

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

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QUESTIONS CONCERNING THE NOTIFICATIONS PROVIDED
BY THE GOVERNMENT OF MALAYSIA¹ OF LAWS AND REGULATIONS
UNDER ARTICLES 18.5 AND 32.6 OF THE AGREEMENTS

The following communication, dated 15 November 1995, has been received from the Permanent Mission of Japan.

Questions on consistency of Malaysian Law with the Anti-Dumping Agreement (AA)
and the Agreement on Subsidies and Countervailing Measures

1. Cross-cumulation

Article 3.3 of the AA authorizes under certain conditions a cumulative assessment of the effects of imports of a product from more than one country in determining material injury when more than one country is simultaneously subject to anti-dumping investigations. The AA, however, does not permit a cross-cumulation of imports for simultaneous A-D and CVD cases.

Section 35 of the Malaysian Anti-Dumping and Countervailing Duties Act provides that:

"Where imports of merchandise from more than one country are simultaneously subject to countervailing or anti-dumping duty investigations or both, the Government may cumulatively assess the effects of subsidized and dumped merchandise or both on the domestic industry."

As such, Section 35 of the Act specifically seems to allow for dumping and subsidy investigations to be combined in a way inconsistent with the AA.

Q. Does Malaysia agree that the authorization in its laws of cross-cumulation is inconsistent with the AA? If not, why?

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2. Acceptance of undertakings

Article 8.2 of the AA specifically states that:

"Price undertakings shall not be sought or accepted from exporters unless the authorities of the importing Member have made a preliminary affirmative determination of dumping and injury caused by such dumping."

The Malaysian legislation, however, expressly allows for the acceptance of undertakings prior to the preliminary determination. Section 27(1) of the Act allows the suspension of an investigation "at any time if undertakings are accepted by the Government". Moreover, Section 27(3) of the Act refers to the possibility of undertakings being accepted prior to the preliminary determination: "If the undertakings are accepted by the Government prior to the preliminary determination ...".

Q. How does Malaysia justify accepting undertakings prior to the preliminary determination in light of Article 8.2 of the AA?

3. Anti-circumvention

Although the participants of the Uruguay Round considered the inclusion of rules and norms for the application of anti-circumvention measures, the AA does not include any authorization for anti-circumvention measures. The Malaysian law, however, authorizes the application of anti-circumvention measures (Section 37 of the Malaysian Act).

Q. Where in the AA does Malaysia find the basis for its anti-circumvention provision?