

# WORLD TRADE ORGANIZATION

RESTRICTED

**G/ADP/Q1/IDN/3**

**G/SCM/Q1/IDN/3**

14 April 1997

(97-1572)

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

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

### Questions from the UNITED STATES to INDONESIA<sup>1</sup>

The following communication, dated 9 April 1997, has been received from the Permanent Mission of the United States.

1. Is it correct to assume that wherever the Customs Law and Regulations notified in this document (G/ADP/N/1/IDN/2-G/SCM/N/1/IDN/2) are silent on an issue covered by the Agreements, the Agreements will prevail?
2. How does Indonesia's antidumping statute or regulations provide for the termination of an antidumping or countervailing duty investigation with respect to imports from any country that are "negligible," as required by Article 5.8 of the AD Agreement and Article 11.9 of the Subsidies Agreement?
3. How does Indonesia implement Article 3 of the AD Agreement and Article 15 of the Subsidies Agreement, which require consideration of specific factors when analyzing whether dumped or subsidized imports have caused material injury or threatened to cause material injury to the domestic industry?
4. Articles 12.2.1(v) and 12.2.2. of the Antidumping Agreement, and Articles 22.4(v) and 22.5 of the SCM Agreement require disclosure of "the main reasons leading to the determination" and "the reasons for the acceptance or rejection of relevant arguments or claims made..." Please clarify how these requirements will be satisfied.
5. The Notification does not include a requirement that authorities consider the magnitude of the dumping margin in assessing material injury. How is this consistent with Article 3.4 of the Antidumping Agreement?

### **Customs Law Number 10**

6. Articles 18 and 21 of Chapter IV of Indonesia's Law Number 10, 1995, provide that antidumping or countervailing duties may be applied to imported goods if (among other things) the importation of the goods "threaten the domestic industry that produces similar goods." How are these provisions

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<sup>1</sup>G/ADP/N/1/IDN/2-G/SCM/N/1/IDN/2.

consistent with Article VI(6)(a) of the GATT, which provides that parties may levy antidumping or countervailing duties on imports that “threaten material injury (emphasis added)” to the domestic industry?

7. Article 19(1) of Chapter IV of Law Number 10 states that antidumping duties will be applied “at the maximum amount of the margin between normal value and export price.” Similarly, Article 22(1) states that countervailing duties will be applied “at the maximum amount of the margin.” Finally, the Explanatory of the Customs Law of the Republic of Indonesia, in the explanation of Article 18, states that when comparisons are made to third countries, they will be based on “the highest price of the similar goods.” Does this mean that duties will be levied based on the highest margin of dumping or subsidies found, rather than the weighted-average margin of dumping or subsidies?

### **Explanatory Notes to Customs Law Number 10**

8. How is the definition of “domestic industry” contained in the explanatory notes to Law Number 10, which appears to provide that the domestic industry need only include one “domestic producer of similar goods,” consistent with the definition of “domestic industry” set forth in Article 4.1 of the 1994 Agreement on Implementation of Article VI of the GATT (hereinafter, the “AD Agreement”) and Article 16.1 of the 1994 Agreement on Subsidies and Countervailing Measures (the “Subsidy Agreement”), which require that the “domestic industry” include the “domestic producers as a whole of the like products” or those domestic producers whose collective output represents “a major proportion” of the total domestic production of the like products? How is it consistent with the definition of “domestic industry” set forth in Article 1.8 of Government Regulation 34 for 1996, which contains similar provisions to those set forth in the AD Agreement and the Subsidies Agreement?

9. How is the definition of “similar goods” contained in the explanatory notes to Law Number 10 consistent with the definition of “like product” set forth in Article 2.6 of the AD Agreement? How is it consistent with the definition of “like product” set forth in Article 1.8 of Government Regulation 34?

10. Is the meaning of the phrase “in common trade” when defining normal value in Article 18 of the explanatory notes the same as the meaning of the phrase “in the ordinary course of trade” when defining normal value in Article 1 of the Regulation?

### **Government Regulation 34**

11. Article 1.11 of Government Regulation 34 for 1996 appears to provide that antidumping and countervailing duties may be imposed on imports if (among other things) the imports cause “injury” or threaten “injury” to a domestic industry producing the like product. Is this consistent with Article 6(a) of the GATT, which requires that injury (whether actual or threatened) be “material”?

12. How is it that imported goods are “alleged” to be dumped in Chapter 3 Article 9 of Regulation 34 if this provision regards investigations that are not pursuant to applications from domestic industries?

13. Can the Minister still decline to impose antidumping or countervailing duties once the Committee “proposes[s]” their imposition, under Chapter 3 Article 12 of Regulation 34?

14. Can you explain what is meant by the provision contained in Article 13 of Regulation 34 which provides that, when conducting antidumping or subsidy investigations, the Indonesian Antidumping Committee (“IAC”) shall “give pieces of written evidence from one interest party to another by keeping the pieces of evidence secret”?

15. Are Articles 14(1)(c) and (e) of Regulation 34, which provide that the IAC “may” provide interested parties with all relevant information and “may” inform them of any important information serving as a basis for its final antidumping or countervailing duty decisions, consistent with the provisions of Articles 6.4 and 6.9 of the AD Agreement and Articles 12.3 and 12.8 of the Subsidies Agreement, which state that the authorities “shall” make such information available to interested parties?

16. Are the provisions of Article 16(2) and (3) of Regulation 34, which allow the IAC to restrict the number of exporters and importers investigated by the committee, intended to apply only to the calculation of antidumping margins, as contemplated in Article 6.10 of the AD Agreement?

17. Chapter 1, Article 1.5 of Government Regulation 34 defines a subsidy as “any financial assistance directly or indirectly provided by the government or public body to companies, industries, group of industries, or exporters” or “any form of support on income or price directly or indirectly provided with a view to increasing export or decreasing import from or to the countries concerned...” Does Indonesia consider whether a benefit has been incurred as a result of such financial assistance or support, as required by Article 1.1(b) of the WTO Agreement on Subsidies and Countervailing Measures (SCM Agreement)?

18. Does the definition in Article 1.5 of Government Regulation 34 exclude non-actionable subsidies, as defined under Article 8 of the SCM Agreement? Are non-actionable subsidies countervailable under Indonesian law or practice?

19. Are the forms of support in Article 1.5(b) of Government Regulation 34 meant to be those provided only by the government, or do they include those by the private sector entrusted or directed by the government, acting in a government capacity?

20. Is the export subsidy language in Article 1.5 of Government Regulation 34 - “with a *view* to increasing export” - meant to be as precise as the SCM Agreement’s language stating that actionable export subsidies are those “contingent upon export performance?”

21. Please clarify Chapter 1, Articles 2 and 3 of the Regulation, which state that imports may be subject to import duties in addition to antidumping or countervailing duties if those imports are found to be dumped or subsidies and found to be causing injury. Please describe these additional duties. If the antidumping or countervailing duties are designed to remedy the dumping or subsidization, why are additional remedial duties required?

22. Chapter 3, Article 8 of the Regulation states that the Minister of Industry and Trade “shall stipulate the requirements” of a petition for antidumping or countervailing duties. Could you specify the exact requirements of a petition?

23. Chapter 7, Article 32 of the Regulation combines Committee-initiated and party-initiated review into one provision. Does the use of the words “*may* be reviewed” provide parties with a guaranteed right to review, provided they make a proper request? Is this a matter of administrative burden?

24. Chapter 7, Article 33 of the Regulation stipulates that the imposition of duties may be continued or discontinued as a result of a review by the Committee. Can the level of the duty be changed as a result of a review, or does the level of duties always remain the same if duties continue to be imposed?

25. Article 35 of Government Regulation 34 allows parties to file “objections” to antidumping or countervailing duties with the “Appeal Institute referred to in Article 97 of Law No 10 of 1995 regarding Customs Affairs.” Is this appeal process a “prompt” one, as required by Article 13 of the

AD Agreement and Article 23 of the Subsidies Agreement? Is the Appeal Institute an entity independent from the authorities responsible for the antidumping or countervailing duty determination on appeal, as required by the same provisions of the AD and Subsidies Agreements? Can any interested party appeal the determination? Can any matter regarding interpretation of law or interpretation of fact be appealed by any interested party?