

**MULTILATERAL TRADE  
NEGOTIATIONS  
THE URUGUAY ROUND**

RESTRICTED

MTN.GNG/NG8/W/30

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Group of Negotiations on Goods (GATT)  
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Agreements and Arrangements

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COMMUNICATION FROM JAPAN

The following communication has been received from the delegation of Japan, following statements it made at the Group's meeting on 6-7 June 1988.

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Background Notes to Japan's Proposals on  
the Anti-Dumping Code

These background notes were prepared in order to facilitate the work of the MTN negotiating group with respect to Japanese proposals (MTN.GNG/NG8/W/11) regarding the Anti-Dumping Code submitted on September, 1987.

These notes do not exclude the possibility of additional submission in the future.

I. Problems in terms of the current AD code

1. Definition of "introduced into the commerce of another country"

Since a signatory may accept a complaint even when the import is not actual but expected (e.g., at the time when a sales contract is made or when an irrevocable tender is offered), a dumping investigation may be initiated when a bid is made by an exporter (even if this bid is not finally

accepted). Consequently, customers may become reluctant to import due to the possibility of the imposition of an AD duty. In Japan's view, signatories should not, in principle, initiate investigations before the products are actually imported. It is necessary to clarify the interpretation of this point.

(related article: 2-1)

## 2. Criteria used to determine "like products"

The concept of "like products" is a quite significant criterion for determining a product price of which is used as a normal value, and also for defining the scope of domestic industries and the qualifications of petitioners. However, the definition in the current Code is so abstract that it permits various interpretations. Therefore, the definition of "like products" needs to be clarified with respect to price comparison and injury determination.

(Related article : 2-2)

3. Criteria when using constructed value, and criteria for calculating general expenses and profits in constructed value.

The Code provides that the dumping margin cannot be determined by using the domestic sales price as a normal value when there are no sales of the like product "in the ordinary course of trade" or when a "particular market situation" exists. It is necessary in this regard to clarify how these phrases should be interpreted.

Japan considers that, in the above circumstances, the Group should examine the possibility of establishing a priority order between the following two; constructed value and export price to a third country.

Furthermore, certain signatories have domestic laws which stipulate that the minimum amounts for general expenses and for profit should be not less than 10% of the cost and not less than 8% of the sum of the general expenses and

cost, respectively. Japan believes that there is no reasonable basis for establishing such minimums. Since constructed value tends to be calculated arbitrarily, for example a certain signatory happens to use a 32% profit rate, Japan believes that it is necessary to examine a possibility of unifying a method of calculating the constructed value.

(Related article : 2-4)

#### 4. Fair comparison

(1) Items deducted in calculating the export price and domestic sales price in cases where sales are made through a subsidiary.

When sales are made through a subsidiary in an importing country, the export price is calculated by deducting all the costs of the subsidiary from the sales price to a third party (and in certain signatories, profits are also deducted).

However, in calculating normal value from domestic sales prices, certain signatories do not deduct, wholly or partially, indirect selling expenses, general expenses and profits of the subsidiary from domestic sales prices to a third party. As a result of the above calculation in comparison with the export price and normal value, dumping margins naturally occur or increase. As an example, a certain signatory's calculation method is shown in figure 1.

In Japan's view, there is no reasonable basis for allowing a different treatment in items to be deducted in calculating export price and normal value. In order to eliminate arbitrariness in this field, it would be appropriate to establish a rule to define the scope of items which should be deducted. (Related article: 2-6)

(2) Definition of "related company" and treatment of sales to related companies.

Transactions with related companies and those with unrelated companies are treated differently in an

investigation. In this regard, the definition of "related company" in calculating export price and domestic sales price needs to be clarified.

Companies having personnel or capital relationships are normally regarded as related. However, different signatories use different criteria for the ratio of share holding in determining whether the companies concerned are related or not. Certain signatories consider firms to be related if the manufacturer holds more than 5% of the purchaser's shares, or if the purchaser holds more than 1% of the manufacturer's shares. Other signatories consider that exporters and importers are related if one of them holds more than 20% of the other's shares, and that two firms in the exporting country are related if one of them holds more than 5% of the other's shares.

Japan believes that it is not appropriate in the light of economic reality to decide that companies that have a small share of other company are related, and also believes that there is no need to treat relationships between an exporter and importer differently from those between an exporter and its subsidiary in the exporting country.

In calculating domestic sales price in cases where related companies are involved, certain signatories estimate the domestic sales price on the basis of the related company's resale price and direct sales price to independent buyers, while some others estimate it solely on the basis of the direct sales price to independent buyers. Therefore, the methods to determine domestic sales price needs to be clarified.

These problems are closely related to 4.(1) above.  
(Related articles: 2-1, 2-5)

(3) Price comparison in cases where sales prices vary

In cases where sales prices vary among many transactions, certain signatories, using the weighted-average of domestic sales price as the normal value with which each export price is compared, calculate the average dumping margin in such a way that the sum of the dumping margins of transactions export prices of which are lower than normal value is divided by total amount of export prices. In this method, however, negative dumping margins, i.e., the amount by which export price exceeds normal value, are ignored.



Consequently, dumping margins occur in cases where export prices vary over time (figure 2) or where export prices vary due to different routes of sale (figure 3), even if the average level of export prices is equal to that of domestic sales prices.

(Related article: 2-6)

(4) Revision of export prices due to sharp exchange rate fluctuations

It should be noted that an exporter who intends to revise his export price due to the fluctuations of the exchange rate cannot do so immediately because of his contracts with users, and, accordingly, he takes some time to revise his export prices. It is necessary to pay due consideration to this time lag.

When exchange rates fluctuate sharply, dumping margins may vary depending on which exchange-rates in the transaction period are used. Certain signatories use the exchange rate of the time when a related company sells a product to an

independent buyer (figure 4). When the value of the export country's currency rises during the period from exportation to resale in the importing country, the actual income of the exporter is underestimated because the export price is converted into the export country's currency using the exchange rate at the time of resale in the importing country. A similar situation also arises when the exporter makes an exchange contract. These points should also be examined. (Related article: 2-6)

5. Sufficient evidence necessary to initiate investigation

The Code permits the authorities to initiate an investigation only if the complaint includes sufficient evidence. However, it does not provide a clear definition of the term "sufficient evidence" so each signatory may have a different interpretation. In fact, since only a non-confidential version of the complaint is available, defendants sometimes doubt whether the complaint actually contains "sufficient evidence". Definite criteria for "sufficient evidence", therefore, should be established. (Related article: 5-1)

6. Criteria for accepting price undertakings

A decision to accept price undertakings is left to the discretion of investigating authorities, and the number of cases where investigations are terminated through the acceptance of undertakings has declined in recent years. Japan believes it would be useful to examine the criteria to be used in accepting price undertakings.

(Related article: 7-1)

7. Reviews and refunds

In conducting reviews or refunds, certain signatories regard the AD duty as a cost incurred between importation and resale, even when such an AD duty does not need to be paid.

Therefore, even when the import price and resale price are increased by the amount equivalent to the dumping margin or the AD duty in cases where the importer is related to the exporter, signatories would deduct the amount equivalent to the AD duty from the resale price as a cost, thus a

dumping margin still exists, and the duty paid would not be refunded nor the AD measure terminated. Consequently, the resale price would have to be increased by the total amount of the AD duty and the dumping margin in order for a refund to be made or the AD measure to be terminated. Therefore, the interpretation of the current AD Code needs to be clarified as to the validity of regarding the AD duty as a cost in the above situation.

(Related articles: 8-3, 9)

#### 8. Sunset clause

Although an AD duty remains in force only as long as necessary to counteract the dumping which is causing injury, certain signatories have continued to apply AD findings for more than ten years.

Such AD findings are thought generally to have become unnecessary in the course of time because of changes in the domestic industry and market situation. Other signatories provide a sunset clause which limits in principle the

effective term of an AD finding to be a three or five year period during which reviews can be made on request. Japan considers that such a clause should be incorporated in the AD Code.

(Related article: 9)

## II. New developments

### 1. Anti-circumvention

A certain signatory mentioned "anti-circumvention" in the proposal he submitted to this Negotiating Group, and proposed that the principles underlying his own country's legislation should be incorporated into the AD Code. Japan is ready to discuss this issue and does not oppose the establishment of rules for remedies if a circumvention of an AD duty actually occurs.

However, Japan does oppose the incorporation of such legislation into the AD Code as it would present fundamental problems in light of the GATT and AD code.

In Japan's view, when establishing international rules with regard to anti-circumvention measures, care should be taken so as to avoid impeding normal trade and investment unjustifiably.

Furthermore, it appears that certain signatories intend to impose AD duties on newly developed products on the basis of products subject to AD duty. There is no justification for imposing AD duties, without AD investigations, on products other than those found to have been dumped. Thus it is necessary to establish criteria to determine whether such new products should be regarded as the same as the dumped products: for example, physical features, purpose and ways of use.

## 2. Input dumping

The ADP Committee has studied the method of the dumping investigation of cases where finished products incorporate parts or materials found to have been dumped, and has drafted a recommendation.

The draft recommendation stipulates that in the dumping investigations on such finished products the domestic sales price of the finished products, in principle, should be used as the normal value, and that the actual purchase price of the parts and materials from unrelated parties should be used when determining the constructed value. The recommendation permits signatories to take into account input dumping only when the parts or materials have been purchased from related parties.

However, in cases where finished products in which parts or materials found to have been dumped have been incorporated are imported, a certain signatory appears to intend to use the constructed value based on the normal value of the parts or materials as the normal value of such products.

This method presents many problems. For example it ignores the domestic sales price of the finished products, and compels bona-fide third parties to become involved in

dumping investigation. It is not realistic, moreover, to insist that manufacturers of finished products should know whether the parts or materials they wish to purchase have been found to have been dumped, or what the normal value of the parts or materials are. Therefore, Japan considers that the draft recommendation of the ADP Committee should be incorporated in the Code.

3. Dumping determinations and cost reductions due to innovations in technology

(1) The cost of some high-tech products (e.g., semiconductors) declines rapidly after the commencement of production. There are three reasons which contribute to this cost reduction.

First, costs are affected by the "learning curve". In other words, since yield rates improve as manufacturing know-how accumulates with the increase in cumulative volume, unit production costs inevitably decline. For example, the production cost of semiconductors is said to drop by approximately 30% when the cumulative production volume doubles.



Second, costs are affected by the depreciation of production facilities. In some cases of high-tech products, technologies become obsolete quickly, and high-cost production facilities must be depreciated in a short period of time. In such cases, the proportion of fixed costs to total costs will increase. Therefore, if the demand for a high-tech product expands rapidly, production cost per unit will be drastically reduced due to the scale merit.

Third is the factor of R&D costs. Although R&D expenses sometimes do not correspond to the cost of the products derived from the R&D, R&D costs basically have the character of fixed costs. Therefore, in the case of a high-tech product whose R&D costs are relatively high, the R&D cost per unit will drop significantly as demand for the product expands rapidly.

The above three factors contribute to the rapid cost reductions of some new high-tech products.

(2) As a method of setting the price of those products whose cost fall rapidly over a short period of time after the commencement of production, one might consider making the initial price higher and lowering it as costs decline, or establishing a stable price corresponding to the average cost during a fixed period. According to the current practices under the Code, however, a finding of dumping will be made when export prices are below costs at the time of export.

Therefore, considering the above circumstances, Japan thinks that the following points should be examined, (1) when there are domestic sales, the investigation authorities should use the domestic sales price as the normal value to be compared with the export price. (2) and even when a constructed value is used, due consideration should be given to the probable rapid reduction in cost.

Furthermore, in terms of price undertakings, it is necessary to revise price levels periodically so that they reflect actual cost reductions more closely, instead of fixing price levels based on the previous cost and market price data.

figure 1

domestic sales price

export price

sales price to an unrelated party

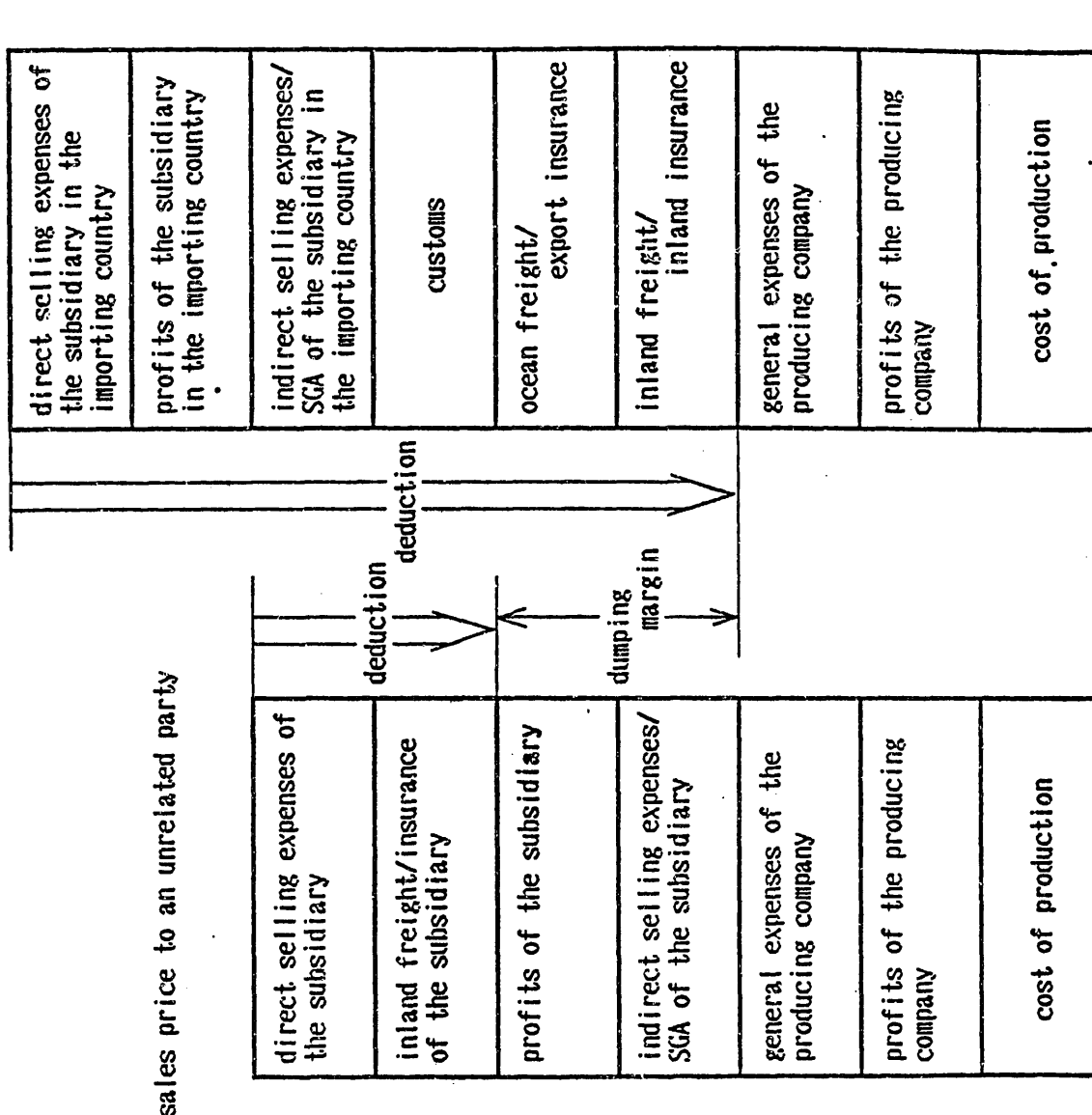
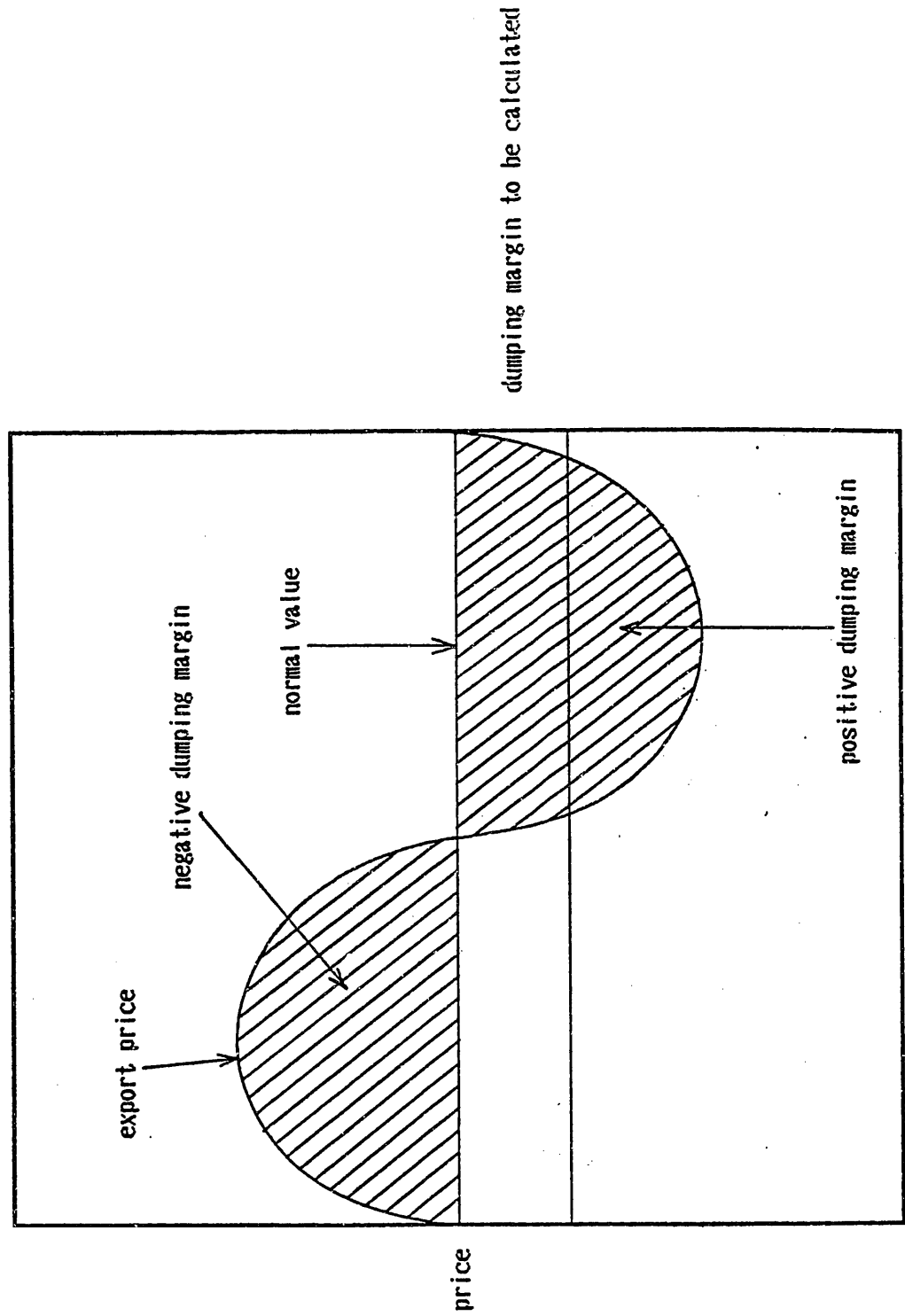


figure 2



term

figure 3

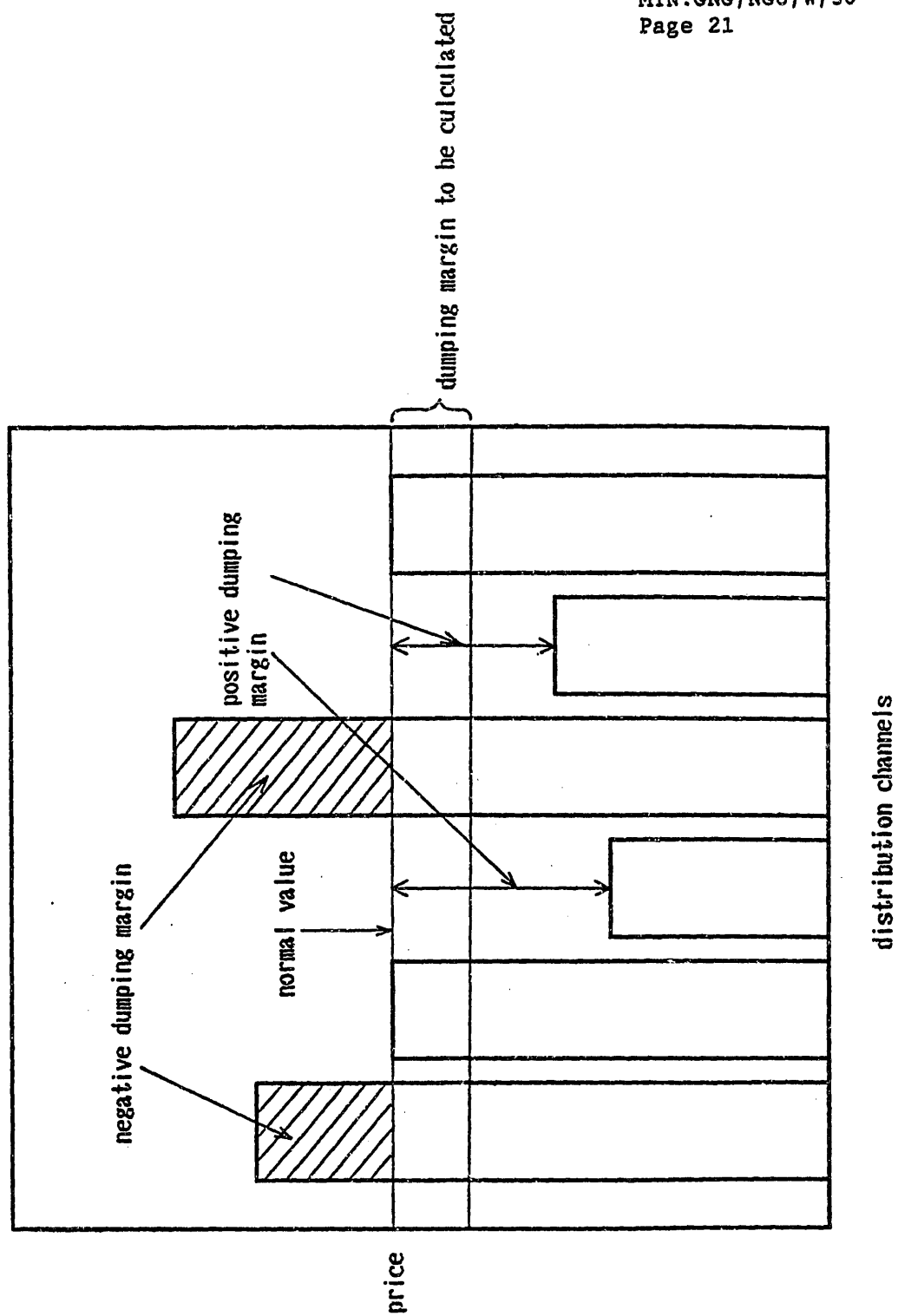
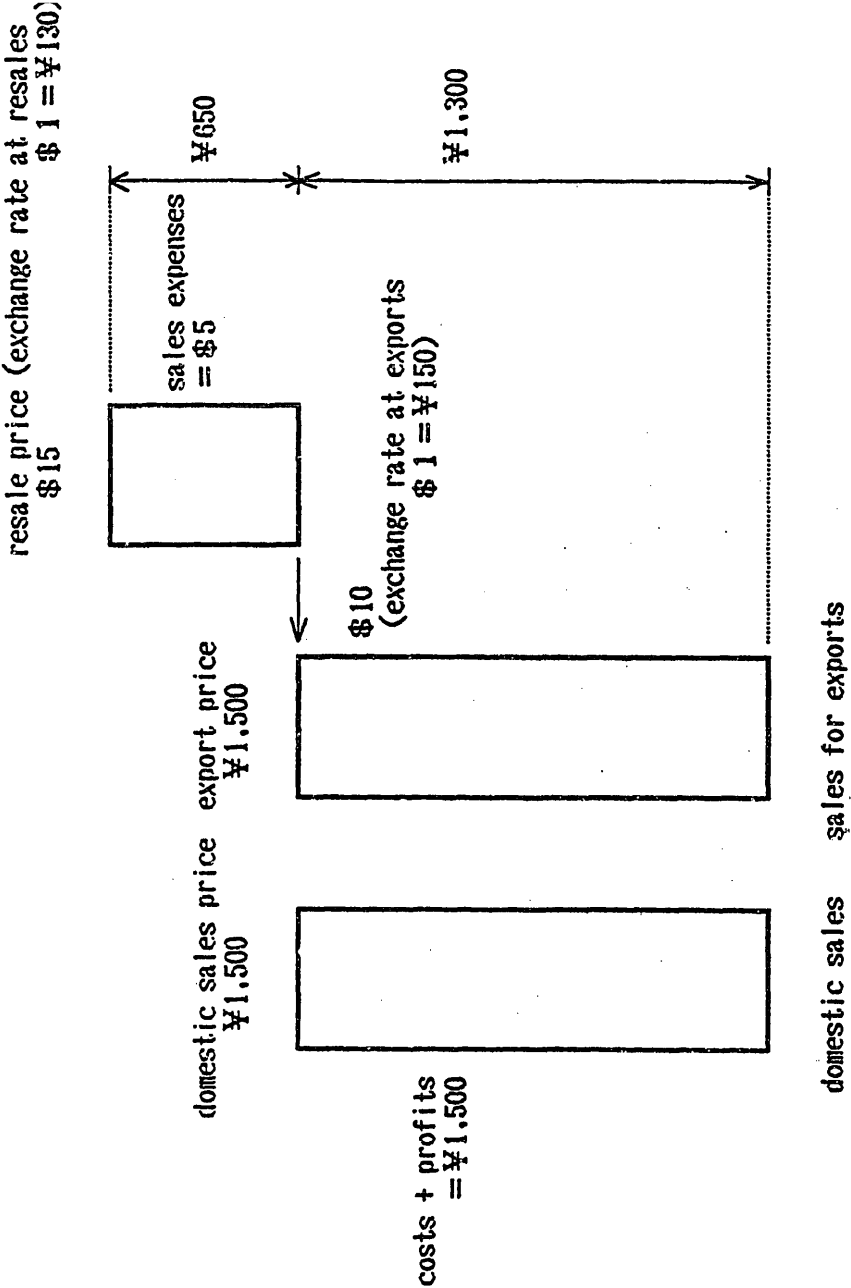


figure 4



actual income of exporting company = \$10 = ¥1,500

income to be calculated of exporting company = \$10 = ¥1,300