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Allocation of subsidies to products and markets

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Calculation of the amount of subsidy

Article 14 SCM Agreement: method to be provided for in the national legislation

Article 19.4 ASCM: No CVD in excess of the amount of the subsidy found to exist, calculated in terms of subsidization per unit of the subsidized and exported product.

EU Basic CVD Regulation: Articles 5-7

Calculation Guidelines (COM-Communication OJ C394 of 17/12/1998) - 'Soft' legislation

Subsidy linked to the output quantity

❖ Subsidies granted by reference to the quantities exported to the EU (Art.7(1) BR)

- **subsidy amount per unit during IP = numerator**
- **CIF value (duty unpaid) of unit import price to the EU = denominator**

Example:

- **Subsidy amount: 10 per unit, e.g. per exported television (TV)**
- **CIF import value TV: 500 per unit based on invoice**
- **Subsidy margin: 2%**

Example: lump sum payment per quantity produced 'USD 1/gallon scheme' (Biodiesel USA Reg. 2015/1519, OJ L 239, 15.9.2015, p. 99)

Subsidy not linked to the output quantity

❖ Subsidies not granted by reference to output quantities

Art. 7(2) BR: *"Where the subsidy is not granted by reference to the quantities manufactured, produced, exported or transported, the amount of countervailable subsidy shall be determined by allocating the value of the total subsidy, as appropriate, over the level of production, sales or exports of the products concerned during the investigation period for subsidisation"*

- **Total subsidy amount found during IP = numerator**
- **Export subsidies: Total export sales during IP = denominator**
- **Other subsidies: Total sales (domestic+export) during IP = denominator**
- **Note: Unless a subsidy is limited to a particular product/production sector, the denominator is the company's total sales (all products)**

Subsidy tied to the PUI (1)

❖ US-Washers from Korea (WT/DS/464) :

- a subsidy is "tied" to a particular product if connected to, or conditioned upon, the production or sale of the product concerned (para 5.270)
- "a subsidy that does not restrict the recipient's use of the proceeds of the financial contribution may, nonetheless, be found to be tied to a particular product if it induces the recipient to engage in activities connected to that product." (para 5.273)
- Tax credits for R&D obtained by Samsung should have been assessed whether tied to specific products on the basis of evidence provided showing activities by product line
- A subsidy may be bestowed on the recipient's production outside the jurisdiction of the subsidizing Member. For instance, if the recipient is a multinational corporation the subsidized products may include that corporation's production in those multiple countries. (para 5.297).

➤ China-Broilers (DS 427):

- The correct calculation of a CVD rate requires matching the elements taken into account in the numerator and denominator
- Subsidies of chicken feed that was not used for the production of the PUI should have been excluded from subsidisation calculation

Subsidy tied to the PUI (2)

- ❖ Subsidies specific to PUI: subsidy amount allocated only to the sales of PUI
 - Direct grants/tax rebates, etc. specific to the production or export of PUI. Provision of goods or services directly linked to the PUI. Example: provision of iron ore at LTAR (ductile India) Reg. 2016/387
- ❖ Subsidies not specific to PUI: subsidy amount allocated to the total turnover of the company
 - Loans, credit lines and guarantees, provision of land, indirect grants, tax rebates not directly linked to the PUI

Example (1) subsidies not granted by reference to output quantities

- Subsidy amount: 10.000 (checked with company accounts)
- Total Turnover: 500.000 (verified P&L)
- Export Turnover: 100.000 (verified questionnaire response)

- Subsidy margin
 - a) **export subsidies: 10% (10.000/100.000)**
 - b) **other subsidies: 2% (10.000/500.000)**

Example (2) export contingent subsidies

❖ **Export Promotion Capital Goods Scheme (EPCGS)**

- Contingent upon export performance
- Subsidy not limited to the exports of the product under investigation
- The total unpaid customs duty was spread across the depreciation period of the capital goods and then limited to the IP + adjusted with interest (numerator)
- The denominator was all exports turnover

❖ **Focus Product Scheme**

- Contingent upon export performance
- Subsidy limited to exports of the product under investigation
- The amount of subsidy dedicated to the exports to the EU was determined on the basis of the data provided by the two exporting producers (numerator)
- The denominator was limited to the EU exports turnover

Example (3) not export contingent subsidies

- ❖ Provision of land at LTAR and tax credits for R&D
- Denominator was companies' total turnover as these subsidies were not dedicated only to the PUI

HRF China Reg. 2017/969 OJ L 1469.6.2017, p. 17

- ❖ Provision of iron ore at LTAR
- Numerator limited to purchases of iron ore actually used in the production of ductile cast iron during the IP
- Denominator: companies' total turnover of the product concerned

Ductile India Reg. 2016/387, OJ L 73, 18.3.2016, p.1.