ANNEX C

THIRD PARTY RESPONSES TO QUESTIONS FROM THE PANEL

ANNEX C-1

EUROPEAN COMMUNITIES RESPONSES TO QUESTIONS FROM THE PANEL AND THE UNITED STATES – THIRD PARTY SESSION

24 September 2003

I. QUESTION 1

Could the third parties express their views regarding the proposition that Article 3.7 of the AD Agreement and Article 15.7 of the SCM Agreement require the identification of a specific event or turning-point in time as a "change in circumstances" in order to justify an affirmative determination of threat of material injury? If they agree with this view, could they please comment of the import of the footnote to this provision, which sets out as an example "that there is convincing reason to believe that there will be, in the near future, substantially increased importation of the product at dumped prices." In addition, could the third parties comment on the view that the "change in circumstances" could be understood to encompass developments in the situation of the industry and/or the dumped or subsidized imports, which lead to the conclusion that injury which has not yet occurred can be predicted to occur imminently, and need not refer to any specific event. Could the third parties comment on whether the relevant change in circumstances must be explicitly identified?

RESPONSE:

The European Communities already argued in its Third Party Submission that Article 3.7 of the *Anti-Dumping Agreement* and Article 15.7 of the *SCM Agreement* do not require identification of a "change in circumstances" in the form of a specific event or turning-point in time, but rather an analysis of factors that would create a change in the situation.[1]

The question whether the term "change in circumstances" could be understood to encompass developments in the situation of the industry and/or the dumped or subsidised imports, can be answered by considering the relevant context.[2]

Article 3.7 of the *Anti-Dumping Agreement* and Article 15.7 of the *SCM Agreement* list a number of relevant factors which essentially relate to the likelihood of increased imports. The European Communities, therefore, considers that the focus of the analysis should be on whether there is a high likelihood of substantially increased imports (in addition to the existing "significant rate of increase") as required under Article 3.7 (i) of the *Anti-Dumping Agreement* and 17.7 (ii) SCM). This is further corroborated by footnote 10 of the *Anti-Dumping Agreement* which cites as one example that there will be "in the near future, substantially increased importation of the product at dumped prices" and the negligibility rule in Article 5.8 of the *Anti-Dumping Agreement* and Article 11.9 of the *SCM Agreement* which refers to "potential" as opposed to "actual" subsidised/dumped imports. Thus, the phrase "change in circumstances" requires an analysis of particular factors relating to the occurrence of facts of future dumped/subsidized imports resulting in the conclusion that domestic industry is on the brink of being injured.

The European Communities can also confirm its view that the relevant change in circumstances must be explicitly identified.[3] The second sentence of Article 3.7 of the *Anti-Dumping Agreement* and Article 15.7 of the *SCM Agreement* which commences "[t]he change in circumstances" directly relates to the "determination of a threat of material injury" required in the first and third sentence of these provisions and therefore mandates an explicit finding on a "change in circumstances".

[1] EC Third Party Submission, paras. 38-43.
[2] *Ibid*.
[3] EC Third Party Submission, para. 39.

II. QUESTION 2

Could the third parties address their understanding of the "special care" requirement in Article 3.8 of the AD Agreement and Article 15.8 of the SCM Agreement? What elements do they consider could demonstrate the appropriate special care? The Panel notes that Article 3.8 of the AD Agreement and Article 15.8 of the SCM Agreement provide that:

> **"with respect to cases where injury is threatened by dumped [subsidized] imports, the application of anti-dumping [countervailing] measures shall be considered and decided with special care".**

Could the third parties address the implications of the phrase "the application of … measures" in terms of the timing of the obligations provided for in this provision? Are the third parties of the view that the "special care" requirement affects or changes the obligation in Articles 3.1 of the AD Agreement and 15.1 of the SCM Agreement that a determination of injury "shall be based on positive evidence and involve an objective examination…" If so, how?

RESPONSE:

The key legal issue underlying the above question, as the EC understands it, is whether the "special care" requirement in Article 3.8 of the *Anti-Dumping Agreement* and Article 15.8 of the *SCM Agreement* refers to the consideration and decision on whether injury is threatened by dumped/subsidized imports or to the later application of anti-dumping and countervailing duty measures.

The term "application of measures" is very broad and might have different meaning in different agreements. However, as explained by the Panel in *India – Bedlinen (21.5)* in the context of the *Anti-Dumping Agreement*, an anti-dumping duty is considered to be applied when it is imposed with respect to imports of the product in question.[4] Thus, there is a distinction between the determination on injury which in itself does not have legal effects and the application of anti-dumping duties. This distinction is also reflected in Article 9 of the *Anti-Dumping Agreement* (and Article 19 of *the SCM Agreement*).

The "special care" requirement in Article 3.8 of the *Anti-Dumping Agreement* and Article 15.8 of the *SCM Agreement* explicitly refers to the "application" of anti-dumping and countervailing measures as opposed to the determination which is governed by Article 3.7 of the *Anti-Dumping Agreement* and Article 15.7 of the *SCM Agreement*. It presupposes that "injury is threatened", and thus, that an injury determination exists. It can therefore, not relate to the consideration and decision on whether a threat of injury exists.

The attribute "special" suggests a more rigorous level of care than that which is normally taken in applying anti-dumping and countervailing duty measures. With a view to the above, it could relate to the consideration and decision on the imposition and collection of anti-dumping and countervailing duties governed by Article 9 of the *Anti-Dumping Agreement* and Article 19 of *the SCM Agreement.*

III. QUESTION 3

The Panel understands that Canada is not arguing that a combined analysis of injury caused by dumped and subsidized imports is per se inconsistent with the cited Agreements. Could the third parties comment on the view that, in the event the Panel finds a violation of any

[4] Panel Report, *EC – Bedlinen (21.5)*, para. 6.255.

other provision of the relevant Agreements, the injury determination as a whole should be deemed inconsistent with both the AD and SCM Agreements?

RESPONSE:

The measures at dispute, as the European Communities understands them, are the final definitive anti-dumping and countervailing duties applied as a result of the final determination that the domestic industry was threatened by material injury by reason of both dumped and subsidised products.[5]

As clarified by Article 1 of the *Anti-Dumping Agreement* and Article 10 of the *SCM Agreement*, the Members must ensure that *anti-dumping* and countervailing duty measures are only imposed in accordance with Article VI of the GATT 1994 and the further requirements under both Agreements.

Article VI of the GATT 1994 prohibits *anti-dumping* or countervailing duties unless there is a determination of injury. Article 3 of the *Anti-Dumping Agreement* and Article 15 of the *SCM Agreement* set out further requirements for the injury determination. However, the injury determination is not in itself a measure to be found WTO incompatible. If an injury determination does not comply with all the requirements set by Article 3 of the *Anti-Dumping Agreement* and Article 15 of the *SCM Agreement*, a Member has violated its obligations under those provisions. As a result, the imposition of *anti-dumping* and countervailing duties is inconsistent with both Agreements.

The EC does not believe that a "combined analysis of injury caused by dumped and subsidized imports" is consistent with the Agreement. There are two separate requirements under two separate Agreements and each must be separately fulfilled.

As already noted by the EC in its Third Party Submission, the ITC injury determination at issue in this case is mixed and consists in the strict sense of two legally separate determinations on which the final countervailing and *anti-dumping* duties are based, which are to be reviewed separately under the *SCM Agreement* and the *Anti-Dumping Agreement*.[6] The same applies to other requirements of the Agreements. Non respect of a provision of one agreement cannot render an injury determination (or a duty) inconsistent with the other agreement.

IV. QUESTION 4

Could the third parties please address the distinctions they see, if any, between "finding", "evaluation" and "consideration" in the context of analysis of factors in a determination under Article 3 of the AD Agreement and/or Article 15 of the SCM Agreement.

RESPONSE:

Article 3 of the *Anti-Dumping Agreement* and Article 15 of the *SCM Agreement* require a "determination" of injury. The term "finding" is not used in Article 3 of the *Anti-Dumping Agreement* and Article 15 of the *SCM Agreement*. However, Article 12. 2 of the *Anti-Dumping Agreement* requires that "findings and conclusions reached on all issues of fact and law considered material by the investigating authorities" are notified. Thus, findings and conclusions relate to the result of an investigative process on the relevant matters of fact and law. Findings form steps in the reaching of an overall determination which is the final settlement of the matter before the adjudicator and to the reasoning relied on to reach that conclusion.

[5] EC Third Party Submission, para. 1.
[6] EC Third Party Submission, para. 16.

As already discussed in the Third Party Submission, the terms "consideration" and "evaluation" rather prescribe the process by which a competent authority reaches a finding and do, therefore, not require a separate finding/determination.[7]

V. QUESTION 5

The Panel notes that Article 3.7 of the AD Agreement and Article 15.7 of the SCM Agreement provide that "In making a determination regarding the existence of a threat of material injury, the authorities should consider, inter alia, such factors as:…" (emphasis added). In this context, could the third parties comment on the view that consideration of all the listed factors is not mandatory, and that the failure to consider at all, or to adequately consider, one of the listed factors, is not fatal to the determination at issue before a Panel?

RESPONSE:

The European Communities considers that the term "should" is not decisive in qualifying the nature of the list of factors in Article 3.7 of the *Anti-Dumping Agreement* or 15.7 of the *SCM Agreement* as the question from the Panel seems to suggest. Rather, the nature of the analysis to be conducted by the Investigating Authority must be determined on the basis of the entirety of the above-mentioned provisions. In this respect, the European Communities finds the first sentence of these provisions to be of particular relevance. Indeed, the requirement that a determination of a threat of material injury must be based on facts and not merely on allegation, conjecture or remote possibility strongly suggests that the authority should conduct a comprehensive analysis of the relevant factors indicating the presence (or indeed the absence) of a threat of material injury.

As pointed out in our Third Party Submission[8], the competent authority must reach a conclusion that a threat of injury exists. The European Communities considers that such conclusion may be justified by at least one threat factor pointing towards a threat of material injury.

It is correct that the third sentence of Article 3.7 of the *Anti-Dumping Agreement* and in Article 15.7 of the *SCM Agreement* does not require that the domestic authorities "shall" consider all those factors as Articles 3.2 of the *Anti-Dumping Agreement* and 15.2 of the *SCM Agreement* do, but only that they "should" consider, "inter alia" such factors as enumerated. Neither does it require an "examination" of factors as Article 3.4 of the *Anti-Dumping Agreement* and Article 15.4 of the *SCM Agreement* do.

While this suggests that Article 3.7 of the *Anti-Dumping Agreement* and Article 15.7 of the *SCM Agreement* leave a broader measure of discretion to investigating authorities regarding the *manner* in which they make a threat of injury determination, this does not mean that an investigating authority could content itself with arbitrarily looking at selected factors. Indeed, it cannot be excluded that a consideration of other factors than those effectively addressed by the authority would cast doubt on the existence of threat of injury. The obligation to consider **all** relevant factors is confirmed by the explicit requirement in the last sentence of Articles 3.7 of the *Anti-Dumping Agreement* and Article 15.7 of the *SCM Agreement* that the "*totality of the factors considered must lead to the conclusion that further dumped (subsidized) exports are imminent and that, unless protective action is taken, material injury would occur*".

Therefore, the European Communities is of the view that a determination of threat of material injury should rely on an objective consideration of all the relevant factors. In that respect, the factors

[7] EC Third Party Submission, paras. 49-57.
[8] EC Third Party Submission, paras. 52-53.

listed in Article 3.7 of the *Anti-Dumping Agreement* and Article 15.7 of the *SCM Agreement* constitute, *a priori*, the most relevant factors to be considered in a threat of material injury determination.

IV. QUESTION 6

Could the third parties please address what, in their view, is required to demonstrate consideration of the "trade effects" arising from subsidies under Article 15.7(i)? What would the third parties consider to be relevant trade effects that should be taken into account?

RESPONSE:

A subsidy may cause a number of different adverse effects, e.g., injury in the domestic market or serious prejudice on other markets.[9] However, for the purposes of an injury determination, only the effects of the subsidy relating to injury on the domestic market are relevant.

The trade effects to be analysed in a threat determination are the same as for a injury determination as set out in paragraphs 2 and 4 of Article 15 of the *SCM Agreement.*

The additional threat analysis is prospective in nature and must be based on facts. In a situation where very few facts are available, the nature of the subsidy can be an important piece of evidence. Thus, if it is an export subsidy, there can be an absolute presumption of a threat of injury. On the other hand a type of subsidy as referred to in Article 6.1(c) of the *SCM Agreement* as being presumed not to be able to cause serious prejudice, i.e., "one-time measures which are non-recurrent and cannot be repeated for that enterprise and which are given merely to provide time for the development of long-term solutions and to avoid acute social problems" might be an important piece of evidence that there is a low likelihood of a threat of injury.

VII. ADDITIONAL QUESTION FROM THE PANEL TO THE EUROPEAN COMMUNITIES

Could the European Communities please clarify and explain the statement at paragraph 7 of the Executive Summary of the Third Party Submission by the European Communities that "Article 17.5 of the Anti-Dumping Agreement confirms that domestic authorities have no investigative duties to obtain facts in addition to the facts submitted by the interested parties"?

RESPONSE:

The European Communities made the same statement in its Third Party Submission[10]. where it noted that the text of Article 17.5 of the *Anti-Dumping Agreement* states in relevant part:

> The DSB shall, at the request of the complaining party, establish a panel to examine the matter based upon:
>
> (ii) the facts made available in conformity with appropriate domestic procedures to the authorities of the importing Member.

The duties of panels in reviewing a measure parallel the duties of the domestic authorities. The domestic procedures for anti-dumping investigations are governed by detailed rules under the *Anti-Dumping Agreement.* Article 6.1 of the *Anti-Dumping Agreement* reflects the basic obligation of

[9] See Articles 5 and 6 *SCM Agreement*.
[10] EC Third Party Submission, paras. 24 and 25.

interested parties to submit the relevant evidence. As clarified in Article 6.6 and 7 of the *Anti-Dumping Agreement*, the competent authorities are only required to "satisfy themselves as to the accuracy of the information supplied by interested Members or interested parties". Finally, they may base their decisions on "best facts available" as provided under 6.8 of the *Anti-Dumping Agreement*.

Thus, other than under the *Agreement on Safeguards*, domestic authorities in anti-dumping cases are not required to investigate on their own initiative into the existence of facts that were not provided by the interested parties.

This is further corroborated through an *a contrario* conclusion from Annex II, paragraph 7 of the *Anti-Dumping Agreement* which sets forth a limited requirement that authorities "check the information from other independent sources at their disposal" in case authorities have to base their findings on information from a secondary source.

VIII. QUESTION FROM THE UNITED STATES TO THE EUROPEAN COMMUNITIES

In Paragraph 53 of its first written submission, the EC states: "What is more, a conclusion that a threat of injury exists may be justified by at least one threat factor pointing towards a threat of material injury." Please confirm whether the United States is correct in understanding that by use of the word "conclusion" the European Communities is addressing the issue of findings rather than "consideration" of factors.

RESPONSE:

The EC can confirm the understanding of the United States and refers to its response to Questions 4 and 5 above.

ANNEX C-2

JAPAN'S RESPONSES TO QUESTIONS FROM THE PANEL – THIRD PARTY SESSION

Q1. Could the third parties express their views regarding the proposition that Article 3.7 of the AD Agreement and Article 15.7 of the SCM Agreement require the identification of a specific event or turning-point in time as a "change in circumstances" in order to justify an affirmative determination of threat of material injury? If they agree with this view, could they please comment of the import of the footnote to this provision, which sets out as an example " that there is convincing reason to believe that there will be, in the near future, substantially increased importation of the product at dumped prices." In addition, could the third parties comment on the view that the "change in circumstances" could be understood to encompass developments in the situation of the industry, and/or the dumped or subsidized imports, which lead to the conclusion that injury which has not yet occurred can be predicted to occur imminently, and need not refer to any specific event. Could the third parties comment on whether the relevant change in circumstances must be explicitly identified?

Answer

1. It is our view that the authorities must justify its affirmative determination of a threat of material injury based on the facts that increased effects of dumping or subsidization because of the change in circumstances between the time of the determination and an imminent future would cause material injury to the domestic industry. Article 3.7 or 15.7 does not provide how the state of such increased effects must be reached. It thus may be reached through either gradual or abrupt change in circumstances.

2. The ordinary meaning of a "circumstance" is "something surrounding", or "that which stands around or surrounds".[1] The term "change" means "substitution of one thing or set of conditions for another" or "alternation in state or quality".[2] The "change in circumstances" thus means, in the context of the second sentence of Articles 3.7 and 15.7, a substitution or alternation of conditions currently surrounding the domestic industry to different conditions.

3. The second sentence in Articles 3.7 and 15.7 further provides that such substitution or alternation of conditions must be "clearly" foreseen and imminent and further that such conditions would create a situation that the dumping or subsidy causes material injury to the domestic industry. In other words, it must be clearly shown from the facts that the new or altered conditions will increase the effects of dumping or subsidization to the magnitude that will cause material injury to the domestic industry. The first sentence in these Articles in conjunction with the second sentence thus requires that the affirmative determination of a threat of material injury must be based on facts clearly showing occurrence of such new or altered conditions in an imminent future.

4. Footnote 10 of the AD Agreement provides a good example. Assume that the volume of dumped imports at the time of the investigation was 100 metric tons, and the total margin of dumping was US$100. The authorities then must demonstrate first based on the facts that the increase of volume of dumped imports to certain volume, for example, 300 metric tons, is clearly foreseen and imminent at the time of their determination. The authorities also must demonstrate that the foreseen

[1] *The New Shorter Oxford English Dictionary (1993)*, Volume 1, p. 405
[2] Ibid., p. 371.

increase of the total margin of dumping to be, for example, US$300, and that such increased magnitude of the dumping would cause the material injury to the domestic industry.

Q2. Could the third parties address their understanding of the "special care" requirement in Article 3.8 of the AD Agreement and Article 15.8 of the SCM Agreement? What elements do they consider could demonstrate the appropriate special care? The Panel notes that Article 3.8 of the AD Agreement and Article 15.8 of the SCM Agreement provide that:

> **"with respect to cases where injury is threatened by dumped [subsidized] imports, the application of anti-dumping [countervailing] measures shall be considered and decided with special care".**

Could the third parties address the implications of the phrase "the application of … measures" in terms of the timing of the obligations provided for in this provision? Are the third parties of the view that the "special care" requirement affects or changes the obligation in Articles 3.1 of the AD Agreement and 15.1 of the SCM Agreement that a determination of injury "shall be based on positive evidence and involve an objective examination…". If so, how?

Answer

5. The provision of "special care" in Articles 3.8 and 15.8 require that, upon the authorities' affirmative determination of a threat of material injury, the authorities make additional consideration whether the amount of anti-dumping or countervailing duty or the terms of undertakings shall be equivalent to full amount of dumping margin or subsidization or less.

6. Article 11.1 of the AD Agreement and Article 21.1 of the SCM Agreement set forth the general rule on the imposition of the duty that an anti-dumping and countervailing duty must be "to the extent necessary to counteract" injurious dumping or subsidy. These provisions inform of all other provisions related to the imposition of the duty and to undertakings. In case of threat of material injury, the domestic industry has not yet suffered material injury at the time of the investigation. The status quo therefore would not cause the injury. Only the foreseeable and imminent "change" would cause the material injury, as discussed above. The amount of duty thus must be limited to the extent necessary to prevent from occurring material injury because of such "change". The full amount of dumping margin or subsidy, which was calculated using data during the period of investigation, would be excessive to counteract injurious dumping or subsidization, which has not yet occurred.

7. This provision of "special care" in Article 15.8 of the SCM Agreement is especially important, as the SCM Agreement does not have provisions corollary to Article 9.1 of the AD Agreement, which set forth the lesser duty rule.

8. The "special care" provision would not affect to the authorities' obligations under Articles 3.1 and 15.1. The authorities must always make its determination based on the objective examination of positive evidence in a fair, unbiased, and even-handed manner. The determination may not be based on the method or manner favoring one particular interested party.

Q3. The Panel understands that Canada is not arguing that a combined analysis of injury caused by dumped and subsidized imports is *per se* inconsistent with the cited Agreements. Could the third parties comment on the view that, in the event the Panel finds a violation of any other provision of the relevant Agreements, the injury determination as a whole should be deemed inconsistent with both the AD and SCM Agreements?

Answer

9. The provisions of Article 3 of the AD Agreement are corollary to the provisions of Article 15 of the SCM Agreement. Thus, if the Panel finds a violation of a provision of either Article 3 of the AD Agreement or Article 15 of the SCM Agreement, then the rationale of the violation is equally applicable to the corresponding provision in the other Agreement.

Q4. Could the third parties please address the distinctions they see, if any, between "finding", "evaluation" and "consideration" in the context of analysis of factors in a determination under Article 3 of the AD Agreement and/or Article 15 of the SCM Agreement.

Answer

10. It is our view that the term "finding" means a decision with respect to an issue of fact or law supported by reasoned explanation of facts, which was properly established and evaluated in an unbiased and objective manner, in the context of the AD Agreement and the SCM Agreement. While the term "finding" does not appear in these Articles, other provisions of these Agreements clarify the meaning of the term. Article 12.2 of the AD Agreement and Article 22.3 of the SCM Agreement provide that "each such notice shall set forth … in sufficient detail the findings and conclusions reached on all issues of fact and law considered material by the investigating authorities". In this context, the panel in *Mexico – HFCS* stated, in finding that a Mexico's decision is inconsistent the AD Agreement, "there was no explanation of the facts and conclusions underlying Mexico's decision in this regard in the final notice".[3] As indicated by that Panel, the AD Agreement requires that a finding must be supported by reasoned explanation of facts. Article 6.6 of the AD Agreement and Article 12.5 of the SCM Agreement also provide that the authorities shall satisfy themselves as to the "information . . . upon which their findings are based." Further, Article 17.6(i) of the AD Agreement provides that establishment of the facts must be proper and the evaluation of those facts must be unbiased and objective. The term "finding" should be interpreted in these contexts.

11. The panel in *EC – Bed Linen (Article 21.5 – India)* provides a good explanation, to which we agree, of the meaning of the term "evaluation" in the context of Articles 3 and 15 of the AD and SCM Agreement. The panel stated it means "the analysis of data through placing it in context in terms of the particular evolution of the data pertaining to each factor individually, as well as in relation to other factors examined".[4] The ordinary meaning of the term "evaluation" is "a process of analysis and assessment requiring the exercise of judgement on the part of the investigating authority".[5] This ordinary meaning then must be understood in the context of Articles 3.1 and 15.1, which sets forth the overarching provisions for determining injury, and Articles 3.4 and 15.4, in which the term "evaluation" appears, as discussed in that case.

12. It should be noted that evaluation of each factor under Articles 3.4 and 15.4 must be disclosed and explained to interested parties in the final determination or its report. The Appellate Body confirmed in *EC – Pipe Fittings*, stating:

> Our conclusion in that case regarding the obligations in Article 3.1 was premised on the notion that the *manner* in which the analysis of the injury factors and the results of the injury determination are to be disclosed to interested parties and set forth in the

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[3] *Mexico – Anti-Dumping Investigation of High Fructose Corn Syrup (HFCS) from the United States*, WT/DS132/R (28 January 2000), the Panel Report, para. 7.198

[4] *European Community – Anti-dumping Duties on Imports of Cotton-Type Bed Linen from India, Recourse to Article 21.5 of DSU by India*, WT/DS141/RW ("*EC – Bed Linen (Article 21.5 – India)*"), the Panel Report, para. 6.162.

[5] *Ibid*.

> published documents is a matter regulated by other provisions of the *Anti-Dumping Agreement*.[6]

13. We agree with the panel in *Thailand – H-Beams* with respect to the meaning of the term "consider". The panel stated:

> The *Concise Oxford Dictionary* defines "consider" as, *inter alia: "contemplate mentally, especially in order to reach a conclusion"; "give attention to"; and "reckon with; take into account"*. We therefore do not read the textual term "consider" in Article 3.2 to require an explicit "finding" or "determination" by the investigating authorities as to whether the increase in dumped imports is "significant". While it would certainly be preferable for a Member explicitly to characterize whether any increase in imports as "significant", and to give a reasoned explanation of that characterization, we believe that the word "significant" does not necessarily need to appear in the text of the relevant document in order for the requirements of this provision to be fulfilled. Nevertheless, we consider that *it must be apparent in the relevant documents in the record that the investigating authorities have given attention to and taken into account* whether there has been a significant increase in dumped imports, in absolute or relative terms.[7]

Q5. The Panel notes that Article 3.7 of the AD Agreement and Article 15.7 of the SCM Agreement provide that 'In making a determination regarding the existence of a threat of material injury, the authorities should consider, *inter alia*, such factors as:.." (emphasis added). In this context, could the third parties comment on the view that consideration of all the listed factors is not mandatory, and that the failure to consider at all, or to adequately consider, one of the listed factors, is not fatal to the determination at issue before a Panel?

Answer

14. The authorities have a normative duty and obligation to consider all factors listed in Article 3.7 of the AD Agreement and Article 15.7 of the SCM Agreement, as discussed in our oral statement at the third party session of the first substantive meeting with the Panel on 5 September 2003. Please see paragraphs 9 through 16 of our oral statement for detailed discussion on this issue.

Q6. Could the third parties please address what, in their view, is required to demonstrate consideration of the "trade effects" arising from subsidies under Article 15.7(i)? What would the third parties consider to be relevant trade effects that should be taken into account?

Answer

15. In our view, trade effects in the context of Article 15 of the SCM Agreement encompass the effects, caused by the subsidies, which will lead to material injury to the domestic industry of another Member. Subsidized imports would give effect for the domestic market of their like products in another Member in terms of volume as well as price. As a result, domestic producers of such products would be affected.

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[6] *European Community – Anti-Dumping Duties on Malleable Cast Iron Tube and Pipe Fittings from Brazil*, WT/DS219/AB/R (22 July 2003), the Appellate Body Report, para. 159 (emphasis in original).

[7] *Thailand – Anti-dumping Duties on Angles, Shapes and Sections of Iron or Non-Alloy Steel and H-Beams from Poland*, WT/DS122/R (28 September 2000) the Panel Report, para.7.161 (emphasis added; footnote omitted).

16. With regard to the volume of the subsidized imports, it should be considered whether there has been a significant increase in subsidized imports because of the subsidies in question, either in absolute terms or relative to production or consumption in the importing Member. With regard to the effect of the subsidized imports on prices, it should be considered whether there has been a significant price undercutting by the subsidized imports because of the subsidies as compared with the price of a like product of the importing Member, or whether the effect of the subsidies is otherwise to depress prices to a significant degree or to prevent price increases, which otherwise would have occurred, to a significant degree.

17. To demonstrate trade effects set forth in Article 15.7(i), the authorities must collect all relevant evidence to the effects caused by subsidized imports above mentioned.