

# GENERAL AGREEMENT ON

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## TARIFFS AND TRADE

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Committee on Anti-Dumping Practices

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### QUESTIONS BY JAPAN ON COUNCIL REGULATION

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(see document ADP/1/Add.1/Suppl.5)

#### I. Basic problems

The EC's new regulation virtually extends AD duties on finished products to the parts thereof, thereby not only obstructing investment but presenting a number of serious problems in terms of the legal consistency with the GATT.

The basic problems as we see in the EC's regulation includes the followings.

1. The EC's new measure will virtually impose AD duties on imported parts. Will the EC investigate the existence of dumping and injury in regard to imported parts, respectively, although it is not clear in Article 1(d) of the regulation? If not, the regulation would contravene Article 6-2 and 6-6(a) of the GATT and Article 1 of the AD Code.
2. We believe that the discriminatory levying of AD duties on products assembled by related or associated parties using imported parts above a certain percentage is contrary to Article 8-2 of the AD Code which provides that AD duties should be levied on all products found to be dumped and causing injury on a non-discriminatory basis.

Moreover, the new regulation virtually provides that specified proportion of parts are required to be procured from EC's suppliers. Japan views this as contrary to Article 3-1 and 3-5 of the GATT.
3. We wonder how the imposition of AD duties on products which are assembled or produced in the EC region accords with Article 6 of the GATT and Article 8-2 of the AD Code which provides that AD duties be imposed on any product imported from the territory of another country.

4. The duties in the EC's regulation appear in fact to be internal taxes. If this is so, they contravene Articles 1 and 3 of the GATT since internal taxes are discriminatively imposed on assembled products using parts imported from country subject to AD duties, resulting in discriminatory treatment of parts produced locally and in third countries.

5. Is it a correct understanding that the EC devised this regulation to prevent circumvention with the justification under Article 20(d) of the GATT? Although Article 20(d) of the GATT provides general exceptions concerning the need to secure compliance with laws or regulations which are "not inconsistent with the provisions of this Agreement." Japan believes that the EC's action would make a regulation which is "not inconsistent with the provisions of the Agreement" (i.e. existing EC regulation) into one which clearly is inconsistent with the GATT. Moreover, the Article stipulates that "such measures are not applied in a manner which would constitute a means of unjustifiable discrimination, or a disguised restriction on international trade"; we see some problems on this point as well.

Japan does not think the EC's new regulation falls under the GATT's general exception; how does the EC view this question?

II. In addition to the basic problems mentioned above, we believe this measure has other problems as described below.

1. The scope of circumvention

① How does the EC define "the scope of circumvention?"

Especially, we would like to know how the EC intends to justify the "60% rule" that defines the existence of a circumvention in cases where the ratio of parts imported from a country subject to AD duties exceeds 60% of the value of all parts.

② How does the EC explain the existence of circumvention in the following cases?

- i) Where the ratio of imported parts is high because of difficulty in procuring certain parts or materials in the EC region.
- ii) Where the proportion of local value added is not low.  
( Concerning this matter, Japan would like the EC to clarify the part of its new regulation which provides that "account shall be taken of the variable cost, etc.")
- iii) Where the ratio of imported parts is high during the start-up period immediately after investment, especially when the company is trying to raise the proportion of local procurement and local value added. ( How long does the EC consider the start-up period to be?)
- iv) Where a decision to invest (e.g. application for plant construction made to local authorities) is already made before the initiation of AD investigations. (Japan would like the EC to clarify the part of its new regulation that reads "circumstance of each case.")
- v) Where parts are imported from an independent manufacturer in a country subject to AD duties.

## 2. Review and refund

How does the EC intend to fulfil the review requirement of Article 9-2 of the AD Code in its new regulation? Will the EC fulfil this requirement in regard to the conditions to impose AD duties under the new regulation, or also in regard to the existence, or degree, of dumping and injury to a domestic industry?

In cases where a review is made concerning the existence of dumping or injury, will the scope of investigation be imported parts or products assembled in the EC region? What method of investigation will the EC apply to each case? And in what cases will there be a refund of AD duties? Does the EC provide for these procedures clearly in the regulation in order to ensure trans-

parency?

Under the above procedures, there is the danger that AD duties may not be refunded even when there has been no dumping of imported parts or of products assembled in the EC. Could the EC explain the consistency of the procedures for review and refund under the new regulation with the GATT?

III. As there are many obscure points concerning interpretation and procedures of the new EC's regulation, Japan would like the EC to clarify the following in order to ensure transparency.

1. The EC's new regulation only applies to parties related to or associated with companies producing finished products subject to AD duties. What is the meaning of the words "related" and "associated"? Does the new regulation apply even when an unrelated party assembles imported parts--for example, in cases where the brand of an assembled product is the same as that of a company subject to AD duties, or where the said unrelated party has OEM relationship with the company subject to AD duties?
2. What kind of evidence is required at petitions for the initiation of an investigation? Is sufficient evidence required, for example, on (i) the relationship between the local company and the company in the exporting country; (ii) the start-up period of production or substantial expansion of production; (iii) the ratio of imported parts from a country subject to AD duty; (iv) the local value added, etc.
3. How exactly will the EC carry out the procedures generally recognized in the GATT, such as those concerned with term of investigation, opportunity to submit evidence from interested parties, verifications, provisional measures and undertakings?
4. When a component procured locally by a foreign-capitalized

company in the EC which is related to or associated with the company subject to AD duties is produced by another company (either foreign or EC-capitalized) in the EC, how will the EC, in determining the ratio of imported parts, treat parts which have been imported from a country subject to AD duties for the purpose of producing that component?

5. How will the EC, in determining the ratio of imported parts, treat parts which are imported from parties other than related or associated companies subject to AD duties?
  
6. Is it correct that the EC will not impose AD duties retroactively upon the announcement of the results of investigations carried out under the EC's new regulation? If duties are retroactive, we would like to know how the EC sees that as being consistent with the provisions of the GATT.