

**TIRET 80 - COUNTERVAILING DUTY
INVESTIGATION PROCEDURES**

India

The following communication has been received on 19 October 2001 from the delegation of India.

Draft Decision

Decision of [OCTOBER 2001]

Noting that Article VI:3 of GATT 1994 provides that no countervailing duty shall be levied on any product of the territory of any contracting party in excess of an amount equal to the estimated bounty or subsidy determined to have been granted;

Noting further that footnote 36 to Article 10 of the Agreement on Subsidies and Countervailing Measures provides that the purpose of countervailing duty is offsetting any subsidy bestowed directly or indirectly upon the manufacture, production or export, as provided in paragraph 3 of Article VI of GATT 1994;

Having regard to item (h) of Annex I of the Agreement on Subsidies and Countervailing Measures which provides that the exemption, remission or deferral of prior stage cumulative indirect taxes on goods or services used in the production of exported products in excess of the exemption, remission or deferral of like prior-stage cumulative indirect taxes on goods or services used in the production of like goods when sold for domestic consumption constitutes an export subsidy;

Having further regard to item (i) of Annex I of the Agreement on Subsidies and Countervailing Measures which provides that remission or drawback of import charges in excess of those levied on imported inputs consumed in the production of the exported product constitutes an export subsidy;

Emphasizing that Article 19.4 of the Agreement on Subsidies and Countervailing Measures provides that no countervailing duty shall be levied in excess of the amount of subsidy found to exist;

Recalling the report L/1141, adopted on 27 May 1960 which provides that if it were established that the exemption or the reimbursement [of duties and taxes] exceeded the real charge

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which the product would have to pay in the exporting country, the difference could be considered as constituting a subsidy;

Hereby agree that:

- (a) any exemption, remission or deferral of prior stage cumulative indirect taxes on goods or services used in the production of the exported products to the extent of exemption, remission or deferral of prior stage cumulative indirect taxes on goods or services used in the production of like products when sold for domestic consumption shall not be subjected to countervailing duty. If however it were established that the exemption, remission or deferral of the prior stage cumulative indirect taxes exceeded the exemption, remission or deferral of prior stage cumulative indirect taxes on goods or services used in the production of like products when sold for domestic consumption in the exporting country, the difference could be considered as constituting a subsidy; and
 - (b) any remission or drawback of import charges to the extent of those levied on imported inputs that are consumed in the production of the exported product shall not be subjected to countervailing duty. If, however, it were established that the remission or drawback of import charges exceeded the real charge levied on the imported inputs the difference could be considered as constituting a subsidy.
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