

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

Original: English

QUESTIONS CONCERNING THE NOTIFICATIONS PROVIDED  
BY THE GOVERNMENT OF COLOMBIA<sup>1</sup> OF LAWS AND REGULATIONS  
UNDER ARTICLES 18.5 AND 32.6 OF THE AGREEMENTS

The following communication, dated 28 November 1995, has been received from the Permanent Mission of Hong Kong.

**Domestic Legal Status of the A-D Agreement**

1. Colombia's notification contains Decree 299 of 10 February 1995.

Questions:

- (a) What is the legal status of the WTO A-D Agreement in Colombia? Does it have the force of law? If a provision of the domestic legislation is in conflict with the Agreement, which will take precedence?
- (b) Are Colombian A-D officials required, legally or otherwise, to abide by the A-D Agreement in the conduct of A-D proceedings, or to consult the A-D Agreement, for example on the interpretation of domestic legislation?

**Judicial Review Procedures**

2. Question: What judicial review procedures has Colombia put in place in observance of its obligations under Article 13 of the WTO A-D Agreement?

**Implementation of Panel Reports**

3. Question: What is Colombia's policy and law for the implementation of WTO Panel Reports?

**Anti-circumvention**

4. Article 24 of the Decree provides that the scope of a definitive duty in force on imported product may extend to parts and components for assembly in Colombia on establishment of certain conditions.

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The WTO A-D Agreement does not contain any anti-circumvention provisions. The Ministerial Conference at Marrakesh adopted a decision to refer the problem of circumvention of A-D measures to the Committee on Anti-Dumping Practices established under the WTO A-D Agreement for resolution.

Question:

- (a) Under Article 24, does it require full-fledged investigations on a product pursuant to procedures prescribed in the WTO A-D Agreement and proof of dumping, injury and causal link before any anti-dumping duties can be imposed on the parts and components in question? Would the Colombian authorities explain why imported parts and components for assembly are automatically included within the scope of anti-dumping duties in force? How would Colombia reconcile this Article with its obligations under the WTO A-D Agreement?
- (b) Does Colombia anticipate amendment or repeal of this Article in the light of its obligations under the WTO A-D Agreement?

### **Final Determination of Liability and Refund**

5. Article 9.3 of the WTO A-D Agreement provides that the anti-dumping duty shall not exceed the margin of dumping. Articles 9.3.1-9.3.3 set out the procedures and requirements for refunds, with separate considerations given to assessment of anti-dumping duties on retrospective and prospective basis.

It is not apparent that the notified legislation has provided for procedures and requirements for final determination of liability and refund when the margin of dumping has changed.

Question: Is the Colombian assessment of anti-dumping duties carried out on a retrospective or prospective basis? What are the procedures and requirements for final determination of liability and refund when the margin of dumping has changed? How would Colombia ensure compliance of its obligations under Article 9.3 of the WTO A-D Agreement?

### **Cumulation of Imports for Assessment**

6. Article 16 provides that imports from more than two countries subject to investigation may be cumulated for the purpose of assessing the volume and impact on the domestic industry.

Subject to certain conditions, Article 3.3 of the WTO A-D Agreement permits cumulation of imports from more than one country in assessing injury if such imports are simultaneously subject to anti-dumping investigations.

Question:

- (a) Could imports from only two countries be cumulated?
- (b) Could imports from countries subject to A-D investigation be cumulated with imports from countries subject to countervailing investigation for the purpose of assessing the volume and impact on the domestic industry?

### **Comparison Methodology**

7. Article 10 of the Decree provides that normally the comparison between the normal value and the export prices may be made on the basis of weighted averages. If, during the review period, the normal value and the export prices vary or exceptional circumstances arise, the margin of dumping may be calculated by the weighted average normal value and the various export prices or on a transaction-to-transaction basis.

Article 2.4.2 of the WTO A-D Agreement provides that, for the determination of dumping margins, a weighted average normal value may be compared to prices of individual export transactions only if a pattern of export prices which differ significantly among different purchasers, regions or time periods is found and "if an explanation is provided why such differences cannot be taken into account appropriately by the use of a weighted average-to-weighted average or transaction-to-transaction comparison".

Question: Would Colombia explain how Article 10 of the Decree would implement its obligations under Article 2.4.2 of the Agreement to resort to weighted-average-to-individual transaction comparison only in narrow circumstances defined therein? How would Colombia discharge its obligation under Article 2.4.2 of the WTO A-D Agreement which requires the investigating authorities to provide an explanation for departure from the specified methods of comparison?

### **Sales below Cost**

8. Article 5 of the Decree provides that sales made at a loss or below cost shall be ignored in establishing the normal value in the ordinary course of trade if such sales have been made within a period between six months and one year and in more than 20 per cent of all sales.

Article 2.2.1 of the Agreement provides that prices which are below per unit costs at the time of sale but above weighted average per unit costs for the period of investigation shall be considered to provide for recovery of costs within a reasonable period of time and therefore cannot be disregarded in determining normal value.

Question: How would Colombia interpret sales made at a loss or below cost under Article 5 of the Decree, in the light of its obligations under Article 2.2.1 of the Agreement? How would Colombia ensure satisfactory implementation of its obligations under Article 2.2.1 apparently without codifying the provision to the fullest extent?

### **Voluntary Price Undertakings**

9. It appears that the Decree does not provide for acceptance of satisfactory voluntary undertakings in lieu of imposition of provisional measures or A-D duties envisaged in Article 8 of the Agreement.

Question: Does Colombia accept satisfactory voluntary undertakings in lieu of imposition of provisional measures or A-D duties envisaged in Article 8 of the Agreement? If so, what is the domestic legal basis?

### **Key issues in the WTO A-D Agreement found silent in the Colombian A-D legislation**

10. The WTO A-D Agreement contains many improvements over the Tokyo Round A-D Code. We expect WTO members would unequivocally reflect these improvements in their national legislation.

Although most of them are reflected in Colombian A-D legislation, specific statutory provisions for some of them appears not to be found or the provisions may not be adequate. Some examples are as follows :

- start-up costs (Art. 2.2.1)
- costs based on actual records (Art 2.2.1.1)
- factors for determination of material injury (Art.3.7)
- notification to the government of the exporting country concerned (Art. 5.5)
- sampling techniques (Art. 6.10)
- newcomer review (Art. 9.5)
- duration of review investigations (Art. 11.4)
- public notice requirements (Art. 12)
- procedures for on-the-spot investigation (Annex I)
- procedures regarding use of best information available (Annex II)

Question: If there are no specific statutory provisions, how would Colombia ensure its authorities would follow strictly the relevant provisions of the WTO A-D Agreement on these issues? How would Colombia reconcile its obligations under the WTO A-D Agreement on these issues with the lack of specific statutory provisions?