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Committee on Anti-Dumping Practices

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Committee on Subsidies and Countervailing Measures

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

Supplement

The following communication, dated 11 July, has been received from the United States Trade Representative.

Enclosed are additional questions concerning the injury aspects of Venezuela's anti-dumping and countervailing duty legislation which we intend to pursue at next week's meeting.

INJURY

43. Article 50 of the Regulations states that "it shall be determined that there is material injury to the domestic industry when at least two of the following conditions are met". These conditions pertain to volume effects, price effects, and impact of the subject imports. How does this comply with the requirements of Articles 3.1 and 3.2 of the A-D Agreement and Articles 15.1 and 15.2 of the SCM Agreement that price effects, volume effects, and impact of the subject imports all must be considered?

44. Paragraph (1) of Article 50 of the Regulations states that import volume will be considered significant when it represents at least 5 per cent of the domestic production of like goods. How is this provision consistent with the requirements of Article 3.2 of the A-D Agreement and Article 15.2 of the SCM Agreement?

45. Does the provision in paragraph (1) of Article 50 of the Regulations mean that import volume will not be considered significant when it does not reach the 5 per cent level?

46. What is the meaning of the language in paragraph (2) of Article 50 of the Regulations concerning preventing price increases "which, if goods had not been imported, would have occurred in a natural and competitive manner"? How is the language, as construed, consistent with the requirements of Article 3.2 of the A-D Agreement and Article 15.2 of the SCM Agreement?

47. What is the meaning of the language in paragraph (3) of Article 50 of the Regulations stating that "[the Commission may determine which of the aforementioned [impact] headings apply to an investigation"? Does this mean that the Venezuela Anti-Dumping and Subsidies Commission (VASC) has the discretion to disregard certain of the specified impact factors in a particular investigation?

If so, how is this consistent with the requirements of Article 3.4 of the A-D Agreement and Article 15.4 of the SCM Agreement?

48. There is no requirement in the Law or Regulations for consideration of the magnitude of the dumping margin in making material injury determinations. In the absence of an explicit provision, how would Venezuela ensure the conformity of its practice with Article 3.4 of the A-D Agreement?

49. Does paragraph (5) of Article 51 of the Regulations apply to goods imported solely for reexport? How is this provision consistent with Article 3.7(iv) of the A-D Agreement and Article 15.7 of the SCM Agreement, which merely require examination of inventories of the product being investigated?

50. Article 11, Single Paragraph of the Law states that injury can be presumed for imports whose country of origin do not require injury tests in anti-dumping duty investigations involving Venezuelan imports. How is this provision consistent with Articles 1 and 3 of the A-D Agreement, which require that there be a determination of injury before any anti-dumping measure is imposed?

51. Article 12, Single Paragraph of the Law states that subject imports may be cumulated with imports from other countries that have been the subject of an anti-dumping or countervailing duty investigation during the year prior to the date of the initiation of the anti-dumping or countervailing duty investigation in question. How is this consistent with the provision in Article 3.3 of the A-D Agreement and Article 15.3 of the SCM Agreement that cumulated imports must be "simultaneously" subject to investigation?

52. Article 12, Single Paragraph of the Law does not contain a requirement that VASC examine conditions of competition between subject imports and between subject imports and the domestic like goods before determining to cumulate subject imports from different countries. In the absence of an explicit provision, how would Venezuela ensure the conformity of its practice with Article 3.3 of the A-D Agreement and Article 15.3 of the SCM Agreement?

53. Article 47 of the Regulations, when read in conjunction with Article 14 of the Law, suggests that a determination to impose anti-dumping or countervailing duties may be based on a finding on material injury or threat to as little as 30 per cent of the domestic industry. How is such a provision consistent with the requirements of Articles 3.1, 3.4, and 4.1 of the A-D Agreement, and Articles 15.1, 15.4, and 16.1 of the SCM Agreement?

54. Article 14 of the Law and Article 48 of the Regulations indicate that exclusion from the domestic industry of producers who are importers or who are associated with exporters of the merchandise under investigation is automatic. How is this consistent with footnote 11 to Article 4.1 of the A-D Agreement and footnote 46 to Article 16.1 of the SCM Agreement?

55. The provisions of the Law and Regulations concerning imposition of provisional measures (Articles 19, 20, 60, and 61 of the Law; Articles 53 and 78-82 of the Regulations) do not appear to require that the VASC publish an explanation of a determination whether to impose provisional measures. How has Venezuela implemented the requirement for an explanation of a determination whether to impose provisional measures embodied in Article 12.2.1 of the A-D Agreement and Article 22.4 of the SCM Agreement? In the absence of a specific provision, how would Venezuela ensure the conformity of its practice with the Agreements?

56. The provisions in Article 53 of the Law concerning determinations to impose definitive measures do not expressly require that the explanation of the determination contain reasons for the acceptance

or rejection of arguments made by exporters and importers. Is this consistent with the requirement of Article 12.2.2 of the A-D Agreement?

57. Do interested parties receive access to non-confidential information submitted by other interested parties pursuant to Article 44 of the Law before they must present arguments to the Technical Secretariat pursuant to Article 45 of the Law? In the absence of an explicit provision, how would Venezuela ensure the conformity of its practice with Article 6.4 of the A-D Agreement and Article 12.3 of the SCM Agreement?

58. Does Venezuelan law implement the requirement of Article 6.9 of the A-D Agreement and Article 12.8 of the SCM Agreement that the authorities shall inform interested parties of "the essential facts under consideration" before a final determination is made? There is no provision addressing this issue, and Article 44 of the Law addresses only non-confidential information provided by other interested parties. In the absence of an explicit provision, how would Venezuela ensure the conformity of its practice with the Agreements?

59. Does Venezuelan law implement the requirements of Article 5.8 of the A-D Agreement and Article 27.9 of the SCM Agreement concerning termination of investigations in circumstances when imports are negligible? There is no provision in the Law or Regulations directly addressing this issue. In the absence of an explicit provision, how would Venezuela ensure the conformity of its practice with the Agreements?

60. Under what conditions may the VASC determine to extend anti-dumping and countervailing duties, or undertakings, beyond the five-year maximum period, pursuant to Article 57 of the Law? How are these conditions consistent with the provisions of Article 11 of the A-D Agreement and Article 21 of the SCM Agreement?