

WORLD TRADE

ORGANIZATION

RESTRICTED

G/ADP/W/62

G/SCM/W/71

27 September 1995

(95-2837)

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

Original: Spanish

REPLIES TO ORAL QUESTIONS POSED BY THE UNITED STATES
CONCERNING THE NOTIFICATION OF VENEZUELAN
LAWS AND REGULATIONS¹

The following communication, dated 5 September 1995, has been received from the Permanent Mission of Venezuela.

I enclose herewith the responses to the questions posed by the United States to the Government of Venezuela during the meetings to review Anti-Dumping and Subsidies legislation.

Please note that these responses cover all the questions put to Venezuela.

¹G/ADP/N/1/VEN/1-G/SCM/N/1/VEN/1

UNITED STATES

(Responses to the Follow-Up Questionnaire)

1. *Reforms to the Regulations*

Please clarify whether the Law on Unfair Foreign Trade Practices will be amended by future regulations and if so what is the expected time-frame for implementation of those regulations?

As notified, in response to the original questionnaire, the Law on Unfair Foreign Trade Practices of June 1992 was amended by the Law approving the Marrakesh Agreement of December 1994. In this respect, the Law on Unfair Foreign Trade Practices is only applied in so far as it does not conflict with or diverge from the WTO Anti-Dumping Agreements or those on Subsidies and Countervailing Measures. It should also be pointed out that in general in the Venezuelan judicial system laws approved by the Congress cannot be amended by their regulations.

Owing to the existence of the Law approving the Marrakesh Agreement, it is not necessary in technical terms to adopt any additional provisions (through other laws, regulations, decrees or administrative orders) to implement the obligations of the WTO Agreements.

Despite the above, as indicated, the Government of the Republic of Venezuela is currently drawing up draft regulations to replace the Regulations under the Law on Unfair Foreign Trade Practices and to develop the rules stemming from the WTO Agreements relating to anti-dumping and countervailing measures. As indicated, these amendments are not technically necessary for the implementation of the WTO Agreements, because the Agreements form part of Venezuelan legislation and, in addition, have higher legal status than any regulation. However, through these amendments the use of the provisions currently included in various laws could be facilitated, and the technical and methodological aspects of investigations improved.

The process of reforming the Regulations would take at least six months. In any case by mid-1996 we hope to be in a position to notify the Committees of the final decision regarding the changes in the Regulations under the Anti-Dumping Law.

2. *Targeted Dumping*

Will your regulations provide guidance on when targeted dumping will be found?

In accordance with the provisions of Article 2.4.2 of the WTO Anti-Dumping Agreement and with its past practice, the Commission will continue to be guided by the comparison of weighted-averages of export transaction prices in determining whether dumping exists. The above remains true apart from the special cases provided for in the Anti-Dumping Agreement itself (i.e. where a pattern of export prices is found which differs significantly among different purchasers, regions or time-periods (targeted dumping), or if it is shown that such differences could not be taken into account appropriately by the use of a weighted average-to-weighted average or transaction-to-transaction comparison). The Commission will consider that the use of weighted averages may materially affect the outcome of an investigation only if it finds that there is a pattern of export prices which differs significantly, in accordance with the above provision.

In the future amendments to the Venezuelan Anti-Dumping Regulations, this price comparison methodology would be clarified. The rules included therein for determining whether *targeted dumping* exists will be consistent with the guidelines contained in the Anti-Dumping Agreement.

3. *Definition of Subsidy: Financial Contribution*

Concerning paragraph 13 of Article 2 (of the Anti-Dumping Law), it appears as if any financial contribution is deemed to be a subsidy itself as opposed to an element in determining whether a subsidy exists. Could you please explain?

Contrary to what is implied in the question, the existence of a financial contribution is only one of the elements which the Commission will take into account in determining whether a countervailable subsidy exists or not. Thus, in the case of imports from WTO Member countries, and in accordance with the provisions of the SCM Agreement, the existence of a financial contribution (or of some other form of income or price support in accordance with Article XVI of GATT 1994) shall be only one of the necessary but not sufficient conditions for the Commission to determine that a countervailable subsidy exists.

4. *Cumulation of Imports*

Concerning "Single Paragraph" under Article 12 (of the Anti-Dumping Law), under what circumstances will Venezuela cumulate imports across investigations?

As indicated in response to the original questionnaire, in direct application of the provisions of the WTO Agreements, in the case of investigations involving imports from WTO Member countries, the effects of imports from various countries will be cumulated only in a manner consistent with the rules contained in the Agreements. These rules, which include aspects such as that the imports to be cumulated be simultaneously subject to investigation and that the Commission considers the competitive conditions between the imported products and the domestic products before determining whether to cumulate imports from different countries, would be included in the future amendments to the Venezuelan Anti-Dumping Regulations.

5. *Domestic Industry Support for Applications*

Concerning Article 47 (of the Anti-Dumping Regulations): (i) Is the 30 per cent provision used for the purpose of determining domestic industry support for a petition? (ii) How is this provision consistent with the definition of domestic industry found in Article 4 of the AD Agreement?

As informed in response to the original questionnaire, the Commission has so far been using the criteria contained in Article 14 of the Anti-Dumping Law and Article 47 of the Regulations, not only for determining injury, but also for determining standing for filing applications to initiate investigations. Thus, the Commission has been applying the standards set out in Article 47 of the Anti-Dumping Regulations, namely 30 per cent of domestic production of the like good (which is stricter than the standard set out in the WTO Agreements). However, the Article of the Regulations does, exceptionally, if the special circumstances of the production structure in question so warrant, allow the Commission to use as a benchmark a lower percentage, which may not be less than 20 per cent (a lower percentage taken to be amended to 25 per cent under the WTO Agreement).

As informed, the provisions of the WTO Agreements are directly applicable to anti-dumping or subsidies procedures initiated after 1 January 1995 in Venezuela. Thus, the Commission is verifying that applications for the initiation of anti-dumping or subsidies investigations are filed by a producer or number of producers representing at least 25 per cent of the domestic industry, in accordance with Article 5.4 of the Anti-Dumping Agreement and Article 11.4 of the SCM Agreement, respectively.

Furthermore, as was made clear in response to the original questionnaire, neither the Venezuelan Anti-Dumping Law nor the Regulations include any provision concerning the need to verify the relative degree of support for the application by domestic producers (where some producers support have opposed the investigation). However, as informed, the WTO Agreements are directly applicable to anti-dumping or subsidies procedures initiated after 1 January 1995 in Venezuela. In this respect, in the case of imports from WTO Member countries - and in accordance with the requirements of Article 5.4 of the WTO Anti-Dumping Agreement and Article 11.4 of the SCM Agreement - the Commission, in the event of any opposition to an application filed by domestic producers, will verify whether there is a degree of support of more than half of the domestic industry expressing either its support for or opposition to the application.

The provisions relating to the degree of domestic industry support necessary for applications for investigations would be included in the future amendments to the Venezuelan Anti-Dumping Regulations.

6. *Extension of Provisional Duties*

Is it possible for the Commission to extend provisional measures longer than four months?

As stated, the WTO Agreements are directly applicable to anti-dumping or subsidies procedures initiated after 1 January 1995 in Venezuela. Thus, as indicated in response to the original questionnaire, in the case of a procedure involving imports from a WTO member country, in accordance with Article 7.4 of the Anti-Dumping Agreement and Article 17.4 of the SCM Agreement, the Commission will only apply provisional measures for a brief period which shall not exceed four months.

In the future amendments to the Venezuelan Anti-Dumping Regulations this point would be clarified.

7. *Significant Volume of Imports*

Given that the Agreement specifies that 3 per cent of imports are negligible, how can 5 per cent be considered "significant", as specified in Article 50(1) (of the Anti-Dumping Regulations)?

As indicated in response to the original questionnaire, Article 50(1) of the Anti-Dumping Regulations indeed provides that, in the determination of injury, it shall be considered whether the volume of imports is significant and has increased in absolute terms or relative to the domestic production of like goods. The volume of imports shall be considered significant when it represents at least 5 per cent of the domestic production of like goods.

In considering whether the rule contained in Article 50(1) of the Anti-Dumping Regulations, relating to significant volumes of imports, is consistent with the provisions of Article 5.8 of the Anti-Dumping Agreement and Article 11.9 of the SCM Agreement, it is necessary to distinguish between the two Agreements, since they contain different provisions.

(a) *Anti-Dumping Agreement*

Article 5.8 of the WTO Anti-Dumping Agreement provides that investigations shall be terminated where it is determined that the volume of dumped imports is negligible. Unlike the Venezuelan Regulations, the significance of the volume of imports is determined, not on the basis of the domestic industry, but rather of at least 3 per cent *of imports of the like product in the importing country*. As

informed, the provisions of the WTO Agreements are directly applicable to anti-dumping or subsidies procedures initiated after 1 January 1995 in Venezuela. Thus, now, in accordance with the provisions of this Article of the AD Agreement, the Commission will terminate investigations where it finds that the volume of dumped imports is negligible, i.e. accounts for less than 3 per cent of imports of the like product in Venezuela.

(b) SCM Agreement

Similarly, Article 11.9 of the WTO SCM Agreement provides that investigations shall be terminated where it is determined that the volume of dumped imports is negligible. Unlike the AD Agreement, the SCM Agreement does not provide any precise volume for considering whether imports of subsidized goods are significant. In this respect, the provision contained in Article 50(1) of the Venezuelan Anti-Dumping Regulations goes further than the Agreement and provides a percentage for determining the significance of imports, using the domestic industry producing like goods as a benchmark.

Despite the above, it should be pointed out that Article 50(1) of the Venezuelan Anti-Dumping Regulations allows the Commission to base its determinations concerning the significance of import volumes on percentages other than the 5 per cent level referred to, "when, in its view, the circumstances of the case so require". One case in which the Commission might consider that certain dumped or subsidized imports were significant, in spite of not reaching a level of 5 per cent of the domestic industry, would be where they constitute a significant percentage (more than 3 per cent) of the total volume of imports of the like good in Venezuela, as provided for in Article 5.8 of the WTO Anti-Dumping Agreement.