

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

MTN.GNG/NG8/W/48

3 August 1989

Special Distribution

Group of Negotiations on Goods (GATT)

Original: English

Negotiating Group on MTN
Agreements and Arrangements

SUBMISSION OF JAPAN ON THE
AMENDMENTS TO THE ANTI-DUMPING CODE

The present submission was tabled at the meeting of NG8 on 17 July 1989.

The Government of Japan submits the following proposals as a contribution to further intensive discussions for the improvement of the Anti-Dumping Code in the MTN Agreements Negotiating Group. Japan wishes to reserve the right to submit further proposals to the Group, at an appropriate stage, during the course of the discussions.

I. Definition of "introduced into the commerce of another country"
(Articles 2.1, and 5.1)

(Reason for amendment)

Taking into account the adverse effects of Anti-Dumping investigations on commerce, investigations should, in principle, not be initiated unless there is actual import.

(Proposed amendment)

1. Add the following footnote to Article 2.1:

"As a general rule, when the product concerned has not been actually imported, the product shall not be considered as being introduced into the commerce of another country."

2. Add the following at the end of Article 5.1:

"As a general rule, when the product concerned has not been actually imported, the investigation on the product shall not be initiated."

II. Situation in which the normal value cannot be determined on the basis of the domestic sales price in the exporting country (Article 2.4)

(Reason for amendment)

In order to prevent deliberate avoidance of the use of the domestic sales price, it is necessary to define more clearly the situation where "there are no sales of the like product in the ordinary course of trade in the domestic market of the exporting country".

In this respect, the situation where "there are no sales of the like product in the ordinary course of trade in the domestic market of the exporting country", should be defined according to an appropriately quantified criteria using the ratio of the total value of domestic sales against the value of the export to the importing country concerned. In this connection, the manner in which sales at price below the cost is taken account of should be clearly stipulated. As to the calculation of the domestic sales price in cases where a related company is involved, some contracting parties calculate the domestic sales price on the basis of the resale price of the related company, while others normally disregard sales through related companies in their calculation of the domestic sales price. In order to avoid arbitrary calculation of prices and to harmonize the methods existing in various countries, there is a need to elaborate more precise rules in this regard.

(Proposed amendment)

Add the following footnote to Article 2.4:

"The situation where "there are no sales of the like product in the ordinary course of trade in the domestic market of the exporting country" shall be regarded to exist only when the total domestic sales (excluding below-the-cost sales which are conducted for an extended period of time in substantial quantities, at prices not capable of recovering costs within a reasonable period of time) is less than X per cent of the value of the total export to the importing country concerned.

In determining the domestic sales price, direct sales from the producer or exporter concerned to independent parties within the country shall be used as the basis for calculation. If the direct sales concerned do not reach the above-mentioned level, the resale from parties having associations or having a compensatory arrangement with the producer or exporter concerned to independent parties within the country shall be added to the direct sales concerned."

III. Determination of the constructed value (Article 2.4)

(Reason for amendment)

The calculation of the constructed value tends to involve arbitrary elements by the investigating authority. A certain contracting party sets, without any reasonable ground, the lowest limit for the general and administrative expenses at more than 10 per cent of the production cost, and for the profit at more than 8 per cent of the sum of the production cost and the general and administrative expenses.

In view of the above, there is a need for detailed rules concerning the calculation of the constructed value, including, in particular, rules that the calculations should be based on actual data.

(Proposed amendment)

Article 2.4 should be amended as follows:

"When there are no sales of the like product in the ordinary course of trade in the domestic market of the exporting country or when, because of the particular market situation, such sales do not permit a proper comparison, the margin of dumping shall be determined or with the cost of production in the country of origin plus a reasonable amount for administrative, selling and any other costs and for profits. As a general rule, the addition for profit shall not exceed the profit normally realized on sales of products of the same general category in the domestic market of the country of origin." (Excerpt from Article 2.4).

The underlined part should be replaced with the following:

"... or with the constructed value. The constructed value shall be the sum of the following:

(a) costs of production, selling costs, general and administrative expenses and any other costs of the exported product in question;

(b) profits normally realized on sales of products of the same general category in the domestic market of the country of origin.

Costs and profits as referred to in (a) and (b) above shall be calculated on the basis of actual data. For the purpose of (b), the "same general category" shall be defined as narrowly as practicable, and the calculation shall be based on, if available, the profit realized on sales of the product of the same general category in the domestic market of the producer or exporter concerned. If this profit is not available, but the profit normally realized on sales of like products in the domestic market including other producers or exporters is available, the calculation shall be based on the latter. In the case where the profits of other producers or exporters are taken, the profit shall not exceed the weighted average of the profits of these producers and exporters.

Moreover, in case of (b), below-the-cost sales shall be included in the calculation except for those under specific circumstances where below-the-cost sales are conducted for an extended period of time in substantial quantities, at prices not capable of recovering costs within a reasonable period of time."

IV. Adjustments to ensure a fair comparison of normal value and export price (Article 2.6)

(Reason for amendment)

In order to assure fairness of the comparison between export price and normal value, the present Code requires comparison of prices to be made at the same level of trade, and due allowance to be made for differences affecting price comparability. This adjustment process tends to involve arbitrariness (for example, where the sales take place through a related company within the importing country, the export price is calculated by deducting from the resale price to third parties all costs and profits of the related company, whereas the domestic sales price is calculated without deducting the indirect selling costs, general and administrative expenses and profits of the related party). In order to eliminate arbitrariness, it is necessary to develop an indicative list of the differences to be adjusted, and introduce precise rules on the methods of calculation of export price and domestic sales price.

(Proposed amendment)

1. Amend "normally at ex-factory level" in Article 2.6 to "as far as practicable, at ex-factory level".
2. Add the following footnotes to Article 2.6:

"(Note 1): In order to make price comparison at the same level of trade, all the costs incurred because of the difference in the stage of trade (including all costs of related parties) shall be deducted in calculating of the normal value and export price, respectively."

"(Note 2): Differences affecting price comparability include those in the following:

- (1) difference in physical characteristics
- (2) difference of import duties and indirect taxes
- (3) difference in direct selling costs
- (4) difference in indirect selling costs
- (5) difference in general and administrative expenses
- (6) difference in research and development costs
- (7) difference due to different volume of sales."

In calculating the export price and the domestic sales price, methods for their calculation must not be differentiated in the following manner without justifiable reasons:

- (1) differentiation in the treatment of profits of related parties when calculating from their resale price;
- (2) calculation of the normal value by taking a weighted average of the domestic sales price or the export price to third countries, or by calculating the constructed value using an average cost, and comparing it to individual export prices."

V. Exchange rate fluctuation to be considered in the determination of dumping (Article 2)

(Reason for amendment)

It is highly desirable to establish a detailed rule concerning exchange rate to be used in the calculation of dumping margin, as the amount of the dumping margin may differ significantly, depending on the exchange rate to be used on the specific case.

(Proposed amendment)

Add the following as a new Article 2.7:

"For the purpose of the comparison of prices, in converting a transaction value of a product expressed in terms of a currency in another country, the exchange rate at the date of a contract for export of the product in question shall be adopted as a general rule."

VI. Sufficient evidence necessary to initiate anti-dumping investigation (Article 5.1)

(Reason for amendment)

For the purpose of preventing abuse of anti-dumping investigations, which may in itself impose heavy burden on the party being investigated, the evidence should not only be sufficient but also objective. In this connection, to secure transparency in the administrative procedures, it is also important to ensure that the authorities concerned provide, upon request of the exporter or producer concerned, the reasons of the decision on the existence of the sufficient evidence to initiate an investigation.

(Proposed amendment)

Add the following footnote to Article 5.1:

"The authorities concerned shall not accept any such request as having sufficient evidence unless it contains explanations based upon objective data in a written form.

The authorities concerned shall, upon request, provide exporter or producer concerned with the reasoning as to the sufficiency of the evidence."

VII. Imposition of Anti-Dumping duty on exporters which were not subject to an Anti-Dumping investigation (Article 6.1 and Article 8.2)

(Reason for amendment)

The company specific investigation and the company specific imposition of anti-dumping duties are in all respects desirable. However, there may be exceptional cases where the authorities concerned can not carry out the investigations on all the exporters in question by reason of administrative capabilities. In fact, companies which were excluded from the investigation or had no actual trade at the time of the investigation are in general placed in a difficult situation, as they might be subjected to the highest anti-dumping duty confirmed through the actual investigations. In such cases, appropriate measures which do not impose excessive burden both to the exporter and importer should be taken to protect the interest of these companies excluded from the investigations.

(Proposed amendment)

1. Add the following footnote to Article 6.1

"The authorities concerned shall, as a general rule, investigate all the exporters alleged to be dumping. In a case where the number of the exporters concerned makes the investigation of all the exporters impracticable, the authorities concerned shall investigate exporters whose exportations are representative of the exportations from the country in question. The authorities concerned should investigate unspecified companies, if they so request."

2. Add the following footnote to Article 8.2:

"If any definitive anti-dumping duty should be levied on the product supplied by companies left out of the investigations conducted in accordance with the footnote to Article 6.1, the amount of the anti-dumping duty shall not exceed that of weighted average of dumping margins confirmed through the actual investigations."

VIII. Causal link between dumping and injury (Article 8.5)

(Reason for amendment)

There exist some cases where the existence of injury was determined in relation to normal legitimate import inspite of the fact that the injury was not caused through dumped import. In other cases, dumped import was decided as the cause of the injury when the existence of both dumping and injury were confirmed by the authorities concerned, even though no causal link between the dumping and the injury was established.

Furthermore, insufficient disclosure system of information concerning the determination of the existence of injury leads to arbitrary implementation of this clause.

(Proposed amendment)

Add the following footnote to Article 8.5:

"In the case of affirmative findings, each such notice shall set forth the factors examined and reasons for the determination including information concerning factors other than dumping as was examined in the determinations of injury."

IX. Duration of anti-dumping duties (Article 9)

(Reason for amendment)

As stated in Article 9.1, an anti-dumping duty shall remain in force only so long as and to the extent necessary to counteract dumping which is causing injury. This means, in other words, that the necessity of the imposition of anti-dumping duty should terminate after a certain period of time from the imposition of the duty due to the change in industry and market situation.

A specific clause on the duration of anti-dumping duties should, therefore, be incorporated in the Code to the effect that an order to impose an anti-dumping duty should expire after a certain period of time from the imposition of the duty, unless the authorities concerned receive request from the parties concerned to extend the imposition of the duty and the necessity for further extension of the duty is recognized.

(Proposed amendment)

1. Add the following paragraph after Article 9.1 as new Article 9.2:

"An anti-dumping duty shall be terminated after five years from the date of the imposition of the duty, except where the authorities concerned receive, six months prior to the termination of the duty, evidence in writing by or on behalf of the domestic industry to show that dumped import still exists and the termination of the duty would cause or threaten material injury to the domestic industry. The authorities concerned shall, upon receipt of such evidence, review the situation in order to decide whether or not dumping still exists and whether or not the termination of anti-dumping duty could cause or threaten material injury to the domestic industry. The authorities concerned may specify the period for the extension of the duty up to three years, if the authorities concerned recognize the necessity for the extension of the duty."

2. Existing Article 9.2 should be renumbered as Article 9.3, and following phrase should be added at the top of the new Article 9.3:

"Notwithstanding the provisions of the Article 9.2."

X. Recommendations to be incorporated into the Code

Recommendations adopted by the Anti-Dumping Committee listed below should be incorporated into the Code:

- Transparency of anti-dumping proceedings
- Procedures for an on-the-spot investigation
- Best information available in terms of Article 6.8
- Determination of threat of material injury.