

# WORLD TRADE ORGANIZATION

RESTRICTED

**G/ADP/Q1/MYS/2**

**G/SCM/Q1/MYS/2**

21 October 1997

(97-4598)

**Committee on Anti-Dumping Practices**  
**Committee on Subsidies and Countervailing Measures**

Original: English

## NOTIFICATION OF LAWS AND REGULATIONS UNDER ARTICLES 18.5 AND 32.6 OF THE AGREEMENTS

### Replies of MALAYSIA<sup>1</sup> to Questions Posed by TURKEY<sup>2</sup>

The following communication, dated 16 October 1997, has been received from the Permanent Mission of Malaysia.

**Q. Could the competent Malaysian authorities explain the procedures and provide the timeline of the following anti-dumping investigative processes?**

- **Application**
- **Initiation**
- **Preliminary determination**
- **Hearing(s)**
- **Written submission(s) from parties**
- **Disclosure of essential facts**
- **Final determinations**
- **Public notice of determinations**

#### Reply

#### Application

The petitioner may submit a petition for an anti-dumping investigation to the Investigating Authority (IA) if they believe that there is evidence of dumping and the dumping is causing injury to the domestic industry (Section 20(2) of the Countervailing and Anti-Dumping Duties Act 1993 (the Act)).

A written petition must be filed by or on behalf of the domestic industry (Section 20(1) of the Act). In this context the domestic legislation does not provide the corresponding provision of the WTO Agreement under Article 5.6, therefore pending the finalization of the review on the domestic legislation, the IA will administratively adopt the provision of the WTO Agreement on this matter.

There is no time-frame for the pre-application period.

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<sup>1</sup>G/ADP/N/1/MYS/1-G/SCM/N/1/MYS/1.

<sup>2</sup>G/ADP/Q1/MYS/1-G/SCM/Q1/MYS/1.

### Initiation

After the acceptance of the application the IA must examine the petition to determine whether to initiate an investigation or not. Under Section 20 of the Act and Regulation 8 of the Countervailing and Anti-Dumping Duties Regulation 1984 (the CADDR), the IA must initiate an investigation if it is satisfied that sufficient evidence has been presented with regard to the elements necessary for the Imposition of anti-dumping duties, and the petition is submitted by or on behalf of the domestic industry producing the like product.

Once the IA decided to initiate an investigation, it should notify the appropriate interested party and publish a notice of initiation of investigation (Section 20(5) of the Act).

Under Regulation 6(1) of the CADDR, the IA have 14 days from the date of acceptance of the application to make a decision.

### Preliminary Determination

During the preliminary investigation the IA may distribute questionnaires to all interested parties within a reasonable period from the date of publication of the notice of the initiation in order to obtain information (Regulation 9 of the CADDR). The reasonableness of such time will depend on the time taken by the IA to determine relevant questions to be included in the questionnaires, necessary for the investigation.

The interested parties shall be given at least 30 days (Regulation 9(2) of the CADDR) to submit the written submission. An extension may be granted if requested by a party in writing and the IA is satisfied with the reasons given.

The IA shall within a stipulated time, come out with a preliminary determination. If the IA makes a negative preliminary determination, it shall publish a notice stating the reasons for the negative finding and decision to continue or to terminate the investigation (Section 23(2) of the Act and Regulation 11 of the CADDR). Where the IA makes an affirmative preliminary determination it shall continue the investigation and publish a notice of the determination stating the reasons for its affirmative determination and the provisional measures applicable (Section 23(3) of the Act and Regulation 12 of the CADDR).

The IA has 90 days from the date of publication of the notice of initiation of investigation to conduct a preliminary investigation (Regulation 10(1) of the CADDR). However, in special circumstances, the IA may extend the time period for making a preliminary determination by an additional 30 days (Regulation 10(2) of the CADDR).

### Hearing

Regulation 39 of the CADDR provides that any interested party may submit a written request for a hearing within ten days from the date of the publication of the preliminary determination. The IA must grant a hearing if it determines that the party has provided a valid justification for holding such a hearing.

The IA must notify all interested parties of the time and place of the hearing at least 14 days before the hearing takes place (Regulation 39(3) of the CADDR). Those who are interested to attend the hearing must submit a written request at least seven days before the hearing date with a valid justification for their participation.

### Disclosure of Essential Facts

There is no provision in the domestic anti-dumping legislation with regards to disclosure of essential facts. As such, the IA will adopt the procedures laid down under Article 6.9 of the WTO Anti-Dumping Agreement pending the finalization of the review on the domestic anti-dumping legislation.

### Written Submission(s) from Parties

The interested parties shall be given at least 30 days (Regulation 9(2) of the CADDR) to submit the written submission. An extension may be granted if requested by a party in writing and the IA is satisfied with the reasons given.

### Final Determination

Final determination (Regulation 15 of the CADDR) under sections 10 and 25 of the Act shall be made within 120 days from the date of publication of the notice of the preliminary determination.

During the final determination, the IA will carry out on site verifications (Regulation 38 of the CADDR) against interested parties where the IA decides in order to verify the accuracy and completeness of the factual information submitted during the investigation period or review. The IA shall notify the interested foreign government that the authorized representatives from the IA will visit the interested foreign government, interested parties or any other party deemed relevant.

In the course of carrying out the on site verification, the authorized representatives from the IA may request access to all files, records and personnel that they consider relevant to the investigation or review. The IA on the other hand may select and verify a sample from a large number of parties and apply the results of the verification of the sample to all the rest of the parties included in the investigation.

Besides verifying on site the accuracy and completeness of the factual information submitted during the investigation period or review, the IA may request for the interested party to submit copies of the original documents on which the information was based or statements from independent auditors.

### Public Notice

A public notice contains the summary of the IA final findings under section 25 of the Act.

The notice (Regulation 15 of the CADDR) on a final determination, affirmative or negative, shall include all relevant information on matters of fact and law and reasons that have led to the determination, due regard being given to the requirement for the protection of confidential information, and in particular:

- (a) the names of the exporters and manufacturers;
- (b) a description of the subject merchandise;
- (c) the amount of subsidy or dumping found to exist and the basis for such determination;
- (d) factors that have led to the injury determination;
- (e) any other reasons leading to the final determination;

- (f) the countervailing or anti-dumping duties to be imposed;
- (g) the reason final countervailing or anti-dumping duties should be collected;
- (h) the reason for the retroactive imposition of duties under subsection 10(7) or 25(7) of the Act, if applicable.

Note that: Where there are no relevant provisions in the domestic legislation, in view of the provisions of Article 18.2 of the WTO Anti-Dumping Agreement, the IA has applied the Interpretations of the provisions of the WTO Agreement administratively in view of the fact that Malaysia is within the process of reviewing its domestic legislation to conform with the provisions of the WTO Anti-Dumping Agreement. This method has also been adopted where the provisions of the domestic anti-dumping legislation is not in line with the provisions of the WTO Agreement.