

# WORLD TRADE ORGANIZATION

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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 CHILE OF LAWS AND REGULATIONS UNDER ARTICLES 18.5 AND 32.6 OF THE AGREEMENTS

The following communication, received on 18 July 1995, has been received from the Permanent Delegation of the European Community.

With regard to Chile's countervailing legislation, notified on 15 March 1995 under Article 32(6) of the WTO Subsidies Agreement (document G/SCM/N/1/CHL/1) the European Community has the following questions:

### General

The most recent relevant legislation is dated 17 June 1993. What will be the legal basis of the implementation in Chile of the WTO Subsidy Agreement?

There appears to be no legal definition of "like product", as specified in footnote 46 of the Agreement on SCM. How will this be applied?

Are *de minimis* rules foreseen in the Chilean legislation as provided for in Article 11(9) SCM?

There appears to be no mechanism for undertakings. Do the Chilean authorities intend to allow that proceedings can be suspended or terminated by the acceptance of undertakings?

There appears to be no reference to the length of time of an investigation period. What will be the minimum investigation period for (a) subsidization and (b) injury? What provisions will there be that the period of investigation of subsidization and dumping, will be the most recent appropriate period?

### Specific questions regarding Chilean legislation

Law No. 18.525. D.O., 30 June 1986

*Rules on the importation of goods*

### Article 10

Are the surcharges listed (3 per cent, 5 per cent, 8 per cent, 10 per cent, 12 per cent, 15 per cent, 18 per cent and 20 per cent) the only levels of duty which can be imposed?

If the above is so, can the Chilean authorities confirm that in a proceeding, if the subsidy margin determined in an CVD investigation is say 17 per cent, that the level of duty levied will be 15 per cent, as an 18 per cent levy would be contrary to Article 19(2) of the CVD Agreement? Is the 20 per cent level the maximum duty that can be applied under CVD measures?

#### Article 11

The initiation of an investigation is determined by a National Commission, however, no mention is made of consultations with the relevant Members whose products may be subject to investigation, as provided for in Article 13(1) SCM.

The fourth paragraph of Article 11 states that the Commission may on its own initiative conduct investigations, does this mean that the Commission can commence an investigation and recommend imposition of measures without a sufficiently motivated complaint being received from the domestic industry as required by Article 11(4) of the Agreement? Are special circumstances of 11(6) of the SCM foreseen?

The fifth paragraph of Article 11 and Article 25 of Decree No. 575 of the Ministry of Finance (adopting regulations under Article 11 of Law No. 18.525) refers to the "establishment of minimum customs value". On what basis would a minimum customs value be calculated in a subsidies investigation and how would this relate to the surcharges listed in Article 10 above?

#### Decree No. 575 of the Ministry of Finance

*Adopting regulations under Article 11 of Law No. 18.52*

#### Article 1(1)

#### Green subsidies and non-actionable subsidies

How will the Chilean authorities implement the provisions of Article 8 SCM and footnote 35 SCM as there is no mention of these in the Chilean legislation?

#### Definition

In the definition of a subsidy, no reference is made to the fact that a benefit must be conferred thereby. Can the Chilean authorities nevertheless assure compliance with Article 1(1)(b) SCM?

#### Article 10

#### Standing

Article 10 states that any natural or legal person may make a complaint. How will the Chilean authorities ensure that the level of support is in accordance with Articles 11(4) and 16 of the Subsidies Agreement?

#### Articles 12, 13 and 14

#### Consultations

There appears to be no mechanism for the Chilean authorities to notify interested parties of the information required by the authorities as laid down in Articles 11 and 22 SCM of the Agreement

neither of the provision to supply interested parties the full text of the complaint under 12(1) (3) SCM. How will Chile ensure compliance with these requirements?

#### Article 15

##### Measures

The Article states that "the measures recommended may not be greater than the margin of price distortion". This appears to indicate, that measures can be imposed over and above the level of injury found. How would this square with the provisions of Article 15(5) SCM?

#### Article 16

This provision states that interested parties shall be notified once the corresponding Decree has been published. There does not appear to be any legal provision for interested parties to comment on the findings of the investigation and any recommendations to be made for a definitive decision of the President of the Republic. How can this be reconciled with the requirement of Article 13(2) SCM and footnote 44 to the same Article, regarding consultations and with the requirements of Article 17(1) SCM regarding provisional duties?

#### Article 18

Article 18 states that the National Commission may recommend that measures in force be modified. What criteria would be used? Would a new investigation take place? Would consultations take place as provided for in Article 13(1) if an investigation is initiated?