

# WORLD TRADE ORGANIZATION

RESTRICTED

**G/ADP/W/203**

**G/SCM/W/212**

28 November 1995

(95-3794)

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

Original: English

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 20 November 1995, has been received from the Office of the United States Trade Representative.

ANTI-DUMPING METHODOLOGY

EP and CEP Sales: Generally, export price shall be the price actually paid or payable for the subject merchandise. When the exported and the importer are related or linked by a "compensatory arrangement" (not defined), 17(2) of the Act (page 15) calls for export price to be constructed on the basis of the price at which the merchandise is resold to an independent buyer, or, if it is not resold to an independent buyer, "on any reasonable basis".

1. Can you give any indication of what "reasonable basis" will apply in such circumstances?

Adjustments: 18 of the Act (page 16) calls for export price and normal value to be examined on a comparable basis as to physical characteristics, selling conditions, contemporaneity of period of sale, and "any other differences affecting price comparability" and for adjustments to be made accordingly. An exporter or importer claiming an adjustment under this section must prove that its claim is justified.

2. Under Malaysian law, which adjustments will be made to normal value, and which to export price?

Price Averaging: 31 of the Regulations (Page 42) states (in full): "[a]s a general matter, a specific company export price and normal value will be calculated on a weighted average basis."

3. What exceptions to this procedure are there?
4. How is this consistent with A-D Article 2.4.2?

Exclusion of Sales Below COP: Pursuant to 16(3) of the Act (Page 15), sales in the domestic market may be excluded from use in calculating normal value if there are reasonable grounds to believe or suspect they were made below cost of production.

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<sup>1</sup>G/ADP/N/1/MYS/1-G/SCM/N/1/MYS/1

5. Will sales be excluded based upon mere suspicion that they may be below cost? How will Malaysia determine whether sales were, in fact, made below the cost of production?

6. Article 2.2.1 of the A-D Agreement applies the cost recovery test to the sales below cost. How will Malaysia implement this requirement?

#### SUBSIDIES AND COUNTERVAILING MEASURES

Definition of Subsidy/Specificity 2(2) of the Act (Page 6) defines as a subsidy any financial benefit or contribution provided by a public entity to (i) a specific enterprise, industry or group of industries; or (ii) "exporters", adding the general caveat "where other conditions as may be prescribed have been met."

7. The Malaysian law would appear to indicate that any benefit provided to an exporter were a *per se* subsidy. Is this accurate? If so can you please explain how this is consistent with Article 3.1(a)n.4 of the SCM Agreement provides that "[t]he mere fact that a subsidy is accorded to enterprises which export shall not for that reason alone be considered to be an export subsidy within the meaning of this provision."

8. How will Malaysia define "specific"?

9. How will Malaysia implement the provisions of Article 8?

#### INVESTIGATION PROCEDURES

Initiation/Industry Support: The Malaysian law does not appear to contain provision concerning industry support comparable to the 50 per cent - 25 per cent standard of Article 5.4 of the A-D Agreement.

10. How will Malaysia implement the provisions of Article 5.4?

#### Standard for Obtaining Reviews

11. Are Malaysian authorities required to conduct refund reviews upon request by a party making the necessary evidentiary showing as required by Article and 9.3.2 of the A-D Agreement?

12. Article 19 of the SCM Agreement provides that countervailing duties shall not be levied on any imported product in excess of the amount of the subsidy found to exist. In the absence of refund reviews in CVD cases, how does Malaysian law comply with this provision?

#### New Shippers

13. The Malaysian law does not appear to provide for new shipper reviews, which are required pursuant to Article 9.5 of the A-D Agreement and Article 19.3 of the SCM Agreement. Is this accurate?

Sunset 13(6)(CVD) (page 14) and 28(6)(AD) (page 22) of the Act provide that duties shall not be collected on imports made after five years from the date of publication of the final determination unless the Government determines on the basis of an administrative review "that there is good cause" for the continued imposition of such duties.

14. Article 11.3 of the A-D Agreement and Article 21.3 of the SCM Agreement provide that duties shall be terminated not later than five years from their imposition absent a determination that "the expiry of the duty would be likely to lead to continuation or recurrence of subsidization/dumping and injury". How do the vague "good cause" standard of the Act and the "injury [only]" standard of the regulations implement these provisions?

15. Article 11.5 of the A-D Agreement and Article 21.5 of the SCM Agreement call for the provisions of Articles 11 (A-D) and 21 (SCM)(including the sunset provisions) to apply, *mutatis mutandis*, to undertakings. How will Malaysia implement these provisions?

#### JUDICIAL REVIEW

16. Has the Tribunal called for in 32 of the Act (page 23) been established?

17. Article 13 of the A-D Agreement and Article 23 of the SCM Agreement require that each member provide for judicial, arbitral or administrative tribunals for review of A-D/CVD determinations, and that such tribunals "be independent of the authorities responsible for the determination or review in question". Given the considerable control of the Minister over the tribunal which would review AD/CVD determinations for which he served as a decision-maker, can you clarify how independent review is available in Malaysia for A-D and CVD determinations, as required by the A-D and SCM Agreements?

#### Implementation of adverse panel reports:

18. If Malaysia chooses to implement an adverse WTO panel report, are there any provisions under Malaysian law specifically for implementing the panel reports?