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

Replies of SINGAPORE¹ to Questions posed by HONG KONG², CANADA³,
the UNITED STATES⁴, TURKEY⁵ and KOREA⁶

The following communication, dated 5 May 1997, has been received from the Permanent Mission of Singapore.

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REVIEW OF THE NOTIFICATION OF SINGAPORE'S COUNTERVAILING AND
ANTI-DUMPING LAWS BY THE COMMITTEE ON ANTI-DUMPING PRACTICE
AND SUBSIDIES AND COUNTERVAILING MEASURES

Introductory remarks

The law on anti-dumping and countervailing measures in Singapore can be found in the Countervailing and Anti-Dumping Duties Act 1996 and in the Countervailing and Anti-Dumping Regulations 1997. The Act has been notified and circulated in WTO document G/ADP/N/1/SGP/2.

The present Act and Regulations bring Singapore's law and practice up to date with the Agreement on the implementation of Article VI of the General Agreement on Tariffs and Trade 1994 and the Agreement on Subsidies and Countervailing Measures. The Act and the Regulations are in full conformity with the WTO Agreements. As the Act contains the main framework of the law on countervailing and anti-dumping measures, it should be read together with the Regulations.

Perhaps I could go on to elaborate on the structure of the Act. There are five Parts to the Act, namely:

Part I

This Part largely defines various words or phrases used in the Act, for instance, "domestic industry", "dumping margin", "exporting country", "interested party", "like goods", "subject goods", "subsidy".

Part II

This Part deals with countervailing duties - i.e. when countervailing duties may be imposed, initiation of a countervailing duty investigation and the investigation itself, provisions for consultations, preliminary and final determinations and measures, termination and suspension of investigations and circumstances for review.

Part III

This Part deals with anti-dumping duties along the same structure as Part II with the necessary changes and provisions which apply only for anti-dumping actions.

Part IV

This Part deals with the administrative provisions of the Act, e.g. delegation of duties, the establishment of an Anti-Dumping Tribunal, the application of the Customs Act as far as duties are concerned.

Part V

This Part deals with general provisions such as the procedure for currency conversions notices to interested parties and meeting of interested parties, submission and treatment of confidential information, publication of notices in the Government Gazette and making of regulations by the Minister under the Act.

Apart from the parent Act, details on methodology, procedure or time limits which have not been prescribed in the Act are fleshed out in the accompanying Countervailing and Anti-Dumping Duties Regulations 1997.

REPLIES TO QUESTIONS POSED BY HONG KONG

Domestic Legal Status of the A-D Agreement

1. Singapore's notification contains the Countervailing and Anti-Dumping Duties Act 1996 enacted on 1 November 1996.

Question

What is the legal status of the WTO A-D Agreement (the Agreement) in the Singapore legal system? Does it have the force of law? Are officials required, legally or otherwise, to abide by the provisions of the Agreement in the conduct of A-D proceedings? If the domestic legislation is in conflict with the Agreement, which will take precedence?

Reply

The WTO Agreements do not automatically have force of law in Singapore. In cases where domestic legislation is necessary, Singapore would enact the necessary legislation to implement its obligations under the WTO Agreements.

Where the State implements international agreements in good faith, inconsistency between the international agreements and the domestic legislation should not arise. If, in theory, it does then domestic legislation will prevail. In some cases where the domestic legislation is silent, this may be because the matter is dealt with by interpretation of the legislative text, the common law or administrative action. Interpretation of the domestic law is in the purview of the courts.

Implementation of Panel Reports

2. What is Singapore's policy and law for the implementation of WTO Panel Reports?

Reply

Singapore would implement the recommendations of the WTO Panel Reports in accordance with Article 21 of the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes.

Determination to be made in the public interest

3. The Act provides the Minister with the authority to make a determination of public interest at various stages of A-D proceedings. Some examples are as follows:

- **initiation of investigation (Art. 19(3)(b))**
- **termination of investigation (Art. 24(1)(b))**
- **suspension of investigation (Art. 25(2)(c))**
- **review by Minister (Art. 26(1))**

Question

How would the Singapore authorities make a determination of public interest? What could be the relevant considerations?

Reply

Public interest depends very much on the facts and circumstances of each case. Generally, public interest covers the interest of the public at large and includes, where appropriate under the facts and circumstances of a particular case, the interests of various interested parties, the consumers, other industry groups or sectors of the economy upon whom the anti-dumping or countervailing measures may have an impact.

Other practices discovered during investigation or review

4. Article 38(1) of the Act provides that the Minister may, if there is sufficient time, investigate practices which appear to be dumping but which were not included in the petition if the Minister discovers those practices in the course of an A-D investigation or review.

Questions

Would the practices referred to in Article 38(1) involve the same product from the same country in respect of the anti-dumping investigation or review under way? If not, would the new investigation be considered as self-initiated by the authorities within the meaning of Article 5.6 of the A-D Agreement?

Reply

Section 38(1) permits the Minister to include within the scope of an anti-dumping investigation "practices which appear to be dumping but which were not included in the matters alleged in the petition ...". In order to be included within the scope of the existing investigation, these practices must involve "subject goods". This means that the "practices which appear to be dumping" must relate to the "goods imported, or sold for importation, into Singapore that are the subject of ... [the] anti-dumping duty investigation or review ...". If the Minister elects to include these practices within the existing legislation, there would be no need to initiate a new investigation under section 17(6) of the Act because the goods are already subject to the investigation or review.

Power to make Regulations

5. Article 46 enables the Minister to make regulations for the Act.

Question

Have any Regulations been made under Article 46? If yes, would they be notified in accordance with Article 18.5 of the Agreement?

Reply

Yes, the Countervailing and Anti-Dumping Duties Regulations 1997 have been made under section 46 of the Act. These have been circulated to the WTO.

Key Issues in the WTO A-D Agreement found silent in the Singapore A-D legislation

6. The WTO A-D Agreement contains many improvements over the Tokyo Round A-D Code. We expect WTO members would unequivocally reflect these improvements in their legislation. Although most of them are reflected in Singapore A-D legislation, specific statutory provisions

for some of them appears not to be found or the provisions may not be adequate. Some examples are as follows:

- cumulative assessment of injury (Article 3.3)
- factors for determination of a threat of material injury (Article 3.7)
- on-site verification (Article 6.6, 6.7 and Annex I)
- sampling techniques (Article 6.10)
- industrial users and consumer organisations to provide information (Article 6.12)
- refund procedures (Article 9.3.2)
- duty for exporters and producers not selected in sampling (Article 9.4)
- duration of review investigations (Article 11.4)
- procedures regarding use of best information available (Annex II)

Questions

- (a) Are there any specific domestic provisions reflecting the above Agreement provisions? If not, how will Singapore ensure compliance with these Agreement provisions?
- (b) Will Singapore contemplate further legislative steps to ensure the conformity of its legislation and administrative procedures with the provisions of the Agreement, in accordance with Article 18.4?

Reply

- (a) Yes, there are specific provisions reflecting the above Agreement provisions in the aforementioned Regulations. for the examples mentioned by Hong Kong, the specific regulations are as follows:
 - *cumulative assessment of injury* - Regulation 19 stipulates the conditions when the effects of subsidized imports can be cumulated and Regulation 20 stipulates the conditions when the effects of dumped imports can be cumulated. The conditions in Regulation 20 are consistent with Article 3.3 of the A-D Agreement.
 - *factors for determination of a threat of material injury* - Regulation 17(2) lists the factors upon which the Minister may take into account in his determination whether a threat of material injury exists; for instance there is a significant rate of increase of subsidized or dumped imports into the domestic market, there is sufficient freely disposable or an imminent substantial increase in capacity of the exporter or that the goods are entering at prices that will have a significant depressing or suppressing effect on domestic prices and would likely increase demand for further imported goods. Regulation 17(1) stipulates that the determination must be based on fact and not merely on allegation, conjecture or remote possibility, and that the threat must be clearly foreseen and imminent. The factors just outlined are in accordance with Article 3.7 of the A-D Agreement.
 - *on-site verification* - Regulation 43 covers the procedure for on-site verifications. Regulation 43(2) clearly implements the application of Annex I to the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 to Singapore's domestic law.

- *industrial users and consumer organizations to provide information* - this is provided for under Regulation 42, which is consistent with Article 6.12 of the A-D Agreement.
 - *sampling techniques* - these are covered under Regulation 33, which is consistent with Article 6.10 of the A-D Agreement.
 - *refund procedures* - these are covered under Regulation 40 which is also in line with the procedures contained in Article 9.3.2 of the A-D Code.
 - *duty for exporters and producers not selected in sampling* - Regulation 31(8) stipulates that the anti-dumping duty for exporters or producers not selected in sampling shall not exceed the weighted average margin of dumping established with respect to the exporters or producers individually examined. This is in line with Article 9.4 of the A-D Code.
 - *duration of review investigations* - Regulation 36(2) states that reviews should normally be completed within 180 days from the date of publication of the notice of initiation of the review and in no case shall exceed one year from that date. Regulation 37(2) provides that for expedited reviews of countervailing duties for new exporters, the review should be completed within 6 months. Regulation 38(2) provides that for expedited reviews of anti-dumping duties for new exporters, the review should be completed within nine months. Regulation 39(4) provides that "sunset" reviews should normally be completed within 180 days and in no case more than one year.
 - *procedures regarding use of best information available* - These procedures are laid down in Regulation 44 which follows the procedures stipulated in Annex II to the A-D Code.
- (b) Singapore has already taken steps to ensure that its laws and practices implement its international obligations - by enacting the Countervailing and Anti-Dumping Duties Act 1996 and accompanying Regulations.

REPLIES TO QUESTIONS POSED BY CANADA

Q.1. Under The Countervailing and Anti-Dumping Duties Act 1996, various aspects of Singapore's anti-dumping/countervailing duty regime are to be prescribed by regulation, e.g.:

- **subsection 2(5) - the amount of countervailable subsidy;**
- **subsections 4(2) and 19(2) - contents of a petition;**
- **subsections 7(1) and 21(1) - time period for the conduct of a preliminary determination;**
- **paragraph 10(3)(a) - de minimis amount of subsidy; and**
- **I. subsections 12(4) and 26(4) - period for the conduct of reviews.**

When will these regulations be issued and notified?

Reply

These regulations are known as the Countervailing and Anti-Dumping Regulations 1997.

In relation to the aspects raised by Canada, they are addressed in the Regulations as follows:

- *amount of countervailable subsidy* - The calculation of the amount of countervailable subsidy is prescribed in Regulation 22. The amount is calculated from a particular programme received by the enterprise industry or exporter as to be provided in a single year or an annual basis for two or more years, whichever is appropriate. The countervailable subsidy will be allocated to those goods with which it is associated. Certain deductions may be made for application fees or deposits paid to qualify for or receive the countervailable subsidy as well as for export taxes or other charges specifically intended to offset the countervailable subsidy received.
- *contents of a petition* - these are prescribed in Regulation 3. A countervailing or anti-dumping petition should contain the following:
 - (a) the petitioner's name and address;
 - (b) the volume and value of the domestic production of the like goods;
 - (c) the identity of the domestic industry on behalf of which the petition is submitted;
 - (d) complete description of the goods that defines the requested scope of the investigation;
 - (e) name of the country in which the goods are produced and that of the intermediate country of export, if any;
 - (f) name of the party alleged to be dumping or receiving the countervailable subsidy;
 - (g) factual information, particularly documentary evidence of the authority providing the countervailable subsidy and the manner in which the countervailable subsidy is provided and an estimate of the value of the countervailable subsidy. In the case of an anti-dumping petition, information on domestic market prices, export prices or constructed value of the goods;
 - (h) volume and value of the goods imported into Singapore during the most recent three-year or other more representative period;
 - (i) name and address of each known importer;
 - (j) information on injury caused by the goods and the effect of the goods on domestic prices and the domestic industry.

The requirements of Regulation 3 are in accordance with Article 5.2 of the A-D Agreement and Article 11.2 of the SCM Agreement.

- *Time period for the conduct of a preliminary determination*: The time limit for a preliminary determination under sections 7 and 21 of the Act is prescribed in Regulation 10, i.e. it must be made within 90 days from the date of publication of the notice of initiation of investigation.

- *De minimis amount of subsidy:* The *de minimis* amount of countervailable subsidy under section 10(3)(a) of the Act is prescribed in Regulation 24. The amount is considered *de minimis* as follows:
 - (a) if the countervailable subsidy when expressed as an *ad valorem* percentage is less than 1%;
 - (b) where the country of export is a developing country, if the countervailable subsidy when expressed as an *ad valorem* percentage is not more than 2%; or
 - (c) where the country of export is a developing country that has eliminated export subsidies before 1 January 2003 or a member country referred to in Annex VII of the SCM Agreement, if the countervailable subsidy when expressed as an *ad valorem* percentage is not more than 3%.

These are in accordance with Article 11.9 of the SCM Agreement.

Q.2. Is the reference to "domestic industry" in paragraph 4(8)(b) of the Act, (i.e., the 25% industry support requirement), based only on paragraph (a) of the definition of "domestic industry", (i.e., domestic producers as a whole), or can it also be based on paragraph (b) of the definition, (i.e., domestic producers whose collective output of like goods constitutes a major proportion of total domestic production)?

Reply

The reference to "domestic industry" in section 4(8)(b) of the Act can refer to either paragraph (a) or (b) of the definition of "domestic industry". This is in line with Article 5.4 of the A-D Code and Article 11.4 of the SCM Agreement.

Q.3. Subsection 4(8) of the Act says that it operates notwithstanding any other provision in the section. Is the Minister therefore required to determine that the industry support thresholds in that subsection are satisfied before self-initiating an investigation under subsection 4(6)?

Reply

Yes, the Minister is required to determine that the industry support thresholds in section 4(8) are satisfied before self-initiating an investigation under section 4(6).

Q.4. Subsections 7(2) and 21(2) of the Act state that the Minister "may" terminate an investigation if the Minister makes a negative preliminary determination. Does the Minister have discretion to continue an investigation in such cases?

Reply

Yes, the Minister may terminate the investigation if he is satisfied that there is insufficient evidence of dumping/subsidization or of injury to justify proceeding with the investigation. In other words, he can continue if there is sufficient evidence of dumping/subsidization or of injury to justify proceeding with the investigation.

Q.5. Are both the dumping/subsidy investigation and injury/causation inquiry conducted by the same authority or are these responsibilities bifurcated?

Reply

Both dumping/subsidy investigation and injury/causation enquiry are conducted by the same authority, i.e. the Minister for Trade and Industry.

Q.6. The Act makes reference to "public interest" in several contexts, e.g.:

- paragraphs 4(3)(b) and 19(3)(b) - whether to initiate an investigation;
- subsections 9(4) and 23(4) - whether to impose countervailing/anti-dumping duties after an affirmative final determination;
- paragraphs 11(2)(b) and 25(2)(c) - whether to accept an undertaking; and
- subsections 12(1) and 26(1) - whether to conduct certain reviews.

What public interest factors might the Minister consider relevant in each of the above cases, (particularly in respect of whether or not to impose countervailing/anti-dumping duties after an affirmative final determination)?

Reply

Please see answer to Hong Kong's question 3.

Q.7. Regarding the treatment of sales below cost under subsection 15(4) of the Act, is the Minister required to apply footnotes 4 and 5 to the WTO Anti-Dumping Agreement in determining whether the sales in question were made "within an extended period of time" and "in substantial quantities"?

Reply

Yes, the Minister is required to determine that sales are made "within an extended period of time" and "in substantial quantities" under section 15(4), thereby applying footnotes 4 and 5 of Article 2.2.1 of the A-D Code. Regulation 30(a) of the Regulations state that the extended period of time shall normally be one year but in no case less than six months and Regulation 30(b) provide that sales per unit costs are made in substantial quantities where the Minister establishes that the weighted average selling price of the transactions under consideration is below the weighted average per unit costs, or that the volume of sales per unit costs represents not less than 20% of the volume sold in transactions under consideration.

REPLIES TO FOLLOW-UP QUESTIONS POSED BY CANADA

1. Regarding subsection 2(a), does the term "public body" encompass a private body, as provided in the Article 1 of the WTO Subsidies Agreement, that is entrusted or directed by government to carry out one or more of the functions set out in Subsection 2(1)(2)(a)(i-v) of the law?

Reply

Although Article 1 of the WTO Subsidies Agreement covers a private body that is entrusted or directed by the government to carry out one or more of the functions illustrated in paragraphs (i) to (iii) of Article 1, where the government makes payments to a funding mechanism, such actions will

already be covered under section 2(2)(a)(i) - (v) of the Act. Singapore feels that what a private body does with its own funds does not meet the fundamental requirement of a government action.

2. Subsection 2(3)(a) indicates that a subsidy shall be countervailable if the receipt of the benefit is found to be specific in law or in fact. What factors will be considered in determining whether a subsidy is specific in law or in fact? Will factors be elaborated upon in regulations to The Countervailing and Anti-Dumping Duties Act 1996?

Reply

The factors to be considered in determining whether a subsidy is specific in law or in fact are elaborated upon in Regulation 21 of the Countervailing and Anti-Dumping Duties Regulations 1997. In particular, Regulation 21(1) states that the following principles apply:

- (a) the subsidy is specific where the granting authority, or the legislation pursuant to which the granting authority operates, explicitly limits access to a subsidy to certain enterprises;
- (b) where the granting authority, or the legislation pursuant to which the granting authority operates, establishes objective criteria or conditions governing the eligibility for, and the amount of, a subsidy, specificity shall not exist, provided that the eligibility is automatic and such criteria and conditions are strictly adhered to and are clearly spelt out in written law or other official document so as to be capable of verification; and
- (c) if, notwithstanding any appearance of non-specificity resulting from the application of the principles laid down in subparagraphs (a) and (b), there are reasons to believe that the subsidy may in fact be specific, other factors may be considered.

These factors are in accordance with Article 2 of the SCM Agreement.

3. Subsections 2(4)(a) and (b) refer to conditions under which the Minister would determine subsidies not to be countervailable, including notification of subsidies under Article 8.3 of the WTO Subsidies Agreement. In light of Footnote 35 of the WTO Subsidies Agreement, how would the Minister treat subsidies that were not notified pursuant to Article 8.3 of the WTO Subsidies Agreement, yet such subsidies were otherwise found to conform to the standards set out in Article 8.2 of the Subsidies Agreement?

Reply

Section 2(4)(a) of the Act states that a government action which satisfies the conditions in Article 8.2 of the WTO Subsidies Agreement shall not be countervailable.

REPLIES TO QUESTIONS POSED BY THE UNITED STATES

Q.1. Is it correct to assume that wherever the Notification is silent on an issue covered by the Agreements, the Agreements will prevail?

Reply

Please see answer to Hong Kong's Q.1.

Q.2. Please clarify whether the amount of the antidumping duty will be determined on a retrospective or on a prospective basis.

Reply

The amount of anti-dumping duty will be determined on a prospective basis.

Q.3. Will comparisons be made of sales which are at different levels of trade and, if so, will an adjustment be granted for these different levels? Please explain the basis for this determination and the method to be used for this adjustment.

Reply

Regulation 32(1)(g) of the Countervailing and Anti-Dumping Regulations 1997 provides for adjustments to be made "[w]here the levels of trade are different and the Minister is satisfied that the amount of any price difference is wholly or partly due to such difference". This regulation is in accordance with Article 2.4 of the A-D Agreement.

Q.4. The term "prescribed manner" has been used in several parts of the law involving non-market economy investigations. If there is a written document which describes the non-market economy methodology, does Singapore plan to notify that document? If no methodology has of yet been developed, please indicate.

Reply

The Countervailing and Anti-Dumping Regulations 1997 describes the non-market economy methodology among other things. In particular, the non-market economy methodology is described in Regulations 34 (for countervailing duty) and 35 (anti-dumping) of the afore-mentioned Regulations.

Under Regulation 34, no countervailing duty will be applied to subject goods from a non-market economy to the extent that is impracticable to determine a countervailing duty rate in accordance with the methods prescribed in the Act or Regulations.

The dumping margin for subject goods from a non-market economy may be based, to the extent that it is impracticable to determine the margin in accordance with the methods prescribed in the Act or Regulations, on other reasonable methods such as prices of like goods sold in the ordinary course of trade in an appropriate surrogate market-economy country, constructed value or prices of like goods sold in Singapore. These methods are prescribed in Regulation 35 and is in accordance with Article 2.2 of the A-D Agreement.

Q.5. Does the Government of Singapore intend to verify information obtained during the investigative process, in accordance with Article 6.7 of the WTO Antidumping Agreement (A-D Agreement)?

Where necessary, the Minister may verify information obtained during the investigative process. Regulation 43 for verification in accordance with Article 6.7 of the WTO A-D Agreement. The interested foreign government will be notified of the upcoming verification. Verification may also be confined to a sample because of the large number of parties involved. Regulation 43(2) specifically applies the procedure in Annex I of the A-D Agreement to Singapore law.

Q.6. What are the “prescribed percentage[s]” for identifying a *de minimis* amount of countervailable subsidies and a negligible volume of subsidized imports under Article 10(3) of the Act? Are these consistent with Articles 11.9, 27.9 and 27.10 of the WTO Agreement on Subsidies and Countervailing Measures (SCM Agreement)?

Reply

The prescribed percentage[s] for identifying a *de minimis* amount of countervailable subsidies and a negligible volume of subsidized imports are set out in Regulations 24 and 25 of the Regulations. These prescribed percentage[s] are consistent with the SCM Agreement. Please see answer to Canada's Q.1 for details of the prescribed percentages.

Q.7. Article 15(6)(a) of the Notification indicates that sales in the domestic market made at prices which are not less than the cost of production will be used only when there are sufficient quantities of such sales. Please indicate the quantitative level to be applied for this sufficiency test.

Reply

The quantitative level is not specified in the Act or Regulations. Singapore will apply a quantitative level that is consistent with the WTO Agreement, in this case being 5% or more of the sales of the product under consideration to the importing Member.

Q.8. How does Singapore implement the provisions of Article 3.2 of the A-D Agreement and Article 15.2 of the SCM agreement, which require consideration of significant price undercutting, price depression and suppression by the subject imports in identifying material injury?

Reply

The provisions of Article 3.2 of the A-D Agreement and Article 15.2 of the SCM Agreement are implemented through Regulation 16 of the Regulations. Specifically, Regulation 16(1) stipulates that there must be consideration of significant price undercutting, price depression and suppression by the subject goods in the determination of material injury.

Q.9. In identifying material injury, Article 3.2 of the A-D Agreement and Article 15.2 of the SCM Agreement require an evaluation of whether there has been a significant increase in unfairly traded imports, either in absolute or relative terms. How does Singapore implement this requirement?

Reply

Please see answer to Q.8.

Q.10. There does not appear to be any requirement in the Act for consideration of the magnitude of the dumping margin in assessing material injury. How is this consistent with Article 3.4 of the A-D Agreement?

Reply

The requirements in Article 3.4 of the A-D Agreement are set out in Regulation 15(3)(c) of the Regulations which stipulates that one of the factors to consider is "magnitude of the margin of dumping".

Q.11. The notification does not appear to implement the requirement in the SCM Agreement, when determining whether subsidized imports pose a threat of material injury, that the nature of the subsidies be considered. How is this consistent with Article 15.7 of the SCM Agreement?

Reply

The requirement is implemented in Regulation 17.

Specifically, Regulation 17(2)(e) stipulates that one of the factors to consider in the determination of threat of material injury is "the nature of the countervailable subsidy(s) in question and the trade effects likely to arise therefrom".

Q.12. How does the Act implement the requirements of Article 3.7 of the A-D Agreement and Article 15.7 of the SCM Agreement that a finding of a threat of material injury must be "based on facts and not merely on allegation, conjecture or remote possibility" and must be "clearly foreseen and imminent?"

Reply

Please see answer to Hong Kong's Q.6(a).

Q.13. How does the Act implement Article 3.7(i) of the A-D Agreement and Article 15.7(ii) of the SCM Agreement, which require, in identifying a threat of material injury, consideration of "a *significant* rate of increase" of dumped or subsidized imports and whether imports are entering at prices that have "a *significant* depressing or suppressing effect"?

Reply

Please see answer to Hong Kong's Q.6(a).

Q.14. Does the Act require examination of whether there is "freely disposable, or an imminent, substantial increase in, capacity of the exporter indicating the likelihood of substantially increased ... exports, ... taking into account the availability of other export markets to absorb any additional exports," as required by Article 3.7(ii) of the A-D Agreement and Article 15.7(iii) of the SCM Agreement in determining a threat of material injury?

Reply

Please see answer to Hong Kong's Q.6(a).

Q.15. There is no provision in the Act addressing the issue of the cumulative assessment of the imports from more than one country. Does the Act contemplate cumulation, and, if so, under what circumstances?

Reply

Please see answer to Hong Kong's Q.6.(a).

Q.16. Under Articles 13 and 27 of the Act, an interested party has a right of review by the Anti-Dumping Tribunal of any final determination or review. Article 30 of the Act states that the members of the Anti-Dumping Tribunal shall be appointed by the “Minister,” their remuneration and conditions of appointment determined by the “Minister,” and their rules of procedure established by the “Minister.” Is the Minister referred to in Article 30 the same legal authority referred to as the “Minister” in other Articles of the Act? How is this procedure for review of antidumping and countervailing duty proceedings consistent with Article 13 of the A-D Agreement and Article 23 of the SCM Agreement which require that such tribunals “shall be independent of the authorities responsible for the determination or review in question?”

Reply

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 authority responsible for the determination or review in question.

Q.17. Will all currency conversions be made on the date of the sale of the exported goods, except under the conditions reflected in Articles 33(3) and 33(4)? In this regard, will the conversion of the Constructed Value be made at the date of sale of the exported goods or at the time such costs were incurred by the company? Please indicate the methodology for currency conversion to be used in the case of sustained appreciating and sustained depreciating currencies.

Reply

Yes, all currency conversions will be made on the date of the sale except for the conditions in sections 33(4) and 33(5). Sections 33 of the Act implements Article 2.4.1 of the A-D Agreement. Under section 33, the Minister will use the exchange rate on the dates of sale when converting currencies except as provided in subsections 33(3) ("forward rate of exchange") and 33(5) ("sustained movement"). The Minister, under subsection 33(4), will disregard fluctuations in the exchange rate unless they reflect a sustained movement.

Section 33(5) fully implements Singapore's obligations under Article 2.4.1 of the A-D Agreement with respect to "sustained movements" in exchange rates. If the Minister determines that there has been a "sustained movement" in the exchange rate, he will not use the exchange rate on the date of sale. He will instead consider alternative conversions that take into consideration the obligation to allow at least 60 days for the exporters to have adjusted their export prices. This will be done on a case-by-case basis, depending on the nature, magnitude and duration of the sustained movement in exchange rates. Also, because Article 2.4.1 of the A-D Agreement and section 33(5) are drafted in a fashion that permits "exporters" a period of time to adjust their pricing, the intention is to implement this provision only where there is a sustained appreciation of the currency.

Q.18. How does Singapore implement the requirements of ANNEX II of the A-D Agreement (Best Information Available in Terms of paragraph 8 of Article 6) regarding the use of facts available for preliminary and/or final determinations?

Reply

The requirements are implemented in Regulation 44 of the Regulations which is in accordance with Annex II of the A-D Agreement.

REPLIES TO QUESTIONS POSED BY TURKEY

Q.1. What is the legal status of the WTO Agreement? Does it have the force of law in Singapore? In case of a conflict with the domestic legislation which will take precedence?

Reply

Please see the answer to Hong Kong's Q.1.

Q.2. Article 18 of Singapore's Act states that (page 20) "Where the country of origin of any subject goods is a non-market economy country, the normal value of the subject goods shall be determined in the prescribed manner".

Could Singapore clarify what is alluded to in "in the prescribed manner"?

Reply

Please see answer to US Q.4.

Q.3. Article 3.7 of the A-D Agreement states that "A determination of a threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility".

In this context, could Singapore provide information on how it determines "threat of material injury"?

Reply

Please see answer to Hong Kong's Q.6(a).

Q.4. Article 22(4) of Singapore's legislation states that (page 22) "Provisional measures imposed under this section shall not exceed such period as may be prescribed".

Could Singapore explain what is alluded to in "such period as may be prescribed"?

Reply

Regulation 12(2) prescribes a four-month period for a countervailing duty investigation and six months or, if the Minister decides upon the request of exporters representing a significant percentage of the trade involved, nine months, for an anti-dumping duty investigation. These periods are in accordance with Article 7.4 of the A-D Agreement and Article 17.4 of the SCM Agreement.

Q.5. Article 12 of the A-D Agreement states that "A public notice of the initiation of an investigation shall contain adequate information".

Could you please clarify how the authorities ensure the fulfilment of this requirement?

Reply

Regulation 8 stipulates the sort of information that has to be in the public notice of initiation of an investigation, which is as follows:

- (a) name of the country(s) which produces the subject goods or the name of the intermediate country of export;
- (b) description of the subject goods;
- (c) brief description of the alleged countervailable subsidy or dumping, including basis for the allegations;
- (d) brief summary of factors on which the allegations of injury are based;
- (e) address where information and comments may be submitted;
- (f) date of initiation of investigation; and
- (g) proposed time limits for the investigation.

The provisions of Regulation 8 fulfils the requirements of Article 12 of the A-D Agreement.

Q.6. Footnote 5 of the A-D Agreement is not taken into consideration in Singapore's legislation.

In this context, would you please explain how Singapore determines the substantial quantities?

Reply

Please see the answer to Canada's question 7.

Q.7. Would you please explain the "statistically valid techniques" term stated in Article 19.9 of the Act (page 21) and provide information on whether they were employed in any investigation?

Reply

The term is in accordance with Article 6.10 of the A-D Code. Techniques that are sound, recognized and accepted under normal statistical practice will be employed.

Q.8. With respect to the provisions of Article 26 of the Act (page 27), could you please provide some information on the investigation period for the review investigations?

Reply

Section 26 of the Act describes the circumstances under which a review may be initiated.

The time period within which a review must be completed is provided for in the Regulations. Please see answer to Hong Kong's Q.6. for details of each time period.

Q.9. Are there any time-limits set out for the release of the securities and refund of the duties (Article 24.5 of the Act, page 25)?

Reply

There are no time limits specified. However, in the spirit and object of the A-D Agreement, the Minister will refund the provisional duties or release the securities as expeditiously as possible.

Q.10. Article 19.6 of the Act states that "... Minister may in special circumstances, initiate an anti-dumping duty investigation". Would you please clarify whether the term "anti-dumping duty investigation" implies that the Minister has the opinion in mind to impose an anti-dumping duty prior to the initiation of the investigation (page 21)?

Reply

Section 19(6) of the Act governs the circumstances under which an investigation may be self-initiated. provisional anti-dumping duties, if any, will only be imposed upon publication of the notice of affirmative preliminary determination (section 22 of the Act). There will be no imposition of anti-dumping duty prior to the initiation of the investigation.

Q.11. Article 13 of the A-D Agreement states that tribunals or procedures should be independent of the authorities responsible for the determinations or measures. Since the Chairman and two of the members of the Anti-Dumping Tribunal are appointed by the Minister who is in charge of the conduct of investigations, would you please clarify how the independence of the Tribunal is assured within the context specified by the A-D Agreement (Article 30, page 28)?

Reply

Please refer to the answer to US question 16.

Q.12. Singapore's legislation does not refer to Article 9.5 of the A-D Agreement wherein the Agreement states that the authorities should promptly carry out reviews for the purpose of determining individual dumping margins for the newcomer exporters. Would you please clarify if prompt review investigations are available for such newcomer firms in the Singapore legislation?

Reply

Yes, prompt review investigations are available for newcomer firms and are provided for in Regulation 38 of the Regulations. As stated in our reply to Q.8., the review for such newcomers shall be completed within nine months. This is also in accordance with Article 9.5 of the A-D Agreement.

Q.13. Would you please explain the procedure in such cases that, in the final determination, the injury or the dumping margin determined is lesser than the undertaking (Article 25.4, page 26)?

Reply

Section 25(5) of the Act provides for the undertakings to remain in place subject to the provisions of the Act. Hence, if the final determination demonstrates that the assumptions used as the basis for the undertaking are not correct, the terms of the undertaking agreement may be redefined to comply with the provisions of the Act, e.g. "to eliminate the dumping margin or the injurious effects".

Q.14. Would you please explain the legal positions of the Minister and the Tribunal and in case of conflict whether the decision of the Tribunal prevails (Article 27, page 28)?

Reply

Where the Tribunal does not affirm the Minister's final determination, it will remit the matter back to the Minister for reconsideration (see section 27(3)). The Minister then has to reconsider the matter.

Q.15. Article 4.1(i) of the A-D Agreement states that, "when producers are related to the exporters or importers or are themselves importers of the allegedly dumped product, the term "Domestic industry" may be interpreted as referring to the rest of the producers".

Within this context, would you please clarify the definition of "domestic industry", regarding the above-mentioned Article, considering that some producers have relations with the importers or the exporters of the dumped goods (Article 2.1, page 5)?

Reply

The definition of "domestic industry" in the Act excludes, if so determined by the Minister, domestic producers who are related to the exporters or importers, or are themselves importers of the subject goods. This is in line with Article 4.1(i) of the A-D Agreement.

REPLIES TO QUESTIONS POSED BY KOREA

1. Fair comparison of normal value and export price

Article 17 of the notified regulations regulate the due allowance for fair comparison between the export price and the normal value, but there is no specific method concerning due allowances such as advertisements and level of trade, etc.

Article 2.4 of the WTO A-D Agreement stipulates that "... due allowances shall be made ... including differences in conditions and terms of sale, taxation, levels of trade, candidates, physical characteristics, and any other differences ... affect price comparability."

We hope that the term "differences which affect price comparability" will be more explicitly defined, as enumerated in the WTO A-D Agreement. Does your country plan to enact a new set of laws that will be more compatible with the WTO A-D Agreement?

Reply

The Act and the accompanying Regulations are laws enacted by Singapore which bring its obligations fully in line with the WTO A-D Agreement. Regulation 33 of the Regulations elaborates on the adjustments to be made to ensure a fair comparison between the normal value and the export price of any goods. These adjustments include:

- (a) reasonable allowances for transport expenses e.g. freight, shipping, insurance or similar expenses to ensure prices are compared at an ex-factory level;
- (b) reasonable allowances for bona fide differences in the selling conditions of the sales compared e.g. commissions, credit terms, guarantees, etc.;
- (c) reasonable allowances for differences in the physical characteristics of goods compared;
- (d) reasonable allowances for the amount of any indirect taxes or duties imposed on sales in the exporting country but exempted or rebated upon exportation of the goods;
- (e) reasonable allowances for selling costs incurred by the producer or distributor on behalf of the purchaser;

- (f) where the export price is constructed, reasonable allowances for costs, including duties and taxes, incurred between importation and resale;
- (g) calculate normal value and export price based on the same commercial level of trade and on comparable quantities of goods and to make reasonable allowance for differences in the levels of trade or where the quantities are not comparable; and
- (h) any other adjustments necessary to ensure a fair price comparison.

These factors are in accordance with Article 2.4 of the A-D Agreement.

2. Review

Article 26(1), (2) regulates the review by change of circumstances. However, there is no specific provision concerning the procedures and the time limit of the review.

Article 11.4 of the WTO A-D Agreement regulates the procedures and the time-limit of the review as follows:

"The provisions of Article 6 regarding evidence and procedure shall apply to any review carried out under this Article. Any such review shall be carried out expeditiously and shall normally be concluded within 12 months of the date of initiation of the review."

What is Singapore's position on this matter?

Reply

Section 26(3) of the Act states that if the Minister decides to conduct a review, a notice of the initiation of the review must be published and interested parties must be given opportunities to provide comments. Upon completion of the review, section 26(5) states that the final determination must be published as well. The requirements of Article 6 of the WTO A-D Agreement are embodied in Regulations 41-43 of the Regulations. The requirements in Regulations 41-43 apply both to investigations and reviews.

As regards the time-limits for reviews, please see answer to Hong Kong's Q.6.