Committee on Anti-Dumping Practices
Committee on Subsidies and Countervailing Measures

INFORMATION ON IMPLEMENTATION AND ADMINISTRATION OF THE AGREEMENT

Reproduced herewith are Guidelines for the conduct of countervailing duty and anti-dumping duty investigations adopted by the Government of Japan on 24 December 1986.
GUIDELINES FOR PROCEDURES RELATING
TO COUNTERVAILING DUTY AND ANTI-DUMPING DUTY
(Provisional Translation)

December 24, 1986

Ministry of Finance
Ministry of Health & Welfare
Ministry of Agriculture, Forestry & Fisheries
Ministry of International Trade and Industry
Ministry of Transport
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1. Application

(1) Reception office for application; necessary number of copies

A written application requesting the levy of a countervailing duty or anti-dumping duty shall be submitted to the Planning and Legal Division, Customs & Tariff Bureau, Ministry of Finance.

A minimum of 10 copies of the application shall be submitted.

(2) Applicant

Para. 4 of Art. 8 or Para. 4 of Art. 9 of the Customs Tariff Law

"Any person who has an interest in an industry in Japan" provided for in Paragraph 4 of Article 8 or Paragraph 4 of Article 9 of the Customs Tariff Law is usually one of the following.

(a) Producers forming an industry in Japan

(b) An association composed of producers in (a) above, or

(c) A labour union organized by workers employed by the producers in (a) above.

Written applications shall be made by or on behalf of an industry in Japan.

(3) Industry in Japan

(a) "A major proportion" Para. 1 of Art. 1 of the Cabinet Order Relating to Countervailing Duty or Paragraph 1 of Article 3 of the Cabinet Order Relating to Anti-Dumping Duty shall be interpreted as fifty percent.

"A major proportion" provided for in paragraph 1 of Article 1 of the Cabinet Order Relating to Countervailing Duty or Paragraph 1 of Article 3 of the Cabinet Order Relating to Anti-Dumping Duty shall be interpreted as fifty percent.

(b) Producers excluded from producers in Japan Para. 2 of Art. 1 of the Cabinet Order Relating to Countervailing Duty or para. 2 of Art. 3 of the Cabinet Order Relating to Anti-Dumping Duty

"Producers who are related to the exporters or importers of the product in question" provided for in Paragraph 2 of Article 1 of the Cabinet Order Relating to Countervailing Duty or Paragraph 2 of Article 3 of the Cabinet Order Relating to Anti-Dumping Duty shall be interpreted as those producers who are related to the exporters or importers of the imported products, which are subsidized or dumped, and fall into any one of the following categories:

(a) Producers who directly or indirectly control the exporters or importers

(b) Producers who are directly or indirectly controlled by the exporters or importers

(c) Producers who are directly or indirectly controlled by a third person who directly or indirectly controls the exporters or importers, or
(d) Producer who directly or indirectly controls a third person, together with the exporter or importer;

provided that there are grounds for believing or suspecting that the effect of the relationship is such as to cause the producer, who is related, to behave differently from other producers.

"Producers who are the importers of such product" provided for in Paragraph 2 of Article 1 of the Cabinet Order Relating to Countervailing Duty or Paragraph 2 of Article 3 of the Cabinet Order Relating to Anti-Dumping Duty shall be interpreted as those producers who import the subsidized or dumped products. However, any one of the following shall be excluded:

(a) Producers who were importers of the subsidized or dumped products more than six months before the date of receipt of the application requesting the levy of a countervailing duty or anti-dumping duty, and

(b) Producers who import a de minimus amount of subsidized or dumped products.

Output of the producers who are excluded, under Paragraph 2 of Article 1 of the Cabinet Order Relating to Countervailing Duty, from an industry in Japan provided for in Paragraph 1 of the said Article or who are excluded, under Paragraph 2 of Article 3 of the Cabinet Order Relating to Anti-Dumping Duty, from an industry in Japan provided for in Paragraph 1 of the said Article shall be included in calculating the collective output in Japan.

(4) Documentation

(a) Samples of the application form

See attached samples.

(b) "Sufficient evidence"

With respect to "sufficient evidence" provided for in Paragraph 4 of Article 8 of the Customs Tariff Law and Paragraph 1 of Article 2 of the Cabinet Order Relating to Countervailing Duty, or Paragraph 4 of Article 9 of the Customs Tariff Law and Paragraph 1 of Article 4 of the Cabinet Order Relating to Anti-Dumping Duty, an applicant requesting the levy of a countervailing duty or anti-dumping duty is not required to submit evidence which is not reasonably available to him.
2. Initiation of investigation

(1) Period for determining initiation of an investigation
Para.5 of Art.8 or Para.5 of Art.9 of the Customs Tariff Law

The decision of whether or not an investigation is to be initiated shall be made approximately two months after the date of receipt of a written application requesting the levy of a countervailing duty or anti-dumping duty.

(2) "If necessary" Para.5 of Art.8 or Para.5 of Art.9 of the Customs Tariff Law

When there is sufficient evidence to initiate an investigation, the Government shall, in principle, initiate the investigation. Be it provided, however, that the Government may not initiate an investigation under special circumstance such as when measures to eliminate injurious effect to an industry in Japan have been taken before the initiation of the investigation.

(3) Notification of a decision not to initiate an investigation

In cases where the Government has decided not to initiate an investigation (including the case under the proviso of 2.(2) above), the Minister of Finance shall make written notification to that effect along with the reason, to the applicant requesting the levy of a countervailing duty or anti-dumping duty.

(4) Customs Tariff Council

When an investigation is to be initiated, the Minister of Finance shall notify the commissioners of the Special Duty Group of the Customs Tariff Council of the initiation and, at an appropriate time, explain to the Special Duty Group the circumstances which have led to the initiation of the investigation.

When an investigation is completed, the Minister of Finance shall report the results of the investigation to the Special Duty Group of the Customs Tariff Council.

(5) Investigating body

In initiating an investigation, the Minister of Finance shall arrange an investigating body consisting of several officials from the Ministry of Finance, the Ministry which has jurisdiction over the industry concerned in Japan and the Ministry of International Trade and Industry, in consultation with the Minister who has jurisdiction over the industry and the Minister of International Trade and Industry.

(6) "Any other relevant matters" Sub-Para.5 of Art.3 of the Cabinet Order Relating to Countervailing Duty or Sub-Para.5 of Art.5 of the Cabinet Order Relating to Anti-Dumping Duty

"Any other relevant matters" provided for in Sub-Paragraph 5 of Article 3 of the Cabinet Order Relating to Countervailing Duty or Sub-Paragraph 5 of Article 5 of the Cabinet Order Relating to Anti-Dumping Duty shall include, inter alia, the name of the office (including the title of the official in charge) to which evidence is submitted and the time-limit for submission of the evidence, the name of the office at which evidence is orally presented and the time-limit for presentation of the oral evidence, the name of the office to which the view is presented and the time-limit for presentation of the view and the name of the office to which a request for a meeting with interested parties with opposing views is submitted and the time-limit for submission of such a request.
(7) Withdrawal of application

(a) Treatment of withdrawn application

When an applicant requesting the levy of a countervailing duty or anti-dumping duty has withdrawn his application, the Government shall terminate the investigation. Be it provided, however, that the Government may not terminate the investigation when such termination is considered to be contrary to the public interest.

(b) Notification of withdrawn application

When an investigation is terminated in accordance with (7)(a) or continued in accordance with the proviso of (7)(a), the Minister of Finance shall make written notification to that effect to directly interested parties (the term "directly interested parties" hereinafter means directly interested parties provided for in Article 3 of the Cabinet Order Relating to Countervailing Duty or Article 5 of the Cabinet Order Relating to Anti-Dumping Duty).

3. Information to be obtained

(1) Questionnaire

When the Government considers it necessary to obtain information to conduct an investigation, it shall send a questionnaire to the interested parties (the term "interested parties" hereinafter means those provided for in Paragraph 1 of Article 5 of the Cabinet Order Relating to Countervailing Duty or Paragraph 1 of Article 7 of the Cabinet Order Relating to Anti-Dumping Duty).

The time-limit to respond to the questionnaire shall normally be the thirtieth day from the date of receipt of the questionnaire. A precise time-limit for response shall be stipulated in the questionnaire in each particular case under investigation. However, such a time-limit can be extended when considered necessary.

(2) Lack of cooperation with and impediment to an investigation

When conduct of an investigation does not meet with cooperation or is impeded, the provisions of Paragraph 9 of Article 2 of the "Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade" (hereinafter referred to as the "SCM Code") or of Paragraph 8 of Article 6 of the "Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade" (hereinafter referred to as the "AD Code") shall apply to the above-mentioned case.
(3) When a request for confidentiality is not accepted, the provisions of Paragraph 7 of Article 2 of the SCM Code or Paragraph 4 of Article 6 of the AD Code shall apply to the case. When a request for confidentiality is warranted, but the supplier of the information does not provide non-confidential summaries although it is possible for him to do so under Paragraph 2 of Article 2 of the Cabinet Order Relating to Countervailing Duty or Paragraph 2 of Article 4 of the Cabinet Order Relating to Anti-Dumping Duty, the provisions of Paragraph 7 of Article 2 of the SCM Code or Paragraph 4 of Article 6 of the AD Code shall apply to the case. The above shall also apply to cases in which a request for confidentiality is warranted, but the supplier of the information does not provide non-confidential summaries although it is possible for him to do so under Paragraph 2 of Article 2 of the Cabinet Order Relating to Countervailing Duty or Paragraph 2 of Article 4 of the Cabinet Order Relating to Anti-Dumping Duty. When the Government disregards any information supplied in accordance with the provisions of Paragraph 7 of Article 2 of the SCM Code or Paragraph 4 of Article 6 of the AD Code, the Minister of Finance shall notify the supplier of the information to that effect.

4. Rights of interested parties

(1) Interested parties

Interested parties shall include, in addition to directly interested parties, the following:

(a) Producers in the country exporting the subsidized or dumped products concerned or an association composed of those producers,

(b) An association composed of exporters of the subsidized or dumped products concerned,

(c) An association composed of importers of the subsidized or dumped products concerned,

(d) Producers in Japan of like products or an association composed of those producers (except those who are directly interested parties), and

(e) A labour union organized by workers employed by producers in Japan of like products (except those who are directly interested parties).

(2) Procedure for the presentation of oral evidence

When interested parties have requested to present evidence orally or the Minister of Finance has requested interested parties to present evidence orally, the Minister shall notify in writing the interested parties concerned of procedures for the presentation of oral evidence, including the date of presentation.

Oral evidence shall be presented to the investigating body on a date so indicated by the Minister of Finance.
Interested parties who are to present their written views in accordance with Article 7 of the Cabinet Order Relating to Countervailing Duty shall present in writing to the Minister of Finance their views and reasons explaining why they have an interest in the investigation.

Interested parties who request to present their view orally in accordance with Article 7 of the Cabinet Order Relating to Countervailing Duty shall present to the Minister of Finance a written request stating the reason for that request and reasons explaining why they have an interest in the investigation.

When oral presentation is permitted, the Minister of Finance shall notify in writing the interested parties of the procedures for the presentation of views including the date of presentation.

The parties concerned with a meeting with interested parties with opposing views, who have received a notification under Paragraph 2 of Article 9 of the Cabinet Order Relating to Anti-Dumping Duty, shall submit to the Minister of Finance, at least ten days before the meeting, a statement of the views they intend to present at the meeting. In this case, the Minister of Finance shall promptly send a copy of the submitted statements to the opposing parties concerned.

When the Government is to accept any undertaking (hereinafter meaning "undertaking" provided for in Paragraph 7 of Article 8 or Paragraph 7 of Article 9 of the Customs Tariff Law.), the provisions of Paragraph 5(a)(ii) of Article 4 of the SCM Code or Paragraph 2 of Article 7 of the AD Code shall apply to the case.

With respect to surveillance of the fulfilment of an undertaking, the provisions of Paragraph 6 of Article 4 of the SCM Code or Paragraph 5 of Article 7 of the AD Code shall apply to the case.

In accepting an undertaking, the Government shall decide the contents of information relevant to the fulfilment of the undertaking, pertinent data to be verified and procedures to be followed in connection with the above.

If the authorities or exporters of the country exporting the product under investigation have refused to submit information relevant to the fulfilment of the undertaking or verification of the pertinent data, the undertaking is deemed to have been violated.
In cases where a violation of an undertaking occurs after termination of an investigation, the Government shall promptly resume the investigation. In such a case, the provisions of Article 3 of the Cabinet Order Relating to Countervailing Duty or Article 5 of the Cabinet Order Relating to Anti-Dumping Duty shall apply mutatis mutandis.

In cases where a violation of an undertaking occurs after the completion of an investigation, the Government may take a definitive measure (i.e., measure provided for in Paragraph 1 of Article 8 or Paragraph 1 of Article 9 of the Customs Tariff Law).

In finding that a violation of an undertaking has occurred, the Government shall offer the authorities or exporters of the exporting country of the product subject to investigation an opportunity to present their views.

6. Provisional measures

(1) Period for determining provisional measures

The decision whether or not a provisional measure (hereinafter it means a measure provided for in Paragraph 9 of Article 8 or Paragraph 9 of Article 9 of the Customs Tariff Law) is to be taken shall be made within approximately six months from the date of initiation of the investigation.

(2) Extension of period for provisional measures

(a) "A significant percentage" provided for in Paragraph 1 of Article 12 of the Cabinet Order Relating to Anti-Dumping Duty shall be generally interpreted as more than fifty percent.

(b) Application for an extension of period

Applications requesting the extension of the period for the provisional measure shall be submitted at least 30 days before the expiration date of the provisional measure.

(c) Notification of an extension of period

When a decision is made to extend the period of the provisional measure, the Minister of Finance shall notify the extension of the period, the new date of expiry, etc. to the directly interested parties in writing before the expiration date of the provisional measure.
7. Review of definitive measures, etc., and request for review

(1) Review of undertaking or definitive measures

Para. 5 of Art. 8 or Para. 3 of Art. 9 of the Cabinet Order Relating to Countervailing Duty, or Para. 5 of Art. 10 and Para. 3 of Art. 11 of the Cabinet Order Relating to Anti-Dumping Duty

(2) Request for review of definitive measures

Review of an undertaking or a definitive measure in accordance with Paragraph 5 of Article 8 or Paragraph 3 of Article 9 of the Cabinet Order Relating to Countervailing Duty or Paragraph 5 of Article 10 or Paragraph 3 of Article 11 of the Cabinet Order Relating to Anti-Dumping Duty shall be initiated only when more than one year has elapsed since the date of completion or termination of the investigation.

When the Government has decided that it is not necessary to continue the definitive measure on the basis of the review carried out under Paragraph 3 of Article 9 of the Cabinet Order Relating to Countervailing Duty or Paragraph 3 of Article 11 of the Cabinet Order Relating to Anti-Dumping Duty, the Minister of Finance shall promptly make written notification to that effect, with the reason, to the interested party who requested the review and the directly interested parties.

With respect to the product for which a definitive measure has already been taken, when any person who has an interest in the industry concerned in Japan makes a request to review the definitive measure on the grounds that changes in circumstances have rendered the definitive measure is no longer appropriate, the provisions of Paragraph 4 of Article 8 or Paragraph 4 of Article 9 of the Customs Tariff Law shall apply.

Such a request may be filed only when more than one year has elapsed since the date of completion of the investigation.

8. Determination of dumping

(1) Normal value in cases of sales at less than cost of production, etc.

Para. 1 of Art. 9 of the Customs Tariff Law and Para. 2 of Art. 1 of the Cabinet Order Relating to Anti-Dumping Duty

(a) In the case of sales destined for consumption in the exporting country

Sales of like products destined for consumption in the exporting country shall be presumed not to be "the ordinary course of trade" (hereinafter meaning the ordinary course of trade provided for in Paragraph 1 of Article 9 of the Customs Tariff Law and Paragraph 2 of Article 1 of the Cabinet Order Relating to Anti-Dumping Duty), when the sales of such products fall under one of the following descriptions: In this case, the normal value (hereinafter meaning "normal value" provided for in Paragraph 1 of Article 9 of the Customs Tariff Law) of the products
concerned shall be determined on the basis of the prices of products sold for consumption in the exporting country excluding the prices of products sold in any of the ways described below.

(1) Sales which are made at prices which are less than the cost of production of the products concerned plus an amount of general expenses, and which are in conformity with the following conditions (hereinafter referred to as "sales at less than cost of production").

(i) Sales concerned have been made over an extended period of time and in substantial quantities, and

(ii) Prices for the sales concerned are not such that they permit recovery of cost of production for the products concerned plus an amount of general expenses within a reasonable period of time in the ordinary course of trade.

(2) Sales which are made between associated parties in the exporting country, the prices of which are considered inappropriate to be used as the normal value.

"Cases where there is no price ... in the ordinary course of trade" provided for in Paragraph 2 of Article 1 of the Cabinet Order Relating to Anti-Dumping Duty shall include case where the quantity of the products in the ordinary course of trade is so small that it is not appropriate for use as a basis for determining the normal value.

When sales for export of like products exported to any country other than Japan from the country exporting the imported products in question fall under any of the following descriptions, the first sentence of the first paragraph of the above (1)(a) shall apply mutatis mutandis. The normal value in this respect shall be determined on the basis of the export prices of the like products exported to any country other than Japan, excluding the prices of products sold in any of the ways described below or price provided for in Sub-Paragraph 2 of Paragraph 1 of Article 1 of the Cabinet Order Relating to Anti-Dumping Duty.

(1) Sales at less than the cost of production.

(2) Sales between associated parties, the prices of which are considered inappropriate to be used as the normal value.

Comparison between the export price and the normal value shall be made, in principle, at the same level of trade, normally at the ex-factory level, and, in respect of sales, made at as nearly as possible the same time.

"The difference in any other conditions affecting price comparability" provided for in Paragraph 3 of Article 1 of the Cabinet Order.
Relating to Anti-Dumping Duty shall be interpreted as, for example, differences in physical characteristics of the products affecting the market value in the exporting country, differences in conditions and terms of sale, such as terms of payment, guarantees of quality and aftercare and differences in taxation.

9. Illustration of subsidies
Para.1 of Art.8 of the Customs Tariff Law

"Subsidies" provided for in Paragraph 1 of Article 8 of the Customs Tariff Law include, but are not limited to, the practices listed in the Annex to the SCM Code.

10. Imports from State-controlled-economy countries
Para.1 of Art.8 or Para.1 of Art. 9 of the Customs Tariff Law or Para.2 of Art.1 of the Cabinet Order Relating to Anti-Dumping Duty

Article 15 of the SCM Code shall apply to imports from a State-controlled-economy country (hereinafter meaning a country provided for in Paragraph 2 of SUPPLEMENTARY PROVISIONS on Paragraph 1 of Ad Article 6 of the "ANNEX I NOTES AND SUPPLEMENTARY PROVISIONS" of the General Agreement on Tariffs and Trade).

"A country other than the importing signatory or those mentioned above" provided for in Sub-Paragraphs (a) and (b) of Paragraph 2 of Article 15 of the SCM Code shall be interpreted as a non-State-controlled-economy country whose stage of economic development is the closest comparable to that of the State-controlled-economy country exporting the products concerned.

11. Determination of injury
(1) Criteria for determination of material injury, etc.
Para.1 of Art.8 or Para.1 of Art. 9 of the Customs Tariff Law

In determining whether or not there is material injury, etc. provided for in Paragraph 1 of Article 8 or Paragraph 1 of Article 9 of the Customs Tariff Law, Paragraphs 1, 2 and 3 of Article 6 of the SCM Code or Paragraphs 1, 2 and 3 of Article 3 of the AD Code shall apply.

Paragraphs 6 and 7 of Article 3 of the AD Code shall apply to the determination of a threat of material injury provided for in Paragraph 1 of Article 8 or Paragraph 1 of Article 9 of the Customs Tariff Law.

(2) Causal link
Para.1 of Art.8 or Para.1 of Art. 9 of the Customs Tariff Law

Paragraph 4 of Article 6 of the SCM Code or Paragraph 4 of Article 3 of the AD Code shall apply to the determination of a causal link between imports of the subsidized products or dumped products and the fact of material injury, etc.

12. Nature of the Guidelines

Systems concerning countervailing duty and anti-dumping duty shall be operated in accordance with the General Agreement on Tariffs and Trade, the SCM Code, the AD Code and relevant domestic laws and regulations. The purpose of these Guidelines is to supplement the present provisions and to contribute to the smooth operation of the systems. Furthermore, in applying the above Agreement and Codes, their internationally established interpretations shall be taken into account.
[SAMPLES] Form for a Written Application Requesting the Levy of a Countervailing Duty or Anti-Dumping Duty.

(Date)

To the Minister of Finance

Applicant
(Address)
(Name of Association)
(Name of Representative)

Application Requesting the Levy of a Countervailing Duty (or Anti-Dumping Duty) on (product) made in (country) in Accordance with Article 8 (or Article 9) of the Customs Tariff Law

With respect to (product) imported from (country), I (or we) hereby request, in accordance with the provisions of Paragraph 4 of Article 8 (or Article 9) of the Customs Tariff Law, that a countervailing duty (or anti-dumping duty) be levied on (product) in question, as there are facts of the subsidization (or the dumping) of (product) and facts showing that its importation has caused material injury, etc. to the (product) industry in Japan.
(In the case of an application requesting the levy of a countervailing duty)

1. Description, name of manufacturer, type, model and features of the subsidized product
   1-1. A description and the tariff classification of the subsidized product
   1-2. The manufacturer of the subsidized product
   1-3. The type, model and features of the subsidized product

2. Exporters and exporting country of the subsidized product
   2-1. The country exporting the subsidized product
   2-2. The exporters of the subsidized product
   2-3. The importers of the subsidized product

3. Summary of facts concerning the importation of the subsidized product and facts concerning material injury, etc. to an industry in Japan, caused by such importation
   (The evidence to be attached herewith shall, in principle, cover a one-year period in respect to facts concerning the importation of the subsidized product and a three-year period in respect to facts concerning material injury, etc. prior to submission of a written application)
   3-1. Facts showing that the product is subsidized
      i. A summary of the export promotion policy or measures in the exporting country, if available
      ii. A summary of the subsidy system concerned
      iii. The amount (ratio) of the subsidy
   3-2. Facts concerning material injury, etc. to an industry in Japan caused by the importation of the subsidized product
      i. Volume of importation of the subsidized product
      ii. Effect on prices of a like product in Japan caused by the importation of the subsidized product
      iii. Effect on an industry in Japan caused by the importation of the subsidized product
   3-3. Facts showing that circumstances in which importation of the subsidized product would cause injury are clearly foreseen and imminent, when the application alleges a threat of material injury

4. Those items of submitted evidence, requested to be treated as confidential, and the reasons for such request
   4-1. Evidence requested to be treated as confidential
   4-2. Reasons

5. Reasons why the applicant has an interest in an industry in Japan

6. Any other relevant matters
   6-1. Producers in Japan producing a like product to the subsidized product, excluding the applicant
   6-2. General situation of international transactions of the like product to the subsidized product
(In the case of an application requesting the levy of an anti-dumping duty)

1. Description, name of manufacturer, type, model and features of the dumped product
   1-1. A description and the tariff classification of the dumped product
   1-2. The manufacturer of the dumped product
   1-3. The type, model and features of the dumped product

2. Exporters and exporting country of the dumped product
   2-1. The country exporting the dumped product
   2-2. The exporters of the dumped product
   2-3. The importers of the dumped product

3. Summary of facts concerning the importation of the dumped product and facts concerning material injury, etc. to an industry in Japan, caused by such importation

   (The evidence to be attached herewith shall, in principle, cover a one-year period in respect to facts concerning the importation of the dumped product and a three-year period in respect to facts concerning material injury, etc. prior to submission of a written application)

   3-1. Facts showing that the product is dumped
      i. The margin of dumping
      ii. Normal value of the dumped product
      iii. The export price to Japan of the dumped product

   3-2. Facts concerning material injury to an industry in Japan caused by the importation of the dumped product
      i. Volume of importation of the dumped product
      ii. Effect on prices of a like product in Japan caused by the importation of the dumped product
      iii. Effect on an industry in Japan caused by the importation of the dumped product

   3-3. Facts showing that circumstances in which importation of the dumped product would cause injury are clearly foreseen and imminent, when the application alleges a threat of material injury

4. Those items of submitted evidence, requested to be treated as confidential and the reasons for such request
   4-1. Evidence requested to be treated as confidential
   4-2. Reasons

5. Reasons why the applicant has an interest in an industry in Japan

6. Any other relevant matters
   6-1. Producers in Japan producing a like product to the dumped product, excluding the applicant
   6-2. General situation of international transactions of the like product to the dumped product