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

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NOTIFICATION OF LAWS AND REGULATIONS UNDER ARTICLES 18.5 AND 32.6 OF THE AGREEMENTS

Replies of JAPAN¹ to questions posed by CANADA²

The following communication, dated 29 July 1996, has been received from the Permanent Mission of Japan.

Necessary notifications of laws and regulations and the Guideline are in the course of preparation, and will be submitted by the next meeting of legislation review.

General questions

1. *Throughout the Customs Tariff Law and the Cabinet Orders relating to Anti-dumping and Countervail, only the Minister of Finance is mentioned. In the conduct of an investigation, are there separate authorities to consider the amount of the duty and to consider the question of material injury?*

The Ministries consisting of the investigating authorities (the Minister of Finance, the Minister of International Trade and Industry and any Minister who has jurisdiction over the industry) will communicate to each other and make a determination on any important aspect of investigations after consultations stipulated in Article 18 of the Cabinet Order relating to AD and in Article 14 of the Cabinet Order relating to CVD.

2. *Does Japan have an independent agency charged with judicial review as required in Article 13 of the A-D Agreement and Article 23 of the SCM Agreement?*

The litigation will be filed to courts. Administrative measures including anti-dumping and countervailing measures are covered by Japanese judicial review systems.

3. *What is the legal mechanism in Japanese law for the implementation of decisions rendered by a WTO panel?*

¹G/ADP/N/1/JPN/2+ Corr.1-G/SCM/N/1/JPN/2+ Corr.1.

²G/ADP/W/233-G/SCM/W/243.

Japan's laws and regulations do not have any specific provisions concerning implementation of adverse panel reports. Amendment to the legislation and/or regulation may be made on a case-by-case basis, if necessary, responding to the WTO panel report.

4. *The Anti-Dumping Agreement allows duties to be collected on either a retrospective or prospective basis. Will duties be collected based on normal value or export price?*

Japan would impose the duty on a prospective basis. Duties including AD duties would be calculated on the basis of export price.

Questions on Specific Articles

Initiation standards

5. *Articles 7.6 and 8.5 of the Customs Tariff set out the standards for the initiation of countervail and anti-dumping investigations, respectively. Do these articles allow the authorities to initiate an investigation without having received a written complaint from the domestic industry? If so, why did the Government of Japan not limit the use of this provision to special circumstances only, as required under Article 5.6 of the Anti-Dumping Agreement and Article 11.6 of the SCM Agreement?*

The authorities may decide to initiate an investigation without having received a written application when there is sufficient evidence with regard to the fact of the importation of the subsidized/dumped product and the fact of material injury etc. to the domestic industry caused by such importation, the condition of which corresponds to that provided in the provisions of Articles 11.6/5.6 of the SCM/AD Agreement.

6. *Article 5 of the Cabinet Order Relating to Anti-Dumping Duty and Article 3 of the Cabinet Order Relating to Countervailing Duty requires that the complainants represent not less than 25 per cent of the domestic industry. How does the Government of Japan intend to implement its obligations under Article 5.4 of the Anti-dumping Agreement and Article 11.4 of the SCM Agreement? In particular, how will the Government ensure that the application has been made by or on behalf of the domestic industry, i.e., supported by those domestic producers whose collective output constitutes more than 50 per cent of the total production of the like product produced by that portion of the domestic industry expressing either support for or opposition to the application?*

Article 5 of the Cabinet Order stipulates 25 per cent of total production as a standing requirement for initiating an investigation.

Further, as to the 50 per cent support rule, the provisions of Article 5.4 of the Agreement are directly applied and the manner to find the degree of support is provided for in Article 5(2) of the Guidelines.

7. *Article 2 of the Cabinet Order Relating to Countervailing Duty defines domestic industry to be domestic producers whose collective output of the like products constitutes a major proportion of the total domestic production of those products. Why is there no comparable article in the Cabinet Order Relating to Anti-Dumping Duty? What is the definition of major proportion?*

The definition of domestic industry is provided for in Article 4 of the Cabinet Order relating to Anti-Dumping Duty.

The difference between the Cabinet Order relating to Countervailing Duty and the Cabinet Order relating to Anti-Dumping Duty was caused by a translation error ("major proportion" is the correct translation in place of "substantial proportion" of Article 4 of the Cabinet Order relating to Anti-Dumping Duty.

The "major proportion" is interpreted as 50 per cent in Article 4(1) of the "Guidelines".

8. *Article 7.1 of the Cabinet Order on Anti-Dumping Duty and Article 4.1 of the Cabinet Order on Countervailing Duty set out the required elements of a properly documented complaint. Could the Government of Japan explain why the list of required elements does not include the identity of each known exporter or foreign producer and a list of known persons importing the product in question as given in Article 5.2(ii) of the Anti-Dumping Agreement and Article 11.2(ii) of the SCM Agreement?*

Article 7.1.3 of the Cabinet Order relating to AD and Article 4.1.3 of the Cabinet Order relating to CVD require the inclusion of the information on the identity of suppliers defined as the exporters or producers concerned and are consistent with Article 5.2(ii) of the AD Agreement and Article 11.2(ii) of the SCM Agreement.

The Annex to the Guidelines requires the inclusion of the information on the identity of importer of the product concerned.

Undertakings

9. *Articles 7.8 and 7.9 of the Law provide for undertakings in the case of countervail investigations and Articles 8.7 and 8.8 of the Law provide for undertakings in the case of anti-dumping investigations.*

- (a) *How does the Government of Japan intend to implement its obligations under Article 8.2 of the Anti-Dumping Agreement and Article 18.2 of the SCM Agreement, requiring that undertakings are not to be accepted prior to a preliminary affirmative determination?*

According to Articles 7.10 and 8.8 of the Law, the Government shall not accept such an undertaking until it can be presumed that there is the fact of the importation of subsidized/dumped products and the fact of the material injury etc. This presumption corresponds to the preliminary affirmative determination referred to in Article 8.2/18.2 of the AD/SCM Agreement.

Therefore, it is consistent with Articles 8.2/18.2 of the AD/SCM Agreement.

- (b) *Article 7.9 allows the Government to terminate a countervail investigation if an undertaking is accepted. Article 8.8 allows the Government to suspend an anti-dumping investigation if an undertaking is accepted. Article 8.1 of the Anti-Dumping Agreement and Article 18.1 of the SCM Agreement allow investigations to be suspended or terminated in the event of an undertaking. Could the Government of Japan explain why anti-dumping and countervail investigations are treated differently in this respect?*

This difference was caused by a translation error ("suspend or terminate" is the correct translation in place of "terminate" of Article 7.9 of the Law and "suspend" of Article 8.8 of the Law).

10. *How will the Government of Japan ensure that duties are not collected during the term of an undertaking, as required under Article 9.2 of the Anti-Dumping Agreement and Article 19.1 of the SCM Agreement?*

While a price undertaking is in effect, anti-dumping duty will not be collected.

The provisions of Article 9.2 of the AD Agreement and Article 19.3 of the SCM Agreement are directly applied.

Subsequent Investigation

11. *How does the Government of Japan intend to implement its obligations under Article 11.9 of the SCM Agreement and Article 5.8 of the Anti-Dumping Agreement which require an investigation to be terminated if the amount of subsidy or margin of dumping is de minimis, if the volume of imports is negligible or if the injury is negligible?*

Japan's laws and regulations do not have provisions concerning "de minimis" margin/amount and negligible volume of import.

Therefore, the provisions of Article 5.8 of the AD Agreement and Article 11.2 of the SCM Agreement are directly applied.

An investigation is immediately terminated in the cases where the investigating authorities find that the margin of dumping/subsidy amount is less than the *de minimis* level or that the volume of dumped/subsidized imports is negligible.

12. *How does the Government of Japan intend to implement its obligations regarding on-the-spot investigations, as provided for in Annex I of the Anti-Dumping Agreement and Annex VI of the SCM Agreement?*

The provisions of Annex I to the AD Agreement and Annex VI to the SCM Agreement are directly applied.

13. *How does the Government of Japan intend to implement its obligations regarding Article 6.1 of the Anti-dumping Agreement and Article 12.1 of the SCM Agreement? In particular, how will the Government ensure that exporters or foreign producers are given at least 30 days to reply to questionnaires?*

With regard to the time limit, no provisions are laid in the domestic laws and regulations. The provisions of Articles 6.1.1/12.1.1 of the AD/SCM Agreement are directly applied and at least 30 days are allowed for replying to the questionnaires.

14. *Does the Government of Japan intend to implement rules on sampling as provided for under Article 6.10 of the Anti-Dumping Agreement?*

In the cases of sampling, the provisions of Articles 6.10 and 9.4 of the AD Agreement are directly applied.

15. *How does the Government of Japan intend to implement its obligations under Article 6.8 of the Anti-Dumping Agreement and Article 12.7 of the SCM Agreement regarding the use of the facts available when making a decision?*

The provisions of Article 6.8 and Annex 2 to the AD Agreement as well as Article 12.7 of the SCM Agreement are directly applied.

16. *Article 5 of the Cabinet Order Relating to Countervailing Duty and Article 8 of the Cabinet Order Relating to Anti-Dumping Duty set out procedures for providing notice of initiation of an investigation. Could the Government of Japan explain why the address to which representations by interested parties should be directed is not listed as a requirement in the notice to be published in the Official Gazette, as required under Article 22.2(v) of the SCM Agreement?*

Article 5(1) of the "Guidelines" stipulates the address.

Determination of Dumping

17. *Article 8.1 of the Law defines dumping to be a sale of product for export at a price less than the price of the like product. Could the Government of Japan explain why it has not adopted the definition provided for in Article 2.1 of the Anti-Dumping Agreement, i.e., sale of a product at less than its normal value?*

There is no difference in the meaning between "a sale of product for export at a price less than the price of the like product in the ordinary course of trade destined for consumption in the exporting country or any other similar price prescribed by a Cabinet Order" in Article 8.1 of the Customs Tariff Law and to "introduce a product into the commerce of another country at less than its normal value" in Article 2.1 of the AD Agreement.

18. *How does the Government of Japan intend to implement its obligations under Article 2.4 of the Anti-Dumping Agreement, in particular subparagraph 2, to ensure that a fair comparison is made between the export price and the normal value?*

Japan's laws and regulations do not have provisions concerning this basis for comparison.

Therefore, the provisions of Article 2.4.2 of the AD Agreement are directly applied.

19. *Article 2 of the Cabinet Order Relating to Anti-Dumping Duty sets out different methods for the calculation of normal value. The Cabinet Order does not provide any specific rules on how the calculation is to be carried out, particularly when the cost of production method is used. How will the Government of Japan ensure that its obligations under Article 2.2 of the Anti-Dumping Agreement are met?*

Japan's laws and regulations do not have provisions concerning the concrete calculation method for the constructed normal value.

Therefore, the relevant provisions of the AD Agreement are directly applied.

20. *Article 2.1(3) allows for prices to be calculated from the costs of production of the imported product plus normal profit and administrative, selling and general costs for the like product, produced in the country of origin. How will the Government of Japan ensure that these costs are based on actual data, as required under Article 2.2.2 of the Anti-Dumping Agreement?*

Japan's laws and regulations do not have provisions concerning the data used in the calculation.

The provisions of Article 2.2.2 of the AD Agreement are directly applied.

21. *Article 4.7 of the Law allows for currency conversion to be made based on the foreign exchange rate on the date of import declaration.*

(a) *Could the Government of Japan explain how this is consistent with Article 2.4.1 of the Anti-Dumping Agreement which requires that the rate of exchange on the date of sale be used?*

(b) *Does the Government of Japan intend to implement other elements of Article 2.4.1 of the Anti-Dumping Agreement, e.g., use of exchange rate in forward markets, fluctuations in exchange rates?*

Article 4.7 of the Law is applied just for the imposition of anti-dumping duty, not for the calculation of dumping margin.

Japan's laws and regulations do not have provisions concerning the conversion of currencies in the calculation of the dumping margin.

Therefore, the provisions of Article 2.4.1 of the AD Agreement are directly applied.

Subsidies

22. *Does the Government of Japan intend to implement any laws or regulations regarding the calculation of the amount of subsidy? Does the Government intend to apply the benefit to recipient approach as provided for in Article 14 of the SCM Agreement?*

With regard to the criteria for CVD amount, the provisions of Article 14 of the SCM Agreement are directly applied.

23. *Does the Government of Japan intend to implement any laws or regulations regarding the treatment of inputs in the production process as provided for in Annex II of the SCM Agreement?*

Japan's domestic laws and regulations do not provide for the treatment of inputs in the production process.

Therefore, the provisions of Annex II to the SCM Agreement are directly applied.

Injury

24. *Articles 7.1 and 8.1 of the Customs Tariff Law allow for anti-dumping and countervailing duties to be applied where material injury is found. There is, however, no mention of how material injury is to be assessed in either the Law or the Cabinet Orders. How does the Government of Japan intend to implement its obligations under Article 3 of the Anti-Dumping Agreement and Article 15 of the Subsidies and Countervailing Measures Agreement?*

Japan's laws and regulations do not have provisions concerning the assessment of material injury.

Therefore, the provisions of Article 3 of the AD Agreement and Article 15 of the SCM Agreement are directly applied.