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TARIFFS AND TRADE

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Committee on Anti-Dumping Practices

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ADDITIONAL QUESTIONS BY JAPAN
ON THE REVISED EEC ANTI-DUMPING REGULATION
[(EEC) NO. 2423/88]

1. Article 13(11)

A sales price in an importing country does not always have to increase by the amount of the anti-dumping duties because the normal value might decline due to such factors as the reduction of production costs. In the previous questionnaire (ADP/W/190), Japan asked whether the EC would investigate the normal value when Article 13(11) is applied. The EC replied "the exporter would be free to seek an amendment or repeal of the duty by a request for review under Article 14 of the new EC regulation, and if need be, consideration would be given to applications for the refund of duties under Article 16." However, Japan cannot accept the argument that the procedure of review and/or refund justifies the imposition of additional anti-dumping duties, which exceeds the dumping margin found in the original anti-dumping investigation, without an investigation on normal value.

Therefore we would like to ask the following questions:

- (i) How can the EC explain the consistency of this procedure with the GATT practice that the responsibility of proving a dumping margin rests with the authorities of the importing country concerned?
- (ii) How can the EC explain the consistency of this procedure with the first sentence of Article 8(3) of the Anti-Dumping Code?
- (iii) Which provision of the General Agreement or the Anti-Dumping Code can justify the imposition of an additional anti-dumping duty and its retroactive imposition?

2. Review and Refund

The EC refers to review and refund in relation to the additional anti-dumping duty provided for in Article 13(11).

However, when conducting an investigation under a request for review or for refunds of an anti-dumping duty, the EC regards the anti-dumping duty as a deductible cost incurred between import and resale. Thus, when

importers and exporters are related even if the resale price is raised by an amount equal to the anti-dumping duty or dumping margin, the anti-dumping duty will not be refunded and the anti-dumping measures will not be terminated.

(1) Suppose that the normal value and related importer's costs and profits have not changed, in order to get the EC's judgement that the dumping margin has disappeared, how much must the related importer raise the resale price? In other words, we wish to know the EC's criteria for determining the disappearance of a dumping margin.

(2) We wish to know whether the EC will apply this method of calculation to additional anti-dumping duties or not.

Especially, we wish to know whether the EC regards the additional anti-dumping duty as a deductible cost in applying review and refund. In other words, we would like to know whether the calculated export price is reduced by the amount of the additional anti-dumping duties.

(3) As long as the EC imposes the additional duty retroactively and regards the additional duty as a deductible cost, we conclude that according to the EC's methodology, we can never get a refund of the additional duty. In other words, the amount of refund in cases where the additional duty is imposed is exactly the same as that where the additional duty is not imposed. Is this interpretation correct?

3. Article 2(9)(a) and 2(10)

According to the EC's method of calculation in comparing the export price with normal value, a dumping margin is artificially generated or increased. We believe that no rational base exists for this method of calculation.

We cannot accept the EC's replies and we wish to seek further clarification on the following two points.

(1) According to the EC regulation, allowance will be made for direct expenses but not for indirect expenses. In this connection how can the EC explain its consistency with Article 2(6) of the Anti-Dumping Code which stipulates that "the two prices shall be compared at the same level of trade", and "due allowance shall be made in each case, on its merits, and for the other differences affecting price comparability"?

(2) How can the EC explain its consistency with Article 2(1) of the Anti-Dumping Code? Especially, how does the EC interpret "comparable price"?