

**1 ANNEX II TO THE AGREEMENT ON SUBSIDIES AND COUNTERVAILING MEASURES.....1**

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**1 ANNEX II TO THE AGREEMENT ON SUBSIDIES AND COUNTERVAILING MEASURES**

**1.1 Text of Annex II**

**ANNEX II**

GUIDELINES ON CONSUMPTION OF INPUTS IN THE PRODUCTION PROCESS<sup>61</sup>

*(footnote original)* <sup>61</sup> Inputs consumed in the production process are inputs physically incorporated, energy, fuels and oil used in the production process and catalysts which are consumed in the course of their use to obtain the exported product.

I

1. Indirect tax rebate schemes can allow for exemption, remission or deferral of prior-stage cumulative indirect taxes levied on inputs that are consumed in the production of the exported product (making normal allowance for waste). Similarly, drawback schemes can allow for the remission or drawback of import charges levied on inputs that are consumed in the production of the exported product (making normal allowance for waste).

2. The Illustrative List of Export Subsidies in Annex I of this Agreement makes reference to the term "inputs that are consumed in the production of the exported product" in paragraphs (h) and (i). Pursuant to paragraph (h), indirect tax rebate schemes can constitute an export subsidy to the extent that they result in exemption, remission or deferral of prior-stage cumulative indirect taxes in excess of the amount of such taxes actually levied on inputs that are consumed in the production of the exported product. Pursuant to paragraph (i), drawback schemes can constitute an export subsidy to the extent that they result in a remission or drawback of import charges in excess of those actually levied on inputs that are consumed in the production of the exported product. Both paragraphs stipulate that normal allowance for waste must be made in findings regarding consumption of inputs in the production of the exported product. Paragraph (i) also provides for substitution, where appropriate.

II

In examining whether inputs are consumed in the production of the exported product, as part of a countervailing duty investigation pursuant to this Agreement, investigating authorities should proceed on the following basis:

1. Where it is alleged that an indirect tax rebate scheme, or a drawback scheme, conveys a subsidy by reason of over-rebate or excess drawback of indirect taxes or import charges on inputs consumed in the production of the exported product, the investigating authorities should first determine whether the government of the exporting Member has in place and applies a system or procedure to confirm which inputs are consumed in the production of the exported product and in what amounts. Where such a system or procedure is determined to be applied, the investigating authorities should then examine the system or procedure to see whether it is reasonable, effective for the purpose intended, and based on generally accepted commercial practices in the country of export. The investigating authorities may deem it necessary to carry out, in accordance with paragraph 6 of Article 12, certain practical tests in order to verify information or to satisfy themselves that the system or procedure is being effectively applied.

2. Where there is no such system or procedure, where it is not reasonable, or where it is instituted and considered reasonable but is found not to be applied or not to be applied effectively, a further examination by the exporting Member based on the actual inputs involved

would need to be carried out in the context of determining whether an excess payment occurred. If the investigating authorities deemed it necessary, a further examination would be carried out in accordance with paragraph 1.

3. Investigating authorities should treat inputs as physically incorporated if such inputs are used in the production process and are physically present in the product exported. The Members note that an input need not be present in the final product in the same form in which it entered the production process.

4. In determining the amount of a particular input that is consumed in the production of the exported product, a "normal allowance for waste" should be taken into account, and such waste should be treated as consumed in the production of the exported product. The term "waste" refers to that portion of a given input which does not serve an independent function in the production process, is not consumed in the production of the exported product (for reasons such as inefficiencies) and is not recovered, used or sold by the same manufacturer.

5. 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. The investigating authority should bear in mind that an important question is whether the authorities in the exporting Member have reasonably calculated the amount of waste, when such an amount is intended to be included in the tax or duty rebate or remission.

## **1.2 Examination of the issues of aggregate and generalized rates of remission of import duties and the definition of "inputs consumed in the production process"**

1. On 15 December 2000, the General Council adopted a Decision on Implementation-Related Issues and Concerns that mandates the Committee on Subsidies and Countervailing Measures (SCM Committee) to examine as an important part of its work the issues of aggregate and generalized rates of remission of import duties and the definition of "inputs consumed in the production process", taking into account the particular needs of developing country Members.<sup>1</sup>

2. According to the SCM Committee Chairman's Reports to the General Council, reflecting the work undertaken pursuant to this mandate in relation to the issues of aggregate and generalized rates of remission of import duties, Members have engaged constructively with proponents, including through sharing information on various Members' domestic duty drawback procedures. This said, for a number of Members, the system proposed represented an unworkable framework, due to its technical complexity as well as the general complexity of the issue of duty drawback, and their concerns over the accuracy and transparency of the proposed system.<sup>2</sup>

3. The above-mentioned Reports indicate, in relation to the definition of inputs consumed in the production process, that divergent views remained. In the SCM Committee Chairman's view, consensus could not be reached in the Committee, not because of lack of political will, but because of an enormous amount of technical problems that could not be resolved in that process.<sup>3</sup>

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<sup>1</sup> [WT/L/384](#), para. 6.3.

<sup>2</sup> [G/SCM/34](#), p. 2. See also [G/SCM/36](#), p. 10 and [G/SCM/38](#), p. 23.

<sup>3</sup> [G/SCM/34](#), p. 2. See also [G/SCM/36](#), p. 10 and [G/SCM/38](#), p. 23.