

# WORLD TRADE ORGANIZATION

RESTRICTED

**G/ADP/W/170**

**G/SCM/W/177**

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(95-3719)

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

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QUESTIONS CONCERNING THE NOTIFICATIONS PROVIDED  
BY MALAYSIA<sup>1</sup> OF LAWS AND REGULATIONS UNDER  
ARTICLES 18.5 AND 32.6 OF THE AGREEMENTS

The following communication, dated 14 November 1995, has been received from the Permanent Mission of Korea.

1. General Questions

- (a) In cases where there are no relevant provisions in the domestic legislation, does the WTO Agreement apply?
- (b) If the provisions of the existing domestic legislation do not conform to the WTO Agreement, do the provisions of the WTO Agreement apply?

2. Determining Selling Costs & Profits

In determining the amount of selling costs and profits, WTO A-D Agreement 2.2.2 states that "The amounts for administrative selling and any other costs and for profit shall be based on actual data pertaining to production and sales in the ordinary course of trade of the like product by the exporter or producer under investigation."

Article 16(4) of Malaysia's A-D Act stipulates, "... the cost of production shall be computed on the basis of all fixed and variable costs of materials and manufacturing in the ordinary course of trade in the exporting country plus a reasonable amount for selling, administrative and other general expenses and reasonable margin of profit."

Can the reasonable amount of SG&A and profit in Malaysian A-D Act be construed same as those in the Article 2.2.2 of the Agreement?

3. Adequacy of petition

According to WTO A-D Agreement 5.4, "No investigation shall be initiated when domestic producers expressly supporting the application account for less than 25 per cent of total production of the like product produced by the domestic industry."

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We were not able to find the relevant content in Malaysia's A-D Act. Please provide guidelines, if any.

4. De minimis rule

According to WTO A-D Agreement 5.8, an anti-dumping investigation should be terminated when the dumping margin is less than 2 per cent or dumped imports from a particular country is less than 3 per cent ....

Where are such provisions in Malaysia's regulations?

5. Start-up operation cost adjustment

According to WTO A-D Agreement 2.2.2.1, start-up operation cost shall be reflected in calculating normal price when it is necessary.

Where are such provisions in Malaysia's regulations?

6. Proper Comparison

(a) De minimis volume

For proper comparison, WTO A-D Agreement 2.2 states that "Sales of the like product destined for consumption in the domestic market of the exporting country shall normally be considered a sufficient quantity for the determination of the normal value if such sales constitute 5 per cent or more of the sales of the product under consideration to the importing country, provided that a lower ratio should be acceptable magnitude to provide for a proper comparison.:

However, in Malaysia's A-D Regulation 26(2)(a), "the quantity of merchandise sold for consumption in the domestic market during the period being examined is so small in relation to the quantity sold to ...."

Please clarify whether "so small ... quantity" means "5 per cent" as specified in the WTO Agreement or not?

(b) Exchange rate

According to WTO Agreement 2.4.1, when the price comparison under this paragraph requires a conversion of currencies, such conversion should be made using the rate of exchange on the date of sale, provided that when a sale of foreign currency on forward markets is directly linked to the export sale involved, the rate of exchange in the forward sale shall be used. Fluctuations in exchange rates shall be ignored and, in an investigation the authorities shall allow exporters at least 60 days to have adjusted their export prices to reflect sustained movements during the period of investigation.

Where are such provisions in Malaysia's regulations? In addition, which is the standard currency between the exporter's country and importer's country in calculating A-D margin?

7. Sales below costs

WTO A-D Agreement 2.2.1 paragraph 2 states that "If prices which are below per unit costs at the time of sale are above weighted average costs for the period of investigation, such prices shall be considered to provide for recovery of costs within a reasonable period of time."

Can the above article be applied to Malaysia?