

GENERAL AGREEMENT ON
TARIFFS AND TRADE

RESTRICTED

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Committee on Anti-Dumping Practices

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INFORMATION ON IMPLEMENTATION AND
ADMINISTRATION OF THE AGREEMENT

Legislation of Japan

The following communication, dated 1 July 1980, has been received from the Permanent Delegation of Japan.

Pursuant to Article 16:6 of the Anti-Dumping Code I enclose the relevant parts of Customs Tariff Law and related Cabinet Order amended in conformity with the said Code.

Japan

I. Customs Tariff Law
(Provisional Translation)

Anti-Dumping Duty

Article 9 (as amended by Law No. 7, March 1980)

1. In the case where there is a fact that the importations of dumped products* cause or threaten to cause material injury to an industry in Japan** or materially retard the establishment of an industry in Japan (hereinafter in this Article referred to as "the fact of material injury to an industry in Japan, etc."), there may be levied, if it is deemed necessary in order to protect the industry concerned, upon such products, as prescribed by a Cabinet Order, a duty additional to customs duty chargeable at an applicable rate in the annexed Tariff Schedule, in an amount equal to or less than the difference between the normal value and the dumped price of such products (hereinafter in this Article referred to as "anti-dumping duty"), by specifying the products and exporter or exporting country of such products.

* In this Article, dumping means a sale of products for export at a price that is less than the price of the like products in the ordinary course of trade when destined for consumption in the exporting country or any other similar price as prescribed by a Cabinet Order, hereinafter in this Article referred to as "normal value".

** In this Article, "an industry in Japan" is limited to an industry in Japan which produces the like products.

2. Other than the case described in the preceding paragraph, in cases where there are dumped products, to which a measure provided for in paragraph 9 (hereinafter in this paragraph referred to as "provisional measure") was applied, and those which are specified in accordance with the provisions of the preceding paragraph, and have been imported within the period enumerated in any of the following sub-paragraphs in accordance with the classification of the products, there may be levied upon such products, as prescribed by a Cabinet Order, an anti-dumping duty additional to customs duty chargeable at an applicable rate in the annexed Tariff Schedule.

In this case, an amount of the anti-dumping duty which may be levied upon such products imported within the period for which the provisional measure has been applied, shall not exceed the amount of the provisional duty levied in accordance with the provisions of sub-paragraph 1 of paragraph 9 or the amount of security being ordered to deposit in accordance with the provisions of sub-paragraph 2 of the same paragraph.

(1) Products in respect of which it is deemed that the importation thereof has caused material injury to an industry in Japan (including those products in respect of which it is deemed that the importation thereof would have caused material injury to an

industry in Japan unless the provisional measure was applied, this being the same in the following sub-paragraph), excluding the products falling within sub-paragraphs 2 and 3;

The period for which the provisional measure has been applied;

- (2) Products in respect of which a provisional measure has been applied by reason of violation of undertakings offered in accordance with paragraph 7 and in respect of which it is deemed that the importation thereof has caused material injury to an industry in Japan;

The period commencing on the date which is 90 days prior to the date of application of the provisional measure or the date on which violation of undertakings occurred whichever later and ending on the date prior to the day on which the specification was made in accordance with the provisions of the preceding paragraph;

- (3) Products in respect of which it is deemed that the massive imports thereof in a short period caused the fact of material injury to an industry in Japan, etc., which fall within any of the categories of products listed in the following sub-paragraphs and in respect of which it is deemed necessary to levy

an anti-dumping duty in order to prevent the recurrence of the fact of material injury to an industry in Japan, etc.;

The period commencing on the date which is 90 days prior to the date of application of the provisional measure and ending on the date prior to the day on which the specification was made in accordance with the provisions of the preceding paragraph;

- (a) products which have a history of dumping that caused the fact of material injury to an industry in Japan, etc.;
- (b) products in respect of which it is deemed that the importer was, or should have been, aware that the products were dumped and the fact of material injury to an industry in Japan, etc., would be caused by the importation thereof.

3. Anti-dumping duties levied in accordance with the provisions of the preceding paragraph shall be paid by the importer of the products on which the anti-dumping duties were levied. In this case, the anti-dumping duties shall be considered to have been paid, if provisional duty levied on the products under the provisions of sub-paragraph 1 of paragraph 9 was paid.

4. Any person who has an interest in an industry in Japan referred to in paragraph 1 may, as prescribed by a Cabinet Order, submit sufficient evidence on the fact of importation of dumped products and the fact that the importation causes material injury to an industry in Japan, etc., and request the Government to levy anti-dumping duties on the products.

5. The Government shall, upon a request made under the provisions of the preceding paragraph or when there is sufficient evidence concerning the fact of the importation of the dumped products and the fact of material injury to an industry in Japan, etc., caused by the importation, initiate, if necessary, an investigation as to whether there are those facts.

6. An investigation referred to in the preceding paragraph shall be concluded within one year after the date of initiation of the investigation. However, the period may be extended to such extent as deemed necessary by special reasons.

7. In cases where an investigation under paragraph 5 has been initiated, any exporter of the products covered by the investigation may offer the Government undertakings to revise prices of such products or to cease exports of such products so that it is deemed that the injurious effect of the dumped products on an industry in Japan is eliminated.

8. Where undertakings set forth in the preceding paragraph are offered, the Government may accept them. In cases where the undertakings offered are accepted, the Government may terminate the investigation under paragraph 5 except where any exporter of the products covered by such undertakings desires to complete the investigation concerning the fact of material injury to the industry in Japan, etc., set forth in paragraph 5.

9. In cases where an investigation under paragraph 5 has been initiated, the Government may, if it is deemed that there is the fact of importations of dumped products, if it can be presumed on the basis of sufficient evidence (or the best information available in case of violation of undertakings offered under the provisions of paragraph 7) that there is the fact of material injury to an industry in Japan, etc., caused by such importations and if it is deemed necessary in order to protect the industry concerned in Japan, take any of the following measures, even before completion of the investigation, as prescribed by a Cabinet Order, by specifying the products, exporter or exporting country of the products and period (not exceeding six months).

- (1) To levy provisional duties the amount of which is equal to or less than the amount of the difference between such a price as deemed to be its normal value and the dumped price;

(2) To order to deposit a security the amount of which is equal to the amount of a provisional duty referred to in the preceding sub-paragraph, in order to ensure the anti-dumping duties levied in accordance with the provisions of paragraph 2.

10. The Government shall, if it accepts the undertakings offered under the provisions of paragraph 7, as prescribed by a Cabinet Order, withdraw the measures under the provisions of the preceding paragraph on the products subject to such measures.

11. When an investigation referred to in paragraph 5 has been completed, the Government shall promptly reimburse or release a provisional duty paid or security deposited respectively in accordance with the provisions of paragraph 9, except in the case where an anti-dumping duty is levied in compliance with the provisions of paragraph 2. The amount of provisional duty or security exceeding the amount of anti-dumping duty levied under the provisions of paragraph 2 shall likewise be reimbursed or released.

12. In cases where a domestic sale of the products imported by an importer associated with an exporter is performed at a price less than export price for sale of such products and its normal value, the domestic sale shall be considered as the importation of dumped products and the provisions of the preceding paragraphs shall be applied.

13. Other than the matters set forth in the preceding paragraphs, any necessary matters relating to the application of anti-dumping duty shall be prescribed by a Cabinet Order.

II. CABINET ORDER RELATING TO ANTI-DUMPING DUTY

(Cabinet Order No. 137, May 1980)

(Provisional Translation)

(Normal Value)

Article 1.

1. "Price as prescribed by a Cabinet Order" under the provisions of paragraph 1 of Article 9 of the Customs Tariff Law (hereinafter referred to as "the Law") shall be any of the following prices.

- (1) Export price for sale of the like product from the country exporting the product in question to countries except Japan.
- (2) Price which consists of the cost of production of the imported product plus an amount of normal profit and general expenses of the like product produced in the country of origin.

2. For the purpose of application of the provisions of paragraph 1 of Article 9 of the Law, the cases in which the price prescribed in any of the sub-paragraphs of the preceding paragraph may be used, shall be limited to those in which there is no price of the like product destined for consumption in the ordinary course of trade in the country exporting the product under consideration or in which, because the price reflects the particular

market situation of the exporting country, it is deemed inadequate to use such price.

3. Normal value set forth in paragraph 1 of Article 9 of the Law shall be the price obtained after necessary adjustment with respect to the difference in price resulted from the difference in commercial level or quantity or in any other conditions affecting price comparability between the normal value and the export price for sale of the products in question.

(Special Provisions on Export Price for Sale)

Article 2. For the purpose of application of the provisions of paragraph 1 of Article 9 of the Law, in cases where there is no export price for sale of the product in question or it is not deemed adequate to use such export price because the exporter of the product is associated with the importer thereof (including any person who bought such product in Japan), an export price for sale of the product in question shall be calculated on the basis of price for domestic sale at which the product is first resold to any person who is not associated with any of the exporters or importers of such product (when the product is sold after further processing or manufacturing as raw material, an export price for sale of the product in question shall be calculated on the basis of the price which can be obtained by deduction of the

value added by processing or manufacturing from the domestic price for sale).

(Industry in Japan)

Article 3.

1. The term "industry in Japan" set forth in paragraph 1 of Article 9 of the Law shall mean producers in Japan whose production of the like products constitutes more than a major proportion of the total production of those products.

2. Producer in Japan referred to in the preceding paragraph shall not include the producers who are related to the exporters or importers of the product in question and who are the importers of such product.

(Procedure on Request for Levying of Anti-Dumping Duty)

Article 4.

1. Any person, who is to make a request to the Government to levy anti-dumping duties in accordance with the provisions of paragraph 4 of Article 9 of the Law, shall submit a written information stating the following matters to the Minister of Finance together with sufficient evidence as to the fact of the importation of dumped products and the fact that such importation causes material injury to an industry in Japan, etc., provided for in the provisions of the same paragraph.

- (1) The description, name of manufacturer, type, model and features of the products,
- (2) The name of the exporter or exporting country of the products,
- (3) The summary as to the fact of the importation of the dumped products and the fact that such importation causes material injury to an industry in Japan, etc., referred to in paragraph 4 of Article 9 of the Law,
- (4) A request for confidential treatment of the evidence presented and the reason therefor when such a treatment is sought,
- (5) The reasons for which he has an interest in an industry in Japan referred to in paragraph 1 of Article 9 of the Law and any other relevant matters.

2. The Minister of Finance may, if it is deemed to be appropriate to treat the evidence presented in accordance with the provisions of the preceding paragraph as confidential, request any person who presented such evidence to submit a written summary which is not required to be treated as confidential.

3. Any person, who is requested to submit a written summary under the preceding paragraph, shall, when he does not consider that he can make such a summary of the evidence, submit a written information stating the reasons therefor.

(Notice of the Initiation of Investigation)

Article 5. The Minister of Finance shall, if an investigation referred to in paragraph 5 of Article 9 of the Law (hereinafter referred to as "investigation") is initiated, promptly notify in writing the exporters and importers of the products covered by the investigation and any other person who made a request in accordance with the provisions of paragraph 4 of the same Article (hereinafter referred to as "directly interested parties") of the following information and shall make it known to the public in the Official Gazette.

- (1) The description, name of manufacturer, type, model and features of the products,
- (2) The name of exporter or the exporting country of the products,
- (3) The date when the investigation is initiated,
- (4) The summary of the matters to be investigated,
- (5) Any other relevant matters.

(Extension of the Period of Investigation)

Article 6. The Minister of Finance shall, if the period of investigation is to be extended in accordance with the proviso of paragraph 6 of Article 9 of the Law, promptly notify in writing the directly interested parties of the extended period of investigation and

reasons of the extention and shall make it known to the public in the Official Gazette.

(Presentation of Evidence)

Article 7.

1. The directly interested parties and any other party having an interest in the investigation (hereinafter referred to as "interested parties") may, if they deem necessary or upon a request by the Minister of Finance, present to the Minister of Finance in writing or orally evidence on the fact of the importation of the dumped products and the fact that such importation causes material injury to an industry in Japan, etc., referred to in paragraph 4 of Article 9 of the Law. In this case, any person, who is to present evidence in writing or orally, shall present a written information as to the fact to be identified by such evidence, and a request for confidential treatment of such evidence with the reason therefor when such a treatment is sought.

2. The provisions of paragraphs 2 and 3 of Article 4 shall be applied with regard to the evidence presented in writing or orally referred to in the preceding paragraph.

(Evidence to be Seen)

Article 8.

1. The Minister of Finance shall, upon a request by

interested parties, provide opportunities for them to see any evidence presented in accordance with the provisions of paragraph 1 of Article 4 and paragraph 1 of the preceding Article, a document which records evidence presented orally referred to in paragraph 1 of the preceding Article, and any other evidence used in the investigation (excluding the evidence and document which is by nature found adequate to be treated as confidential) and the written information submitted in accordance with the provisions of paragraphs 2 and 3 of Article 4 (including cases where the provisions of these paragraphs are applied as prescribed in the provisions of paragraph 2 of the preceding Article), hereinafter in the following paragraph referred to as "evidence, etc.".

2. Any person, who is to see evidence, etc., used in the investigation in accordance with the provisions of the preceding paragraph, shall submit to the Minister of Finance a written information stating the headings of evidence, etc. and reasons for which he has an interest in the investigation.

(Meeting with Parties with Adverse Interests)

Article 9.

1. Any interested party, who is to meet the interested parties with opposing views, shall submit to the Minister of Finance a document stating reasons for which he has

an interest in the investigation, the name and address or residence of those parties and the fact to be identified by such meeting.

2. The Minister of Finance shall, when such meeting as prescribed in the preceding paragraph is to be held with the agreement of the interested parties being requested to be met, notify in advance in writing the parties concerned of the name and address or residence of the parties, the fact to be identified by, and the date and place of, such meeting.

(Offer of Undertaking)

Article 10.

1. When any exporter of the products covered by an investigation is to offer, in accordance with the provisions of paragraph 7 of Article 9 of the Law, to the Government undertakings referred to in the same paragraph, he shall submit to the Minister of Finance a document stating the contents of the undertaking offered. If he desires that the investigation should be completed with regard to the fact of material injury to an industry in Japan, etc. as prescribed in paragraph 1 of the same Article, he shall submit to the Minister of Finance a document to that effect.

2. When an undertaking offered by the exporter of the products covered by an investigation in accordance with

the provisions of the preceding paragraph has been accepted in accordance with the provisions of the previous portion of paragraph 8 of Article 9 of the Law, the Minister of Finance shall promptly notify in writing directly interested parties of that effect and of reasons and date of termination of the investigation when it is so decided, or the fact of continuation of the investigation with respect to the fact of material injury to an industry in Japan, etc. referred to in paragraph 1 of the same Article, and shall make it known to the public in Official Gazette.

3. When an investigation regarding the fact of material injury to an industry in Japan, etc., referred to in paragraph 1 of Article 9 of the Law has been completed after acceptance, according to the provisions of the previous portion of paragraph 8 of the same Article, of an undertaking offered by the exporter of the products covered by the investigation in accordance with paragraph 1 above and if the Government has made a finding in respect of the products concerned that there exists the fact of material injury to an industry in Japan, etc., the undertaking accepted in accordance with the provisions of the previous portion of paragraph 8 of Article 9 of the Law shall not lapse. When a finding has been made that there does not exist the fact of material injury

to an industry in Japan, etc., the undertaking shall lapse; Provided that the undertaking shall not lapse in cases where such finding has been made in large part taking account of the existance of such undertaking.

4. The Minister of Finance shall, when a finding as referred to in the preceding paragraph has been made, promptly notify in writing the directly interested parties that an undertaking accepted in accordance with the provisions of the previous portion of paragraph 8 of Article 9 of the Law shall not lapse or shall lapse and of reasons therefor and shall make it known to the public in the Official Gazette.

5. When any exporter or importer of the products covered by an undertaking accepted in accordance with the provisions of the previous portion of paragraph 8 of Article 9 of the Law considers that the undertaking needs not to be continued, he may submit to the Minister of Finance any information demonstrating to that effect and request the Minister to review the need for continuation of the undertaking.

6. When it is deemed that undertakings accepted in accordance with the provisions of the previous portion of paragraph 8 of Article 9 of the Law (excluding undertakings which shall lapse under the provisions of the second sentence of paragraph 3 above) need not to be

continued, the Government shall make a decision to that effect. In this case, the Minister of Finance shall promptly notify in writing the directly interested parties of that effect and reasons therefor and shall make it known to the public in the Official Gazette.

(Notification on Levying of Anti-Dumping Duty)

Article 11.

1. The Minister of Finance shall, when the measure as prescribed in paragraph 1 or 9 of Article 9 of the Law is taken, promptly notify in writing the directly interested parties of the following information.

- (1) The description, name of manufacturer, type, model and features of the products,
- (2) The name of the exporter or exporting country of the products,
- (3) The fact identified by investigations and conclusions obtained therefrom,
- (4) If, in addition to the measure under the provisions of paragraph 1 of Article 9 of the Law, the measure under the provisions of paragraph 2 of the said Article is taken, the products covered by the measure and the reasons therefor.
- (5) Any other relevant matters.

2. The Minister of Finance shall, when it is decided that the measure as prescribed in the paragraph 1 of

Article 9 of the Law should not be taken as the result of investigations, promptly notify in writing the directly interested parties of the information described in the preceding paragraph (excluding sub-paragraph 4) and make it known to the public in the Official Gazette.

3. The interested parties may, when they view that the measures provided for in paragraph 1 of Article 9 of the Law need not to be continued, submit to the Minister of Finance any information demonstrating to that effect and request him to review the need for continuation of the measures.

(Period of Provisional Measure)

Article 12.

1. The measure as prescribed in paragraph 9 of Article 9 of the Law (hereinafter referred to as "the provisional measure") shall not be imposed for a period longer than four months. However, if the exporter of the products with respect to which the provisional measure was taken (limited to the exporter representing a significant percentage of the export of the products concerned) has requested the extension of that period, it may be extended for a period not longer than six months.

2. Any person, who is to request the extension of the period for which the provisional measure can be taken under the provisions of the proviso of the preceding

paragraph, shall, during the period of the provisional measure, submit to the Minister of Finance a written information stating the period and the reason of the extension to be so required.

(Consultation relating to the Investigation)

Article 13. The Minister of Finance, any Minister who has jurisdiction over the industry in Japan as prescribed in paragraph 1 of Article 9 of the Law (hereinafter referred to as "the Minister having jurisdiction over the industry) and the Minister of International Trade and Industry shall, if they deem necessary to initiate an investigation, communicate to each other to that effect. They shall always keep a close contact (including the transmission by the Minister of Finance of a copy of the written information submitted under the provisions of paragraph 1 of Articles 4 and 10 to the Minister having jurisdiction over the industry and the Minister of International Trade and Industry) with each other on the investigation (including ways to deal with the results of the investigation) and on the undertaking offered under the provisions of paragraph 7 of Article 9 of the Law. They shall also make a determination, after consultations among themselves regarding any important matters on these aspects.

(Referral to the Customs Tariff Council)

Article 14.

1. The Minister of Finance shall, when it is deemed necessary to take the measure as prescribed in paragraph 1 of Article 9 of the Law or the provisional measure, promptly refer the matter to the Customs Tariff Council, except in cases where it is found necessary to take the provisional measure urgently in order to protect the industry concerned in Japan.

2. The Minister of Finance shall, when the provisional measure is taken in accordance with the proviso of the preceding paragraph, promptly report to the Customs Tariff Council the details of the provisional measure so taken.

Supplementary Provisions

This Cabinet Order shall enter into force on 25 May 1980.

