

ANNEX III

GUIDELINES IN THE DETERMINATION OF SUBSTITUTION DRAWBACK SYSTEMS AS EXPORT SUBSIDIES

I

Drawback systems can allow for the refund or drawback of import charges on inputs which are consumed in the production process of another product and where the export of this latter product contains domestic inputs having the same quality and characteristics as those submitted for the imported inputs. Pursuant to point (i) of Annex I, substitution drawback systems can constitute an export subsidy to the extent that they result in an excess drawback of the import charges levied initially on the imported inputs for which drawback is being claimed.

II

In examining any substitution drawback system as part of a countervailing duty investigation pursuant to this Regulation, the Commission must normally proceed on the following basis:

1. point (i) of Annex I stipulates that home market inputs may be substituted for imported inputs in the production of a product for export provided such inputs are equal in quantity to, and have the same quality and characteristics as, the imported inputs being substituted. The existence of a verification system or procedure is important because it enables the government of the exporting country to ensure and demonstrate that the quantity of inputs for which drawback is claimed does not exceed the quantity of similar products exported, in whatever form, and that there is no drawback of import charges in excess of those originally levied on the imported inputs in question;
2. where it is alleged that a substitution drawback system conveys a subsidy, the Commission must normally first proceed to determine whether the government of the exporting country has in place and applies a verification system or procedure. Where such a system or procedure is determined to be applied, the Commission shall normally then examine the verification procedures to see whether they are reasonable, effective for the purpose intended, and based on generally accepted commercial practices in the country of export. To the extent that the procedures are determined to meet this test and are effectively applied, no subsidy will be presumed to exist. It may be deemed necessary by the Commission to carry out, in accordance with Article 26(2), certain practical tests in order to verify information or to satisfy itself that the verification procedures are being effectively applied;
3. where there are no verification procedures, where they are not reasonable, or where such procedures are instituted and considered reasonable but are found not to be actually applied or not to be applied effectively, there may be a subsidy. In such cases, further examination by the exporting country based on the actual transactions involved would need to be carried out to determine whether an excess payment occurred. If the Commission deems it necessary, a further examination may be carried out in accordance with point 2;
4. the existence of a substitution drawback provision under which exporters are allowed to select particular import shipments on which drawback is claimed should not of itself be considered to convey a subsidy;
5. an excess drawback of import charges within the meaning of point (i) of Annex I would be deemed to exist where governments paid interest on any monies refunded under their drawback schemes, to the extent of the interest actually paid or payable.