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

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

Questions Posed by ARGENTINA Regarding the Notification of CHILE¹

The following communication, dated 7 November 2000, has been received from the Permanent Mission of Argentina.

In connection with the review of domestic legislation on anti-dumping, subsidies and countervailing measures being conducted in the WTO Committee on Anti-Dumping Practices and Committee on Subsidies and Countervailing Measures, in accordance with the procedure described in document G/ADP/W/284-G/SCM/W/293 (paragraphs 7 and 9), I am attaching herewith the questions which Argentina would like to pose at the forthcoming meetings of the aforementioned Committees in the year 2001 in relation to the legislation notified by Chile (G/ADP/N/1/CHL/2 – G/SCM/N/1/CHL/2).

¹ G/ADP/N/1/CHL/2-G/SCM/N/1/CHL/2.

Concerning with Chile's legislation on anti-dumping and countervailing duties, notified on 9 March 2000 in compliance with Article 18.5 of the Agreement on Implementation of Article VI of the GATT 1994 (document G/ADP/N/1/CHL/2), Argentina would like to pose the following questions:

In its notification, Chile states that the amendment "introduces no significant changes in anti-dumping or countervailing duty investigations. It merely revokes the authority under Article 10 to establish so-called 'tariff surcharges' and minimum customs values ...".

1. The Article in question states that anti-dumping and countervailing duties will be applied to "imports of goods of which the entry into the country causes or threatens serious injury to the domestic industry by entering at diminished prices as a result of artificial effects in their respective markets". What does the expression "diminished prices as a result of artificial effects" mean? To what extent is this concept compatible with the definition of dumping in the AD Agreement? Can the expression "artificial effects in their respective markets" be understood to cover situations other than dumping or subsidies?

2. The second sentence of Article 10 states that "The President of the Republic shall determine the goods to which these surcharges, anti-dumping duties and countervailing duties shall apply ...". Is the concept of "surcharges" the same as the concept which, according to the notification of 9 March, was revoked in Article 10? How can the authority given to the President to determine the goods to which surcharges, anti-dumping duties and countervailing duties shall apply be reconciled with the investigation to be carried out by the Commission?

Administrative procedures

In document G/ADP/W/156, Chile reports that it is preparing a law specifically covering, in accordance with the Agreements, the structure, composition and functions of the investigating authority, the body responsible for reviewing its decisions and those procedural rules not explicitly provided for in the Agreements. It also states that this must be "consistent with the structure of our administrative procedures". Chile has not notified to the WTO the rules which govern the "structure" of its administrative procedures as such.

Questions

1. **Should it be understood that the legislation notified in document G/ADP/N/1/CHL/2 is the law referred to by Chile in document G/ADP/W/156 as a law was being prepared specifically covering, in accordance with the Agreements, the structure, composition and functions of the investigating authority, the body responsible for reviewing its decisions and those procedural rules are not explicitly provided for in the Agreements concerned?**

2. **How is the "structure" of these administrative procedures organized and what is the legal hierarchy of the mechanism?**

3. **How does this mechanism apply to anti-dumping investigations in relation to the Agreement and its specific regulations? If the aforementioned regulations on administrative procedures are included among the laws and regulations under Article 18.5 of the AD Agreement, Argentina interprets this to mean that they should be notified, with special reference to this Article.**

Complaints

In the regulations notified, it is not stated what information the parties must submit for the purposes of initiating an anti-dumping or subsidies investigation. In document G/ADP/W/99, Chile states that "Chilean regulations provide for a form in which the interested parties must provide the information needed for submitting their complaint".

Questions

- 1. As Law No. 18.525 and Decree No. 575 – the only regulations notified to the WTO do not mention any such form, to what "Chilean regulations" does this statement refer?**
- 2. How are these "regulations" to be communicated? What is their legal status and their relationship to the other provisions in Chile's legislation. Argentina considers that these regulations should also have been notified.**

Evidence

Article 6.1 of the AD Agreement provides that "All interested parties in an anti-dumping investigation shall be given notice of the information which the authorities require ..." and paragraph 1 of Annex II specifies that "As soon as possible after the initiation of the investigation, the investigating authorities should specify in detail the information required from any interested party, and the manner in which that information should be structured by the interested party in its response. The authorities should also ensure that the party is aware that if information is not supplied within a reasonable time, the authorities will be free to make determinations on the basis of the facts available, including those contained in the application for the initiation of the investigation by the domestic industry."

Questions

- 1. As it was not possible to identify in the Chilean regulations the procedure for giving interested parties notice of the information which the Commission requires for the purposes of its determination, could Chile provide information on the form in which the Commission gives notice of its information requirements and the stage at which it does so?**
- 2. Is the information regulated in any way? If the reply is in the affirmative, do these regulations come within the concept of "laws and regulations relevant to this Agreement" in Article 18.5? If the answer is yes, will Chile make the relevant notification?**
- 3. If the information is not regulated, when does Chile intend to regulate it and, in the meantime, what guidelines does the authority use and how are the parties notified of these guidelines?**

Period for parties or third parties to submit information.

The Chilean Law and Regulatory Decree, Articles 11.2 and Article 14 respectively, provide that within 30 days from the date of publication in the *Diario Oficial* of the notice of opening of an investigation, referred to in the preceding Article 12, the Commission shall receive the information which the parties or any interested third party wishes to submit concerning the case and shall request any reports it considers necessary.

Questions

1. In document G/ADP/W/156, Chile explains that "the Anti-Dumping Agreement and the Agreement on Subsidies ... neither supplant nor supplement national legislation but form an integral part with it, with the status of laws". Does Chile consider that the aforementioned Articles are consistent with footnote 15 to the AD Agreement, which states that "As a general rule, the time-limit for exporters shall be counted from the date of receipt of the questionnaire ..."?

2. In connection with the words "request any reports it considers necessary" are there any general guidelines on what reports are "necessary" and should be part of any investigation? If the reply is in the affirmative, could Chile inform us of these guidelines?

Verification

The verification referred to in Article 6.6 and 6.7 and Annex I to the AD Agreement are not addressed in the regulations notified.

Questions

1. Does the Commission have recourse to the provisions in Article 6.6 and 6.7 and Annex I to the AD Agreement?

2. If the reply is in the affirmative:

- (a) At what stage are the verifications mentioned in Article 6.7 and Annex I to the AD Agreement conducted?
- (b) Is verification carried out in all investigations or does the authority decide on a case-by-case basis? If it decides on a case-by-case basis, what parameters does the authority use when deciding on the need for verification?
- (c) How are the parties and interested parties given access to the findings of the verification? Do they have an opportunity to submit comments on the verification?
- (d) If the authority does not verify, how does it satisfy itself as to the accuracy of the information used when making its final determination? What type of information is verified by official sources and what are these sources?

Price undertakings

In document G/ADP/W/99, when questioned with regard to price undertakings, Chile stated that "There are no plans to apply this option in the Chilean regulations."

Questions

1. Given the legal status accorded to the AD Agreement by Chile, can an exporter present an undertaking?

2. If the reply is in the affirmative, how will the authority deal with an undertaking presented by an exporter?

Judicial review

In document G/ADP/W/9, Chile reports that it "will either have to set up a special system for judicial review, which may be of this kind, or a separate administrative or arbitral tribunal in accordance with the new provisions of the respective agreements".

Question

1. As no regulations have been notified in this regard, what means have been available to interested parties for the review of a determination of dumping, injury and a causal link, and anti-dumping measures over the five years during which the AD Agreement has been applied in Chile?

Transparency

In October 1995, Chile stated that it was drafting a regulation "which lays down all those minor aspects of procedure to be followed, ensures transparency and the precise manner in which the methods of calculation, adjustments and sources of relevant information within the scope of the Commission (investigatory authority) are to be carried out and any other matters which enable easier access to the mechanisms under the Agreements".

Questions

1. Has Chile drafted this regulation?

2. If the reply is in the affirmative, has this regulation been notified to the WTO in accordance with Article 18.5 of the AD Agreement?

3. If the reply is in the negative, what criterion does the Commission use when dealing with this type of issue?

Essential facts

In document G/ADP/AHG/W/6, Chile reports that its practice in this area is based on written notification to the concerned parties of the essential facts of the investigation. This document summarizes the information in the public record of the investigation into dumping and the injury it has caused, the source of this information, and the methodology used to calculate the margin of dumping, all of which serve as the basis for the final decision by the investigating authority. With regard to the timing of the determination of essential facts, Chile reports that it considered that this

should be done at a date sufficiently close to that of the final determination so that the Commission already possesses virtually all the information needed to reach a decision, while at the same time leaving sufficient time for parties to be able to make their comments, defend their viewpoints and even submit some final information. For this purpose a period of 15 days from the notification is allowed for parties to be able to make their observations.

Questions

- 1. The legislation notified does not contain any provision on the "essential facts". Could Chile explain whether there is a regulation governing this matter?**
- 2. If the reply is in the affirmative, what is the status of this regulation and how is it applied in relation to the AD Agreement?**

Confidentiality

Article 8 of Decree No. 575 provides that "The official records shall be kept in the archives of the Technical Secretariat and shall be public. The corresponding information shall also be public, except when by its nature it is confidential or the interested party which provided it expressly requested confidentiality on justified grounds. In this latter case, the interested party shall furnish public summaries and if, in such cases, it fails to duly provide such summaries without just cause, the Commission may disregard the confidential or reserved information."

Questions

- 1. With regard to information that is confidential by nature, have any criteria been established for defining the confidential nature of information? If they exist, are they known to the parties? Are there any regulations defining them?**
- 2. In this Article of the Chilean Regulations there is a mention of "confidential or reserved information". Is there any legal difference between the two words? If the reply is in the affirmative, could Chile please explain this?**
- 3. In practice, if the party providing the information does not request that it should be treated as confidential, what procedure is followed to declare it "reserved"? Is there a public summary so that the other parties can exercise their right of defence?**
- 4. Are there any supplementary administrative regulations concerning reserved information? If the reply is in the affirmative, Argentina considers that they should have been notified with special reference to Article 18.5 of the AD Agreement.**

New Shipper's Review

In document G/ADP/W/99, when questioned on this aspect, Chile stated that "The notified Chilean regulations do not provide for this type of investigation. However, as provided for in the agreements, Chile is obliged to adopt the necessary regulations and carry out such investigations." To date, Chile has not notified any regulations on this subject.

Question

- 1. How will the implementing authority proceed in cases where a new shipper's review is requested if there are no regulations in this respect?**

Provisional measures

Article 19 of Decree No. 575 states that "Before reaching the decision referred to in the previous Article, the Commission may, at any stage in the investigation and within a period of 60 days of its initiation, when it is necessary to avoid or prevent injury to the domestic industry, request the President of the Republic, through the Minister of Finance, to establish provisional minimum customs duties, surcharges, anti-dumping duties or countervailing duties as referred to in Articles 9 and 10 of Law No. 18.525".

Questions

1. Does the above Article mean that the Commission can request the imposition of provisional measures prior to expiry of the time-limit given to the interested parties to provide information (30 days after the initiation, Article 14)?
2. Bearing in mind that the AD Agreement has the status of law in Chile, if the reply is in the affirmative, how can this be reconciled with Article 7.1(i) of the AD Agreement in the sense that "Provisional measures may be applied only if ... interested parties have been given adequate opportunities to submit information and make comments"?

Establishment and payment of anti-dumping duties**Questions:**

1. Do the Chilean customs regulations contain any rules governing the payment of anti-dumping duties?
 2. Could Chile explain the mechanism for such payment?
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