

**ILLUSTRATIVE LIST OF BENCHMARKS FOR
DETERMINATIONS OF MATERIAL INJURY AND CAUSATION**

Communication from Japan

The following communication, dated 12 May 2005, is being circulated at the request of the Delegation of Japan.

The submitting delegation has requested that this paper, which was submitted to the Rules Negotiating Group as an informal document (JOB(05)/78), also be circulated as a formal document.

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This paper is intended for discussion regarding benchmarks to provide authorities with more specific guidance in making injury determinations. Since Members had useful and constructive discussion on previous papers proposed by the FANs (JOB(04)/183 and JOB(05)/46) in the informal meeting of the Negotiating Group on Rules, this paper should be seen as a complement to the previous papers.

An illustrative list of benchmarks for injury determinations could be useful in providing authorities with more specific guidance and would make determinations more predictable for exporters. Such benchmarks also help investigation authorities through providing clearer guidance for injury determination. This list illustrates certain typical cases in which there can be a presumption of no material injury or causation and authorities may not find material injury or causation in the absence of justification sufficient to overcome such a presumption.¹

The rebuttable presumptions contained in this list shall not be interpreted that the authorities can skip, in any way, an overall assessment with regard to all relevant economic factors and indices including those listed in Article 3.4, or the causation analysis whether the dumped imports in and of themselves are causing material injury. The list shall also not be interpreted to imply that a rebuttable presumption of injury exists in cases other than the circumstances set forth in the list.

This illustrative list corresponds to the FAN's proposal that a determination of injury shall be based upon separate determination of material injury and causation.

¹ We are ready to make further elaboration on these proposals as appropriate. We are open to discuss additional ideas on such rebuttable presumptions and we also reserve the right to make additional proposals to this list.

Material injury – rebuttable presumptions

The investigating authorities shall presume that there is no material injury in any of the circumstances set forth below. In such circumstances, the investigating authorities shall not find material injury unless there is sufficient justification to overcome the presumption.

The domestic industry's operating profits have increased and the market share has been maintained or increased during the investigation period.

Causation – rebuttable presumptions:

The investigating authorities shall presume that the dumped imports are not causing material injury to the domestic industry when any of the following conditions are present. When any of these conditions are demonstrated, investigating authorities shall not find that material injury is caused by dumped imports unless there is sufficient justification to overcome the presumption.

- (i) The volume of increase in non-dumped imports of the product concerned has significantly exceeded the volume of increase in dumped imports during the investigation period.
 - (ii) Prices of the dumped imports have been increasing while there has been no undercutting and the market share of the dumped imports has been declining during the investigation period.
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