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Committee on Safeguards

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NOTIFICATION OF LAWS AND REGULATIONS UNDER ARTICLE 12.6 OF THE AGREEMENT

Replies of JAPAN¹ to questions posed by the UNITED STATES²

The following communication, dated 11 September 1996, has been received from the Permanent Mission of Japan.

Q1. The first 36 pages of laws and regulations notified by Japan include laws and regulations relating to foreign exchange and foreign trade controls and certain customs laws. With the exception of article 9 of the Customs Tariff Law and certain other minor exceptions, why have these laws and regulations been notified?

A1. We provided the full texts of the safeguard-related laws and regulations of Japan in accordance with our agreement at the Special Meeting of this Committee in February 1995. Observing the volume of our notification, however, we must confess that we have abided by such agreement a little too faithfully. Recalling how much work we needed in translating them into English, we are obliged to appreciate the WTO Secretariat's efforts in translating them into other WTO languages.

Q2. Certain provisions within the Foreign Exchange and Foreign Trade Control Law appear to authorize safeguard-type actions, such as a prohibition on the importation of certain technology for up to 4 months when such importation "might imperil the national security, disturb the maintenance of public order, or hamper the protection of the general public; ... might adversely and seriously affect activities of our economy". Para. 3, page 20. Also, article 52 on page 22 provides "For the purpose of sound development of foreign trade and the national economy, a person who is to import goods might be obligated, as Cabinet Order provides for, to obtain approval therefor"; and article 55, also on page 22, which provides authority to require "a warranty in the form of cash, securities, etc., for the expansion of ... importation". What is the relationship of these measures with Japan's obligations under the Agreement on Safeguards?

A2. There is no relationship between those measures and Japan's obligations under the Agreement on Safeguards because those provisions of the Foreign Exchange and Foreign Trade Control Law are not related to the safeguards. Among the provisions of the Foreign Exchange and Foreign Trade Control Law, only Article 52 is related to the safeguards.

¹G/SG/N/1/JPN/2 + Corr.1

²G/SG/W/105

Q3. (a) Why does Japan maintain two different sets of regulations for safeguard measures, one for when the measure is in the form of a quota, and a second for when it is in the form of a duty?

A3. (a) It is because we did not find it necessary to change our legislative framework where the legislation for quantitative restrictions and the legislation for tariff measures existed separately. In the case of taking safeguard measures, however, it is ensured that the procedures shall be conducted jointly and collectively.

(b) Unless the nature of the safeguard measure to be taken has been predetermined, how is it determined, at the outset, whether the investigation is to be conducted by the Minister of International Trade and Industry or by the Minister of Finance?

(b) Those investigations shall be conducted jointly and collectively and the findings of the investigations shall be processed in the same manner. Actual form of the safeguard measure shall be determined after such joint investigations.

(c) There appear to be substantive and procedural differences between the two sets of regulations. For example, under article 2 of the regulations relating to import quotas, the domestic industry appears to be defined in terms of producers of like "and" directly competitive products, but under article 1 of the regulations relating to emergency duties and article 9 of the Customs Tariff Law it is defined in terms of the producers of like "or" directly competitive products. Notification requirements in articles 10 (quotas) and 2 (duties) of the respective regulations also differ. For example, unlike article 10, article 2 of the regulations relating to emergency import quotas requires a more detailed product description; appears to allow for notification of an investigation already initiated, as opposed to one that will ("shall") be initiated; and appears to indicate the period of time during the investigation will be conducted, as opposed to the period time that the investigation will cover (e.g., import and industry trends over the past 3-5 years). Are there real differences and, if so, why?

(c) There must have been an error in the translation. The "and" referred to in Article 2 of the Regulations should be translated as "or".

As a matter of fact, as pointed out by the United States, there are some differences in the expression of the requirements between the Regulations and the Customs Tariff Law and the Cabinet Order relating to Emergency Duties but there is no substantial difference between them.

Q4. (a) Is there any procedure under Japanese law or regulation that allows producers, a trade association of producers, or a labour union or group of workers to petition the Minister of International Trade and Industry and/or the Minister of Finance for an investigation and, if that petition is in good order, requires the Minister(s) to conduct an investigation and make a finding?

A4. (a) The answer is no. According to the provisions of domestic legislation, the investigation for safeguards is initiated ex officio. Accordingly, the petition by the domestic industry does not necessarily lead to the commencement of investigation.

(b) If yes, what are the petitioning and other requirements?

(b) No need to answer.

- (c) *If there is no provision for the filing of a petition, are any written submissions seeking an investigation filed by industry representatives with a minister made available for review by interested parties during the course of an investigation?*
- (c) In the domestic legislation, interested parties may inspect the evidence which is used during the course of an investigation. So if this is the case, interested parties may inspect written submissions seeking an investigation.

Q5. If Japan, under Article 5:5 of its regulations governing the size of import quotas, allocates shares of a quota in a manner other than that provided for in article 5:2(a) of the Agreement on Safeguards, does Japan first intend to engage in consultations under the auspices of the Committee on Safeguards and clearly demonstrate to the Committee that imports from certain WTO members have increased disproportionately in relation to total imports?

A5. The answer is "Yes".

Q6. Under Article 13 of its regulations relating to import quotas, does Japan make available to the public the non-confidential evidence relating to the investigation, or does it limit inspection of such evidence only to those who have been able to demonstrate that they are interested parties in the investigation, as suggested in article 13:2? How is interested party defined, and how are interested parties notified of the investigation and of their rights to obtain such evidence?

A6. The latter approach will be taken. (Under Article 5 of the Cabinet Order Relating Emergency Duties and Article 13 of the Regulations, only the interested parties can have access to such evidence.) The interested parties are defined as "exporters and producers of the product and their associations, importers of such product and their associations, domestic producers of such product and their associations and labour unions representing those workers who are engaged in the domestic production" in Article 12 of the Regulations and Article 4 of the Cabinet Order Relating to Emergency Duties. Those interested parties are notified of the commencement of the investigation and other related matters by the official Gazette.

Q7. Does Japan provide interested parties with the "opportunity to respond to the presentations of others", as required by article 3:1 of the Agreement on Safeguards?

A7. The answer is "yes".

Q8. In making determinations under either set of regulations, what definitions of the terms "serious injury" and "threat of serious injury" does the minister apply, and what economic factors does he take into account?

A8. Such definitions are not found in the domestic legislation. However we will evaluate all the factors listed in Article 4.2(a) of the Agreement on Safeguards, when we determine the "serious injury or threat thereof".

Q9. Article 9 of the Customs Tariff Law does not contain a limitation on safeguard actions similar to that in article 5:1 of the Agreement on Safeguards ("A Member shall apply safeguard measures only to the extent necessary to prevent or remedy serious injury and to facilitate adjustment"), but instead authorizes "a duty in an amount equal to or less than the amount corresponding to the difference between the customs value of the said product and the wholesale price in Japan of like or similar product ...". How does Japan intend to insure that any measures taken will be only to the extent necessary to prevent or remedy serious injury and facilitate adjustment?

A9. When Japan takes a safeguard measure, it abides by the requirements in the provisions of the Agreement on Safeguards. The non-existence of the relevant provision does not mean that the administrative authority disregards such requirements.

Q10. Article 9:6 of the Customs Tariff Law and following paragraphs appear to authorize the taking of a provisional safeguard measure for up to 200 days.

(a) *If this is the case, aside from "sufficient evidence" of increased imports and serious injury, what is the standard that must be applied in determining whether there is a basis for taking such action?*

A10. (a) In Japan, provisional measures can be taken only as tariff measures. Under Paragraph 8 of Article 9 of the Customs Tariff Law, if the fact of import increase of a particular product and the fact of serious injury to a domestic industry caused by such importation are presumed based on sufficient evidence and it is deemed particularly and urgently necessary in the interest of the national economy, the Government may take tariff measures even prior to the completion of the investigation in accordance with the Agreement on Safeguards.

(b) *Does Japan intend, through these paragraphs, to authorize the taking of provisional safeguard measures that conform with those authorized by article 6 of the Agreement on Safeguards? If so, why is there no reference to the term "critical circumstances" or to the definition of that term in article 6 of the Agreement, or to the "clear evidence" test required by Article 6?*

(b) The answer is "yes". As for the requirements for taking provisional safeguard measures, we interpret "the case where it is deemed particularly and urgently necessary in the interest of the national economy" referred to in paragraph 8 of Article 9 of the Customs Tariff Law as having the same meaning as "the critical circumstances where it would be difficult to repair" referred to in Paragraph 1 of Article 6 of the Agreement on Safeguards. We interpret "sufficient evidence" as having the same meaning as "clear evidence".

(c) *Who in the Japanese Government makes the determination concerning whether the standard for taking such an action is satisfied?*

(c) The Cabinet makes such determination.

Q11. The basis for extending the period of a safeguard measure under Japanese regulations appears to differ from that under article 7:2 of the Agreement on Safeguards--under article 7:2 there must be a finding that the safeguard measure "continues to be necessary to prevent or remedy serious injury and that there is evidence that the industry is adjusting". For example, under article 18 of the Japanese regulations relating to import quotas, a measure may be extended by the Minister of International Trade and Industry "because of the importation into Japan of such particular product in increased quantities and that the Domestic Industry Concerned is then in the process of structural adjustment." How does Japan's test for extending a safeguard measure conform to the requirement in article 7:2 of the Agreement? Why does the standard for extending a measure in article 18 differ from that in article 9:10 of the Customs Tariff Law for extending a measure in the form of a duty?

A11. The requirement for extending safeguard measures referred to in paragraph 10 of Article 9 of the Customs Tariff Law and in Article 18 of the Regulations are consistent with those referred to in paragraph 2 of Article 7 of the Agreement on Safeguards. The requirements between the law and

the Regulations are essentially the same, and the difference in the expression is only technical in nature, but which became inadvertently exaggerated through the course of translation by different translators.