

WORLD TRADE ORGANIZATION

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

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QUESTIONS CONCERNING THE NOTIFICATIONS PROVIDED BY JAPAN¹ OF LAWS AND REGULATIONS UNDER ARTICLES 18.5 AND 32.6 OF THE AGREEMENTS

The following communication, dated 20 November 1995, has been received from the Office of the United States Trade Representative.

Note Page Citations are to Document G/ADP/N/1/JPN/2.

ANTI-DUMPING

BASIC METHODOLOGY

CEP Sales: Article 3 of the A-D Cabinet Order (page 42) states that where the exporter of the products in question is "associated" with the importer, the selling price for the products will be based upon the price at which the products are first resold in Japan to a party not associated with the exporter or importer.

1. Article 3 specifies that in the case of associated and importers the price to the first unrelated parties will be the basis for determining selling price. Could you please explain what is meant by the basis? What, if any, adjustments will be made to this price?

Intermediate Country Sales: Neither the Customs Law nor the A-D Cabinet Order contains a provision relating to intermediate country sales.

2. In the case where the exports to Japan are under the conditions specified in Article 2.5 of the A-D Agreement (through an intermediate country etc.) what basis will be used for determining normal value?

Adjustments: Article 2, Paragraph 3 of the A-D Cabinet Order (Page 42) states that normal value will be adjusted for "differences in transaction stages, quantity or any other conditions affecting price comparability between the normal value and the selling price for export of the imported good in question".

3. Can transaction stages be interpreted to mean levels of trade?

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Exchange Rates

4. For purposes of dumping, will exchange rate conversions be made consistent with Article 4-7 of the Japanese Customs law (Page 7)?

Price Averaging

5. On what basis will normal value be compared to export price or constructed export price (transaction to transaction or average to average)?

COST/COP

6. There does not appear to be any indication in the Japanese law that sales made below the cost of production will be disregarded for purposes of determining normal value, will such sales be disregarded? If so, under what conditions?

CV/General: Article 2 of the A-D Cabinet Order (Page 41) provides that normal value may be based on cost of production, plus SG&A, plus profit, if it cannot be based on home market sales because there are none in the ordinary course of trade or for other reasons. There are no other provisions governing COP/CV issues.

7. How will Japan calculate the cost of production? Under what circumstances might Japan not utilize cost records maintained by a producer/exporter in the normal course of business? Will Japan make any adjustments to the cost of production to account for non-recurring and/or start-up costs?

8. How will Japan calculate SG&A and profit? Will Japan rely only on information provided by the producer/exporter as to its actual SG&A and profit?

COUNTERVAILING DUTIES

IDENTIFICATION, VALUATION

Conferral of Benefit and Amount of Subsidy

9. What method will be used for determining the subsidy amount?

INVESTIGATION PROCEDURES

BASIC PROCEDURES

Initiation/Industry Support: Articles 7.5 and 8.4 of the Customs Law (pages 10 and 15) provide that "any person with an interest in domestic industry ... as may be prescribed by a Cabinet Order" may bring a petition. Article 2.1 of the CVD Cabinet Order defines "domestic industry" as "domestic producer whose collective output of the like products constitutes a major portion of the total domestic production of the like products" in accordance with Article 16.1 of the SCM Agreement.

10. Article 4 of the A-D Cabinet Order (page 42) defines "industry in Japan" as "the producers in Japan whose collective output of the like products constitutes more than a substantial portion of the total domestic production of the like products". Article 4.1 of the A-D Agreement provides for a "major proportion". Was the use of a different term intended to imply an alternative standard, particularly in light of the use of "major proportion" in Article 4 of the CVD Cabinet Order? (Translation problem?)

Article 5.1 of the A-D Cabinet Order (page 43) and Article 3.1 of the CVD Cabinet Order (page 48) provide that petitioners must represent 25 percent of domestic production in accordance with Article 5.4 of the A-D Agreement and Article 11.4 of the SCM Agreement.

11. Why is there no provision requiring 50 per cent support from domestic production of those expressing an opinion when there is opposition to a petition as required by Article 5.4 of the A-D Agreement and Article 11.4 of the SCM Agreement?

De Minimis Margins and Negligible Imports

12. Is there a provision for termination of the investigation where preliminary margins are *de minimis* or import volumes are negligible in accordance with Article 5.8 of the A-D Agreement or Article 11.9 of the SCM Agreement?

UNDERTAKINGS

Article 8.7 of the Customs Law states that when an anti-dumping investigation is initiated, exporters may offer the government price undertakings so as to eliminate the injurious effects of dumping or to cease exports altogether. Article 8.8 allows the government to suspend an investigation for no more than five years where (1) an undertaking has been offered (2) sufficient evidence indicates the existence of dumping and material injury and (3) the exporter does not request the investigation to be continued.

13. Article 8.2 of the A-D Agreement states that price undertakings shall not be "sought or accepted" from exporters until there is a preliminary affirmative determination of dumping and injury caused by dumping. However, Article 8.7 of the Customs Law (page 16) allows an exporter to offer an A-D price undertaking to the Government "[w]hen an investigation under paragraph 5 has been initiated". Similarly, Article 7.8 of the Customs Law (page 10) allows an exporter or the authorities of the exporting country to offer a CVD undertaking "where an investigation has been initiated under paragraph 6". Please explain this apparent inconsistency.

14. Article 8.8 of the Customs Law (page 16) states that A-D undertakings may be enacted "so long as the term of validity of which is less than five years". However, Article 7.9 of the Customs Law (page 11) states that the "valid period should be limited within five years" for CVD undertakings. Does this difference in language mean that the government has discretion to accept a CVD undertaking for a period greater than five years?

ALL OTHERS, NEW SHIPPERS

All Others Rate

15. How will the rate for those producers who have not been individually investigated be calculated in A-D cases?

New Shippers

16. The evidence required for initiation of a new shippers review includes evidence on the amount of dumping (A-D Cabinet order Art. 7.2(4) page 44)) what basis in the Agreement exist for requiring this evidence prior to initiation of a new shipper review?

JUDICIAL REVIEW

The Japanese A-D/CVD legislation submitted to the WTO contains no explicit provision for judicial review of final administrative A-D or CVD actions. Article 13 of the A-D Agreement and Article 23 of the SCM Agreement require that each member provide for judicial review of such actions.

17. Can you clarify whether independent judicial review is available in Japan for A-D and CVD determinations, as required by the A-D and SCM Agreements?

Implementation of adverse panel reports:

18. If Japan chooses to implement an adverse WTO panel report, are there any provisions under Japanese law specifically for implementing the panel reports?