

WORLD TRADE

ORGANIZATION

RESTRICTED

G/ADP/W/71

G/SCM/W/80

11 October 1995

(95-2981)

Committee on Anti-Dumping Practices

Original: Spanish

Committee on Subsidies and Countervailing Measures

QUESTIONS CONCERNING THE NOTIFICATIONS PROVIDED BY THE
EUROPEAN COMMUNITIES¹ OF LAWS AND REGULATIONS
UNDER ARTICLES 18.5 AND 32.6 OF THE AGREEMENTS

The following communication, dated 20 September 1995, has been received from the Permanent Mission of Argentina.

I have the pleasure to attach hereto the questions of the Argentine Delegation concerning the legislation of the European Communities on dumping and subsidies that is to be reviewed at the meetings of the WTO Anti-Dumping and Subsidies and Countervailing Measures Committees to be held in the week of 23 to 27 October 1995. These questions were likewise transmitted to the Delegation of the European Communities.

¹G/ADP/N/1/EEC/1 and G/SCM/N/1/EEC/1

General

1. In the event of conflict between a provision of Council Regulations No. 3283 (document G/ADP/N/1/EEC/1) and No. 3284 (document G/SCM/N/1/EEC/1) of 22 December 1994 and a provision of the Agreements on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 and on Subsidies and Countervailing Measures, which would prevail?

2. Article 3 of the Regulation on Dumping and Article 5 of the Regulation on Subsidies refer in the Spanish version to "*perjuicio*" whereas the Agreements on Dumping (Article 3) and Subsidies (Article 15) refer to "*daño*". The English versions of both the Regulations and the Agreements refer to "*injury*". What is the reason for this difference in terminology? Is it merely a question of translation or does it have some other significance?

Anti-dumping

1. Article 3, paragraph 5, of the Regulation includes among the factors to be considered in the evaluation of injury "*the fact that an industry is still in the process of recovering from the effects of past dumping or subsidization*", a factor not contained in the Agreement.

Please explain the scope and possible application of this hypothetical circumstance.

2. Article 5, paragraph 5 of the Regulation on Dumping establishes the obligation to notify the government of the exporting country concerned before proceeding to initiate an investigation. How is this notification implemented and how much in advance of the initiation of the investigation is it carried out?

3. Article 5, paragraph 7, of the Regulation on Dumping establishes that "*proceedings shall not be initiated against countries whose imports represent a market share of below 1 per cent, unless such countries collectively account for 3 per cent, or more, of Community consumption*".

Article 5.8 of the Anti-Dumping Agreement provides that "*the volume of dumped imports shall normally be regarded as negligible if the volume of dumped imports from a particular country is found to account for less than 3 per cent of imports of the like product in the importing Member, unless countries which individually account for less than 3 per cent of the imports of the like product in the importing Member collectively account for more than 7 per cent of imports of the like product in the importing Member*".

How may this difference between the Regulation and the Agreement, and the effects thereof, be explained?

4. Article 5, paragraph 9, of the Regulation on Dumping states that "*where, after consultation, it is apparent that there is sufficient evidence to justify initiating proceedings the Commission shall initiate proceedings within 45 days of the lodging of the complaint and publish a notice in the Official Journal of the European Communities. Where insufficient evidence has been presented, the complainant shall, after consultation, be so informed within 45 days of the date on which the complaint is lodged with the Commission*".

What parameters need to be taken into account to consider that the evidence presented is sufficient?

5. Article 5, paragraph 10, of the Regulation on Dumping establishes that the notice of initiation has to state the period within which interested parties may make themselves known, present their views in writing and submit information. It also has to state the period within which interested parties may apply to be heard.

What is the period allowed to interested parties to come forward?

Why does the Regulation not lay down a period?

Is this period fixed in each case?

6. Article 6, paragraph 1, of the Regulation on Dumping establishes that an investigation period shall be selected which, in the case of dumping, shall normally cover a period of not less than six months immediately prior to the initiation of the proceedings.

What is the selection of the investigation period based on?

7. Article 7, paragraph 2, of the Spanish version of the Regulation establishes that the anti-dumping duty "*no deberá sobrepasar el margen de dumping provisionalmente establecido ni ser inferior a dicho margen, siempre que resulte adecuado para eliminar el perjuicio ocasionado a la industria de la Comunidad*". The English version states that "*The amount of the provisional anti-dumping duty shall not exceed the margin of dumping provisionally established but it should be less than the margin, if such lesser duty would be adequate to remove the injury to the Community industry*".

Is this difference merely a translation error?

8. Article 7, paragraph 7, of the Regulation establishes that provisional duties may be imposed for six months and extended for a further three months where exporters so request or do not object.

Article 7.4 of the Anti-Dumping Agreement provides for a period not exceeding four months, which may be extended to six months upon request by exporters, and to nine months when requested by an exporter and in addition the authorities examine whether a duty lower than the margin of dumping would be sufficient to remove injury.

How may this difference be explained?

9. Article 9, paragraph 3, of the Regulation establishes that the investigation will be terminated where the margin of dumping is *de minimis*, but at the same time provides that individual exporters will remain subject to the proceedings and may be reinvestigated in any subsequent review.

Since Article 5.8 of the Anti-Dumping Agreement refers only to terminating the investigation when the margin of dumping is *de minimis*, how may this difference be explained?

10. Article 10, paragraph 4(ii), of the Regulation refers to "*substantial rise*" in imports. Article 10.6(ii) of the Anti-Dumping Agreement refers to "*massive dumped imports*".

What is the reason for this difference?

11. Article 12 of the Regulation provides for the re-opening of the investigation if "*measures have led to no movement, or insufficient movement, in the sale prices or subsequent selling prices in the Community*". The Anti-Dumping Agreement does not provide for re-opening on these grounds. What

are the legal effects of such re-opening? Does it involve a new investigation or continuation of the previous investigation? What are the effects of re-opening on the definitive duties already imposed? What would the Council's power to increase the measures in force be based upon?

12. How does the concept of "*circumvention*" in Article 13 of the Regulation fit into the framework of the Anti-Dumping Agreement?

Subsidies

1. Article 5, paragraph 5, of the Regulation includes among the factors to be considered for the evaluation of injury "*the fact that an industry is still in the process of recovering from the effects of past subsidization or dumping*", a factor not contained in the Agreement.

Please explain the scope and possible application of this hypothetical circumstance.

2. Article 7, paragraph 9, of the Regulation refers to notifying the country of origin and/or export and inviting the government for consultations to clarify the situation and arrive at a mutually agreed solution. What does this possibility of a "*mutually agreed solution*" refer to?

3. Article 7, paragraph 11, of the Regulation establishes that proceedings shall not be initiated "*against countries whose imports represent a market share of below 1 per cent, unless such countries collectively account for 3 per cent, of Community consumption*", a circumstance not provided for in the Agreement.

What is the basis for including this?

4. Article 10, paragraph 1(ii), of the Regulation lists, among the types of undertakings, "*to cease exports*", which is not listed in Article 18 of the Agreement.

How may this be reconciled with the Agreement?

5. How does the concept of "*circumvention*" in Article 14 of the Regulation fit into the framework of the Subsidies Agreement?