were not included in the initial investment and development plans, with a view to their being considered under those plans if they meet the criteria established for that purpose by the Ministry of Foreign Trade.

That it is therefore necessary to establish technical criteria for recognition of the investments made in free zones that have not been included in the initial investment and development plans.

RESOLVES:

Article 1 – *General Principles*. For the purposes of Article 2 of Decree 918 of 22 May 2001, the Ministry of Foreign Trade may consider investments made in the free zones and not included in the initial investment and development plans presented by the user-operators to have been made in compliance with those plans, provided the investments are in one of the following areas:

1. Investments in infrastructure. Where the construction, adaptation and repair of fixed assets in free zones is involved, provided they have served to maintain or increase the value of the fixed assets located in the zone, preventing their physical deterioration or loss of monetary value due to use or the passage of time. Direct labour, through wages and outsourcing contracts, shall not be included for the purposes of legal recognition.
2. Security and control systems. Where the purpose of the investment is to implement, improve or expand security systems or mechanisms to ensure control over the movement of goods into and out of the free zone and, in general, to ensure compliance with the customs regime and proper application of the free regime.
3. Investments in promotion and marketing programmes. Where the purpose of the investment is to maintain and promote exports, with the goal of domestic and international positioning and greater access and use of free zones for foreign trade activities.

4. Improvement or expansion of services. Where the purpose of the investment is to improve, expand or create and implement the services referred to in Article 14(7) of Decree 2233 of 1996, amended by Article 9 of Decree 918 of 2001, or services expressly authorized in advance by the Ministry of Foreign Trade.

Article 2. *Investment Accounting Support.* For the investments mentioned in Article 1 of this Resolution to be recognized, the user-operator shall present a list of the investments made and recorded, duly certified by a chartered accountant and by the competent tax auditor, together with a certificate signed by the legal representative, stating that the investments do not conform to the applicable investment and development plan. The accounting aids, in physical and magnetic form, and other documents that the Ministry of Foreign Trade requests in each case, duly certified and approved by the user-operator's accountant and tax auditor, shall also be attached.

Article 3. *Technical Committee.* The determination as to which investments can be recognized under this Resolution shall be made by a technical committee composed of the Director General of Foreign Trade, the Deputy Director of Promotion Instruments and the Director of Export Promotion and Culture.

The principles to be taken into account in determining recognition include reasonableness, consistency, continuity and necessity. Where the technical committee deems it necessary, it will require further information, other aids or explanations from the user-operator, relating to the investments for which recognition in the investment and development plan is requested.

Article 4. *Recognition of Investments.* Once the necessary analysis has been carried out, the Ministry of Foreign Trade shall notify the user-operator in person of the decision determining which investments have been recognized and certified to comply with its investment and development plan, indicating the value determined for each of them.

For free zones that operate on property owned by the Nation – Ministry of Foreign Trade, investments recognized under this Resolution shall be taken into account in determining the extent of compliance with the commitments made by the user-operator under the lease.

Article 5. *Entry into Force.* This Resolution shall come into force on the day it is published.

For publication and implementation.

Done at Bogotá, D.C., on 11 July 2002.

The Minister of Foreign Trade,

Angela María Orozco Gómez.

**EXPLANATORY MEMORANDUM ON THE DRAFT LAW ON THE ADOPTION
OF MEASURES TO SECURE COMPLIANCE WITH COMMITMENTS
UNDERTAKEN WITHIN THE FRAMEWORK OF THE WTO**

By virtue of Law No. 170 of 15 December 1994, the Honourable Congress of the Republic approved the Agreement Establishing the World Trade Organization (WTO).

One of the multilateral agreements annexed to the WTO Agreement is the Agreement on Subsidies and Countervailing Measures, which prohibits the granting of export subsidies, particularly under the free zone regime.

Notwithstanding that prohibition, under the provisions on Special and Differential Treatment for developing countries contained in the Agreement, a grace period of eight years from the entry into force of the WTO Treaty was granted for the dismantling of such subsidies. That period expired on 1 January 2003.

Under the Agreement, developing countries were given the possibility of requesting an extension upon expiry of the transition period. By virtue of a Decision of 17 December 2002, the WTO Committee on Subsidies and Countervailing Measures granted Colombia an extension of the transition period.

The extension was granted to Colombia subject to the elimination of the export subsidies by 31 December 2006 at the latest.

The extension granted by the Committee on Subsidies and Countervailing Measures was couched in the following terms:

"Colombia will ensure the conformity of its laws and regulations with its commitments under this decision. The transition period for the elimination of the export subsidies as described in paragraph 9 shall not, in any case, be extended beyond 2006, including the final two-year period provided for in the last sentence of Article 27.4 of the SCM Agreement."

Consequently, Colombia is obliged to dismantle the prohibited export subsidies under the free zone regime, consisting of exemptions from the income and remittance tax granted to industrial users of goods, by 31 December 2006 at the latest.

The honourable Members of Congress,

ALBERTO CARRASQUILLA BARRERA
MINISTER OF FINANCE AND PUBLIC CREDIT

JORGE HUMBERTO BOTERO
MINISTER OF TRADE, INDUSTRY AND TOURISM

DRAFT LAW No.

**(On the adoption of measures to secure compliance with the commitments
undertaken within the framework of the WTO)**

THE CONGRESS OF THE REPUBLIC

DECREES:

Article 1. Pursuant to the commitments on elimination of export subsidies made by Colombia to the World Trade Organization, the exemption from income tax and supplementary taxes and from the remittance tax on earnings from sales to foreign markets, granted to industrial users of goods in the free zones, shall remain in force until 31 December 2006.

Article 2. This law shall enter into force from the date of its promulgation and revokes any contrary provisions.

FOR PUBLICATION AND IMPLEMENTATION

The Honourable Members of Congress,

ALBERTO CARRASQUILLA BARRERA
Minister of Finance and Public Credit

JORGE HUMBERTO BOTERO
Minister of Trade, Industry and Tourism
