

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

Original: English

QUESTIONS CONCERNING THE NOTIFICATIONS PROVIDED  
BY JAPAN<sup>1</sup> OF LAWS AND REGULATIONS UNDER  
ARTICLES 18.5 AND 32.6 OF THE AGREEMENTS

The following communication, dated 14 November 1995, has been received from the Permanent Mission of Korea.

1. General Questions

- (a) In cases where there are no relevant provisions in the domestic legislation, does the WTO Agreement apply?
- (b) If the provisions of the existing domestic legislation do not conform to the WTO Agreement, do the provisions of the WTO Agreement apply?

2. Market Viability

Cabinet Order 2.2 prescribes that the prices in sub-paragraphs (2) or (3) of Order 2.1 may be used only where there is no price for the like product in the supplying country or where it is deemed inadequate to use the price because of the particular market situation or low sales volume.

Could Japan explain its standard for determining low sales volume? The WTO Agreement stipulates 5 per cent or more of the sales of the product in the domestic market to be considered a sufficient quantity for the normal value.

3. Constructed Export Price

Cabinet Order 3 prescribes that in cases where the export price is not deemed adequate to use because of the association between the exporter and importer, the export price would be calculated on the basis of the price at which the products are first resold to any person who is not associated. Further, the Order prescribes that the price for domestic sale of the product sold after having processed the imported products as raw material is the price at which they are sold minus the value added by such production.

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

Could Japan clarify what it means by "value added by such production"? Could Japan explain what costs and profits it will adjust as allowances between importation and resale? More specifically, could Japan explain the calculation method of value added and profits deductible?

4. Due Allowance

Does the "necessary adjustment" in cabinet Order 2.3 includes the differences in conditions and terms of sale, taxation, levels of trade and physical characteristics? Could we consider "transaction stages" in the order the same as "levels of trade" in the WTO Agreement? If so, could Japan clarify how it calculates the adjustment for the difference in transaction stages?

It seems that the Order 2.3 only refers to the normal value. Does Japan adjust the differences from both sides (export price and normal value) for comparison at the ex-factory, or does it only adjust the differences affecting price comparability from one side? If the latter, how does it reconcile this with WTO Agreement 2.4, which normally requires comparison at the ex-factory level?

5. Ordinary Course of Trade

How does Japan define "ordinary course of trade" in cabinet Order 2.1? Does Japan adopt the definition of "extended period of time" and "substantial quantity" in Article 2.2 and footnotes of the WTO Agreement to decide whether the sales are in the ordinary course of trade?

6. Cost Calculation/Start-up Cost

Could Japan confirm that it calculates costs on the basis of records kept by the exporter or producer for the purpose of costs calculation in Cabinet Order 2.1? Could Japan clarify whether there will be adjustment for non-recurring items and start-up operation for the costs calculation in Order 2.1 as specified in the WTO Agreement 2.2.1.1?

7. SG&A, Profit for C/V

On what basis does Japan determine the amounts for SG&A and profit for the purpose of Cabinet Order 2.1(3)? Could Japan clarify what "normal profit" means in Order 2.1.(3)? Could Japan confirm that it will base the calculation of SG&A and profit on actual data pertaining to production and sales by the exporter or producer under investigation?

8. Comparison

It seems that the Customs Tariff Law or Cabinet Order relating to anti-dumping duty does not specify the comparison method between normal value and export transactions. Could Japan clarify that it establishes the existence of dumping margin on the basis of a comparison of a weighted-average normal value with a weighted-average export price or by a comparison of normal value and export prices on a transaction-to-transaction basis in accordance with Article 2.4.2 of the WTO Agreement?

9. Cumulative Assessment of Injury

Could Japan clarify whether it cumulatively assesses the effects of simultaneous imports from more than one country? If so, could Japan clarify the conditions for the cumulative assessment? Is it consistent with Article 3.3 of the WTO Agreement?

10. Standing

It seems that Article 5 of the cabinet Order only stipulates 25 per cent of total production condition as a standing requirement. Does this mean that the application shall be considered as fulfilling the requirements as far as the 25 per cent production requirement is met without testing whether it is 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?

11. Undertaking

Could Japan explain how Article 8.8 of the Customs Tariff Law is reconciled with Article 8.2 of the WTO Agreement, which stipulates that price undertakings shall not be sought or accepted from exporters unless the authorities of the importing Member have made a preliminary affirmative determination of dumping and injury?

Could Japan clarify how "can be presumed" in Article 8. 8 of the Customs Tariff Law can be reconciled with "affirmative determination" in Article 8.2 of the WTO Agreement?

12. Sampling

It seems that the Customs Tariff Law or Cabinet Order does not stipulate the cases where the number of parties is too large to make individual margin determination. In this respect, does Japan always determine the individual margin of all exporters concerned regardless of the number of exporters? If Japan limits the number of firms to be examined, please clarify the conditions.

13. De Minimis/Negligible Volume

Could Japan confirm that there shall be immediate termination in cases where the authorities determine that the margin of dumping is *de minimis* or that the volume of dumped imports or injury is negligible? If so, what is the definition of the *de minimis* dumping margin and negligible imports volume in the customs tariff law or cabinet order?

14. Time limit for Questionnaire Response

Does Japan give exporters at least 30 days to reply to questionnaires, as stipulated in Article 6.1.1 of the WTO Agreement?

15. Conversion of Currency

Could Japan explain what exchange rate it would use when the comparison requires a conversion of currencies?

Does Japan allow adjustment for exchange rate to reflect sustained movements during the period of investigation?

16. Industrial Users or Consumer Organizations

Does Japan provide opportunities for industrial users or consumer organizations to provide information as specified in Article 6.12 of the WTO Agreement?

17. Judicial Review

Could Japan clarify whether independent judicial, arbitral or administrative tribunals or procedures are available? Please explain the relevant law or regulation and procedures for filing judicial review.