

# WORLD TRADE ORGANIZATION

RESTRICTED

**G/SCM/Q2/ARG/9**

11 February 1997

(97-0501)

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**Committee on Subsidies and Countervailing Measures**

Original: Spanish

## SUBSIDIES

Replies of ARGENTINA to Questions posed by CANADA<sup>1</sup>, JAPAN<sup>2</sup>,  
KOREA<sup>3</sup>, POLAND<sup>4</sup>, the UNITED STATES<sup>5</sup>  
and the EUROPEAN COMMUNITY<sup>6</sup>

The following communication, dated 27 January 1997, has been received from the Permanent Mission of Argentina.

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### CANADA (1)

#### Refund Scheme for Patagonian Ports

#### Question 1

**Can Argentina advise as to whether all users of port facilities or only exporters are eligible for assistance under this programme?**

#### Reply

The products eligible under the programme are clearly defined and are products from the Patagonian region exported through the ports from San Antonio Oeste to Ushuaia (list of ports included in Law 23,018).

#### Question 2

**Can Argentina clarify whether the list of goods indicated in Annex VII of ANA Resolution 3304 of 14 December 1987 is an exhaustive list of goods that may benefit from the programme?**

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<sup>1</sup>G/SCM/Q2/ARG/2.

<sup>2</sup>G/SCM/Q2/ARG/3 + Rev.1.

<sup>3</sup>G/SCM/Q2/ARG/1.

<sup>4</sup>G/SCM/Q2/ARG/5.

<sup>5</sup>G/SCM/Q2/ARG/6.

<sup>6</sup>G/SCM/Q2/ARG/4.

Reply

The list of goods represents only part of the eligible products and they are mentioned because, up to 31 December 1986, they were eligible under the RSPP (Refund Scheme for Patagonian Ports) even though they were not produced in the Patagonian region.

Question 3

**Article 25 requires information in respect of the form of the subsidy. Can Argentina indicate the form of the subsidy provided?**

Reply

The form of the subsidy is a payment to exporters of products originating/produced in Patagonia.

The payment is made when the goods are exported and is calculated by a percentage on the f.o.b. export value and is paid by the Customs after verifying the origin of the goods. The percentage ranges from 7 to 12 per cent, depending on the port of shipment (Art. I, Law 23,018).

CANADA (2)

Question 1

**Argentina will phase out the programme by the year 2007. Can Argentina confirm that the programme and all payments under the programme will be ended? Will Argentina consider phasing out this programme at a faster rate in accordance with its obligations under the Agreement on Subsidies and Countervailing Measures?**

Reply

The phasing out, starting in the year 2002, will be completed by 2007. Yes, the programme will be ended, together with any payments under it.

It could be phased out at a faster rate if an alternative programme for the development of Patagonia, now under examination, is introduced.

Question 2

**What are the major agricultural products benefiting from the supplementary refund scheme for Patagonia ports (Law 23,018)? Could Argentina provide an annual breakdown of total refunds, export volumes affected, and per unit refund by major agricultural product for the period 1994 to the present? Could Argentina also specify the total exports of each of these products during this period?**

Reply

It is difficult to compile the product breakdown requested. The total amount of refunds paid up to the first half of 1994 is contained in the notification. For 1995 we are only in a position to give a breakdown of the totals paid for the period 1 January 1995 to 31 December 1995. This information is set out in the tables in Annex 1. Annex 2 contains the figures for the second half of 1994.

Question 3

**On page 13 of the notification, there are two tables with data on additional refunds and general reimbursements. How do they relate to the Patagonian Refund, Law 23,018? If "additional" is the same as "supplementary", could Argentina indicate what is included under "general reimbursement" and what payments have been made under general reimbursement since 1 July 1994.**

Reply

Additional is the same as supplementary refund and both are simply different names for the benefit under Law 23,018.

A general reimbursement is the one granted under Law 22,415 and Decree 1011/91 and consists of a payment to exporters equivalent to the amount of indirect taxes paid at prior stages in producing the exported product.

Question 4

**Incompatibilities: On page 8 of the notification, reference is made to other "specific, special or zonal promotional schemes". Could Argentina provide examples of such schemes and how they affect exports?**

Reply

The explanation for the reference is that, at that time, in 1983, there were industrial promotion programmes in the provinces of Neuquén, Río Negro, Chubut and Santa Cruz. These schemes came to an end in 1992 and were not continued. At the present time, there are no other promotional schemes in the area.

## NATIONAL CUSTOMS ADMINISTRATION

Statistics Department  
Systems Division  
Export Systems Section  
23 May 1996

ANNEX I

TOTAL AMOUNT OF ADDITIONAL REFUNDS, PATAGONIAN PORTS  
(in pesos)

Period - 1 January 1995 to 31 December 1995 (Law 23,018) Copy No. 7

Customs		Total refunds in pesos
14.	Comodoro Rivadavia	277,806.39
19.	Deseado, Puerto	12,084,778.84
47.	Madryn, Puerto	29,364,633.76
48.	Río Gallegos	2,067,997.56
49.	Río Grande	97,263.06
61.	Santa Cruz	16,931,294.82
67.	Ushuaia	8,114,550.15
80.	San Antonio Oeste	12,359,274.29
		81,297,598.87

NATIONAL CUSTOMS ADMINISTRATION

Statistics Department  
Systems Division  
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23 May 1996

ANNEX II

TOTAL AMOUNT OF ADDITIONAL REFUNDS, PATAGONIAN PORTS  
(in pesos)

Period - 1 July 1994 to 31 December 1994 (Law 23,018) Copy No. 7

Customs	Total refunds in pesos
14. Comodoro Rivadavia	39,365.09
19. Deseado, Puerto	6,255,363.78
47. Madryn, Puerto	11,573,067.92
48. Río Gallegos	1,254,621.19
49. Río Grande	46,536.60
61. Santa Cruz	1,037,713.15
67. Ushuaia	8,847,588.81
80. San Antonio Oeste	3,143,228.24
	32,197,484.78

JAPAN

Question

- (a) Does the Scheme correspond to "subsidies contingent upon export performance" or "upon the use of domestic over imported goods" within the meaning of Article 3 of the SCM Agreement?
- (b) Will Argentina phase out the Scheme in the following time frame:
  - Subsidies contingent upon export performance: within eight years;
  - subsidies contingent upon domestic content: within five years.
- (c) Has Argentina already notified the Scheme under Article 28.1 of the SCM Agreement?

Reply

- (a) The RSPP Scheme does not correspond to any of these definitions in Article 3 and, accordingly, is not deemed to be a prohibited subsidy.
- (b) Argentina will phase out the Scheme within a period starting in the year 2002.
- (c) The Scheme has not been notified under Article 28.1 because it is not deemed to be a subsidy "inconsistent" with the provisions of the SCM Agreement.

KOREA

Question 1

**Article 25 of the SCM Agreement prescribes that every country shall notify all specific subsidies, as defined in Articles 1 and 2, that they grant. Argentina has notified only one prohibited subsidy.**

**Does Argentina not grant or maintain any other actionable subsidy other than the one notified?**

Reply

Argentina has notified the Patagonian Ports Refund Scheme (RSPP) because it is a subsidy, but does not consider the subsidy to be either specific or prohibited.

The RSPP is not a prohibited subsidy because it does not fulfil the conditions set out in Articles 2 and 3 of the SCM Agreement.

The RSPP is not a prohibited subsidy because it cannot be deemed to be a specific subsidy in accordance with Article 2 or under Article 3.

Article 2 deems a subsidy to be specific when:

- (a) It is limited to certain enterprises;

- (b) it does not respond to objective criteria governing eligibility and it is applied automatically.

The RSPP is not limited to certain enterprises, within the meaning of Article 2.1 of the SCM Agreement, there is no limit on the beneficiaries, and it is granted in accordance with directly applicable objective criteria governing eligibility.

The RSPP is not a prohibited subsidy as defined in Article 3 in the SCM Agreement, where Note 4 especially points out that the mere fact that a subsidy is granted to enterprises which export shall not for that reason alone be considered to be an export subsidy within the meaning of Article 3.1(a) of the Agreement.

Lastly, Argentina considers that the RSPP could be deemed to be a subsidy falling under the terms of Article 8, and in particular, Article 8.2 (b). The Scheme is intended to promote the development of an economically backward region of the Argentine Republic, namely Patagonia, which covers the provinces of Río Negro, Neuquén, Chubut, Santa Cruz and Tierra del Fuego. It is a region where per capita income is lower than the national average and unemployment is higher than the national rate. In other words, it is a subsidy to assist a disadvantaged region within a general framework of regional development and it is not specific within the meaning of Article 2.

Question 2

**The RSPP. The notification states that the subsidy will be in force until the year 2007. Is there any schedule to phase out the subsidy in conformity with the SCM Agreement?**

Reply

The phase out scheduled will start in the year 2002.

POLAND

Question 1

**We find the Refund Scheme for Patagonian Ports a prohibited subsidy stipulated in Article 3 of the SCM Agreement. If so, has Argentina notified this subsidy pursuant to Article 28.1 of the SCM Agreement? Prohibited subsidies are to be brought into conformity with provisions of the SCM Agreement within 3 years; even if Article 27 concerning special treatment of developing countries as applied, and a subsidy should be phased out within an eight-year period (i.e. in 2002), while Argentina wants to maintain this Scheme in force until 2007. We should like clarification on this point. If not, please explain why this subsidy is not a prohibited subsidy.**

Reply

The RSPP is not a prohibited subsidy because it cannot be regarded as a specific subsidy in accordance with Article 2 or under Article 3.

Article 2 considers a subsidy to be specific when:

- (a) It is limited to certain enterprises;

- (b) it does not respond to objective criteria governing eligibility and it is applied automatically.

The RSPP is not limited to certain enterprises, within the meaning of Article 2.1 of the SCM Agreement, there is no limit on the beneficiaries, and it is granted in accordance with directly applicable objective criteria governing eligibility.

The RSPP is not a prohibited subsidy as defined in Article 3 in the SCM Agreement, where Note 4 especially points out that the mere fact that a subsidy is granted to enterprises which export shall not for that reason alone be considered to be an export subsidy within the meaning of Article 3.1(a) of the Agreement.

Lastly, Argentina considers that the RSPP could be deemed to be a subsidy falling under the terms of Article 8, and in particular Article 8.2(b). The RSPP Scheme is intended to promote the development of an economically backward region of the Argentine Republic namely, Patagonia, which covers the provinces of Río Negro, Neuquén, Chubut, Santa Cruz and Tierra del Fuego. It is a region where the per capita income is lower than the national average and unemployment is higher than the national rate. In other words, it is a subsidy to assist a disadvantaged region within a general framework of regional development and it is not specific within the meaning of Article 2.

#### Question 2

**Point 5 of the Argentine notification does not specify clearly what is the form of the subsidy applied and we guess that it is a direct payment to the exporter. Could Argentina confirm this?**

#### Reply

The RSPP consists of payment to the region's producers of a sum of money, namely a percentage of the f.o.b. export value of the goods that ranges from 7 to 12 per cent, depending on the port of shipment.

### UNITED STATES

#### General question and list of programmes

#### Question

**Please provide information concerning the following programmes which did not appear to be included within Argentina's notification, yet may meet the notification requirements of GATT 1994 and/or the SCM Agreement. If these programmes are encompassed elsewhere in Argentina's notification, please explain. If not, please include information relevant to the elements requested in the notification format or explain the basis on which Argentina determined that each programme did not meet the notification requirements referenced above.**

**(Note: Certain of the following programmes have been found to be countervailable subsidies in United States countervailing duty proceedings, including certain apparel products, standard and line pipe and oil country tubular goods).**

**A. Rebate upon export of indirect taxes paid (Reembolso). Legal basis/Authority: Decree 1555/86, 16 October 1986. Policy: export; tax rebate paid upon export calculated as a percentage of the f.o.b. invoice price of the exported product.**



A1. Reply

This programme was replaced under Decree 1011/91, which established an export refund payable to exporters in the form of a reimbursement is equivalent to the incidence on the value of the exported products of the cumulative indirect taxes on goods and/or services used in the production process. It is paid on the basis of the f.o.b. price of the exported product and is calculated by a percentage that varies depending on the product. The value of temporarily goods imported and exempted from payment of import duties is deducted from the f.o.b. value. Commission paid abroad is deducted.

A2. Reply

This programme is not deemed to be a subsidy in accordance with the definition in Article 1 of the SCM Agreement and, in particular, Note 1, which states that, in accordance with Article XVI of GATT 1994 (Note to Article XVI) and the provisions of Annexes I through III of the SCM 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.

B. Question

**Discounts of Foreign Currency Paper (bills or notes) under Circular RF-21.**

**Legal basis: Central Bank Circular RF-21 replaced by Communication A-1205 dated June 1988.**

**Policy: export; provides preferential financing for up to 80 per cent f.o.b. value of export shipments.**

Reply

This regime is no longer in existence. OPRAC Communication A-1205 was rescinded by Communication A-1595 of 1 January 1990 and Communication A-1807 of 8 March 1991 and was not replaced by any similar regime.

C. Question

**Pre-Export Financing under OPRAC-1, Circular RF. 153.**

**Legal basis: Central Bank, Circular RF. 153.**

**Policy: export; allows exporters to receive pre-export financing from Central Bank for up to 70 per cent of the f.o.b. value of the exported merchandise at an annual interest rate of up to 1 per cent. Loans indexed to US dollar.**

Reply

The regime was abolished, like the one referred to in question B.

D. Question

**Post-Export Financing under OPRAC 1-9.**

Reply

The regime was abolished, like the one referred to in question B.

E. Question

**Tax Deduction under Decree 173/85.**

Reply

The regime under Decree 173/85 has not been in existence since Decree 553/89 was adopted in April 1989.

F. Question

**Exemption from Stamp Taxes under Decree 186/74.**

Reply

The decree establishing exemption from stamp tax for export contracts was Decree 174/86. The stamp tax has been eliminated for all contracts for economic transactions, except contracts relating to immovable property.

G. Question

**Tucuman Regional Tax Incentives.**

Reply

The regime is no longer in existence and has not been replaced by another one.

H. Question

**Patagonia Regional Tax Incentives.**

Reply

The only regional incentives for Patagonia are those which have been notified, namely, export refunds for goods produced in the region and shipped through Patagonian ports from San Antonio Oeste and Ushuaia. The legal basis is Law 23018.

I. Question

**Corrientes Regional Tax Incentive.**

Reply

The tax incentive system for the province of Corrientes does not exist any longer (1984).

J. Question

**Export Payments under Decree 176/86, Special Export Programmes (PEEX).**

Reply

The PEEEX and Decree 176/86 were abolished under Decree 963/88. Furthermore, the regime established that registered programmes could last up to a maximum of five years, a period which expired in 1991.

K. Question

**Financing of Investments for Export under Communication A-980 (FIDEX).**

Reply

This regime was abolished under Communication A-1589 of 18 December 1989.

L. Question

**Government Counterguarantees.**

**Authority: Ministry of Finance.**

**Policy: Guarantees of loans provided by the Banco Nacional de Desarrollo (BANADE).**

Reply

The BANADE operated in Argentina until it was decided to close it down and terminate its activities in June 1993.

M. Question

**Medium and Long-Term Loans under Law 22,510.**

Reply

Law 22,510 was enacted on 6 November 1981, creating a system to enable banks to grant financing to enterprises with debt problems. The regime was abolished in 1988 and was not replaced.

N. Question

**Price Support for Leaf Tobacco.**

**The United States understands that Argentina provides a production subsidy for leaf tobacco funded by a 7 per cent excise tax and a per pack tax on cigarettes, generating an annual revenue of \$170 million. It further understands that a large percentage of this \$170 million goes towards supporting the price of tobacco. Could Argentina explain why this subsidy was not included in the notification?**

Reply

The National Tobacco Fund is being notified in the context of the Agreement on Agriculture, in compliance with commitments.

## EUROPEAN UNION

Argentina submitted on 7 August 1995 its notification of subsidy programmes to the WTO pursuant to Article XVI:1 GATT 1994 and Article 25 of the Subsidies Agreement.

In this respect, the Community would like to obtain clarification on a number of issues on the notified scheme as described below.

Moreover, the Community has obtained information on other subsidy schemes which were not notified to the WTO, although their notification seems necessary pursuant to Article 25.2 of the Subsidies Agreement.

### **I. NOTIFIED SUBSIDY PROGRAMMES**

Argentina notified one programme which is listed below. After examination, the Community has serious concerns on the extent and the practical implications of the programme. The present analysis constitutes the remarks of the Community and a request for clarification.

#### **A. Refund Scheme for Patagonian Ports**

##### Question

**Could Argentina provide the criteria for eligibility?**

**Argentina states that the programme will end in 2007. Could Argentina comment on the compatibility of the ending date with the commitments under Article 27.2 of the Subsidies Agreements?**

##### Reply

1. The eligibility criterion is set out in Law 23,018 and National Customs Administration Resolution No. 3304/87. They establish that the goods must originate in the region located south of the Colorado river and must be exported in their natural state or manufactured in industrial establishments located in the said region. This includes exports of manufactures produced in industrial establishments in the aforementioned region using inputs not originating therein, provided that the said process results in a change of tariff heading in the Nomenclature and that the resulting product is the consequence of an industrial process and not simply of an assembly procedure.

2. The programme will be phased out over a period starting in the year 2002. Argentina is considering introducing a regional development programme for Patagonia that could modify the Scheme. The new programme would fall under Article 8, on non-actionable subsidies.

### **II. ADDITIONAL PROGRAMMES NOT NOTIFIED TO THE WTO**

##### Question

**Argentina has not notified a large number of programmes which appeared to be notifiable under Article 25. The Community finds that the schemes described below provide a financial contribution which confers benefits on the local industry. In addition, the schemes are clearly specific (as pertaining to a specific sector or contingent upon exports). In addition to the specific questions asked, the Community would like clarification why these programmes were not notified to the WTO and requests that, if appropriate, Argentina supplies a notification under Article 25, using the standard format.**

Reply

1. Special Trade Area of *Tierra del Fuego*

The regime was established under Law 19,640, in 1972. Since 1992, it has not longer been possible to establish new enterprises under this regime.

2. Subsidies for the automotive sector (including subsidies for the production of spare parts and pieces)

The present regime for enterprises in the automotive sector was notified to the WTO under the provisions of the Agreement on Trade-Related Investment Measures (TRIMs) in March 1995.

3. Incentives for the forestry industry

The regime to promote forestry plantations was introduced in 1996 and is administered by the Ministry of Agriculture, Fisheries and Food.

The Argentine Republic is at the present time examining the appropriate terms for notification of this programme.

4. Special Fund for Tobacco

The National Tobacco Fund is being notified in the context of the Agreement on Agriculture, in compliance with commitments.

5. Reimbursement of indirect tax payment to exporters

1. The programme mentioned was replaced under Decree 1011/91, which established an export refund payable to exporters in the form of a reimbursement equivalent to the incidence on the value of the exported product of cumulative indirect taxes on the goods and/or services used in the production process. It is paid on the basis of the f.o.b. value of the exported product and is calculated by a percentage that varies depending on the product. The value of temporarily imported goods exempted from payment of import duties is deducted from the f.o.b. value. Commission paid abroad is deducted.

2. This programme is not deemed to be a subsidy under the definition in Article 1 of the Subsidies Agreement and, in particular, Note 1, which states that, in accordance with Article XVI of GATT 1994 (Note to Article XVI) and of the provisions of Annexes I through III of the SCM 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.