

WORLD TRADE ORGANIZATION

RESTRICTED

G/ADP/W/232

G/SCM/W/242

1 December 1995

(95-3912)

Committee on Anti-Dumping Practices
Committee Subsidies and Countervailing Measures

Original: English

QUESTIONS CONCERNING THE NOTIFICATIONS PROVIDED BY
JAMAICA¹ OF LAWS AND REGULATIONS UNDER
ARTICLES 18.5 AND 32.6 OF THE AGREEMENTS

The following communication, dated 29 November 1995, has been received from the Permanent Mission of Canada.

In document G/ADP/N/1/JAM/1-G/SCM/N/1/JAM/1, submitted 16 August 1995 to the Committee on Anti-Dumping Practices and the Committee on Subsidies and Countervailing Measures, Jamaica indicates that new legislation relating to anti-dumping and countervailing measures are currently being drafted to implement provisions of the AD and SCM Agreements.

1. Will all the new WTO Agreement obligations (referred to in the Appendix) be implemented through the forthcoming law, through regulations, administrative practices or decrees?
2. What is the legal mechanism in Jamaican law for the implementation of decisions rendered by a WTO panel?
3. Could the Jamaica indicate when they will be able to notify the changes to legislation referred to in the above documents?

¹G/ADP/N/1/JAM/1-G/SCM/N/1/JAM/1.

Appendix
Changes To Legislation Resulting From
The Agreement on Subsidies and Countervailing Measures
and
The Agreement on Implementation of Article VI of the
General Agreement on Tariffs and Trade 1994
Of Primary Interest To Canada

I. Subsidies Disciplines

Definition of Subsidy

- Treatment of definition of subsidy: [SCM Art. 1] - financial contribution by government that confers a benefit to the recipient;
- Treatment of exhaustive list of government practices that constitute financial contributions; inclusion of income or price support elements;

Specificity

- Treatment of *de jure* and *de facto* tests governing specificity, [SCM, Art. 2];
- Treatment of sub-federal specificity (SCM Art. 2.2), and designation of prohibited subsidies as specific (SCM Art. 2.3);

Prohibited subsidies

- Treatment of definition [SCM Art. 3 and 4] and illustrative list [SCM Annex I];
- Treatment of *Agriculture Agreement* exemptions,

Actionable Subsidies

- Treatment of actionable subsidies: [SCM Art. 5, 6, 7] i.e. countervailable subsidies, to ensure exclusion of non-actionable under the *SCM Agreement*;
- Treatment of serious prejudice elements;

Non-Actionable Subsidies

- Treatment of types, definitions and remedies for "non-actionable" subsidies [SCM Art. 8 and 9];

II. Countervailing Measures

Massive Subsidization

- Treatment of differences with anti-dumping measures, i.e., only applies with respect to prohibited subsidies;

Calculation of Amount of Subsidy

- Treatment of Article 14 principles;

- Treatment of basis for calculation, i.e., benefit to recipient basis (unless Annex IV calculation);
- Treatment of amounts attributable to non-actionable subsidies;

Developing Country Members

- Treatment of transition and phase out period for prohibited subsidies (Art. 27.3 and 27.4); thresholds for "export competitiveness" (Art. 27.5 and 27.6); actionable subsidies (Art. 27.9); thresholds for terminating countervail investigation (Art. 27.10. 27.11);

III. Determination of Dumping (ADP. Art. 2):

- Treatment of sales below cost - n. V. Based on cost-plus or third country sales (ADP Art 2.2)
- Treatment of non-recurring items (ADP Art 2.2.1.1)
- Treatment of start-up operations (ADP Art. 2.2.1.1)
- GS&A and Profits based on actual data (ADP Art. 2.2.2)
- Fair comparison provisions (ADP Art. 2.4)
- Use of exchange rates - Treatment of sustained movements (ADP Art. 2.4.1)
- Determination of dumping: investigation phase (ADP Art 2.4.2)
- Targeted dumping (ADP Art . 2.4.2)
- Trans-shipments (ADP Art. 2.5)

IV. Provisions Common to Antidumping and Countervail Investigations

DETERMINATION OF INJURY:

- Cumulation
- Injury analysis /causation
- Injury from other factors **not** to be attributed to dumping/subsidizing
- Threat of material injury
- Treatment in countervail provisions of differences with anti-dumping measures i.e., case of agriculture, *de minimis* standard and "negligible" injury;

APPLICATIONS/COMPLAINTS:

- Content of complaint
- Explicit requirement to examine adequacy and accuracy of complaint

INITIATION STANDARDS:

- Support
- Authorities to avoid publicising complaints
- Notice of complaint
- Conduct of investigations

EVIDENCE:

- Elements of due process
- Sampling
- Public interest

TRANSPARENCY:

- Public notice/ explanation of determinations

PROVISIONAL MEASURES:

- Proper initiation, public notice and interested parties have had an opportunity submit information and make comments
- Shall not be applied sooner than 60 days after initiation

FINAL MEASURES:

- Imposition and collection of duties
- Margin where exporters not included in samples
- Expedited reviews

PRICE UNDERTAKINGS:

- Time thresh-hold (i.e. Not before a preliminary determination) for accepting price undertakings.
- Treatment in countervail provisions of differences with anti-dumping measures, i.e., government permission, and quantitative restrictions;

SUNSET:

- Duration and review of antidumping/countervailing duties and price undertakings

JUDICIAL REVIEW:

- Independent judicial review shall be maintained

FINAL PROVISIONS

- Prohibition of actions not based on the agreement
- Transitional measures