

WORLD TRADE ORGANIZATION

RESTRICTED

G/ADP/AHG/W/23

30 September 1997

(97-4088)

**Committee on Anti-Dumping Practices
Ad Hoc Group on Implementation**

Original: English

TIMELINE, CONFIDENTIAL INFORMATION, AND LESSER DUTY RULE (PARAGRAPH 3 OF WTO/AIR/643)

Information Provided by JAPAN

The following communication, dated 24 September 1997, has been received from the Permanent Mission of Japan.

1. Timeline of Anti-Dumping Investigation

(1) Application

A documented application shall include sufficient evidence with regard to the fact of the importation of the dumped product and the fact of material injury, etc. to the domestic industry caused by such importation.

[Cf. The Customs Tariff Law (hereinafter referred to in this section as "the Law") Article 8.4]

[Cf. The Guideline for Procedures Relating to Countervailing and Anti-Dumping Duties (hereinafter referred to in this section as "the Guideline") 5.(1)-(4)]

(2) Notification to the government of the exporting Member concerned before initiation of an investigation

- The decision on whether or not to initiate an investigation shall be made within approximately two months from the date of receipt of the application, and notification to the government of the exporting member concerned shall be provided as soon as possible before the decision of initiation.

[Cf. The direct application of the Anti-Dumping Agreement Article 5.5] [Cf. the Guideline 6.(1)]

(Reference)

- Under the Tokyo Round Anti-Dumping Agreement, Japan provided, on its own judgement, notification before initiation of an investigation.
- Japan intends to provide notification before initiation of the review investigation (the Law Article 8.22) and the new suppliers investigation (the Law, Article 8.13).

(3) Initiation of an investigation

- When sufficient evidence with regard to the fact of the material injury, etc. to the domestic industry caused by the dumping is submitted, if it is found to be necessary, the decision to initiate an investigation shall be made. [Cf. the Law, Article 8.5.]
- When a decision to initiate an investigation is made, a written notification to the interested parties as well as a public notice in the Official Gazette regarding the initiation of an investigation and the details of the investigation, shall be promptly provided. As a general rule, the day on which the investigation is initiated is the same day as that for both the notification and the public notice. [Cf. the Cabinet Order Relating to Anti-Dumping Duty (hereinafter referred to in this section as "the Cabinet Order") Article 8.1.]

(4) Answers to questionnaires and written submissions

- After initiation of an investigation, questionnaires are sent to the interested parties. The interested parties shall reply to the questionnaires no later than 30 days* after receipt. However, if the interested parties have a special reason for being unable to submit their response within the stated term, they shall provide the reason and the date by which they are able to submit the response within the deadline prescribed in the questionnaire.

As a general rule, the deadline is no later than 15 days after receipt of the questionnaire.

*Note Regarding the date of receipt of a questionnaire, we deem that the interested parties should have received the questionnaire within one week from the day on which it was sent, this according to the Note of the Anti-Dumping Agreement, Article 6.1.1.

[Cf. the Cabinet Order, Article 10.2] [Cf. the direct application of the Anti-Dumping Agreement, Article 6.1.1]

- The interested parties are allowed to submit any relevant evidence in writing within the term which is prescribed in both the notification and public notice for initiation of an investigation. As a general rule, the term is approximately two months from the date of initiation of an investigation.

[Cf. the Cabinet Order, Article 8.1(7)] [Cf the Cabinet Order, Article 10.1]

(5) Oral evidence

- The interested parties are allowed to present any relevant oral evidence within the term which is prescribed in both the notification and the public notice for initiation of an investigation. As a general rule, the term is approximately two months from the date of initiation of an investigation. [Cf. the Cabinet Order, Article 8.1(7)] [Cf. the Cabinet Order, Article 10.1]

(6) Meeting with parties with adverse interests

- Apart from the above-mentioned oral evidence, the interested parties are allowed to request an opportunity to meet the other interested parties with opposing views concerning the matters of the investigation within the term which is prescribed both

in the notification and the public notice for the initiation of an investigation. As a general rule, the term is approximately two months from the date of initiation of an investigation.

In addition, the meeting is held after all the interested parties have had an opportunity to see all evidence, except any confidential information.

[Cf. the Cabinet Order, Article 8.1(7)] [Cf. the Cabinet Order, Articles 12.1-3]

(7) Preliminary determination and decision on whether to take provisional measures

- If, on the basis of sufficient evidence, it can be presumed that there is the fact of the importation of the dumped product and the fact of the material injury etc. to the domestic industry caused by such importation and, if it is found necessary to protect such domestic industry, only then may provisional measures be taken. A decision on whether or not to take provisional measures may be made no sooner than 60 days from the date of initiation of an investigation. Details of provisional measures shall be promptly provided and shall be prescribed both in a notification to the interested parties and in a public notice in the Official Gazette.

[Cf. the Law, Article 8.9] [Cf. The Cabinet Order, Article 16]

(8) Disclosure of essential facts

- The essential facts on which the final determination is based shall be notified in writing to the interested parties sufficiently before the final determination. As a general rule, they are notified approximately two months before the final determination. The disclosure provides specific information on the fact of dumping, the fact of material injury, etc. to the domestic industry and the causality between them, including methodology of calculating the dumping margin. The interested parties are allowed to make a rebuttal concerning the details of the disclosure within the term. As a general rule, the term is between ten days and two weeks from the date of disclosure, which is prescribed in the notification of disclosure.

[Cf. the Cabinet Order, Article 15]

(Reference)

- Under the Tokyo Round Anti-Dumping Agreement, Japan conducted, on its own judgement, a disclosure of important facts before the final determination.

(9) Final determination

- An investigation shall be concluded within one year after the date of its initiation. However, the period may be extended at most six months if it is found necessary for special reasons. [Cf. the Law, Article 8.6]
- After final determination, the details of such shall be promptly notified in writing to the interested parties. As a general rule, they are notified on the day on which the final determination has been made. [Cf. the Cabinet Order, Article 16]

(10) Public notice of determination

- After final determination, the details of such shall be promptly notified publicly in the Official Gazette. As a general rule, they are notified within five days after the determination. [Cf. the Cabinet Order, Article 16]

2. Treatment of Confidential Information

With regard to the treatment of confidential information, when any information provided comes under both of the following cases, Japan will treat it as confidential information in practice.

- (1) Such information which is not known publicly and which is protected by the person who provided the information.
- (2) Such information which falls within either of the following cases:
 - It is recognized that disclosure of any information would certainly provide a significant competitive advantage to competitors, or would certainly have a significant harmful effect upon the direct supplier of the information or the original supplier of the information.
 - When any information is provided as confidential information by any interested party, and the authority recognizes that there is enough reason for treating it as confidential information.

(Reference)

For example the following information is considered to be confidential.

- Cost of manufacturing
- Sales expenses
- Actual transaction prices
- Names of customers or suppliers
- Other business proprietary information

3. Lesser Duty Rule

Under Japanese law, the provision related to this issue is Article 8.1 of the Customs Tariff Law. It prescribes an anti-dumping duty in an amount equivalent to or less than the difference between the normal price and the price of the dumped product.

In the past cases, Japan imposed anti-dumping duties in an amount equivalent to the difference between the normal price and the price of the dumped product.