QUESTIONS BY JAPAN ON COUNCIL REGULATION
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1. The new EC regulation introduces the following new provisions:

1. Article 13-11 [Additional anti-dumping duty]

The new EC regulation stipulates that the absence of a price increase by an amount corresponding to the anti-dumping duty shall be considered as an indicator that the anti-dumping duty has been borne by the exporter, and then an additional anti-dumping duty may be imposed retroactively.

(1) i) If an importer is not related to an exporter, at which stage of trade will the EC investigate a price increase?
ii) How will the EC treat the case where the unrelated importer does not increase the price by an amount corresponding to the anti-dumping duty?

(2) i) A price increase will not be made by an amount of anti-dumping duty if there is a decline in export price caused by a decline in the normal value due, for instance, to decrease in production cost. Will the EC investigate the normal value when Article 13-11 is applied?
ii) If not, how will the consistency with Article 8-3 of the AD Code be maintained? Article 8-3 of the AD Code stipulates that "the amount of the anti-dumping duty must not exceed the margin of dumping as established under Article 2"?

iii) If an exporter demonstrates a decline in normal value, will the EC estimate the actual dumping margin? How does the placing of responsibility of the proof on the exporter, as is done in Article 13-11(c) of the new EC regulation, accord with the AD Code?

(3) i) The new EC regulation cites as an example of evidence submitted by an interested party the resale price of a product to the first independent third party. We wonder if this is sufficient evidence.

ii) This criterion is out of balance with the requirement in Article 16 of the new EC regulation that the importer must prove that the duty actually collected exceeds the actual dumping margin.

(4) Will the EC investigate and impose additional anti-dumping duties on each importer individually?

(5) i) Won't an additional anti-dumping duty be imposed when the average of the increase in resale price is the same as the amount of the anti-dumping duty?

ii) Even in such a case, will an additional anti-dumping duty be imposed if the resale price for some individual transactions has increased less than the average?

(6) Will additional anti-dumping duties be applied retroactively only to the products imported which reveals an additional dumping margin?

(7) Will the EC apply the new anti-dumping duty rate to products imported after the conclusion of investi-
gations under this article? If so, how does this article accord with Article 14(review) of the new EC regulation, which requires the investigation of export price and normal value.

2. Article 2-10(e)[Adjustment]

The new EC regulation stipulates that "claims for adjustments which are insignificant in relation to the price or value of the affected transactions shall be disregarded."

We believe that the amount of prices unadjusted will become significant if such "insignificant adjustments" accumulate. Is there not a danger of dumping margins becoming larger as a result?

II. We believe that the following problems are inherent in the administration of the previous EC regulation and in the new EC regulation.

1. Article 2-9(a), 2-10[Comparison]

As the new EC regulation basically stipulates in writing the procedure used by the EC up until now concerning method of carrying out comparisons between export price and normal value, we continue to have concern in regard to the following points:

In cases where sales are made through related company in an importing country and an exporting country, the export price is estimated by deducting all costs and adequate profits of the related company in the importing country from the sales price to a third party. On the other hand, the normal value is estimated without deducting indirect
sitting expenses, SGA and profits of related company in the exporting country from the sales price to a third party.

The problem with this method is that it makes it easier to find a dumping margin as a result (See figure 1).

(1) How does this method of differentiating between deduction items accord with Article 2-6 of the AD Code, which stipulates that "the two prices shall be compared 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."

(2) What is the reason for the deletion of the sentence "they shall normally be compared at the same level of trade, preferably at the ex-factory level, and as nearly as possible at the same time" provided in Article 2-9 of the previous EC regulation, from the EC regulation?

2. Article 2-13[Averaging and sampling techniques]

Article 2-13 of the new EC regulation stipulates that "where price vary:
- normal value shall normally be established on a weighted average basis,
- export prices shall normally be compared on a transaction-by-transaction basis."

However, negative dumping margins, in which the export price exceeds the normal value, are ignored in such cases.

Consequently, dumping margins occur in cases where exports vary according to the time of contract (See figure 2) or where according to the distributor (See figure 3), even if the domestic sales price is on the average equivalent to the export price.
How does this method of estimation accord with Article 2-6 of the AD Code, which stipulates that "due allowances shall be made in each case, on its merit, for the differences in conditions and terms of sales, for the differences in taxation, and for the other differences affecting price comparability"?
figure 1

domestic sales price

direct selling expenses of the subsidiary
inland freight/insurance of the subsidiary
profits of the subsidiary
indirect selling expenses/SGA of the subsidiary
general expenses of the producing company
profits of the producing company
cost of production

export price

sales price to an unrelated party
direct selling expenses of the subsidiary in the importing country
profits of the subsidiary in the importing country
indirect selling expenses/SGA of the subsidiary in the importing country
customs
ocean freight/export insurance
Inland freight/Inland Insurance
general expenses of the producing company
profits of the producing company
cost of production
figure 2

[Diagram showing export price, negative dumping margin, normal value, positive dumping margin, and dumping margin to be calculated]
figure 3

negative dumping margin
(normal value)
positive dumping margin

price

distribution channels

dumping margin to be calculated