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TARIFFS AND TRADE

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Committee on Anti-Dumping Practices

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QUESTIONS BY JAPAN ON US ANTI-DUMPING LEGISLATION (OMNIBUS TRADE AND COMPETITIVENESS ACT OF 1988)

1. Section 1321 (Section 781(a) of the Tariff Act concerning Prevention of Circumvention)

(1) Section 781(a)(1)(c) stipulates "the difference between the value of such merchandise sold in the United States and the value of the imported parts and components referred to in sub-paragraph (B) is small". What is the definition of the word "small"? Are there any guidelines for the implementation of this provision?

(2) With respect to the question above, will the United States impose anti-dumping duties of imported parts only when they can be considered as a like product of a finished product which is subject to the original anti-dumping duties? How does the United States explain the consistency of such an imposition with the first sentence of Article 8(2) of the Anti-Dumping Code?

(3) Section 781(a)(1) provides "the administering authority, after taking into account any advice provided by the Commission under sub-section (c), may include within the scope..... the imported parts or components". Does ITC conduct new investigations in this context?

Will the United States include the imported parts or components within the scope of anti-dumping duties imposition orders, if the Commission notifies the administering authorities of its advice that inclusion would be inconsistent with the affirmative determination of the Commission on which the original order or finding is based?

(4) What does the phrase "the pattern of trade" provided in Section 781(a)(2)(A) mean?

What is the difference between the case where the manufacturer or exporter of the parts or components is related to the assemblers and the case where they are not related?

Regarding Section 781(a)(2)(C), are there any concrete criteria for determining "whether imports of the parts or components have increased after the issuance of such an order or finding"? How does the United States treat the case of a company that manufactured the final products in the United States before the issuance of the original anti-dumping order or finding?

2. Section 1321 (Section 781(d) of the Tariff Act concerning Later-Developed Merchandise)

For the purposes of determining whether a product is later-developed merchandise, Section 781(d) provides five factors as criteria to be considered, i.e. (A) the general physical characteristics; (B) the expectations of the ultimate purchasers; (C) the ultimate use; (D) the channels of trade; (E) the manner of advertisement and display. Does the United States impose an anti-dumping duty on the product being considered as "later-developed merchandise" only when all five factors are fulfilled by the product? Or can the United States impose an anti-dumping duty on the product, if some of these factors are satisfied?

We assume that the general physical characteristics and the ultimate use are the most important among these five factors. Even if a later-developed merchandise is different from the earlier product in either of the two characteristics, would an anti-dumping duty be imposed on the later-developed merchandise? Does the United States agree that the product should not be considering a like product of an earlier product any more if either of the two factors is different between them?

3. Section 1320 (Section 780 of the Tariff Act concerning Downstream Product Monitoring)

(1) Regarding Article 780(a)(2)(A), what are the concrete criteria that the United States applies so that it may judge that imports of the downstream product are increased?

(2) In making a determination under paragraph (2)(A) of the same Article, the administering authority may take into account the following three factors:

- (A) the value of the component part in relation to the value of the downstream product;
- (B) the extent to which the component part has been substantially transformed as a result of its incorporation into the downstream product; and
- (C) the relationship between the producers of component parts and producers of downstream products.

Is there any specific guideline for considering these factors?

With regard to (2)(C) above, how can the United States make a decision in the non-related cases?

(3) Concerning paragraph (c)(1) of the same Article, in the light of Article 5(1) of the Anti-Dumping Code, it would be difficult for the authority to initiate an investigation based on the report of the

Commission that imports of a downstream product increased during any calendar quarter by five per cent or more over the preceding quarter. Therefore, what additional procedure will be necessary for the authority to initiate investigations?

4. Section 1323 (Section 733 of the Tariff Act concerning Short Life Cycle Products)

Under Section 733(b)(1)(B), if a petition filed concerns short life cycle merchandise, the investigation period which continues by the preliminary determination of a reasonable indication of injury shall be shortened to 100 days or 120 days from 160 days. These periods will not be extended without the consent by the petitioner.

Under such a law can the authority conduct investigations appropriately?

5. Consistency with Article 16(1) of the Anti-Dumping Code

The United States says in the paper submitted to the Negotiating Group in the Uruguay Round "Article 16(1) of the Anti-Dumping Code limits the remedies for dumping to the imposition of off-setting duties and appears to prohibit additional or alternative remedies".

However, according to Section 733(b)(1)(B), the second offenders or multiple offenders are less favourably treated by being given a shorter investigation period compared with the others. Downstream products are also less favourably treated because the investigation of such products would be initiated more easily than the others.

How does the United States explain the consistency of those measures with Article 16(1) of the Anti-Dumping Code?