

Duty and Tax Exemptions on Exported Goods - Issues related to Countervailability

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Key Issues

A. Provisions/Policy related Issues

1) Is there any ambiguity on interpretation of Note to Article XVI and provision of Annex I,II,III of Agreement on Subsidies and Countervailing Measures (ASCM)

“Interpretative Note Ad Article XVI- The exemption of an exported product from duties or taxes borne by the like product when destined for domestic consumption, or the remission of such duties or taxes in amounts not in excess of those which have accrued, shall not be deemed to be a subsidy.”

Article 1 Subsidy – 1.1 For the purpose of this Agreement, a subsidy shall be deemed to exist if:

- (a)(1) (i) ---
- (ii) government revenue that is otherwise due is foregone or not collected (e.g. fiscal incentives such as tax credits)¹;
- (iii) ----

Footnote 1 – *“In accordance with the provisions of Article XVI of GATT 1994 (Note to Article XVI) and the provisions of Annexes I through III of this Agreement, the exemption of an exported product from duties or taxes borne by the like product when destined for domestic consumption, or the remission of such duties or taxes in amounts not in excess of those which have accrued, shall not be deemed to be a subsidy.”*

Annex I – Illustrative list of export subsidies

Annex II – Guidelines on consumption of inputs in the production process

Annex III – Guidelines in the determination of substitution drawback systems as export subsidies

Key Issues (Provisions/Policy related)– Cont...

2) Aligning Country's Export facilitation/promotion schemes in line with permissible exemptions/remissions

3) Laying down the permissible limits/norms of such exemptions/remissions (Consumption (input/output) norms on raw material's/Duty drawback rates) scientifically

4) Avoiding overcompensation by exemption/remission

Para 5 to Annex II of the Agreement on Subsidies and Countervailing Measures (ASCM); "The investigating authority's determination of whether the claimed allowance for waste is "normal" should take into account the production process, the average experience of the industry in the country of export, and other technical factors, as appropriate."

Key Issues – Cont...

B. Implementation Related Issues

1) Establishing a system to monitor exemptions/remissions

2) Limiting the exemption/Remission to the actual incidence of taxes/duties

3) Monitoring Methodology

Key criteria

(i) Monitoring methodology in accordance with footnote 61 of ASCM

(ii) Maintenance of comprehensive consumption registers by all beneficiaries

(iii) ICT enabled trust based monitoring

(iv) Representative sample checks

Key Issues – Cont...

C. Extent of Countervailing measure

- Only to the extent of excess exemption/remission claimed?
- Would countervailing the entire exemption/remission on an otherwise ASCM compatible scheme be appropriate?
- ❖ Article VI:3 of GATT 1994; “No countervailing duty shall be levied on any product...in excess of the amount equal to the estimated bounty or subsidy determined to have been granted”
- ❖ Article 19.4 of the ASCM; “no countervailing duty shall be levied on any imported product in excess of the amount of subsidy found to exist”
- ❖ Para 2 to Annex II of the ASCM; “remission or drawback of duties **in excess of the amount** of such duties and taxes actually levied is to be treated as a subsidy”