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Committee on Anti-Dumping Practices

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Committee on Subsidies and
Countervailing Measures

QUESTIONS SUBMITTED BY BRAZIL
CONCERNING THE JAPANESE GUIDELINES FOR
THE CONDUCT OF ANTI-DUMPING
AND COUNTERVAILING DUTY INVESTIGATIONS
(ADP/1/Add.8/Suppl.1 SCM/1/Add.8/Suppl.1)

Because the word "usually", the language in Guideline 1(2) does not seem to limit the content of that Guideline to the examples provided for in items (a), (b) and (c) therein. Therefore, the scope of the sentence "any person who has an interest in an industry in Japan" could be enlarged according to the will of the Japanese authorities applying Paragraph 4 of Article 8 or Paragraph 4 of Article 9 of the Customs Tariff Law. Taking that possibility into account, Brazil would like to know who else could make written applications in accordance with the Japanese law?

2) Guideline 1(2) states that "written applications shall be made by or on behalf of an industry in Japan". Brazil would like to know to what industry that provision refers. Any industry or only the industry affected? How do the Japanese authorities bring that specific provision of Guideline 1(2) into line with Article 5.1 of the Anti-dumping Code, which states that "an investigation to determine the existence, degree and effect of any alleged dumping shall normally be initiated upon a written request by or on behalf of the industry affected"?

3. Article 12.1 of the Anti-Dumping Code states that "an application for anti-dumping action on behalf of a third country shall be made by the authorities of the third country requesting action". It is up to the importing country to decide whether or not to proceed with the case. Brazil would like to know how Guideline 1(2) complies with the provisions of Article 12.1 if that Guideline states that "Written applications shall be made by or on behalf of an industry in Japan".

4. Guideline 1(3)(a) states that the expression "a major proportion" provided for in paragraph 1 of Article 1 of the Cabinet Order Relating to Countervailing Duty shall be interpreted as 50%. Guideline 6(2) states that the expression "a significant percentage" provided for in Paragraph 1 of Article 12 of the Cabinet Relating to Anti-Dumping Duty shall generally be interpreted as more than 50%. How does Japan render these two provisions compatible? How does Japan bring these two provisions into line with Article 4.1 of the Anti-Dumping Code?

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5. Guideline 1(4)(b) states that "an applicant requesting the levy of a countervailing duty or anti-dumping duty is not required to submit evidence which is not reasonably available to him". What does this provision specifically mean? Would just an application be sufficient? How does Japan bring such a provision into line with Article 5.1 of the Anti-Dumping Code which requires that a request shall include sufficient evidence?

6. Guideline 7(1) refers to the initiation of the review of an undertaking or a definitive measure only when more than one year has elapsed since the date of completion or termination of the investigation. There is no provision regarding the initiation of such a review in a time frame shorter than one year. How do the Japanese authorities intend to deal with exceptional cases concerning substantial changes of circumstances or concerning the interest of the country in initiating the said review before one year has elapsed since the completion of investigation?

7. Article 2.6 of the Anti-Dumping Code states that the export price and the domestic price in the exporting country (or the country of origin) shall be compared at the same level of trade. However, Guideline 8(2) states that "comparison between the export price and the normal value shall be made, in principle, at the same level of trade". How does Japan bring such a Guideline in line with the referred article of the Anti-Dumping Code?