

# WORLD TRADE ORGANIZATION

RESTRICTED

**G/ADP/W/298**

**G/SCM/W/306**

26 February 1996

(96-0707)

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

Original: English

REPLIES TO QUESTIONS POSED BY KOREA<sup>1</sup>  
CONCERNING THE NOTIFICATION  
OF LAWS AND REGULATIONS OF ISRAEL<sup>2</sup>

The following communication was received from the Permanent Mission of Israel on 15 February 1996.

*Q1. 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?*

- A1. (a) As the Government of Israel has ratified, in April 1995, its membership in the WTO and the Agreements made within that framework, it follows that in cases where there are no contradictions between the Agreement and the current Law (which is presently in the process of being revised so as to conform to the Agreement) that the provisions of the Agreement do apply. Due to the language of the current Law, in practice the Authorities follow, to the extent possible, the provisions of the Agreements.
- (b) As the current Law is being revised in order to bring it into conformity with the provisions of the Agreement we do not expect the problem of "non-conformity" to arise. Prior to the revision of the current Law, according to the Israeli legal system in the case, which would be extremely rare, of a direct contradiction between the Agreement and the Law, the provisions of the domestic legislation would override. It should be noted however, that according to Israeli principles of jurisprudence it is presumed that the Israeli legislature enacts laws which are in conformity with principles of international law. Therefore it can be expected that the Israeli Courts will interpret the Law in conformity with the Agreements.

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<sup>1</sup>G/ADP/W/168-G/SCM/W/175.

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

Comparison with a comparable price of the like product

*Q2. In accordance with Article 2.2 of the WTO Agreement, the margin of dumping shall be determined by comparison with a comparable price of the like product when exported to an appropriate third country, provided that this price is representative, in case there are no sales of the like product in the ordinary course of trade in the domestic market of the exporting country.*

*However, Israel regulates that the highest price of identical goods exported to a third country in the course of ordinary business shall be used as the normal price of goods in Title Three, Article 12(b)(1) of the Anti-Dumping Law of Israel.*

*This provision would artificially increase the dumping margin and should be revised properly according to the WTO Agreement.*

*What is Israel's opinion on this?*

A2. Section 12(b) of the Law reflects the legal situation prevailing in 1991 since the Law was enacted in conformity to the Anti-Dumping Code of 1979. The revisions presently taking place will consider the exclusion of Section 12(b) from the proposed legislation.

Complaint of dumped imports

*Q3. Title Four, Article 16 of Israel's anti-dumped regulation states simply that the producer of a certain product may submit to the commissioner a written complaint. It seems that Israel Government guarantee easy filing of complaint and then we expect that the abuse of filing complaint will happen.*

*Therefore, the requirements concerning the initiation and subsequent investigation of anti-dumping in Article 5.4 of WTO agreement should be reflected in this provision of Israel's anti-dumping law.*

*What is Israel's opinion on this?*

A3. As Article 5.4 is a new addition to the Agreement, Israel will as part of its amending process address the issue raised in that Article.

Comparison with a comparable price of the like product

*Q4. In accordance with Article 9.1 of the WTO Agreement, it is desirable that the duty be less than the margin of dumping if such lesser duty would be adequate to remove the injury to the domestic industry, and Article 9.3 of the WTO Agreement states that the amount of the anti-dumping duty shall not exceed the margin of dumping.*

*In conclusion, WTO regulations permit the imposition of anti-dumping duty less than the margin of dumping or the margin of the injury.*

*However, Title Five, Article 24(b) of Israel's Anti-Dumping Law states that the anti-dumping duty shall be at the rate of some or all of the difference between the normal price and the export price.*

*Can Israel explain the reasons for the different language in the two provisions?*

A4. It should be noted that Section 24 of the Law allows in fact a lesser duty to be applied. The Authorities concerned, may at their discretion, in keeping with the provisions of Article 9.1 of the

Agreement, impose a lesser duty than the margin of dumping if such lesser duty would be adequate to remove the injury to the domestic industry.

Rules for price equalization

*Q5. Title Three, Article 14 of Israel's Anti-Dumping Law states that prices shall be equalized under similar commercial conditions, taking into account different terms of sales, including differences in indirect taxes, as well as any other factor likely to affect the equalization.*

*Article 2.4 of the WTO Agreement stipulates fair comparison as follows:*

*"This comparison shall be made at the same level of trade, normally at the ex-factory level, and ...." In addition, this Article gives the specific adjustment of the cost.*

*Can Israel explain the reasons for the different language in the two provisions?*

A5. Although the language used in Section 14 of the Law is not identical to the language used in Article 2.4 of the Agreement, there is no contradiction between the two provisions and in practice the Authorities follow the fair comparison rules in Article 2.4 of the Agreement. In any case as previously stated the Law is being amended and different language will be considered in order to better reflect the provisions of Article 2.4 of the Agreement. In practice, it should be noted that the Authorities, when making a comparison between export price and normal value endeavour to do so at the ex-factory level.

Absence of transparency

*Q6. In general, the Anti-Dumping Law of Israel is so simple that it cannot properly reflect the purpose of the WTO Anti-Dumping Code, especially in the case of Article 2 (determination of dumping), and Article 4 (determination of injury)*

*In addition, there is no provision concerning the de minimis.*

*Does Israel plan to revise its anti-dumping law in accordance with the WTO Agreement?*

A6. Israel, as stated, intends to revise its Law in accordance with the Agreement.