

WORLD TRADE ORGANIZATION

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

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REPLIES TO QUESTIONS POSED BY HONG KONG¹
CONCERNING THE NOTIFICATION OF LAWS AND
REGULATIONS OF ICELAND²

The following communication dated 21 March 1996, has been received from the Permanent Mission of Iceland.

1. *Iceland's notification contains a copy of Articles 115-119 of Customs Law No. 55/1987 and Regulation No. 351/1994. Iceland further states that the legislation is under review in light of the relevant provisions of the WTO Agreements. Apparently, some provisions in Iceland's legislation may be at odds with the WTO A-D Agreement and numerous provisions of the WTO A-D Agreement are not featured in Iceland's legislation.*

Questions:

- (a) *What is the legal status of the WTO A-D Agreement in Iceland? 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 the A-D officials of Iceland 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?*
- (c) *What is the time table of the review and the implementation of the new legislation?*
- (d) *How will Iceland ensure compliance with the provisions of the WTO A-D Agreement before its laws are brought into total conformity with the WTO A-D Agreement?*

Reply

Iceland adheres to the dualistic system in the application of international law to Icelandic domestic law. In principle, Acts are required to give international law, including treaty obligations, direct legal effect within the Icelandic legal system. It is a well established principle in court cases, however, that domestic legislation must be interpreted in accordance with international law and international obligations which Iceland has undertaken. This principle is further strengthened in the Regulation No. 351/1994

¹G/ADP/W/189-G/SCM/W/196.

²G/ADP/N/1/ISL/1-G/SCM/N/1/ISL/1

on A-D and CVD measures, Article 1 paragraph 2, which specifically states that in implementing the Regulation, consideration must be given to provisions of international agreements to which Iceland is a party.

The traditional methodology of drafting legislation is similar to that of the European continental method. The principles provided by the legislation are normally stated in broad terms, namely general principles and with the exceptions stipulated. In this fashion Iceland normally transforms the principles of international agreements into its legislation. Consequently every provision of international agreements need not be stated in the domestic legislation.

The WTO Agreements have not in their entirety been regarded as requiring direct transformation into Icelandic law. The Agreements have, however, been the basis for amendments to and drafting of relevant domestic legislation.

It is foreseen that review of the legislation will be realised by the middle of this year. The present domestic A-D and SCM legislation predates the entry into force of the WTO A-D and SCM Agreements. Since it is more limited than the Agreements - and in the light of the above - it leaves significant scope for interpretation and administrative proceedings in a way which should avoid conflict with the relevant disciplines of the Agreements.

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

Reply

All administrative acts can be submitted to national courts for judicial review according to Article 60 of the Icelandic Constitution.

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

Reply

There is no domestic legislation regarding the implementation of recommendations flowing from Panel reports. If Iceland was a party to a dispute which was resolved in a Panel, it would be up to the Government how to deal with the situation. The reaction would of course be dependent on the nature of the case, i.e. whether it would call for a legislative amendment. A Panel report would, however, be considered an authoritative interpretation of international obligations to which Iceland was bound by the force of International law and therefore treated as such. In other words the authorities would endeavour to interpret the affected legislation to the extent possible in accordance with the recommendations or conclusions of a Panel. If the conclusions would call for an amendment or repeal of existing legislation, an Act of Parliament would be necessary.

4. *Article 39 of Regulation No. 351/1994 provides that A-D duties may be imposed on products that are introduced into the commerce of Iceland after having been assembled or produced in Iceland provided that certain conditions are met.*

Questions:

(a) *Are these "A-D duties" under Article 39 customs duties or internal taxes?*

- (b) *Does it require full-fledged investigations pursuant to procedures prescribed in the WTO A-D Agreement on the parts used in the assembly in Iceland and proof of dumping, injury and causal link before any anti-dumping duties can be imposed? How would Iceland reconcile this Article with its obligations under the WTO A-D Agreement?*
- (c) *Does Iceland anticipate amendment or repeal of this Article in the light of its obligations under the WTO A-D Agreement?*

Reply

It seems clear that there is nothing in the WTO Agreements that explicitly contradicts or prohibits the terms of Article 39 of the Regulation. This is an open question still pending in the WTO and waiting for a resolution. Once a solution is found Iceland will abide by it. Anti-circumvention would require full fledged investigation.

In the internal review process, concerns have been raised whether the “A-D duties” under Article 39, are in effect an internal tax. This will be taken into account during the revision of the domestic legislation.