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Group on Anti-Dumping Policies

ANTI-DUMPING POLICIES

Comments of the Japanese Government on the United Kingdom Note Regarding Draft International Code on Anti-Dumping Procedures and Practice

The following are the initial and preliminary comments of the Japanese Government on the United Kingdom Draft Code. These comments are submitted for consideration by the Group on Anti-Dumping Policies without prejudice to the final position to be taken by the Japanese Government on the Draft Code.

I. Provision 1 - Applicants for action

In the view of the Japanese Government the domestic producers are in the position to be aware at first hand whether a situation satisfying the criterion of material injury has arisen. Accordingly, the Government investigation in connexion with anti-dumping action should not in principle be initiated until the application for such action has been made by domestic producers.

It would be necessary, however, for the Group to examine a case where exceptionally the initiation of anti-dumping action might appropriately be based on the initiative coming from the government of the importing country itself.

II. Provision 4 - Provision of information to suppliers

1. While Provisions 4(a) and (b) apparently confine the information that should be given to the foreign suppliers concerned to the information on price, these suppliers may well be in a position to submit their comments and counter evidence on the injury information. Further, in order to prevent premature determination of the existence of prima facie case of dumping on flimsy grounds, the information on the evidence on injury should also be made available to foreign suppliers with the exception of such information which should be regarded as industrial secrets. Full consideration should be given by the authorities concerned to all comments and counter evidence submitted to them by suppliers.

2. All information provided to the foreign suppliers should at the same time be notified to foreign governments concerned.
3. In cases where the suppliers are not specified or in large number, notification of information may be made in accordance with more simplified procedures.
4. Provision should be made that in the absence of the above notification of information, neither provisional measures nor any subsequent actions including the imposition of anti-dumping duties should be taken by the governments of the importing countries concerned against like products of the exporting countries concerned.

III. Provision 4(c) - On-the-spot investigation

Discussions "on the spot" should be limited to such exceptional cases where their need have been well justified on sufficient evidence and the concurrence of the suppliers and the governments concerned has been obtained. When on-the-spot investigation should in fact take place, the agreement of the government concerned should also be sought with respect to the procedures for the investigation.

IV. Provision 5(a) - Criterion for provisional measures

1. Provision 5(a) makes reference only to the information submitted in accordance with Provision 3(a) and (b) and other relevant information as the subject of initial examination preceding the application of provisional measures. Taking into consideration the fact that the same Provision 5(a) states that "Provisional measures shall be used only sparingly and in exceptional circumstances" and in the light of the fact that the provisional measures might well incur unduly grave disadvantages to the exporters, it is proposed that the text should be so amended as to limit the application of provisional measures to such cases where careful examination in advance (in critical circumstances the examination may be ex post facto) of the comments or counter evidence referred to in Provision 4(b) has warranted such measures.

Moreover, in the event that the provisional measures are taken the government of the importing country concerned should inform the suppliers as well as the government of the exporting country concerned of the reasons why resort to such measures have been found necessary and on what ground these measures have been based.

2. It should be unequivocally provided that provisional measures like the imposition of anti-dumping duties dealt with in Provision 18 should not be retroactive.

V. Provision 5(c) - Period of provisional measures

Since the provisional measures are bound to entail economic burdens to suppliers concerned, temporary as they may be, these measures may be taken only for a definite period. It seems that a period of about three months would be appropriate. On the other hand, as far as the period for investigation is concerned, if the period allowed is too short, the investigation of price and injury may turn out to be so rough that there would be a danger of a hasty judgment. Therefore, in the opinion of the Japanese Government, there is no need for setting a time-limit. Accordingly, it would suffice if provision is made that a reasonable period necessary for careful study of counter evidence and other information should be allowed for investigation.

VI. Provision 6(a) and (b) - Mode of provisional measures

As indicated in the report of the Group of Experts, it would be preferable that the provisional action should take the form of requiring security rather than of anti-dumping duties. In other words, the form of the provisional action should be limited to the one provided for in Provision 6(a).

VII. Provision 12 - Definition of domestic industry

The domestic industry should be identified as nation-wide in scope. The provisions of Provision 12(c) are not desirable because they may give rise to abuse.

VIII. Provisions 13 and 14 - Determination of material injury

1. It is necessary to define the term "material injury" in a strict manner. One approach, for example, would be to deem that material injury has been caused when an actual and substantial reduction of the returns has occurred, excepting the case of infant industry.

2. The illustrated case of the threat of material injury in Provision 14 as such does not seem to justify a finding of threat of material injury. A finding of threat of material injury should be permitted only when the threat has become more tangible and real, for example, in the case where export contracts have been concluded involving substantially increased quantities of the goods at dumped prices.

IX. Provision 15 - Imposition of duties

1. Provision 15(b) proposes that one rate of duty may be imposed on the imports from each country, that the duty may be equal to the largest margin of dumping established in each country, and that for the time being the duty would be imposed

on all imports of products concerned from each country. This practice would be detrimental to the free flow of trade because it would subject the exporters who are not guilty of dumping to the same disadvantages.

A way is open for subsequent relief but the relief measure does not appear to be adequate because, for instance, the burden of proof is to be shouldered by innocent exporters.

It may admittedly be impossible to conduct investigation of domestic price and finding of injury for each single consignment, but at least these investigations and findings would be on an enterprise-by-enterprise basis.

It should be made a rule, however, that at the stage of actually imposing duties a dumping margin should be assessed for each single consignment in accordance with its export price and the duties be determined accordingly.

2. In case the enterprise-by-enterprise imposition of duties as proposed above is found unrealistic, it would be necessary to consider an alternative measure of a practical nature.

X. Provision 17 - Basic price

The concept of basic price, as the Group of Experts pointed out, is not as a matter of principle desirable. If, however, the basic price approach is to be accepted, it would be necessary to retain the three conditions set out in the Draft Code.

XI. Provision 21 - Duration of anti-dumping duties

The text should be amended so that the authorities concerned should carry out a review of the position if the government of the exporting country concerned, as well as exporters of the goods in question, so requested.

XII. Bilateral consultations

Provision should clearly be made that the government of the importing country should enter into bilateral consultations without delay upon request by the government of the exporting country concerned should disputes have arisen between the two countries in connexion with the application of provisional action, the imposition of final anti-dumping duties, the appropriate duration of such duties, etc.