

**Committee on Anti-Dumping Practices**

Original: English

**Committee on Subsidies and Countervailing Measures**

QUESTIONS CONCERNING THE NOTIFICATIONS PROVIDED  
BY THE GOVERNMENT OF THE UNITED STATES OF LAWS  
AND REGULATIONS UNDER ARTICLES 18.5 AND 32.6 THE AGREEMENTS

The following communication, dated 3 July, has been received from the Permanent Delegation of the European Community.

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Please find enclosed the written questions submitted by the European Community in view of the legislation review to be carried out in the next meeting of the Anti-Dumping and Subsidies and Countervailing Measures Committees.

With regard to the US countervailing legislation, notified on 16 March 1995 under Article 32.6 of the WTO Subsidies Agreement (Document G/ADP/N/1/USA/1-G/SCM/N/1/USA/1), the European Community would like to ask the following questions:

1. Section 701 (b) Subsidies Agreement Country

Please explain what criteria the US President applies "to determine whether a country has assumed obligations with respect to the United States". Which countries are falling under the categories 2 and 3 of this Section?

2. Section 701 (d) Treatment of international consortia

The US will cumulate all subsidies provided to the members of an international consortium by the respective home countries. Is it possible that the average countervailable subsidy found exceeds the subsidy found to exist per unit of the subsidized product of one country? How would this square with Article 19.4 SCM? Would production manufactured within the US also be taken into account for the purpose of cumulating calculation?

3. Section 703 (d)(1)(A)(ii) and Section 777(A)(e)(2)(B)

The US can decide to apply a single country-wide subsidy rate to be applied to all exporters and producers, in case of sampling. Can the US explain whether under its system it is possible that a company obtains a higher CVD rate than its subsidy margin, even if this company has been subject to an individual investigation? What procedural remedies are foreseen in order to prevent a situation arising that would conflict with Article 19.4 SCM?

4. Section 705 (c)(5) The country wide subsidy rate

Can the US explain why it excludes from the weighted average to come to a country wide rate, the exporters for which a zero or *de minimis* rate was found? Can it also explain more detail what approaches may be used if all exporters have zero or *de minimis* rates?

5. Section 771 (5F) Change in ownership (page 273)

This section preserves the possibility for the US to continue to countervail subsidies granted prior to a privatization (at arm's length) at full market value, as the US has done in recent steel cases. Can the US explain whether it considers that in such a situation all requirements of the definition of a subsidy (Article + 1SCM) are fulfilled, i.e. a financial contribution and, most important, a benefit to the company whose products will be countervailed?

6. Section 771 (5A)(D)(ii)

The US omitted a part of footnote 2 to Article 2 SCM, which deals with the objective criteria or conditions to be taken into account in a *de jure* specificity determination. The US omitted "the economic nature and horizontal application". Would it be possible to explain this?

7. Section 771 (E) notified subsidy programme (page 278)

Can the US explain what the situation will be if in an investigation it comes across a subsidy programme which has not been notified but that fulfils the conditions of Article 8.2 SCM?

Code of Federal Regulation

8. Section 355.11 (b)

This section makes reference to countries "entitled to an injury test". Will this requirement remain in the revised Regulations? If so, how would the US reconcile this with the provisions under the SCM?

9. Injury threshold

Will the US impose countervailing duties of less than the total amount of the subsidy if such lesser duty would be adequate to remove the injury to the domestic industry? (Article 19.2 SCM).