MULTILATERAL TRADE NEGOTIATIONS THE URUGUAY ROUND

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COMMUNICATION FROM JAPAN CONCERNING THE ANTI-DUMPING CODE

The Government of Japan submitted specific proposals for improvements in the Anti-Dumping Code on 3 August 1989 (MTN.GNG/NG8/W/48) and on 29 January 1990 (MTN.GNG/NG8/W/48 Add.1). After having elaborated further on these proposals, both orally and in written form, and in the light of the extensive discussions held on these and on other proposals, the Government of Japan wishes to draw the attention of the Negotiating Group on MTN Agreements and Arrangements to the following points.

1. The Government of Japan continues to believe that anti-dumping action is and should remain an exception to the principal objectives of the GATT, which are, to reduce barriers to trade and to promote global economic growth through free competition, including price competition.

The GATT allows for remedial anti-dumping action only under narrowly defined conditions, the basic elements of which are:

(a) the actual existence of dumping (defined as the price of the product exported from one country being less than the normal value of the product) and

(b) the existence of injury caused or threatened by such exports.

However, certain governments take "anti-dumping" measures in such a way as to expand the scope of what is and should continue to be a remedial measure exceptionally allowed under the GATT, the effect of which is to stifle competition (anti-competitive), and to erode the GATT. In view of the fact that anti-dumping measures are being used more frequently in recent years and throughout many parts of the world, Japan believes that the time has come to arrest the abuse of anti-dumping measures and to reinforce, rather than further erode, multilateral, GATT discipline.

2. The Government of Japan is of the view, that GATT anti-dumping rules should and can be strengthened in such a manner as to reduce the potential for arbitrary or unilateral interpretation. They should be made as clear and objective as possible so as to ensure greater uniformity, consistency and predictability in their implementation by what is today an increasing number of countries.

It is for the foregoing reasons that Japan believes it essential that the following elements, without excluding other constructive suggestions in the same direction, should be included in the outcome of the Uruguay Round negotiations on anti-dumping.

(1) Investigations: Experience has shown that the very initiation of anti-dumping investigations have an immediate and significant restrictive effect on trade. The Anti-Dumping Code should be clarified so that investigation will be initiated only when there is sufficient, objective data to do so.

(2) Price Comparison: As referred to above in paragraph 1, price comparison ("export price" VS "normal value") is the starting point for any anti-dumping action. Existing Code provisions on this key condition, however, have been subject to unilateral interpretation and have, therefore, become a source of potential GATT disputes. In order to maintain the stability and credibility of the GATT as an international régime and in order to reaffirm the free trade, free competition principles of that régime, there is an urgent need to make the relevant Code provisions more explicit.

(a) The Code should clearly stipulate the use of actual data for "expenses" and "profits" for the purposes of the price comparison under reference. The use of artificial percentage figures in lieu of actual data should be prohibited.

(b) The Code should set out clear guidelines that ensure symmetrical comparison of "normal value" and "export price" at the same level of trade, and eliminate the possibility of asymmetrical comparison, in disregard of certain costs actually incurred, and thereby artificially creating "dumping" when none actually exist. The Code should also be clarified, as another aspect of "symmetrical comparison", to disallow the practice of calculating "normal value" on an average basis and then to compare it to "export price" on an individual basis.

(3) Injury: The basic condition for anti-dumping action, as mentioned in 1.(b) above, is the existence of injury and the causal link between injury an dumped exports. In some cases, however, anti-dumping action was taken even when "injury" was not caused by dumped exports. It is important, therefore, to clarify the relevant Code provisions to reaffirm that, all three factors, (i) increase in the volume of dumped exports, (ii) their effect on domestic prices, (iii) the consequent impact of such exports on domestic producers should exist to justify anti-dumping action.

(4) Anti-dumping measures:

(a) Anti-dumping duty imposed on companies not investigated.

The Code should stipulate that anti-dumping duty is to be based on actual investigations and prescribe the practice of imposing weighted average of the duties of companies actually investigated, on companies not investigated.

(b) Review and duration: anti-dumping duty should remain in force only so long as it is necessary to counteract dumping which is causing injury. It follows logically, fully reflecting that anti-dumping duty is an exceptional measure, that the Code should call for expiration of such action after a certain period of time, unless there is positive evidence that it is necessary to continue the measure. Review and refund procedures are important for similar reasons. The Code should stipulate that refund procedures shall not be excessively burdensome and that, if the resale price is increased by the dumping margin, the full amount of anti-dumping duty collected shall be refunded. (I.e. in calculating the amount to be refunded in cases of transactions with related parties, anti-dumping duties paid shall not be treated as a "cost" of importation which is not refundable.)