

WORLD TRADE ORGANIZATION

RESTRICTED

G/ADP/Q1/SGP/15
G/SCM/Q1/SGP/15
25 September 1998

(98-3714)

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 to Questions Posed by the UNITED STATES¹ Regarding the Notification of SINGAPORE²

The following communication, dated 21 September 1998, has been received from the Permanent Mission of Singapore.

Question 1

What is the legal relationship between the Countervailing and Anti-Dumping Duties Regulations 1997 and the Countervailing and Anti-Dumping Duties Act 1996? Have any changes or amendments been made to the Act? Are the regulations and the Act the sole sources of legal authority for imposing anti-dumping and countervailing duties?

Answer

The Act contains the main framework of the law on countervailing and anti-dumping measures, and the Regulations contain details on methodology, procedure or time limits which have not been prescribed in the Act. The Countervailing and Anti-Dumping Duties Act 1996 and the Countervailing and Anti-Dumping Regulations 1997 bring Singapore's law and practice up to date with the Agreement on the Implementation of Article IV of the General Agreement on Tariffs and Trade 1994 and the Agreement on Subsidies and Countervailing Measures. The Act and the Regulations are the sole sources of legal authority for imposing countervailing and anti-dumping duties.

Question 2

The regulations address cumulation of goods from more than one country for purposes of determining injury in countervailing duty investigations. In a separate provision, the regulations address cumulation of goods from more than one country in anti-dumping investigations. Do the regulations contemplate cumulation of imports subject to simultaneous anti-dumping and countervailing duty investigations, and if so, under what circumstances?

¹ G/ADP/Q1/SGP/14-G/SCM/Q1/SGP/14

² G/ADP/N/1/SGP/2-G/SCM/N/1/SGP/2 and Suppl.1

Answer

No, the Regulations do not contemplate cumulation of imports subject to simultaneous anti-dumping and countervailing duty investigations.

Question 3

Under the Act, an interested party has a right of review by the Anti-Dumping Tribunal of any final determination or review; however, because this tribunal is appointed by the Minister for Trade and Industry who also determines the tribunal's remunerations, conditions of appointment, and rules of procedure, it is unclear whether this tribunal is "independent of the authorities responsible for the determination or review in question", as required by Article 13 of the A-D Agreement and Article 23 of the SCM Agreement. How do the regulations clarify this issue?

Answer

Section 30(12) states that for the purposes of section 30, the "Minister" means the Minister for Law whereas the legal authority for implementing the rest of the Act and Regulations is the Minister for Trade and Industry. The Tribunal is thus appointed by an authority which is independent of the authorities responsible for the determination or review in question.

Question 4

Under section 39(2) of the Regulations, for purposes of a five-year "extension review" the Minister will specify the period within which any interested parties may present views on the termination of imposition of duties. What period will normally be specified for purposes of expression of such views?

Answer

Regulation 39(1) requires that the Minister provide a notice of the impending termination of the imposition of countervailing and anti-dumping duties at least six months prior to the end of the five-year period. Section 39(2) of the Regulations states that the Minister shall specify in that notice the period within which any interested party may present views on the termination. The time-period for expressions of such views is not specified. However, in the spirit and object of the A-D and SCM Agreements, interested parties would have ample opportunity to present in writing all relevant evidence. Due consideration would be given to any request for an extension of the period, and upon cause shown, such an extension may be granted wherever practicable.

Question 5

Under paragraph (3)(5), the Minister for Trade and Industry ("Minister") may permit an amendment to the petition to the preliminary determination if he is satisfied that "exceptional circumstances" exist to justify such action. What kinds of circumstances does Singapore anticipate it would deem exceptional?

Answer

Regulation 3(5) is drafted to strictly limit the amendments to petitions. First, pursuant to regulation 3(5)(a) any amendment must be made before a preliminary determination. In addition, the amendment will only be accepted if "exceptional circumstances exist to justify the amendment".

Question 6

Paragraph (8)(g) indicates that public notice of an initiation of an investigation will include the proposed time limits for such investigation. Will these proposed time limits also include time limits regarding interested parties' comments, as required by Article 12.1.1(vi) of the A-D Agreement and Article 22.2(vi) of the SCM Agreement?

Answer

Yes, the public notice of an initiation of an investigation will include proposed time limits regarding interested parties' comments.

Question 7

Paragraph (9)(1) states that the Minister may issue questionnaires to any relevant party in an investigation to obtain information he considers necessary for making a determination under the Act. Does Singapore anticipate instances when it would not issue questionnaires to producers and exporters? If so, what alternative means will Singapore employ to provide notice to all interested parties of the information required to be submitted, as mandated by Article 6.1 of the A-D Agreement and Article 12.1 of the SCM Agreement?

Answer

Under section 34(1) of the Act, all interested parties in a countervailing or anti-dumping duty investigation or review have to be given notice of the information required by the Minister and opportunities to present all evidence they consider relevant. Regulation 44(1) requires the Minister to specify in detail the information required from any interested party and the form in which that information is required, as soon as practicable after the initiation of an investigation or review. Hence, although regulation 9(1) does not make it mandatory for the Minister to issue questionnaires, the Singapore authorities have to abide by section 34(1) of the Act and regulation 44(1) of the Regulations. Therefore, the Singapore authorities do not envisage a situation where questionnaires will not be issued.

Question 8

Paragraph (11)(1) does not specifically state that the notice will be public. Will the notice of a preliminary determination be made public, as required by Article 12.2 of the A-D Agreement and Article 22.3 of the SCM Agreement?

Answer

Yes, sections 7 and 21 of the Act require such notice to be published.

Question 9

Will the notice of an affirmative preliminary determination of dumping under paragraph 11(2)(c) include a discussion of the methodology used in the establishment and comparison of the export price and normal value, as required by Article 12.2(iii) of the A-D Agreement?

Answer

Regulation 11(1) states that a notice of a preliminary determination under section 7 or 21 of the Act shall set forth in sufficient detail the findings and conclusions reached on all issues of fact and law considered material. Regulation 11(2)(c) states that the notice shall contain the amount of countervailable subsidy or margin of dumping, if any, found to exist and the basis for such determination.

Question 10

Paragraph 12(2)(b) indicates that in anti-dumping investigations the application of provisional measures shall not exceed six months or, where exporters representing a significant percentage of subject imports so requests, nine months. Article 7.4 of the A-D Agreement requires that provisional measures shall not exceed four months, or six months where exporters representing a significant percentage of subject imports request extension. How does paragraph 12(2)(b) comply with Article 7.4? Does Singapore make a determination in all anti-dumping investigations as to whether duty less than the margin of dumping is sufficient to eliminate the injury? Is this done in both the provisional and final stages of each anti-dumping investigation?

Answer

Regulation 12(2)(b) is in line with Article 7.4 of the A-D Agreement. Article 7.4 generally limits the application of provisional measures "to as short a period as possible, not exceeding four months or ..., upon request by exporters representing a significant percentage of the trade involved, to a period not exceeding six months". However, Article 7.4 also indicates that these periods may be extended to "six and nine months, respectively" where, during the course of the investigation, the authorities "examine whether a duty lower than the margin of dumping would be sufficient to remove injury ...".

Section 14(2)(b) of the Act requires that the amount of the anti-dumping duty to be imposed shall be equal to the dumping margin or "if the Minister determines that a lower anti-dumping duty will be sufficient to eliminate the injury ..., shall be such lower duty". Consequently, Singapore considers whether a "lesser duty" would be sufficient to eliminate injury in every investigation.

The Act contemplates that the "lesser duty" rule will only apply to final determinations. Specifically, Section 21(1)(a) requires a preliminary determination of the amount of the dumping margin. Furthermore, section 22(3) of the Act requires that, if provisional measures are appropriate, such measures shall take the form of a provisional duty or a security equal to the amount of the estimated dumping margin determined. Consequently, the "lesser duty" rule is not applicable at the preliminary stage.

Question 11

Paragraph (13) does not provide for a time-period for the domestic industry to present an allegation for critical circumstances in an anti-dumping or a countervailing investigation. Does Singapore intend to make such a finding without an allegation from the petitioning industry? Will interested parties be permitted to submit information and comment regarding whether critical circumstances exist prior to the Minister's finding.

Answer

Singapore believes that the application of "critical circumstances" applies only in extraordinary circumstances. The standard for the application of such retroactive duties is strictly adhered to in section 9(8) and section 23(8) of the Act. As the Singapore law provides notice that the government might take in a final determination, all interested parties have the ability to comment during the course of the investigation as to whether such action is appropriate.

Question 12

Paragraph (14) does not specify what action(s) Singapore will take if a violation of the price undertaking has occurred. How does Singapore intend to act in this regard? Will interested parties be permitted an opportunity to respond if Singapore determines that a violation has occurred, or determines to terminate the price undertaking?

Answer

Section 25(9) to (13) of the Act provide the actions that will be taken if there is a determination that there is a "material violation". The procedures to be followed in making such a determination will be specifically included in the terms of any undertaking. Generally, it is anticipated that any alleged material violation of an undertaking will be brought to the attention of the party promptly in writing, providing a reasonable period to respond.

Question 13

Paragraph (22)(b) states that the Minister shall allocate the countervailable subsidy to those goods with which the countervailable subsidy is associated. Upon what factors will Singapore rely in making this determination?

Answer

Regulation 22(b) requires that when calculating the countervailable subsidy, the Government shall allocate the countervailable subsidy to those goods with which the countervailable subsidy is "associated". In making this determination, Singapore generally will consider whether the countervailable subsidy is, in law, "tied" to certain goods. In this regard, Singapore will consider the law, regulation, and other official documents that establish the legal authority to grant the subsidy.

Question 14

Paragraph (29)(3) indicates that in calculating the costs of production and constructed value actual data of the producer or exporter in the exporting country shall be used. Does the term "exporting country" as used in paragraph (29)(3) have the same meaning as "country of origin" under Article 2.2.2(i) of the A-D Agreement?

Answer

Article 2.2.2(i) through Article 2.2.2(ii) of the A-D Agreement are specifically implemented into the regulation 29(4). Regulation 29(4)(a) specifically uses the term "country of origin" in conformity with Article 2.2.2(i). Furthermore, "exporting country" is defined in Section 2 of the Act to include country of origin.

Question 15

Paragraph 40(2) compels an importer seeking a refund review to first inform the Minister and the Director-General of Customs and Excise of such request no later than the time of entry of subject goods into Singapore "in such form as may be required". How will Singapore implement this provision? Will importers be put on notice in a timely manner?

Answer

The intention of Section 40(2) is simply to provide notice to Singapore Customs that the importer intends to contest the applicable anti-dumping duty. The importer simply notes in writing on the entry form that refund review is contemplated. This will put Customs on notice that it should not finalize the duties on such entries.

Question 16

Paragraph (40)(7) states that where the margin of dumping in a refund review is found to be less than the anti-dumping duty paid by an importer, the difference shall be refunded. Does Singapore intend normally to make refunds within the 90 day time-period described in Article 9.3.2 of the A-D Agreement?

Answer

Yes.

Question 17

Paragraph (41) will the Minister impose deadlines upon interested parties for the written submissions of information described in paragraph (41)(1)? Will interested parties be provided with the opportunity to submit information and written comments in defence of their interests and for rebuttal and clarification of information and comments submitted by others?

Answer

Yes.

Question 18

Paragraph (43)(6) indicates that where the Minister decides not to conduct verification he may request an interested party to submit "statements from independent auditors as to accuracy and completeness of the factual information submitted". Will such auditors' attestations be limited to financial statements? If not, what other kinds of information does Singapore envision an independent auditor would attest to?

Answer

The SCM Agreement (Article 12.5) and the A-D Agreement (Article 6.6) require that the authorities "satisfy themselves as to the accuracy of the information supplied by interested parties ...". In this regard, the Agreements authorize "on-the-spot" investigations (or verifications) to ensure accuracy. In general, Singapore's experience indicates that the "on-the-spot" verifications can be disruptive and costly for respondents and petitioners. Also, such "on-the-spot" verifications can be time-consuming and costly for the investigating Government. Consequently, regulation 43(6)

contemplates alternative methods to verify information presented to the Government. For example, the submission of original documents to support the factual information submitted is included as one alternative. Also, the regulation indicates that "statements from independent auditors as to the accuracy and completeness of the factual information submitted" by the respondent or petitioner might be used as another alternative. Such a certificate of accuracy and completeness would not be limited to the financial statements. Rather, such certificates could relate to any relevant information submitted to the Government.

Question 19

Singapore's regulations do not address importation of subject merchandise through intermediate countries. However, section 40 of Singapore's Act does provide that where merchandise is not imported directly into Singapore but indirectly through an intermediate country, such merchandise will be considered to have originated in the country of origin, and the provisions of Singapore's Act will apply. Does this mean that Singapore will always compare the export price to comparable prices in the country of origin? If so, how does Singapore intend to comply with Article 2.5 of the A-D Agreement, which states that the export price of subject merchandise will normally be compared price of the merchandise sold in the intermediate country (exporting country), unless certain circumstances exist, in which case the export price may be compared to the comparable price in the country of origin?

Answer

Section 40 of the Act deals with transshipment. Section 40 states that "where goods are not imported into Singapore directly from the country of origin, but exported to Singapore from an intermediary country, the provisions of this Act and any regulations made thereunder shall be fully applicable and the transaction, for the purposes of this Act and those regulations, shall be regarded as having taken place between the country of origin and Singapore". Article 2.5 of the WTO Agreement allows the export price to be compared with the comparable price in the country of origin if the products are merely transhipped through the country of export. Thus, Section 40 of the Act is in compliance with Article 2.5 of the Agreement.
