

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

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**PRACTICAL ISSUES AND EXPERIENCE
IN APPLYING ARTICLE 2.4.2**

**PRACTICAL ISSUES AND EXPERIENCE IN CASES INVOLVING
CUMULATION UNDER ARTICLE 3.3**

Paper by Japan

The following communication, dated 18 April 2000, has been received from the Permanent Mission of Japan.

Practical Issues and Experience in Applying Article 2.4.2

I. INTRODUCTION

The method for calculation of dumping margins lies at the heart of anti-dumping investigations and it would be extremely important to arrive at a consensus about how investigating authorities should calculate dumping margins in all stages of investigations, including reviews, in order to increase fairness and transparency in investigations.

It seems that there are some cases where the method used by the authorities to calculate dumping margins differs. Therefore it would be useful for Members to discuss this issue to avoid that the margins calculated by the authorities differ in identical situations.

Based on these points, Japan would like to share its views about the calculation method of dumping margin, which are as follows.

II. VIEWS OF JAPAN

1. Application of Article 2.4.2

Applying Article 2.4.2 only to original investigations while allowing dumping margins to be calculated differently in reviews is not appropriate. For example, if Article 2.4.2 governs original investigations but not "reviews" under Article 11.2 and 11.3, or new supplier "reviews" under Article 9.5, even though such reviews are akin to an original investigation, the mere difference in the timing of these "investigations" can lead to an unreasonable result. Therefore Article 2.4.2 should be applied to reviews under Articles 11.2, 11.3 and 9.5 and to assessments for refunds under Article 9.3.1, 9.3.2 and 9.3.3.

Additionally, Article 2.4.2 should be applied to determine margins for provisional measures and for the final determination as well because anti-dumping investigations should aim to analyze

identical elements from the initiation of an investigation up to the final decision in the same manner and thereby to increase the accuracy of the results of the investigation.

2. Calculation method of dumping margin in Article 2.4.2

(1) Priority of calculation method

Article 2.4.2 provides for weighted average-to-weighted average or transaction-to-transaction comparisons as the preferred calculation methods of dumping margins.

Comparing a normal value established on a weighted average basis with the prices of individual export transactions is the third method for calculating dumping margins that applies only under the conditions provided for in the Article, and therefore requires careful examination to ensure that the conditions for its application have been met.

(2) Prohibition of “zeroing out” of dumping margin

When comparing weighted average normal values with weighted average export prices on a per-type basis, normal values with export prices on a transaction-to-transaction basis, or a weighted average normal value with the prices of individual export transactions, zeroing out any negative dumping margins should not be permitted. If zeroing out were permitted, dumping margin would be detected even if vast majority of export transactions are made at prices higher than those of corresponding domestic transactions. This is an artificial creation of dumping margin and is *per se* an unfair comparison.

3. Application of the *de minimis* provision in Article 5.8

The *de minimis* rule stipulated in Article 5.8 should apply to dumping margins resulting from all the calculation methods provided in Article 2.4.2, and it should apply only to the entire dumping margin which would be imposed to an exporter or a producer. In other words, the provision should not apply to individual dumping margins resulting from a weighted average-to-weighted average on a per-type comparison, transaction-to-transaction comparison, or transaction-to-weighted average comparison but apply to the weighted average of them.

In addition, the *de minimis* rule should be applied to the determination of dumping margins by sampling as well because the application of Article 5.8 does not depend on how the dumping margin was determined.

4. Other issues concerning the calculation method of dumping margin

The following are observations on other issues in connection with the calculation method of dumping margins.

(1) Sampling method

It is possible to use sampling method in a situation where there are numerous types of products which make the determination of dumping margin impracticable in domestic market. Even if normal values are calculated by sampling method, it does not necessarily mean that export prices should be calculated by sampling method. Use of sampling method should be restricted as much as possible. If sampling method is used, sufficient reason for using it should be identified and the consultation stipulated in Article 6.10.1 should be undertaken regularly because there is the possibility that the method is arbitrarily used.

- (2) Should comparisons start with normal values or export prices?

When comparing normal values with export prices on a transaction-to-transaction basis, regarding which is determined first, normal value or export price, transaction-to-transaction comparisons should start with export prices and then proceed to choosing comparable normal values.

- (3) Practice of adjustment in averaging

When comparing a weighted average normal value with a weighted average of export prices, regarding whether “adjustments” should be made before or after averaging, the adjustment should be made before averaging. The reason is that the adjustment before averaging is more accurate.

- (4) Question concerning an indication in the submission paper of New Zealand (G/ADP/AHG/W/70)

At the last meeting, the following indication was made in the paper submitted by New Zealand: “The use of averages can distort the extent of dumping found, and can lead to findings of dumping where none exists, or findings that goods are not dumped when in fact they are dumped.” Japan would like to know examples where this situation arose. Japan would also like to ask New Zealand to explain how its transaction-to-transaction comparison works.

III. ITEMS ON WHICH MEMBERS SHOULD REACH CONSENSUS

Based on the viewpoints mentioned above, it would be beneficial to arrive at a consensus among Members about the following items concerning calculation method of dumping margin.

1. Application of Article 2.4.2

(1) Article 2.4.2 should apply to reviews (including sunset reviews), new supplier reviews and refunds of anti-dumping duty as well.

- (2) Article 2.4.2 should apply to both provisional measures and the final determination.

2. Calculation methods of dumping margin

(1) Recognizing that comparing a normal value calculated on a weighted average basis with the prices of individual export transactions is an exceptional calculation method, application of such method should be carefully examined to determine whether the requirements provided in Article 2.4.2 are met.

(2) Zeroing out any negative dumping margins, when comparing (i) weighted average normal values with weighted average export prices on a per-type basis, (ii) normal values with export prices on a transaction-to-transaction basis, or (iii) a weighted average normal value with the price of individual export transactions, should not be permitted.

3. Application of the *de minimis* provision in Article 5.8

The *de minimis* rule stipulated in Article 5.8 should apply to dumping margins resulting from all the calculation methods provided in Article 2.4.2 and it should apply only to the entire dumping margin. In other words, the provision should not apply to individual dumping margins resulting from a weighted average-to-weighted average on a per-type comparison, transaction-to-transaction

comparison, or transaction-to-weighted average comparison but apply to the weighted average of them.

Practical Issues and Experience in Cases Involving Cumulation under Article 3.3

Japan would like to convey the following list as the guidelines of "the conditions of competition" for cumulation.

With respect to Article 3.3 of the Agreement on cumulative assessment, the Agreement clearly requires that before deciding to cumulate imports, the authorities must ensure that imports satisfy the following requirements:

1. The level of alleged dumping must be more than "de minimis" for each country involved;
2. The volume of imports under investigation from each country must not be "negligible"; and
3. Cumulative assessment of the effects of the imports must be appropriate in light of the conditions of competition between the imported products and the conditions of competition between the imported products and the like domestic product.

(Guidelines of the conditions of competition for cumulation)

All the following factors should be considered to determine whether cumulative assessment is appropriate in light of the conditions of competition. The following list of factors is not exhaustive:

- (i) Physical characteristics, such as quality, and uses;
- (ii) The levels and trends in the imports, either in absolute terms or relative to production or consumption in the importing country, from each of the countries proposed for cumulation;
- (iii) The degree of competition in the end-user markets, based on factors such as consumer perception;
- (iv) The existence of common or similar channels of distribution;
- (v) The levels and trends of price undercutting, price depression or suppression caused by imports in the domestic market, and the levels and trends of prices among imports; and
- (vi) The extent to which imports and domestic like products are sold in overlapping geographic regions of the domestic market during the same time-period.

If the investigating authorities determine to assess the effects of imports cumulatively, they should explain the reason sufficiently to exporters.
