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

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PRACTICAL ISSUES AND EXPERIENCE IN PROVIDING OPPORTUNITIES FOR INDUSTRIAL USERS AND CONSUMER ORGANIZATIONS TO PROVIDE INFORMATION UNDER ARTICLE 6.12

Paper from Japan

The following communication, dated 17 April 2001, has been received from the Permanent Mission of Japan.

Japan has examined with interest the recent papers provided by Israel (G/ADP/AHG/W/101) and Canada (G/ADP/AHG/W/105). Both papers discuss the linkage between two important issues: the concept of taking into account the "public interest" when deciding on dumping measures; and the concept of a "lesser duty" rule which ensures that dumping margins are no higher than necessary to offset injury to the domestic industry. Japan shares the view that these two issues are inter-related and that it is useful to consider these two issues together.

In Japan's view, the underlying theme related to these two issues is the importance of considering proper balances between benefit and cost of imposing anti-dumping duties. Members are allowed to use anti-dumping measures to protect domestic industries that are suffering injury caused by dumped imports. However, imposing such measures for the protection to the domestic industries are likely to require downstream users of the product to face higher input costs and a loss of competitiveness. In addition, consumers are likely to face higher prices for finished goods using the product targeted with duties. This trade-off is inherent in any anti-dumping measure. Rather than underestimating such a trade-off, Japan believes that WTO anti-dumping rules should explicitly recognize such a trade-off and provide a framework within which Members can make a decision that such a trade-off is well considered.

Consider a hypothetical example. Suppose import prices are lower than normal domestic price levels of an importing country, and imports are gaining market share from domestic producers of the importing country due to its price factor.

Under such circumstances, domestic producers begin to apply an anti-dumping case. The authorities calculate a dumping margin, for example, that is 50 per cent. This calculation might be done in accordance with the relevant provisions of the actual ADA. However, taking the actual situation of domestic producers, a duty rate adequate really to remove the injury to domestic industry could be considered lower than 50 per cent, for example, that is 10 or 20 per cent.

Such a large divergence between this "adequate" duty rate and the calculated dumping margins by the authorities is sometimes observed. The domestic industry may be restored to a normal price situation through a dumping duty much lower than 50 per cent. Is it necessary to use such a

high duty to offset any injury to the domestic industry in terms of economic rationality, although "lesser duty rule" is not mandatory under Article 9.1?

Japan regards the Canadian framework as a useful starting-point for future discussion. Canada has a procedure for evaluating proposals for a lesser duty, and builds into this process many elements that reflect public interest.

The Canadian system calls for these factors to be examined in an actual decision. Some Members also allow comments from various interested parties, including consumer groups and downstream users of the product being investigated.

Some Members have expressed their views that imposing anti-dumping duties is their sovereign right to favour domestic producers at the expense of others in their economies. Japan shares the view that Members should make their own decisions in imposing anti-dumping duties, but believes that the WTO can/may provide a framework to ensure the balanced decisions. Emphasizing that anti-dumping duties affect other Members in the international trading system, Japan believes that it is necessary to discuss the framework of linkage of both "public interest" and "lesser duty" rule. While GATT Article VI provides that "... may levy on any dumped product an anti-dumping duty not greater in amount than the margin of dumping ...", it is also necessary to clarify further when and in what way that anti-dumping measures are used.

Just as bound tariff rates provide a framework - Japan thinks that Members may charge whatever tariff they like, as long as the tariff does not exceed the bound rates - such a lesser duty rule would provide a framework for setting maximum anti-dumping duty rates. It is worth discussing this framework so that the rates should reflect a process that balances the competing interests that benefit or cost of those duties.
