

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED
MTN.GNG/NG8/W/11
28 September 1987
Special Distribution

Group of Negotiations on Goods (GATT)
Negotiating Group on MTN
Agreements and Arrangements

Original: English

COMMUNICATION FROM JAPAN

The following communication was received on 17 September 1987 from the delegation of Japan.

Proposals on the Anti-Dumping Code

I. Introduction

According to the agreed negotiating plan for the Group on MTN Agreements and Arrangements, participants are requested to submit proposals on issues to be taken up in the negotiations during the period of "initial phase". Japan requests that this negotiating group deals with issues relating to the Anti-Dumping Code.

Recognizing that anti-dumping practices should not constitute an unjustifiable impediment to international trade, the Anti-Dumping Code was introduced to interpret provisions of Article VI of the GATT and to elaborate rules for their application. However, the lack of agreement on detailed interpretation of the Code has given rise to the cases of arbitrary application by Signatories, causing an unjustifiable impediment to international trade. More significantly, anti-dumping practices which are not necessarily prescribed in the Code have recently appeared in certain Signatories.

With this in mind and without excluding the possibility of additional submission in the future, Japan proposes that following issues relating to the Anti-Dumping Code be taken up and examined in order to improve, clarify, or expand the Code, and that, in conformity with SS commitments, contracting parties reaffirm the position that they will not take any actions inconsistent with provisions of the current Code.

II. Issues in the current Code

1. Article 2

Despite this provision for determining dumping, exporters are still faced with unjustifiably high dumping margin by the discretion on the part

of authorities of importing countries to make export price artificially lower and normal value higher. With a view to excluding such an artificial way of determination of dumping, Japan proposes to examine the following points.

(1) Article 2.1 "introduced into commerce"

The term "introduced into commerce" involves the timing when a product is deemed to be introduced into commerce of another country. Japan views that Signatories in principle can not initiate investigations unless the product is actually imported.

(2) Article 2.2 like product

The concept of the "like product" is quite significant in the sense that it is not only a criterion for employing domestic price as normal value, but an issue involving the scope of domestic industry or petitioners. Japan consider that the definition needs to be further clarified.

(3) Article 2.4 constructed value

The Code requires Signatories to use primarily domestic sales price as normal value. Clarification needs to be made on the definition of "no sales of the like product" and "particular market situation" under which the Code permits the Signatories to use other prices as normal value.

In the absence of domestic sales price mentioned above, either export price to a third country or constructed value can be used. Japan considers in this connection that a possibility of establishing a priority order between the two should be explored, taking into account the burden to be born by the investigating authority and the degree of discretion in the process of investigation.

Japan also considers it would be desirable to reach a common understanding on the way to determine constructed value which tends to permit an arbitrary application. They may include, for instance, an enumeration of elements which can be the basis of the calculation.

With respect to calculation of general expenses and profit in constructed value, Japan views it inappropriate to impose fixed amount of general expenses and profit without regard to actual amount.

(4) Article 2.6 fair comparison

Although the Code states that, in order to effect a fair comparison between export price and domestic price, two prices are to be compared at the same level of trade and due allowance be made for the differences in

conditions of sale, it is still susceptible of authority's subjective discretion. To clarify elements to be counted for adjustment in order to assure the same level of trade and to enumerate the content of the differences in conditions of sale would help the authorities to assure a fair comparison.

Certain Signatories use the weighted average of prices in all transactions in calculating the "normal value" whereas they use the weighted average of dumped prices exclusively in calculating the "export price". There is a need, therefore, to build a common understanding on the calculation of dumping margin in order to eliminate such an arbitrary calculation.

Japan also proposes this group to examine a case where a foreign exchange rate fluctuates sharply. It should be noted that an exporter who intends to revise its export price due to the fluctuation of exchange rate can not do so immediately because of the contract with users, and accordingly it takes some time for such exchange fluctuation to effect export price. There is a need to give consideration to this time lag.

2. Article 5.1 sufficient evidence

The Code permits the authority in the importing country to carry out the investigation only if it has sufficient evidence. In reality, however, the investigation in some cases seems to be initiated without sufficient evidence. The term "sufficient evidence" therefore needs to be clarified to avoid the abuse of anti-dumping practices.

3. Article 7.1 price undertaking

In the context of the Code, the acceptance of price undertakings is subject to the import country's discretion. The clarification should be made on reasonable operational criteria for accepting undertakings.

4. Article 8.3 refund

There are some cases in which a Signatory's investigating authority deducts the anti-dumping duty from the resale price of subsidiary sales company in calculating export price. This calculation leads to the result that even though the resale price is increased by the amount equivalent to the dumping margin, the dumping margin still exists and the duty would not be refunded. It is therefore necessary to examine the appropriateness of deeming the dumping duty as a cost in calculation of export price.

5. Article 9 review

According to the Code, an anti-dumping duty remains in force only as long as, and to the extent necessary to counteract dumping which is causing

injury, but our experiences suggest that not a few dumping cases lasted for more than ten years. This group should study the idea of limiting the effective period of an anti-dumping duty to a certain reasonable period during which reviews can be made on request.

III. New developments

1. Circumvention

In certain Signatories, there is a move towards imposing anti-dumping duty on parts or components of products subject to anti-dumping duty under the assumption that those parts or components are imported in such forms to circumvent the said duty. Since there is no provision on the circumvention of dumping duties in the current Code, the group is requested to examine this issue. In this connection, there is also a certain Signatory where a proposal has been made to enable the authorities to include newly-developed products in the scope of an outstanding anti-dumping case on other products. Having great concern on this move, Japan considers this issue should also be examined.

2. Input dumping

The question of input dumping is whether or not an anti-dumping duty can be imposed on the final product which in itself is not dumped but incorporates dumped parts or materials. While there is no provision on this matter in the Code, a certain Signatory is trying to introduce such a concept in their anti-dumping practice. This causes serious problems since bona fide third parties could be implicated in dumping investigations. A common understanding on this matter, taking into account draft recommendation proposed by the Anti-Dumping Committee, should be reached.

3. Cost decline by innovation

Among products developed by recent rapid technical innovation, there are some products which, after requiring a huge amount of money for their development, show sharp cost decline in a short period of time after development due to the advancement of production technology. Producers of such products tend to set stable domestic price and export price based on the average cost which is estimated to be incurred during a certain period of time leading to the future, while there are cases where the investigating authority of an importing country determines the existence of dumping using constructed value based on the cost prevailing at the time of actual export, on the grounds that the domestic sales price of such products is less than the cost of production and thus cannot be regarded as the price in ordinary course of trade. It is Japan's view that, with respect to the dumping investigation of the products whose costs decline sharply, setting of price in anticipation of cost decline should be considered differently from sales at a price less than the cost of production only aiming at expanding market share of the products. Japan considers in this respect that investigating authorities should use the

domestic sales price, whenever it exists, as the price to be compared with the export price, and in case authorities use constructed value in the absence of the domestic sales price, due allowance should be made for the sharp cost decline. Japan also considers that the content of price undertaking and the level of anti-dumping duty should be reviewed so that they correspond to actual conditions.

4. Recommendations

Recommendations and understandings adopted by the Anti-Dumping Committee listed below should be incorporated into the Code, with appropriate modifications if necessary.

- transparency of anti-dumping proceedings
- procedures for an on-the-spot investigation
- time-limits given to respondents to anti-dumping questionnaires
- best information available in terms of Article 6.8
- determination of threat of material injury
- definition of the word "related".