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

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NOTIFICATION OF LAWS AND REGULATIONS UNDER ARTICLES 18.5, 32.6 AND 12.6 OF THE AGREEMENTS

JAPAN

Supplement

The following communication, dated 31 July 2009, is being circulated at the request of the Delegation of Japan.

Pursuant to Article 32.6 of the Agreement on Subsidies and Countervailing Measures, Article 18.5 of the Anti-dumping Agreement, and Article 12.6 of the Agreement on Safeguards, the Government of Japan wishes to notify the relevant Articles in the Cabinet Order Relating to Countervailing Duty, Anti-Dumping Duty and Emergency Duty, and the Guidelines for Procedures Relating to Countervailing Duty, Anti-Dumping Duty and Emergency Duty/Measures, which are amended. The amendments were published on 31 March.

THE GUIDELINES FOR PROCEDURES
RELATING TO COUNTERVAILING DUTY

1. Status of this Guideline

The operation of the system relating to countervailing duties is governed by the provisions of the relevant domestic laws and regulations of Japan, the General Agreement on Tariffs and Trade 1994 and the Agreement on Subsidies and Countervailing Measures. The objective of enacting this Guideline is to complement the Agreements, laws and regulations above, and to contribute to facilitate the operation of the system. Further, flexible and responsive approaches in individual cases shall not be precluded in applying this Guideline. Moreover, consideration shall be given to internationally established interpretations of each of the above-mentioned Agreements for its application.

2. Definitions

For the purpose of this Guideline, the terms "Law", "Cabinet Order" and "ASCM" shall mean "Customs Tariff Law (Law No. 54 of 1910)", "Cabinet Order Relating to Countervailing Duty (Cabinet Order No. 415 of 1994)", and "Agreement on Subsidies and Countervailing Measures", respectively.

3. Domestic Industry

(1) Major Proportion

(Cabinet Order: Article 2, paragraph 1.)

The term "major proportion" as provided for in paragraph 1 of Article 2 of the Cabinet Order shall be interpreted as approximately 50 per cent.

(2) Producers Excluded from Domestic Producers

(Cabinet Order: Article 2, paragraphs 1 and 2.)

The output of the like products of the imported product concerned by producers who are not included in "domestic producers" referred to in paragraph 1 of Article 2 of the Cabinet Order pursuant to paragraph 2 thereof, shall be included into the calculation of the total domestic production of the product concerned.

(3) Relation to Control

(Cabinet Order: Article 2, the proviso to paragraph 2.)

The term "control" as provided for in the proviso to paragraph 2 of Article 2 of the Cabinet Order shall apply to any of the following cases, based on Japan's GAAP (Generally Accepted Accounting Principles).

(i) When a company holds in its own account more than half of the voting rights in another company;

(ii) When a company holds from 40 per cent to half of the voting rights, and meets any of the conditions in the following subparagraphs:

- A. Combination of the voting rights held by the company's own account and the voting rights held by those who are expected to exercise the voting rights in the same way as the company based on the close relationship through investment, personnel affairs, capital, technology, transactions, and so forth, and the voting rights held by those who have agreed to exercise their voting rights in the same way as the company exceeds the majority of voting rights of the other company;
- B. Current or former executives or employees of the company who can influence on the decisions on financial and operating or business policies of the other company constitute the majority of the board of directors or equivalent governing body of the other company;
- C. There are contracts or other agreements that control important financial and operating or business policies of the other company;
- D. The company finances the majority of the loans of the other company; and
- E. There are other facts that indicate the company can exercise control over the decision-making body of the other company.

(iii) When a combination of the voting rights held by the company's own account and the voting rights held by those who are expected to exercise the voting rights in a same way as the company based on the close relationship through investment, personnel affairs, capital, technology, transactions, and so forth, and the voting rights held by those who have agreed to exercise their voting rights in the same way as the company exceeds the majority of voting rights of the other company, and meets any of the conditions of paragraph (3)(ii) B to E of Article 3 hereof.

(4) Exception of producers who have imported such products or who have relations with importers or producers of such imported products

(Cabinet Order Relating: Article 2, the proviso to paragraph 2.)

(i) The judgment as to whether producers "behave differently from other producers who have no relations (non-related producers)" as provided for in the proviso to paragraph 2 of Article 2 of the Cabinet Order Relating shall be made on the basis of the following:

- A. Actual conditions of transactions with related parties regarding volume and uses of such products, etc.;
- B. Stance on support of the request for the imposition of duty, etc. under paragraph 5, 18 or 23 of Article 7 of the Law; and
- C. Any other relevant matters which shows that direct or indirect control does not require to behave differently from other producers.

(ii) The judgment as to whether a producer's "major business concerning those products and the like products is domestic production of the like products" as provided for in the proviso to paragraph 2 of Article 2 of the Cabinet Order shall be made on the basis of the following:

- A. Actual conditions of imports regarding suppliers, volumes and purposes of such imported products, etc.;
- B. Stance on support of the request for the imposition of duty, etc. under paragraph 5, 18 or 23 of Article 7 of the Law; and
- C. Any other relevant matters which show that major business concerning those products and the like products is domestic production of the like products.

4. Request for the Imposition of Duty, etc.

(1) Submission of Evidence, etc.

(Cabinet Order: Article 2, the proviso to paragraph 2; Article 4, paragraphs 1 to 7 and the second sentence of paragraph 9; Article 7, paragraphs 1 and 2; Article 8, paragraph 2; Article 9, paragraphs 1 and 2; Article 10, paragraphs 1 and 2; Article 11, paragraph 1.)

The following items shall be submitted to or presented at the Tariff Policy and Legal Division of the Customs and Tariff Bureau, Ministry of Finance, and shall be addressed to the Minister of Finance. The number of copies of the submission in writing shall be no less than 1 if the same is also submitted in an electronic medium at the time of the submission. The number of copies of the submission in writing shall be no less than 4 if the same in an electronic medium is not submitted.

- The evidence referred to in the proviso to paragraph 2 of Article 2 of the Cabinet Order,
- The document or evidence referred to in paragraphs 1 to 7 or the second sentence of paragraph 9 of Article 4 of the Cabinet Order,
- The evidence, testimony or document referred to in paragraph 1 or 2 of Article 7 of the Cabinet Order,
- The document referred to in paragraph 2 of Article 8 of the Cabinet Order,
- The presentation of the view referred to in paragraph 1 or 2 of Article 9 of the Cabinet Order,
- The information referred to in paragraph 1 or 2 of Article 10 of the Cabinet Order, or
- The document referred to in paragraph 1 of Article 11 of the Cabinet Order.

(2) Sufficient Evidence

(Law: Article 7, paragraph 5.)

Sufficient evidence as provided for in paragraph 5 of Article 7 of the Law shall be the evidence based on such information as is reasonably available. Simple assertion, unsubstantiated by relevant evidence, cannot be considered as such sufficient evidence.

(3) The Degree of Support

(Cabinet Order: Article 4, subparagraph 7 of paragraph 1, subparagraph 7 of paragraph 3 and subparagraph 7 of paragraph 4.)

It shall not be regarded as "found to be necessary" referred to in paragraph 6, 19 or 24 of Article 7 of the Law, unless indicated as the degree of support by interested producers or interested labour unions provided for in subparagraph 7 of paragraph 1, subparagraph 7 of paragraph 3, or subparagraph 7 of paragraph 4 of Article 4 of the Cabinet Order that:

- The collective domestic output of like products of the imported product concerned by interested producers, etc. (in the case of association of domestic producers of like products of the imported product concerned, direct or indirect members of the association) in support of the request referred to in the provisions of paragraph 5, 18 or 23 of Article 7 of the Law, exceeds the total domestic output of the said product minus the collective domestic output of the said product by interested producers, etc. who express not to oppose the request concerned (including interested producers, etc. in support of the said request); or

- The collective number of the members of interested labour unions which support the said request and who are engaged in the domestic production of the said product exceeds the total number of persons engaged in the said production minus the number of members of interested labour unions which express not to oppose the said request (including interested labour unions in support of the said request).

(4) Producers Excluded from Domestic Producers, etc.

(Cabinet Order: Article 3, paragraphs 1 and 2.)

The output of like products of the imported product concerned by the following producers, or the number of the following members, shall be included into the calculation of the total domestic production of the product concerned or the total number of persons engaged in the domestic production of the said product:

- Producers who shall, pursuant to paragraph 2 of Article 3 of the Cabinet Order, not be included in "domestic producers" referred to in subparagraph 1 of paragraph 1 of the said Article, or
- Members who shall, pursuant to paragraph 2 of Article 3 of the Cabinet Order, not be included in "members" referred to in subparagraph 2 of paragraph 1 of the said Article.

(5) Sample of Items and Manners of Description in the Request for the Imposition of Duty, etc., Sample Form for Submission of Evidence, and Sample Manners of Summarization of Confidential Evidence, etc.

(Cabinet Order: Article 4, paragraphs 1 to 6; Article 7, paragraphs 1 and 5.)

(i) In making a request for the imposition of countervailing duty, etc., the document setting forth the necessary information shall be submitted in accordance with the sample of items and manners of descriptions in the request for the imposition of duty, etc. in Attachment 1. The sample form for submission of evidence to be attached to the request shall be Attachment 2. The sample manners of summarization of confidential evidence, etc. shall be Attachment 3; provided that matters pertaining to the amount of subsidy in the document to be submitted and the evidence to be attached thereto in connection with such matters shall follow Article 6 hereof.

(ii) The sample form for submission of evidence as provided for in paragraph 1 of Article 7 of the Cabinet Order shall be Attachment 4. The sample manners of summarization of confidential evidence, etc. shall be Attachment 3; provided that the evidence to be submitted in connection with matters pertaining to the amount of subsidy shall follow Article 6 hereof.

(6) Offices for Consultation

(Law: Article 7, paragraphs 5, 13, 18 and 23.)

The following offices are in charge of consultation in connection with the request for the imposition of countervailing duty, etc.:

- Tariff Policy and Legal Division of the Customs and Tariff Bureau, Ministry of Finance
3-1-1 Kasumigaseki, Chiyoda-ku, Tokyo, 100-8940 Japan
Telephone number: +81-3-3581-4786
Fax number: +81-3-5251-2173
Email address: anti.dumping@mof.go.jp
- Office for Trade Remedy Investigations of the Trade Control Department of the Trade and Economic Cooperation Bureau, Ministry of Economy, Trade and Industry
1-3-1 Kasumigaseki, Chiyoda-ku, Tokyo, 100-8901 Japan
Telephone number: +81-3-3501-3462
Fax number: +81-3-3501-0992
Email address: qqfcbk@meti.go.jp

5. Initiation of Investigation, etc.

(1) The Period of Time until the Decision on the Initiation of Investigation

(Law: Article 7, paragraphs 6, 14, 19, 24 and 28)

The decision on whether to initiate the investigation referred to in paragraphs 6, 14 or 19 of Article 7 of the Law (including the case where the provisions of paragraph 19 are applied *mutatis mutandis* paragraph 28 of the same Article) or in paragraph 24 of Article 7 (hereinafter referred to simply as "investigation", except for paragraphs (2), (5) and (6) of Article 5, Article 10, and paragraph (1)(i) of Article 11 hereof), shall be made within approximately two months from the date of the submission of the document referred to in paragraphs 1 to 5 of Article 4 of the Cabinet Order. In case that the said document is submitted, certain corrections (including additional evidence) may be requested where necessary. In case that certain corrections are requested, the decision on whether to initiate the investigation shall be made within approximately two months from the date of completion of all such corrections.

(2) Examination for the Initiation of Investigation

(Law: Article 7, paragraph 6. Cabinet Order: Article 4, subparagraph 5 of paragraph 1.)

(i) When the request for the imposition of countervailing duty is made pursuant to the provision of paragraph 5 of Article 7 of the Law, the following issues, among other issues, shall be examined with respect to the evidence, etc. attached the said request in making a decision on whether to initiate the investigation as provided for in paragraph 6 of the said Article.

A. Fact of Importation of the Subsidized Product:

- (a) It is indicated that a measure as provided for in either of items of subparagraph (a) of paragraph 1 of Article 1 of ASCM is granted;
- (b) It is indicated that benefit is conferred by a measure as specified in accordance with paragraph (2)(i)A(a) of Article 5 hereof; and
- (c) It is indicated that the measure as specified in accordance with paragraph (2)(i)A(a) of Article 5 hereof is specific as provided for in Article 2 of ASCM.

B. Fact of Material Injury, etc. to the Domestic Industry Caused by Importation of the Subsidized Product:

- (a) An increase of importation of the subsidized product, either in absolute terms or relative to production or consumption in Japan is indicated. Where there is more than one supplying country of the subsidized product, such increase is indicated for each supplying country;
- (b) It is indicated that importation of the subsidized product depresses prices of a like product of the subsidized product in Japan or prevents its price increases, which otherwise would have occurred without importation of the subsidized product;
- (c) The impact of importation of the subsidized product on the domestic industry (including a decline in sales, profits, output, market share, productivity, return on investments or utilization of capacity, or negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments) is indicated; and
- (d) A causal relationship between importation of the subsidized product and material injury, etc. to the domestic industry may be confirmed.

(ii) In principle, the scope of the examination under paragraph (2)(i) of Article 5 hereof shall be limited to matters as set forth in the document of the request for the imposition of countervailing duty; provided that in case corrections are made after submission of the said document in accordance with paragraph (1) of Article 5 hereof, a decision on whether to initiate the investigation shall be based on the corrected document.

(3) Council on Customs, Tariff, Foreign Exchange and Other Transactions

(Cabinet Order: Article 5, paragraph 1; Article 13, paragraphs 2 and 3.

The Minister of Finance shall, when a decision to initiate an investigation has been made, notify the members of the Special Duty Group of the Customs Tariff Subcouncil of the Council on Customs, Tariff, Foreign Exchange and Other Transactions and explain to the Special Duty Group, whenever appropriate, the reasons for initiating the investigation.

The Minister of Finance shall, in cases where he/she notifies and gives a public notice pursuant to paragraph 2 or 3 of Article 13 of the Cabinet Order, report to the Special Duty Group of the Customs Tariff Subcouncil of the Council on Customs, Tariff, Foreign Exchange and Other Transactions on the content thereof.

(4) Investigating Team

(Cabinet Order: Article 14.)

The Minister of Finance shall, when a decision to initiate the investigation has been made, after consulting with any Minister who has jurisdiction over the industry in Japan as referred to in paragraph 1 of Article 7 of the Law and the Minister of Economy, Trade and Industry, establish an investigating team composed of relevant officials of the Ministry of Finance, the said Ministry having jurisdiction over the industry in Japan, and the Ministry of Economy, Trade and Industry.

(5) Standard Period of Investigation

(Law: Article 7, paragraph 6. Cabinet Order: Article 5, subparagraph 7 of paragraph 1; Article 7, paragraph 1; Article 9, paragraph 1; Article 10, paragraph 1; Article 10-2; Article 12; Article 13; paragraphs 1 and 2.)

(i) In the initiation of an investigation as provided for in paragraph 6 of Article 7 of the Law, in principle, the due date for submission of the evidence, etc. to be indicated in a public notice pursuant to subparagraph 7 of paragraph 1 of Article 5 of the Cabinet Order shall be established in or around the following period:

A. Due date for submission of evidence and testimony pursuant to the first sentence of paragraph 1 of Article 7 of the Cabinet Order: three months after initiation of an investigation; and

B. Due date for presentation of the view pursuant to paragraph 1 of Article 9 of the Cabinet Order and provision of information pursuant to paragraph 1 of Article 10 of the Cabinet Order: four months after initiation of an investigation.

(ii) In principle, the procedures regarding the investigation as provided for in paragraph 6 of Article 7 of the Law shall be conducted in or around the following period:

A. On-the-spot investigation: six months after initiation of an investigation;

B. Preliminary determination: eight months after initiation of an investigation;

C. Notification of important facts (which shall mean notification pursuant to the provision of Article 12 of the Cabinet Order; hereinafter the same): ten months after initiation of an investigation; and

D. Final determination: one year after initiation of an investigation.

(iii) After the initiation of an investigation as provided for in paragraph 6 of Article 7 of the Law, if it is found appropriate to modify the matters indicated in a public notice pursuant to the provision of paragraph 1 of Article 5 of the Cabinet Order, such as suppliers of the product under investigation, etc., such finding shall, in principle, be handled by amending the said notice. In such case, the right equivalent to the right of submission of evidence, etc. (which shall mean the right of submission by the respective due dates indicated in a public notice pursuant to subparagraph 7 of paragraph 1 of Article 5 of the Cabinet Order) given to the interested parties (as referred to in paragraph 1 of Article 7 of the Cabinet Order; hereinafter the same) and the industrial users, etc. (which shall mean industrial users of, or representative consumer organizations for the product under investigation as referred to in paragraph 1 of Article 10 of the Cabinet Order; hereinafter the same) at the time of initiation of the investigation shall be given to the interested parties and the industrial users, etc., who are relevant to the amended matters.

(iv) The Minister of Finance shall notify the time schedule up to the final determination in making the notification of important facts.

(6) Period of Investigation

(Law: Article 7, paragraph 6. Cabinet Order: Article 5, subparagraph 5 of paragraph 1.)

In the initiation of an investigation as referred to in paragraph 6 of Article 7 of the Law, the period of investigation to be indicated in a public notice pursuant to subparagraph 5 of paragraph 1 of Article 5 of the Cabinet Order shall be, in principle, as follows:

(i) Fact of importation of the subsidized product: one year;

(ii) Fact of material injury, etc. to the domestic industry caused by such importation: three years; and

(iii) The period under paragraph (6)(i) of Article 5 hereof shall be within the period under paragraph (6)(ii) of the said Article hereof.

(7) Termination of Investigation

(Cabinet Order: Article 13, paragraph 3.)

A decision on termination of the investigation as provided for in paragraph 3 of Article 13 of the Cabinet Order shall be made in any of the following cases. Due care pursuant to Article 6 hereof shall be given to calculation pursuant to paragraph (7)(i) of Article 5 hereof.

- (i) when the amount of subsidy is found to be less than 1 per cent of the price of the product under investigation in the course of the investigation as provided for in paragraph 6 of Article 7 of the Law;
- (ii) when continuation of the investigation is found unnecessary due to the withdrawal of the request for the imposition of the duty, etc. upon initiation of the investigation based on request for the imposition of duty, etc. pursuant to paragraph 5, 13, 18 or 23 of Article 7 of the Law, or paragraph 18 thereof which applies *mutatis mutandis* to paragraph 28 thereof; or
- (iii) when it is found that there is not sufficient evidence to justify continuation of the investigation process, or otherwise termination of the investigation is found appropriate.

6. Calculation of the Amount of Subsidy

(1) Principles of the Calculation

(Law: Article 7, paragraph 1.)

In principle, the amount of subsidy shall be calculated as follows:

- (i) The local currency shall be used as the currency for the calculation; and
- (ii) Sales, which were made during the period of investigation, shall be covered. The date of sale shall normally be the date on which the material terms of sale are established; provided that the date of sale shall be determined on an individual case basis.

(2) Basic Concept of the Calculation Method

(ASCM: Article 14.)

The method of calculating the amount of representative subsidies is basically as follows and it shall be calculated from the perspective of the recipient of the subsidy; provided that the calculation method of the amount of each subsidy shall be determined appropriately, taking account of characteristics and conditions of each subsidy in an individual investigation.

(i) Grants

A. Amount of subsidy

In the case of a grant, the amount of subsidy is the amount of the grant by the government of the export country (hereinafter referred to as "government" including (a) any public body in the export country, (b) a private body carrying out funding that is normally vested in the government, or one that is entrusted or directed by the government to carry out funding that does not differ substantially from practices normally followed by the government). In the case of exemption or remission of domestic

taxes, etc., as for a grant, the amount of subsidy is the amount of the tax exempted or remitted, etc. the company would have paid.

B. Time of receipt of subsidy

In the case of a grant, the subsidy is deemed to have been received as of the date on which the company received the grant.

(ii) Debt forgiveness

A. Amount of subsidy

In the case of forgiveness of a company's debt obligation, the amount of subsidy is the amount of the principal and/or interest that the government has forgiven.

B. Time of receipt of subsidy

In the case of forgiveness of a company's debt obligation, the subsidy is deemed to have been received as of the date on which the debt and/or interest was forgiven.

(iii) Equity infusion

A. Amount of subsidy

(a) In the case of a government-provided equity infusion, where a benefit is considered to have existed to the extent that the investment decision is inconsistent with the usual investment practice of private investors (e.g. private investors would not be able to invest under such investment conditions), including the practice for the provision of risk capital, the amount of subsidy is the amount of the balance of the government's investment over and above that of private investors under the similar investment conditions.

(b) If actual investment by private investors which is comparable to government investment is not available, an adequate amount of subsidy will be determined after examining the difference between the amount of the investment by the government and the appraised amount of the value of the shares issued by the company, etc.

B. Time of receipt of subsidy

In the case of a government-provided equity infusion, the subsidy is deemed to have been received as of the date on which the company received the equity infusion.

(iv) Loans

A. Amount of subsidy

(a) In the case of a loan, where a benefit is considered to have existed to the extent that there is a difference between the amount a company pays on the government-provided loan and the amount the company would pay on a comparable commercial loan that the company could actually obtain on the market, the amount of subsidy is the amount of that difference.

- (b) If an actual commercial loan to the company which is comparable to a government-provided loan is not available, an adequate amount of subsidy will be determined after examining reasonably comparable commercial loans available in the domestic market, etc.

B. Time of receipt of subsidy

In the case of a loan, the subsidy is deemed to have been received as of the date on which the company would otherwise have had to make a payment on a comparable commercial loan.

(v) Loan guarantees

A. Amount of subsidy

In the case of a loan guarantee, where a benefit is considered to have existed to the extent that there is difference between the amount a company pays for a loan with a government-provided guarantee and the amount the company would pay for a comparable commercial loan that the company could actually obtain on the market without the government-provided guarantee, the amount of subsidy is the amount of that difference.

B. Time of receipt of subsidy

In the case of a loan guarantee, the subsidy is deemed to have been received as of the date on which the company would otherwise have had to make a payment on a comparable commercial loan.

(vi) Provision of goods or services / Purchase of goods

A. Amount of subsidy

- (a) In the case of provision of goods or services or purchase of goods by a government, where a benefit is considered to have existed to the extent that such provision of goods or services is made for less than adequate remuneration, or such purchase of goods is made for more than adequate remuneration, the amount of subsidy is the amount of the difference between adequate remuneration and actual remuneration made.
- (b) The adequacy of remuneration shall be determined appropriately by considering prevailing market conditions for the good or service in question in the country of provision or purchase (including price, quality, availability, marketability, transportation and other conditions of purchase or sale).

B. Time of receipt of subsidy

In the case of the provision of goods or services or purchase of goods, the subsidy is deemed to have been received as of the date on which the company or the government paid or, in the absence of payment, is assumed to have been due to pay for the provision of goods or services or purchase of goods by a government.

(vii) Debt-to-equity swap

A. Amount of Subsidy

- (a) In the case of a government-provided debt-to-equity swap, where a benefit is considered to have existed to the extent that the debt-to-equity swap decision is inconsistent with the usual investment or debt-to-equity swap practice of private investors (e.g., private investors would not be able to invest or make debt-to-equity swaps under similar conditions), the amount of subsidy is the amount of the balance of the debt converted into equity by the government over and above the amount of investment or debt-to-equity swap by private investors under the similar conditions.
- (b) If actual investment or debt-to-equity swap by private investors which is comparable to the debt-to-equity swap by the government is not available, an adequate amount of subsidy will be determined after examining the difference between the amount of the debt converted into equity by the government and the appraised amount of the value of the shares issued by the company, etc.

B. Time of Receipt of Subsidy

In the case of a government-provided debt-to-equity swap, the subsidy is deemed to have been received as of the date on which the company received the debt-to-equity swap.

(viii) Extension of the maturity of loan

A. Amount of subsidy

- (a) In the case of an extension of the maturity of loan, where a benefit is considered to have existed to the extent that there is a difference between the amount that a company pays on the government-provided loan subject to the extension of the maturity of the loan and the amount that the company would pay on a comparable commercial loan that the company could actually obtain on the market, the amount of subsidy is the amount of that difference.
- (b) If an actual commercial loan to the company which is comparable to a government-provided loan subject to the extension of the maturity of loan is not available, an adequate amount of subsidy will be determined after examining reasonably comparable commercial loans available in the domestic market, etc.

B. Time of receipt of subsidy

In the case of an extension of the maturity of loan, the subsidy is deemed to have been received as of the date on which the company would otherwise have had to make a payment on a comparable commercial loan.

(3) Adjustments to the Calculation

(ASCM: Article 14.)

When the amount of a subsidy is calculated, the following adjustments shall be made:

(i) Deductible expenses

Expenses incurred in applying for a subsidy or export tax paid in order to offset the subsidy shall be deducted from the amount of subsidy.

(ii) Allocation of subsidy

A. Where a company continuously receives benefit over a number of years from the base year for reckoning receipt of a subsidy, the amount of subsidy shall be allocated for an appropriate period of time. In that case, interest on the benefit derived from the subsidy shall be added.

B. The necessity of the allocation of subsidy shall be determined upon considering the nature, conditions, and so forth of the individual subsidy.

(4) Calculation of the Rate of the Countervailing Duty

(Law: Article 7, paragraph 1.)

In case of the imposition of a countervailing duty on an *ad valorem* basis, the rate of the countervailing duty shall be calculated by dividing the amount of the subsidy of the product under investigation by the CIF price (transaction price including freight and insurance costs to Japan) of the said product imported during the period of investigation.

7. Request for Submission of Evidence, etc.

(Cabinet Order: Article 5, subparagraph 7 of paragraph 1; Article 7, paragraph 2; Article 9, paragraph 2; Article 10, paragraph 2.)

(1) When the Minister of Finance sends questionnaires to the interested parties or industrial users, etc. to request the submission of evidence as referred to in paragraph 2 of Article 7 of the Cabinet Order, to request for the presentation of the view as referred to in paragraph 2 of Article 9 of the Cabinet Order, or to request the provision of information as referred to in paragraph 2 of Article 10 of the Cabinet Order (hereinafter referred to as "submission of evidence, etc."), the Minister of Finance shall explicitly indicate in the questionnaire in each investigation case the due date for the response to the questionnaire.

(2) When requesting the submission of evidence, etc., voluntary submission in an electronic medium together with submission in writing shall be requested.

(3) While evidence must be submitted by the due date for the submission of evidence indicated in a public notice pursuant to subparagraph 7 of paragraph 1 of Article 5 of the Cabinet Order upon initiation of the investigation, submission of evidence may also be permitted in any of the following events:

- (i) when questionnaires are issued;
- (ii) when submission of evidence upon the preliminary determination is requested;
- (iii) when submission of evidence upon the notification of important facts is requested;
- (iv) when submission of evidence at the on-the-spot investigation is requested; or
- (v) when otherwise submission of evidence for any inevitable reason is requested.

8. On-the-spot investigation

(ASCM: Article 12, paragraph 6; Annex VI.)

(1) When necessary to verify information provided or to obtain further details, the investigating team may conduct on-the-spot investigation of the suppliers or government that granted subsidies in the exporting country (as in paragraph 6 of Article 12 of ASCM), in the following manner:

(i) Before investigation

A. Schedule arrangement.

- (a) Confirm the agreement of the party subject to the on-the-spot investigation (hereinafter referred to as "the party concerned") over the investigation.
- (b) Arrange the date of the investigation, upon the agreement with the party concerned.
- (c) Notify representatives of the government of exporting countries and confirm that they do not object to the investigation.

B. Notify the party concerned prior to the investigation.

When the date is agreed, send a notification and other detail documents of the investigation to the party concerned. In such a case, send a detailed agenda of the investigation along with these documents to the supplier in the exporting country in a reasonable period of time prior to the visit considering the necessary preparation time.

(ii) After the investigation

A. Make a verification report.

B. When making the notification of important facts before the final determination, send the verification report to the parties concerned.

C. Regardless of paragraph (1)(ii)B of Article 8 hereof, disclose the verification report to the interested party prior to the notification of important facts, if requested to do so.

(2) The following actions shall be taken upon request for submission of evidence at the on-the-spot investigation pursuant to paragraph (3)(iv) of Article 7 hereof:

(i) Evidence shall be submitted in writing; presentation of the evidence shall not be deemed as submission thereof;

(ii) Voluntary submission in an electronic medium together with submission in writing shall be requested;

(iii) With respect to evidence which cannot be submitted on the day of the on-the-spot investigation, it shall be deemed that no response was submitted. In principle, replacement of evidence, which was submitted at the on-the-spot investigation, shall not be permitted;

(iv) In principle, submission of new evidence irrelevant to the facts, which were revealed before the on-the-spot investigation, shall not be permitted;

- (v) Submission of a list of the evidence submitted during the on-the-spot investigation by the end of the on-the-spot investigation shall be requested to the party concerned. With respect to evidence, which had been requested to be submitted during the on-the-spot investigation, it shall be confirmed that the requested evidence was properly submitted by referring to the list thereof;
 - (vi) In order to improve the accuracy of the investigation, in principle, questions and answers shall be recorded;
 - (vii) In principle, the on-the-spot investigation shall be conducted in Japanese; interpreters may be used depending on the case;
 - (viii) When evidence was not submitted or when the party concerned has not sufficiently cooperated, the on-the-spot investigation may be terminated; and
 - (ix) When the on-the-spot investigation was terminated pursuant to paragraph (2)(viii) of Article 8 hereof, facts that were available (hereinafter "facts available") shall be applied in accordance with the procedures under paragraph (2) of Article 9 hereof.
- (3) The provision of paragraphs (1) and (2) of Article 8 hereof shall apply *mutatis mutandis* to on-the-spot investigations of the domestic producers and importers.

9. Facts Available

(Cabinet Order: Article 7, paragraph 4. ASCM: Article 12, paragraph 7.)

- (1) Application of facts available shall mean the procedures as provided for in paragraph 4 of Article 7 of the Cabinet Order, and may be used in, for example, any of the following events:
- (i) A response was not made by the original due date for the response to a request for the submission of evidence pursuant to Article 7 hereof;
 - (ii) A response was made only partially to a request for the submission of evidence pursuant to Article 7 hereof, and necessary evidence was not submitted;
 - (iii) The accuracy of the submitted evidence cannot be confirmed; or
 - (iv) It was found that the submission of evidence has been significantly delayed without any good reason or the investigation was otherwise impeded.
- (2) Regarding the use of the facts available, the following procedures apply. The lack of cooperation by an interested party with the investigation could lead to a result which is less favourable to the party concerned.

In sending a questionnaire, the questionnaire shall set forth that facts available may be applied if the due date for the response to the questionnaire is missed. In sending documents explaining the on-the-spot investigation, the documents shall set forth that facts available may be applied if the evidence to be requested at the on-the-spot investigation is not submitted by the end of the on-the-spot investigation.

- (i) When the due date for the response to the questionnaire has been missed, it shall, in principle, be deemed that the response has not been submitted.
- (ii) Upon request for the submission of evidence at the on-the-spot investigation to verify the accuracy of the evidence submitted prior to the on-the-spot investigation, the evidence, which had been requested but not submitted by the end of the on-the-spot investigation, shall be deemed that no response was made.
- (iii) In making the preliminary determinations, the reason for the use of facts available as well as the evidence used and the process involved shall be set forth in the document notifying the preliminary determination.

(iv) In making the notification of important facts, the reason for the use of facts available as well as the evidence used and the process involved shall be set forth in the document notifying the important facts.

(v) In making the final determination, the reason for the use of facts available as well as the evidence used and the process involved shall be set forth in the document notifying the final determination.

(vi) Even where there is no evidence directly obtained from the interested party, in using secondary information as evidence to apply facts available, the secondary information shall be sufficiently examined.

10. Preliminary Determination

(1) Notification of the Preliminary Determination, etc.

(Cabinet Order: Article 7, paragraph 2; Article 9, paragraph 2; Article 10-2.)

The following actions shall be taken in making the notification, etc. of a preliminary determination:

(i) In the notification and the public notice of a preliminary determination, where found necessary, submission of evidence pursuant to paragraph 2 of Article 7 of the Cabinet Order may be requested with setting forth the due date for the response, to the extent that it is directly related to the preliminary determination;

(ii) In the public notice of a preliminary determination, where found necessary, presentation of the view pursuant to paragraph 2 of Article 9 of the Cabinet Order may be requested with setting forth the due date for the response, to the extent that it is directly related to the preliminary determination. As is the case of views presented by interested parties, views presented by the industrial users, etc., shall be one of the factors in determining the necessity of protecting the domestic industry while it is the discretion of the authorities, not an independent requirement, to impose the countervailing duty on how their views should be reflected in the final determination; and

(iii) At the time of a preliminary determination, in principle, an interim report on the facts found, which formed the basis for the determination, shall be prepared and be made public on the website.

(2) Actions after the Preliminary Determination

(Law: Article 7, paragraphs 9 and 10.)

The following actions shall be taken after the preliminary determination:

(i) When it can be presumed that importation of the subsidized product has occurred resulting in material injury, etc. to the domestic industry caused by such importation in the preliminary determination, and if it is found necessary to protect such domestic industry, measures under the provision of paragraph 10 of Article 7 of the Law (hereinafter referred to as "provisional measures") may be applied or an undertaking referred to in the first sentence of paragraph 9 of the same Article may be accepted;

(ii) If it cannot be presumed that importation of the subsidized product has occurred in the preliminary determination, but it can be presumed that such importation caused material injury, etc. to the domestic industry, further continuation of investigation shall be considered; and

(iii) When material injury, etc. to the domestic industry caused by the importation of the subsidized product cannot be presumed in the preliminary determination, termination of the investigation shall be considered.

11. Undertaking

(Law: Article 7, first sentences of paragraphs 9 and 15, paragraphs 21, 25 and 28.)

(1) Requirements for the Acceptance of an Undertaking

An undertaking (as referred to in the first sentence of paragraph 9 of Article 7 of the Law (including *mutatis mutandis* application of said provisions to the first sentence of paragraph 15, paragraphs 21 and 25 of the said Article, and further *mutatis mutandis* application of paragraph 21 to paragraph 28 of the said Article) and the same applies to paragraphs (1) and (3) through (5) of Article 11 hereof) may be accepted only if an offer including all of the following matters is made:

- (i) A provision stating that: the effective period of the undertaking concerned expires, within five years from the date of accepting the undertaking, on the day as fixed in the said undertaking however, in cases where such a date, within five years from the date of accepting the undertaking, as fixed by the undertaking, is preceded by the date on which the undertaking lapses in accordance with paragraph 3 of Article 11 of the Cabinet Order or the date on which the undertaking is withdrawn or the date on which the undertaking is violated, the date on which the investigation is concluded in cases where changes in circumstances, as referred to in subparagraphs of paragraph 17 of Article 7 of the Law, are found as a result of the investigation referred to in paragraph 19 of the said Article which applies *mutatis mutandis* to paragraph 28 of the said Article (except for the cases where an undertaking is newly accepted in accordance with the provision of paragraph 21 of the said Article which applies *mutatis mutandis* to paragraph 28 of the said Article), or any other date on which the undertaking loses effect, the undertaking concerned loses effect on the date whichever is the earliest;
- (ii) A provision relating to: the provision of information relevant to the fulfilment of the undertaking concerned, the permission of verification of pertinent data and other matters found necessary. Such provision shall include at least the following matters:

- A. Information relating to grant of the subsidy will be submitted periodically;
- B. Information relating to production of the product under investigation will be submitted periodically;
- C. Other information which is considered to be necessary to confirm the fulfillment of the undertaking will be submitted when necessary;
- D. The export of the subsidized product to Japan through a third party and the circumvention exports to Japan through a third country will be prevented to the maximum extent;
- E. On-the-spot investigations will be accepted unconditionally at any time in order to verify the accuracy of the information, etc. provided;
- F. A prior notice will be given to terminate the undertaking; and
- G. Where an undertaking is offered to revise the price of the product to the price that it may be found that the injurious effect of the subsidy of the product on the domestic industry is eliminated, matters as illustrated below will be included:
- (a) the price, which will eliminate the injury to the domestic industry, is offered;
- (b) if the price of the product under investigation fluctuates, the price of the undertaking will be changed accordingly in a way that will eliminate the injury to the domestic industry, and its calculation method is offered in a verifiable manner;
- (c) the price of the undertaking will be maintained even where benefit for customers (discounts, etc.) will be given; and
- (d) the information of the export transactions of the product under investigation to Japan will be submitted periodically; and

H. Where the undertaking is offered by the authorities of the supplying government to take measures which are deemed appropriate to eliminate the effect of the subsidy of the product on the domestic industry, specific conditions of such measures are offered;

(iii) A provision stating that: if the authorities of the supplying country or the exporter who offered the undertaking concerned refuse to provide information relevant to the fulfillment of the undertaking concerned, to permit verification of pertinent data, or to provide other matters found necessary to fulfill the undertaking, such act shall be deemed as a violation of the undertaking; and

(iv) A provision stating that: the Japanese government may determine at its own judgment whether or not the undertaking is violated.

(2) The following procedures shall apply to an undertaking:

(i) Offer of an undertaking (as referred to in the first sentence of paragraph 9 of Article 7 of the Law (including *mutatis mutandis* application thereof to the first sentence of paragraph 15, paragraphs 21 and 25 of the said Article)) shall be made within 10 days after the notification of important facts; and

(ii) The applicant as referred to in paragraph 1 of Article 4 of the Cabinet Order shall be given an opportunity to provide further explanation.

(3) Even where an undertaking, which includes all of the matters as provided for in paragraph (1) of Article 11 hereof, is offered, such offer may be refused in any of the following events:

(i) When objective grounds exist to doubt the fulfillment of such an undertaking;

(ii) When objective circumstances exist that would make it difficult to observe the situation of compliance with such an undertaking; or

(iii) When it is otherwise considered that it is not appropriate to accept such an undertaking.

(4) Even when an undertaking is accepted, in principle, the investigation shall continue.

(5) Where it is judged that the undertaking has been broken, the following actions shall be taken:

(i) When an investigation is not yet complete, the provisional measures shall immediately be taken based on the best information available at the time, the investigation shall be completed promptly, and a countervailing duty as referred to in paragraph 1 of the Article 7 of the Law may be imposed; and

(ii) When an investigation has been completed, a countervailing duty as referred to in paragraph 1 of Article 7 of the Law may be immediately imposed.

12. Notification of Important Facts

(Cabinet Order: Article 12.)

In the notification of important facts, where found necessary, submission of evidence pursuant to paragraph 2 of Article 7 of the Cabinet Order may be requested upon setting forth the due date for the response, to the extent that it is directly related to the important facts.

THE GUIDELINES FOR PROCEDURES RELATING
TO ANTI-DUMPING DUTY

1. Status of this Guideline

The operation of the system relating to anti-dumping duties is governed by the provisions of the relevant domestic laws and regulations of Japan, the General Agreement on Tariffs and Trade 1994 and the Agreement of Implementation of Article VI of the General Agreement on Tariffs and Trade 1994. The objective of enacting this Guideline is to complement the Agreements, laws and regulations above, and to contribute to facilitate the operation of the system. Further, flexible and responsive approaches in individual cases shall not be precluded in applying this Guideline. Moreover, consideration shall be given to internationally established interpretations of each of the above-mentioned Agreements for its application.

2. Definitions

For the purpose of this Guideline, the terms "Law", "Cabinet Order" and "ADA" shall mean "Customs Tariff Law (Law No. 54 of 1910)", "Cabinet Order Relating to Anti-Dumping Duty (Cabinet Order No. 416 of 1994)", and "Agreement of Implementation of Article VI of the General Agreement on Tariffs and Trade 1994", respectively.

3. Like Products

(Law: Article 8, paragraph 1. Cabinet Order: Article 2, paragraph 1; Article 4, paragraph 1.)

In the determination of the like products of the dumped product as provided for in paragraph 1 of Article 8 of the Law regarding the investigation of a fact of material injury, etc. to the domestic industry, the products produced in Japan shall be the subject matter. In the determination of the like products of the product concerned destined for consumption in the exporting country (including products as provided for in paragraph 1 of Article 2 of the Cabinet Order as equivalents) as provided for in paragraph 1 of Article 8 of the Law in connection with calculation of the normal value (as referred to in the same paragraph; hereinafter the same), the products produced in, or exported from, the supplying country shall be the subject matter.

4. Domestic Industry

(1) Major Proportion

(Cabinet Order: Article 4, paragraph 1.)

The term "major proportion" as provided for in paragraph 1 of Article 4 of the Cabinet Order shall be interpreted as approximately 50 per cent.

(2) Producers Excluded from Domestic Producers

(Cabinet Order: Article 4, paragraphs 1 and 2.)

The output of the like products of the imported product concerned by producers who are not included in "domestic producers" referred to in paragraph 1 of Article 4 of the Cabinet Order pursuant

to paragraph 2 thereof, shall be included into the calculation of the total domestic production of the product concerned.

(3) Relation to Control

(Cabinet Order: Article 4, the proviso to paragraph 2.)

The term "control" as provided for in the proviso to paragraph 2 of Article 4 of the Cabinet Order shall apply to any of the following cases, based on Japan's GAAP (Generally Accepted Accounting Principles).

- (i) When a company holds in its own account more than half of the voting rights in another company;
- (ii) When a company holds from 40 per cent to half of the voting rights, and meets any of the conditions in the following subparagraphs:

- A. Combination of the voting rights held by the company's own account and the voting rights held by those who are expected to exercise the voting rights in the same way as the company based on the close relationship through investment, personnel affairs, capital, technology, transactions, and so forth, and the voting rights held by those who have agreed to exercise their voting rights in the same way as the company exceeds the majority of voting rights of the other company;
- B. Current or former executives or employees of the company who can influence on the decisions on financial and operating or business policies of the other company constitute the majority of the board of directors or equivalent governing body of the other company;
- C. There are contracts or other agreements that control important financial and operating or business policies of the other company;
- D. The company finances the majority of the loans of the other company; and
- E. There are other facts that indicate the company can exercise control over the decision-making body of the other company.

- (iii) When a combination of the voting rights held by the company's own account and the voting rights held by those who are expected to exercise the voting rights in a same way as the company based on the close relationship through investment, personnel affairs, capital, technology, transactions, and so forth, and the voting rights held by those who have agreed to exercise their voting rights in the same way as the company exceeds the majority of voting rights of the other company, and meets any of the conditions of paragraph (3)(ii) B to E of Article 4 hereof.

- (4) Exception of producers who have imported such products or who have relations with importers or producers of such imported products

(Cabinet Order: Article 4, the proviso to paragraph 2.)

- (i) The judgment as to whether producers "behave differently from other producers who have no relations (non-related producers)" as provided for in the proviso to paragraph 2 of Article 4 of the Cabinet Order shall be made on the basis of the following:

- A. Actual conditions of transactions with related parties regarding volume and uses of such products, etc.;
- B. Stance on support of the request for the imposition of duty, etc. under paragraph 4, 21 or 26 of Article 8 of the Law; and

C. Any other relevant matters which shows that direct or indirect control does not require to behave differently from other producers.

(ii) The judgment as to whether a producer's "major business concerning those products and the like products is domestic production of the like products" as provided for in the proviso to paragraph 2 of Article 4 of the Cabinet Order shall be made on the basis of the following:

A. Actual conditions of imports regarding suppliers, volumes and purposes of such imported products, etc.;

B. Stance on support of the request for the imposition of duty, etc. under paragraph 4, 21 or 26 of Article 8 of the Law; and

C. Any other relevant matters which show that major business concerning those products and the like products is domestic production of the like products.

5. Request for the Imposition of Duty, etc.

(1) Submission of Evidence, etc.

(Cabinet Order: Article 4, the proviso to paragraph 2; Article 7, paragraphs 1 to 7, and the second sentence of paragraph 9; Article 10, paragraphs 1 and 2; Article 10-2, paragraphs 1 and 2; Article 11, paragraph 2; Article 12, paragraphs 1 and 3; Article 12-2, paragraphs 1 and 2; Article 13, paragraphs 1 and 2; Article 14, paragraph 1; Article 17, paragraph 2.)

The following items shall be submitted to or presented at the Tariff Policy and Legal Division of the Customs and Tariff Bureau, Ministry of Finance, and shall be addressed to the Minister of Finance. The number of copies of the submission in writing shall be no less than 1 if the same is also submitted in an electronic medium at the time of the submission. The number of copies of the submission in writing shall be no less than 4 if the same in an electronic medium is not submitted.

- The evidence referred to in the proviso to paragraph 2 of Article 4 of the Cabinet Order,
- The document or evidence referred to in paragraphs 1 to 7 or the second sentence of paragraph 9 of Article 7 of the Cabinet Order,
- The evidence, testimony or document referred to in paragraph 1 or 2 of Article 10 of the Cabinet Order,
- The evidence, testimony or document referred to in paragraph 1 or 2 of Article 10-2 of the Cabinet Order,
- The document referred to in paragraph 2 of Article 11 of the Cabinet Order,
- The document referred to in paragraph 1 or 3 of Article 12 of the Cabinet Order,
- The presentation of the view referred to in paragraph 1 or 2 of Article 12-2 of the Cabinet Order,
- The information referred to in paragraph 1 or 2 of Article 13 of the Cabinet Order,
- The document referred to in paragraph 1 of Article 14 of the Cabinet Order, or
- The document referred to in paragraph 2 of Article 17 of the Cabinet Order.

(2) Sufficient Evidence

(Law: Article 8, paragraph 4.)

Sufficient evidence as provided for in paragraph 4 of Article 8 of the Law shall be the evidence based on such information as is reasonably available. Simple assertion, unsubstantiated by relevant evidence, cannot be considered as such sufficient evidence.

(3) The Degree of Support

(Cabinet Order: Article 7, subparagraph 7 of paragraph 1, subparagraph 7 of paragraph 3 and subparagraph 7 of paragraph 4.)

It shall not be regarded as "found to be necessary" referred to in paragraph 5, 22 or 27 of Article 8 of the Law, unless indicated as the degree of support by interested producers or interested labour unions provided for in subparagraph 7 of paragraph 1, subparagraph 7 of paragraph 3, or subparagraph 7 of paragraph 4 of Article 7 of the Cabinet Order that:

- The collective domestic output of like products of the imported product concerned by interested producers, etc. (in the case of association of domestic producers of like products of the imported product concerned, direct or indirect members of the association) in support of the request referred to in the provisions of paragraph 4, 21 or 26 of Article 8 of the Law, exceeds the total domestic output of the said product minus the collective domestic output of the said product by interested producers, etc. who express not to oppose the request concerned (including interested producers, etc. in support of the said request); or
- The collective number of the members of interested labour unions which support the said request and who are engaged in the domestic production of the said product exceeds the total number of persons engaged in the said production minus the number of members of interested labour unions which express not to oppose the said request (including interested labour unions in support of the said request).

(4) Producers Excluded from Domestic Producers, etc

(Cabinet Order: Article 5, paragraphs 1 and 2.)

The output of like products of the imported product concerned by the following producers, or the number of the following members, shall be included into the calculation of the total domestic production of the product concerned or the total number of persons engaged in the domestic production of the said product:

- Producers who shall, pursuant to paragraph 2 of Article 5 of the Cabinet Order, not be included in "domestic producers" referred to in subparagraph 1 of paragraph 1 of the said Article; or
- Members who shall, pursuant to paragraph 2 of Article 5 of the Cabinet Order, not be included in "members" referred to in subparagraph 2 of paragraph 1 of the said Article.

(5) Sample of Items and Manners of Description in the Request for the Imposition of Duty, etc., Sample Form for Submission of Evidence, and Sample Manners of Summarization of Confidential Evidence, etc

(Cabinet Order: Article 7, paragraphs 1 to 6; Article 10, paragraphs 1 and 5.)

(i) In making a request for the imposition of anti-dumping duty, etc., the document setting forth the necessary information shall be submitted in accordance with the sample of items and manners of descriptions in the request for the imposition of duty, etc. in Attachment 1. The sample form for submission of evidence to be attached to the request shall be Attachment 2. The sample manners of summarization of confidential evidence, etc. shall be Attachment 3; provided that matters pertaining

to the margin of dumping in the document to be submitted and the evidence to be attached thereto in connection with such matters shall follow Article 7 hereof.

(ii) The sample form for submission of evidence as provided for in paragraph 1 of Article 10 of the Cabinet Order shall be Attachment 4. The sample manners of summarization of confidential evidence, etc. shall be Attachment 3; provided that the evidence to be submitted in connection with matters pertaining to the margin of dumping shall follow Article 7 hereof.

(6) Offices for Consultation

(Law: Article 8, paragraphs 4, 12, 21 and 26.)

The following offices are in charge of consultation in connection with the request for the imposition of anti-dumping duty, etc:

- Tariff Policy and Legal Division of the Customs and Tariff Bureau, Ministry of Finance
3-1-1 Kasumigaseki, Chiyoda-ku, Tokyo, 100-8940 Japan
Telephone number: +81-3-3581-4786
Fax number: +81-3-5251-2173
Email address: anti.dumping@mof.go.jp
- Office for Trade Remedy Investigations of the Trade Control Department of the Trade and Economic Cooperation Bureau, Ministry of Economy, Trade and Industry
1-3-1 Kasumigaseki, Chiyoda-ku, Tokyo, 100-8901 Japan
Telephone number: +81-3-3501-3462
Fax number: +81-3-3501-0992
Email address: qqfcbk@meti.go.jp

6. Initiation of Investigation, etc

(1) The Period of Time until the Decision on the Initiation of Investigation

(Law: Article 8, paragraphs 5, 13, 22, 27 and 31)

The decision on whether to initiate the investigation referred to in paragraphs 5, 13 or 22 of Article 8 of the Law (including the case where the provisions of paragraph 22 are applied *mutatis mutandis* to paragraph 31 of the same Article) or in paragraph 27 of Article 8 (hereinafter referred to simply as "investigation", except for paragraphs (2), (5) and (6) of Article 6, Article 12 and paragraph (1)(i) of Article 14 hereof), shall be made within approximately two months from the date of the submission of the document referred to in paragraphs 1 to 5 of Article 7 of the Cabinet Order. In case that the said document is submitted, certain corrections (including additional evidence) may be requested where necessary. In case that certain corrections are requested, the decision on whether to initiate the investigation shall be made within approximately two months from the date of completion of all such corrections.

(2) Examination for the Initiation of Investigation

(Law: Article 8, paragraph 5. Cabinet Order: Article 7, subparagraph 5 of paragraph 1.)

(i) When the request for the imposition of anti-dumping duty is made pursuant to the provision of paragraph 4 of Article 8 of the Law, the following issues, among other issues, shall be examined with respect to the evidence, etc. attached the said request in making a decision on whether to initiate the investigation as provided for in paragraph 5 of the said Article.

A. Fact of Importation of the Dumped Product:

- (a) The normal value is indicated in a verifiable manner;
- (b) The export price (which shall mean the price sold for export as referred to in the provision of paragraph 1 of Article 8 of the Law; hereinafter the same) is indicated in a verifiable manner; and
- (c) The export price is less than the normal value in accordance with the comparison of these prices as shown in paragraphs (2)(i)A (a) and (b) of Article 6 hereof.

B. Fact of Material Injury, etc. to the Domestic Industry Caused by Importation of the Dumped Product:

- (a) An increase of importation of the dumped product, either in absolute terms or relative to production or consumption in Japan, is indicated. Where there is more than one supplying country of the dumped product, such increase is indicated for each supplying country;
- (b) It is indicated that importation of the dumped product depresses prices of a like product of the dumped product in Japan or prevents its price increases, which otherwise would have occurred without importation of the dumped product;
- (c) The impact of importation of the dumped product on domestic industry (including decline in sales, profits, output, market share, productivity, return on investments or utilization of capacity, or negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments) is indicated; and
- (d) A causal relationship between importation of the dumped product and material injury, etc. to the domestic industry may be confirmed.

(ii) In principle, the scope of the examination under paragraph (2)(i) of Article 6 hereof shall be limited to matters as set forth in the document of the request for the imposition of anti-dumping duty; provided that in case corrections are made after submission of the said document in accordance with paragraph (1) of Article 6 hereof, a decision on whether to initiate the investigation shall be based on the corrected document.

(3) Council on Customs, Tariff, Foreign Exchange and Other Transactions

(Cabinet Order: Article 8, paragraph 1; Article 16, paragraphs 2 and 3.)

The Minister of Finance shall, when a decision to initiate an investigation has been made, notify the members of the Special Duty Group of the Customs Tariff Subcouncil of the Council on Customs, Tariff, Foreign Exchange and Other Transactions and explain to the Special Duty Group, whenever appropriate, the reasons for initiating the investigation.

The Minister of Finance shall, in cases where he/she notifies and gives a public notice pursuant to paragraph 2 or 3 of Article 16 of the Cabinet Order, report to the Special Duty Group of the Customs Tariff Subcouncil of the Council on Customs, Tariff, Foreign Exchange and Other Transactions on the content thereof.

(4) Investigating Team

(Cabinet Order: Article 18.)

The Minister of Finance shall, when a decision to initiate the investigation has been made, after consulting with any Minister who has jurisdiction over the industry in Japan as referred to in paragraph 1 of Article 8 of the Law and the Minister of Economy, Trade and Industry, establish an investigating team composed of relevant officials of the Ministry of Finance, the said Ministry having jurisdiction over the industry in Japan, and the Ministry of Economy, Trade and Industry.

(5) Standard Period of Investigation

(Law: Article 8, paragraph 5. Cabinet Order: Article 8, subparagraph 7 of paragraph 1; Article 10, paragraph 1; Article 10-2, paragraph 1; Article 12, paragraph 1; Article 12-2, paragraph 1; Article 13, paragraph 1; Article 13-2; Article 15; Article 16, paragraphs 1 and 2.)

(i) In the initiation of an investigation as provided for in paragraph 5 of Article 8 of the Law, in principle, the due date for submission of the evidence, etc. to be indicated in a public notice pursuant to subparagraph 7 of paragraph 1 of Article 8 of the Cabinet Order shall be established in or around the following period:

A. Due date for submission of evidence and testimony pursuant to the first sentence of paragraph 1 of Article 10 and the first sentence of paragraph 1 of Article 10-2 of the Cabinet Order: three months after initiation of an investigation; and

B. Due date for application for the meeting with parties with adverse interests pursuant to paragraph 1 of Article 12 of the Cabinet Order, presentation of the view pursuant to paragraph 1 of Article 12-2 of the Cabinet Order and provision of information pursuant to paragraph 1 of Article 13 of the Cabinet Order: four months after initiation of an investigation.

(ii) In principle, the procedures regarding the investigation as provided for in paragraph 5 of Article 8 of the Law shall be conducted in or around the following period:

A. Meeting with parties with adverse interests: five months after initiation of an investigation;

B. On-the-spot investigation: six months after initiation of an investigation;

C. Preliminary determination: eight months after initiation of an investigation;

D. Notification of important facts (which shall mean notification pursuant to the provision of Article 15 of the Cabinet Order; hereinafter the same): ten months after initiation of an investigation; and

E. Final determination: one year after initiation of an investigation.

(iii) After the initiation of an investigation as provided for in paragraph 5 of Article 8 of the Law, if it is found appropriate to modify the matters indicated in a public notice pursuant to the provision of paragraph 1 of Article 8 of the Cabinet Order, such as suppliers of the product under investigation, etc., such finding shall, in principle, be handled by amending the said notice. In such case, the right

equivalent to the right of submission of evidence, etc. (which shall mean the right of submission by the respective due dates indicated in a public notice pursuant to subparagraph 7 of paragraph 1 of Article 8 of the Cabinet Order) given to the interested parties (as referred to in paragraph 1 of Article 10 of the Cabinet Order; hereinafter the same) and the industrial users, etc. (which shall mean industrial users of or representative consumer organizations for the product under investigation as referred to in paragraph 1 of Article 13 of the Cabinet Order; hereinafter the same) at the time of initiation of the investigation shall be given to the interested parties and the industrial users, etc., who are relevant to the amended matters.

(iv) The Minister of Finance shall notify the time schedule up to the final determination in making the notification of important facts.

(6) Period of Investigation

(Law: Article 8, paragraph 5; Cabinet Order: Article 8, subparagraph 5 of paragraph 1.)

In the initiation of an investigation as referred to in paragraph 5 of Article 8 of the Law, the period of investigation to be indicated in a public notice pursuant to subparagraph 5 of paragraph 1 of Article 8 of the Cabinet Order shall be, in principle, as follows:

- (i) Fact of importation of the dumped product: one year;
- (ii) Fact of material injury, etc. to the domestic industry caused by such importation: three years; and
- (iii) The period under paragraph (6)(i) of Article 6 hereof shall be within the period under paragraph (6)(ii) of the said Article hereof.

(7) Termination of Investigation

(Cabinet Order: Article 16, paragraph 3.)

A decision on termination of the investigation as provided for in paragraph 3 of Article 16 of the Cabinet Order shall be made in any of the following cases. Due care pursuant to Article 7 hereof shall be given to calculation pursuant to paragraph (7)(i) of Article 6 hereof:

- (i) when the margin of dumping is found to be less than 2 per cent of the export price of the product under investigation in the course of the investigation as provided for in paragraph 5 of Article 8 of the Law;
- (ii) when the volume of importation of the dumped product from a particular supplying country is found to account for less than 3 per cent of the total volume of the importation of the product under investigation (unless supplying countries which individually account for less than 3 per cent of the total volume of importation of the dumped product under investigation collectively account for more than 7 per cent of the total volume of the importation of the product under investigation);
- (iii) when continuation of the investigation is found unnecessary due to the withdrawal of the request for the imposition of the duty, etc. upon initiation of the investigation based on request for the imposition of duty, etc. pursuant to paragraph 4, 12, 21 or 26 of Article 8 of the Law or paragraph 21 thereof which applies *mutatis mutandis* to paragraph 31 thereof; or
- (iv) when it is found that there is not sufficient evidence to justify continuation of the investigation process, or otherwise termination of the investigation is found appropriate.

7. Calculation of the Margin of Dumping

(1) Principles of Calculation

(Law: Article 8, paragraph 1.)

In principle, the margin of dumping shall be calculated as follows:

- (i) Comparison shall be made between a weighted-average normal value of individual transactions with a weighted-average export price of all comparable export transactions;
- (ii) The local currency shall be used as the currency for the calculation;
- (iii) Sales, which were made during the period of investigation, shall be covered. The date of sale shall normally be the date on which the material terms of sale are established; provided that the date of sale shall be determined on an individual case basis;
- (iv) Comparison between the normal value and the export price shall be made at the ex-factory level; and
- (v) Transactions, which are found not to be in the ordinary course of trade, shall be excluded from the examination of the price comparison. For example, the following transactions may be considered as not being in the ordinary course of trade:
 - A. transactions in a small amount or of a small volume;
 - B. sampling imports for testing; or
 - C. transactions of samples without charge.

(2) Transactions between Affiliated Companies

(Law: Article 8, paragraphs 1 and 36; Cabinet Order: Article 2; Article 3; Cabinet Order for Enforcement of the Customs Tariff Law: Article 1-8.)

In determining whether transactions should be treated as transactions between affiliated companies, the following shall be considered, referring to Article 1-8 of Cabinet Order for Enforcement of the Customs Tariff Law (Scope of relationship):

- (i) when one company holds 5 per cent or more of the voting stock or shares of the other company;
- (ii) when 5 per cent or more of the voting stock or shares of both companies are held respectively by the same third party; or
- (iii) when it is otherwise found that there is an affiliation between companies of the transaction.

(3) Export Price

(Law: Article 8, paragraphs 1 and 36. Cabinet Order: Article 3)

In calculating the export price, transactions between affiliated companies as provided for in paragraph (2) of Article 7 hereof may be deemed as imports by the importer associated with the importer as provided for in paragraph 36 of Article 8 of the Law. In such case, calculation shall be made pursuant to the same paragraph and Article 3 of the Cabinet Order.

(4) Normal Value

(Law: Article 8, paragraph 1; Cabinet Order: Article 2)

(i) In calculating the normal value, in principle, a transaction between affiliated companies shall be excluded. Provided that, in case of calculating the normal value based on the price of the like products of the product in the ordinary course of trade destined for consumption in the exporting country as provided for in paragraph 1 of Article 8 of the Law (including cases as provided for in paragraph 1 of Article 2 of the Cabinet Order as equivalents) with respect to the product in the transaction between affiliated companies, such transaction may be included in calculation of the normal value if the price of such transaction is not less than 98 per cent but not more than 102 per cent of the normal value of transactions calculated upon excluding transactions between affiliated companies.

(ii) In calculating the normal value, when using the price other than (a) the price as referred to in subparagraph 3 of Article 2 of the Cabinet Order, or (b) the price of the costs of production of the like product of the product concerned in the comparable country in the most similar economic development stage to the country of origin of the dumped product, plus normal profit and administrative, selling and general costs of the said like product as referred to in subparagraph 4 of the same Article, sales at prices below per unit (fixed and variable) costs of production plus administrative, selling and general costs (sales below costs) may be excluded.

(5) Calculation of the Rate of the Anti-Dumping Duty

(Law: Article 8, paragraph 1.)

In case of the imposition of an anti-dumping duty on an *ad valorem* basis, the rate of the anti-dumping duty shall be calculated by dividing the margin of dumping of the product under investigation by the CIF price (transaction price including freight and insurance costs to Japan) of the said product imported during the period of investigation.

(6) A fact that the market economy conditions regarding production and sale of a specified product prevail

(Cabinet Order: Article 2, paragraph 3; Article 10-2, paragraphs 1 to 4).

(i) The phrase "a fact that the market economy conditions regarding production and sale of a specified product prevail", which producers of the specified product of Chinese origin (excluding those of Hong Kong and Macao; hereinafter the same) or of Vietnamese origin shall clearly show as provided for in paragraph 3 of Article 2 of the Cabinet Order, contains those facts described below:

- A. a fact that decisions by producers regarding prices, costs, production, sales and investment are made based on market economy principles, and without significant government interference in this regard (the term "government", herein and in paragraph (6)(i)D of Article 7 hereof, means the central government, local governments or other public organizations of the country of origin of the imported product concerned);
- B. a fact that costs of major inputs (such as raw materials) reflect market prices;
- C. a fact that wage rates are determined by free negotiations between labour and management;
- D. a fact that means of production are not owned nor controlled by government; and

E. other facts as the Minister of Finance considers it appropriate for the interpretation of the phrase "a fact that the market economy conditions regarding production and sale of a specified product prevail", and notified to the producers on initiation of an investigation.

(ii) It shall be noted that paragraph 3 of Article 2 and Article 10-2 of the Cabinet Order shall be effective until 10 December 2016 with regard to specified products of Chinese origin, pursuant to the conditions provided for in Section 15(d) of Protocol on the Accession of the People's Republic of China, and until 31 December 2018 with regard to specified products of Vietnamese origin, pursuant to the conditions provided for in Article 2 of Protocol on the Accession of the Socialist Republic of Viet Nam, and paragraphs 255(d) and 527 of the Report of the Working Party on the Accession of Viet Nam.

(7) Difference in Conditions Affecting Price Comparison

(Cabinet Order: Article 2, Paragraph 4.)

"The difference in any other conditions affecting price comparability" as provided for in paragraph 4 of Article 2 of the Cabinet Order means, for example, the difference in quality of product which may affect the market price in the supplying country, the difference in sales conditions such as payment terms, quality guarantee, and after-sale-service, and the difference in taxation.

8. Request for Submission of Evidence, etc.

(Cabinet Order: Article 8, subparagraph 7 of paragraph 1; Article 10, paragraph 2, Article 10-2, paragraph 2; Article 12-2, paragraph 2; Article 13, paragraph 2.)

(1) When the Minister of Finance sends questionnaires to the interested parties or industrial users, etc. to request the submission of evidence as referred to in paragraph 2 of Article 10, or paragraph 2 of Article 10-2 of the Cabinet Order, to request for the presentation of the view as referred to in paragraph 2 of Article 12-2 of the Cabinet Order, or to request the provision of information as referred to in paragraph 2 of Article 13 of the Cabinet Order (hereinafter referred to as "submission of evidence, etc."), the Minister of Finance shall explicitly indicate in the questionnaire in each investigation case, the due date for the response to the questionnaire. The standard form of a questionnaire shall be Attachment 5 and shall be used after modifying as appropriate according to the characteristic of each issue.

(2) When requesting the submission of evidence, etc., voluntary submission in an electronic medium together with submission in writing shall be requested.

(3) While evidence must be submitted by the due date for the submission of evidence indicated in a public notice pursuant to subparagraph 7 of paragraph 1 of Article 8 of the Cabinet Order upon initiation of the investigation, submission of evidence may also be permitted in any of the following events:

- (i) when questionnaires are issued;
- (ii) when submission of evidence upon the preliminary determination is requested;
- (iii) when submission of evidence upon the notification of important facts is requested;
- (iv) when submission of evidence at the on-the-spot investigation is requested; or
- (v) when otherwise submission of evidence for any inevitable reason is requested.

9. On-the-spot investigation

(ADA: Article 6, paragraph 7; Annex I.)

(1) When necessary to verify information provided or to obtain further details, the investigating team may conduct on-the-spot investigation of the suppliers in the exporting country (as in paragraph 7 of Article 6 of ADA), in the following manner:

(i) Before investigation

A. Schedule arrangement

(a) Confirm the agreement of the party subject to the on-the-spot investigation (hereinafter referred to as "the party concerned") over the investigation.

(b) Arrange the date of the investigation, upon the agreement with the party concerned.

(c) Notify representatives of the government of exporting countries and confirm that they do not object to the investigation.

B. Notify the party concerned prior to the investigation

When the date is agreed, send a notification and other detail documents of the investigation to the party concerned. In such a case, send a detailed agenda of the investigation along with these documents to the supplier in the exporting country in a reasonable period of time prior to the visit considering the necessary preparation time.

(ii) After the investigation

A. Make a verification report

B. When making the notification of important facts before the final determination, send the verification report to the parties concerned.

C. Regardless of paragraph (1)(ii)B of Article 9 hereof, disclose the verification report to the interested party prior to the notification of important facts, if requested to do so.

(2) The following actions shall be taken upon request for submission of evidence at the on-the-spot investigation pursuant to paragraph (3)(iv) of Article 8 hereof:

(i) Evidence shall be submitted in writing; presentation of the evidence shall not be deemed as submission thereof;

(ii) Voluntary submission in an electronic medium together with submission in writing shall be requested;

(iii) With respect to evidence which cannot be submitted on the day of the on-the-spot investigation, it shall be deemed that no response was submitted. In principle, replacement of evidence, which was submitted at the on-the-spot investigation, shall not be permitted;

(iv) In principle, submission of new evidence irrelevant to the facts, which were revealed before the on-the-spot investigation, shall not be permitted;

(v) Submission of a list of the evidence submitted during the on-the-spot investigation by the end of the on-the-spot investigation shall be requested to the party concerned. With respect to evidence, which had been requested to be submitted during the on-the-spot investigation, it shall be confirmed that the requested evidence was properly submitted by referring to the list thereof;

- (vi) In order to improve the accuracy of the investigation, in principle, questions and answers shall be recorded;
- (vii) In principle, the on-the-spot investigation shall be conducted in Japanese; interpreters may be used depending on the case;
- (viii) When evidence was not submitted or when the party concerned has not sufficiently cooperated, the on-the-spot investigation may be terminated; or
- (ix) When the on-the-spot investigation was terminated pursuant to paragraph (2)(viii) of Article 9 hereof, facts that were available (hereinafter "facts available") shall be applied in accordance with the procedures under paragraph (2) of Article 10 hereof.

(3) The provision of paragraphs (1) and (2) of Article 9 hereof shall apply *mutatis mutandis* to on-the-spot investigations of the domestic producers and importers.

10. Facts Available

(Cabinet Order: Article 10, paragraph 4. ADA: Article 6, paragraph 8; Annex II.)

(1) Application of facts available shall mean the procedures as provided for in paragraph 4 of Article 10 of the Cabinet Order, and may be used in, for examples, any of the following events:

- (i) A response was not made by the original due date for the response to a request for the submission of evidence pursuant to Article 8 hereof;
- (ii) A response was made only partially to a request for the submission of evidence pursuant to Article 8 hereof, and necessary evidence was not submitted;
- (iii) The accuracy of the submitted evidence cannot be clarified; or
- (iv) It was found that the submission of evidence has been significantly delayed without any good reason or the investigation was otherwise impeded.

(2) Regarding the use of the facts available, the following procedures apply. The lack of cooperation by an interested party with the investigation could lead to a result which is less favourable to the party concerned.

In sending a questionnaire, the questionnaire shall set forth that facts available may be applied if the due date for the response to the questionnaire is missed. In sending documents explaining the on-the-spot investigation, the documents shall set forth that facts available may be applied if the evidence to be requested at the on-the-spot investigation is not submitted by the end of the on-the-spot investigation.

- (i) When the due date for the response to the questionnaire has been missed, it shall, in principle, be deemed that the response has not been submitted.
- (ii) Upon request for the submission of evidence at the on-the-spot investigation to verify the accuracy of the evidence submitted prior to the on-the-spot investigation, the evidence, which had been requested but not submitted by the end of the on-the-spot investigation, shall be deemed that no response was made.
- (iii) In making the preliminary determination, the reason for use of facts available as well as the evidence used and the process involved shall be set forth in the document notifying the preliminary determination.
- (iv) In making the notification of important facts, the reason for use of facts available as well as the evidence used and the process involved shall be set forth in the document notifying the important facts.

(v) In making the final determination, the reason for use of facts available as well as the evidence used and the process involved shall be set forth in the document notifying the final determination.

(vi) Even where there is no evidence directly obtained from the interested party, in using secondary information as evidence to apply facts available, the secondary information shall be sufficiently examined.

11. Sampling for investigation

(ADA: Article 6, paragraph 10; Article 6, paragraph 10, subparagraphs 1 and 2.)

(1) In any of the following cases, when the volume of the exports from the relevant countries exceeds that which can reasonably be investigated in the examination, a sampling method may be used in the investigation (hereinafter referred to simply as "sampling") pursuant to paragraph 10 of Article 6 of ADA:

- (i) In principle, when the number of known suppliers in the exporting country exceeds 20; or
- (ii) When the number of types of the product under investigation is so large as to make individual determinations impracticable.

(2) When conducting the sampling, the following procedures shall be followed:

(i) Send a questionnaire to all the known suppliers in the exporting country, and request for responses on the willingness to cooperate with the investigation and the summary of transactions, etc. (the volumes of exports of the product concerned to Japan and third-countries, sales in the domestic market and volume of production of the product concerned in the exporting country during the period of investigation);

(ii) In a case under paragraph (1) of Article 11 hereof, select representative suppliers from the suppliers which have expressed cooperation to the investigation for sampling;

(iii) Notify the selected suppliers that the supplier will be sampled;

(iv) Notify the unselected suppliers among those who expressed their cooperation to the investigation that the supplier was not selected for sampling and that the facts will be found from the data of the selected suppliers, and that the supplier shall, in principle, be included in the sampling if the supplier expresses its wish to be selected for sampling and have already submitted the summary of transactions, etc.; and

(v) Pursuant to the procedures under paragraph (2) of Article 10 hereof, the facts available shall apply to suppliers who did not express willingness to cooperate with the investigation or who did not respond to the questionnaire pursuant to paragraph (2)(i) of Article 11 hereof.

(3) When conducting sampling, the following points will be considered:

(i) The selection shall be made, in principle, in the order of producers, which have the largest volume of exports to Japan, to cover approximately 50 per cent of the total exports from that exporting country; provided that this provision does not apply to the case where it is found that suppliers which have expressed cooperation to the investigation cannot satisfy said condition;

(ii) In the case that there is more than one supplying country of the product under investigation, selections of producers will be made for each of such countries; and

(iii) In the case that there is more than one type of the product under investigation, it shall be secured that types of the product, which selected suppliers export, include all types of products, to the extent possible.

12. Preliminary Determination

(1) Notification of the Preliminary Determination, etc.

(Cabinet Order: Article 10, paragraph 2; Article 10-2, paragraph 2; Article 12-2, paragraph 2; Article 13-2.)

The following actions shall be taken in making the notification, etc. of a preliminary determination:

(i) In the notification and the public notice of a preliminary determination, where found necessary, submission of evidence pursuant to paragraph 2 of Article 10 or paragraph 2 of Article 10-2 of the Cabinet Order may be requested with setting forth the due date for the response, to the extent that it is directly related to the preliminary determination;

(ii) In the public notice of a preliminary determination, where found necessary, presentation of the view pursuant to paragraph 2 of Article 12-2 of the Cabinet Order may be requested with setting forth the due date for the response, to the extent that it is directly related to the preliminary determination. As is the case of views presented by interested parties, views presented by the industrial users, etc., shall be one of the factors in determining the necessity of protecting the domestic industry while it is the discretion of the authorities, not an independent requirement, to impose the antidumping duty on how their views should be reflected in the final determination; and

(iii) At the time of a preliminary determination, in principle, an interim report on the facts found, which formed the basis for the determination, shall be prepared and be made public on the website.

(2) Actions after the Preliminary Determination

(Law: Article 8, paragraphs 8 and 9.)

The following actions shall be taken after the preliminary determination:

(i) When it can be presumed that importation of the dumped product has occurred resulting in material injury, etc. to the domestic industry caused by such importation in the preliminary determination, and if it is found necessary to protect such domestic industry, measures under the provision of paragraph 9 of Article 8 of the Law (hereinafter referred to as "provisional measures") may be applied or an undertaking referred to in the first sentence of paragraph 8 of the same Article may be accepted;

(ii) If it cannot be presumed that importation of the dumped product has occurred in the preliminary determination, but it can be presumed that such importation caused material injury, etc. to the domestic industry, further continuation of investigation shall be considered; and

(iii) When material injury, etc. to the domestic industry caused by the importation of the dumped product cannot be presumed in the preliminary determination, termination of the investigation shall be considered.

13. Exporters of Products to which Provisional Measure is applied

(Cabinet Order: Article 17, subparagraph 2 of paragraph 1.)

The term "substantial ratio" referred to in subparagraph 2 of paragraph 1 of Article 17 of the Cabinet Order shall be approximately 50 per cent.

14. Undertaking

(Law: Article 8, first sentences of paragraphs 8 and 14, paragraphs 24, 28 and 31.)

(1) Requirements for the Acceptance of an Undertaking

An undertaking (as referred to in the first sentence of paragraph 8 of Article 8 of the Law (including *mutatis mutandis* application of said provisions to the first sentence of paragraph 14, paragraphs 24 and 28 of the said Article, and further *mutatis mutandis* application of paragraph 24 to paragraph 31 of the said Article), and the same applies to paragraphs (1) and (3) through (5) of Article 14 hereof) may be accepted only if an offer including all of the following matters is made:

(i) A provision stating that: the effective period of the undertaking concerned expires, within five years from the date of accepting the undertaking, on the day as fixed in the said undertaking however, in cases where such a date, within five years from the date of accepting the undertaking, as fixed by the undertaking, is preceded by the date on which the undertaking lapses in accordance with paragraph 3 of Article 14 of the Cabinet Order or the date on which the undertaking is withdrawn or the date on which the undertaking is violated, the date on which the investigation is concluded in cases where changes in circumstances, as referred to in subparagraphs of paragraph 20 of Article 8 of the Law, are found as a result of the investigation referred to in paragraph 22 of the said Article which applies *mutatis mutandis* to paragraph 31 of the said Article (except for the cases where an undertaking is newly accepted in accordance with the provision of paragraph 24 of the said Article which applies *mutatis mutandis* to paragraph 31 of the said Article), or any other date on which the undertaking loses effect, the undertaking concerned loses effect on the date whichever is the earliest;

(ii) A provision relating to: the provision of information relevant to the fulfilment of the undertaking concerned, the permission of verification of pertinent data and other matters found necessary. Such provision shall include at least the following matters:

- A. Information relating to home market sales of the product under investigation in the exporting country and export transactions to the third countries will be submitted periodically;
- B. Information relating to production of the product under investigation will be submitted periodically;
- C. Other information which is considered to be necessary to confirm the fulfillment of the undertaking will be submitted when necessary;
- D. The export of the dumped product to Japan through a third party and circumvention exports to Japan through a third country will be prevented to the maximum extent;
- E. On-the-spot investigations will be accepted unconditionally at any time in order to verify the accuracy of the information, etc. provided;
- F. A prior notice will be given to terminate the undertaking; and
- G. Where an undertaking is offered to revise the price of the product to the price that it may be found that the injurious effect of the dumping of the product on the domestic industry is eliminated, matters as illustrated below will be included:

- (a) the price, which will eliminate the injury to the domestic industry, is offered;
 - (b) if the price of the product under investigation fluctuates, the price of the undertaking will be changed accordingly in a way that will eliminate the injury to the domestic industry, and its calculation method is offered in a verifiable manner;
 - (c) the price of the undertaking will be maintained even where benefit for customers (discounts, etc.) will be given; and
 - (d) the information of the export transactions of the product under investigation to Japan will be submitted periodically;
- (iii) A provision stating that: if the exporter who offered the undertaking concerned refuses to provide information relevant to the fulfilment of the undertaking concerned, to permit verification of pertinent data, or to provide other matters found necessary to fulfill the undertaking, such act shall be deemed as a violation of the undertaking; and
- (iv) A provision stating that: the Japanese government may determine at its own judgment whether or not the undertaking is violated.
- (2) The following procedures shall apply to an undertaking:
- (i) Offer of an undertaking (as referred to in the first sentence of paragraph 8 of Article 8 of the Law (including *mutatis mutandis* application thereof to the first sentence of paragraph 14, paragraphs 24 and 28 of the said Article)) shall be made within 10 days after the notification of important facts; and
 - (ii) The applicant as referred to in paragraph 1 of Article 7 of the Cabinet Order shall be given an opportunity to provide further explanation.
- (3) Even where an undertaking, which includes all of the matters as provided for in paragraph (1) of Article 14 hereof, is offered, such offer may be refused in any of the following events:
- (i) When objective grounds exist to doubt the fulfillment of such an undertaking;
 - (ii) When objective circumstances exist that would make it difficult to observe the situation of compliance with such an undertaking; or
 - (iii) When it is otherwise considered that it is not appropriate to accept such an undertaking.
- (4) Even when an undertaking is accepted, in principle, the investigation shall continue.
- (5) Where it is judged that the undertaking has been broken, the following actions shall be taken:
- (i) When an investigation is not yet complete, the provisional measures shall immediately be taken based on the best information available at the time, the investigation shall be completed promptly, and an anti-dumping duty as referred to in paragraph 1 of Article 8 of the Law may be imposed; or
 - (ii) When an investigation has been completed, an anti-dumping duty as referred to in paragraph 1 of Article 8 of the Law may be immediately imposed.

15. Notification of Important Facts

(Cabinet Order: Article 15.)

In the notification of important facts, where found necessary, submission of evidence pursuant to paragraph 2 of Article 10 or paragraph 2 of Article 10-2 of the Cabinet Order may be requested with setting forth the due date for the response, to the extent that it is directly related to the important facts.

16. Exception on a new supplier who has relations with other suppliers

(Cabinet Order: Article 6.)

The term "control", as provided for in Article 6 of the Cabinet Order shall apply in any of the following cases, based on Japan's GAAP (Generally Accepted Accounting Principles):

(i) When a company holds in its own account more than half of the voting rights in another company;

(ii) When a company holds from 40 per cent to half of the voting rights, and meets any of the conditions in the following subparagraphs:

- A. Combination of the voting rights held by the company's own account and the voting rights held by those who are expected to exercise the voting rights in the same way as the company based on the close relationship through investment, personnel affairs, capital, technology, transactions, and so forth, and the voting rights held by those who have agreed to exercise their voting rights in the same way as the company exceeds the majority of voting rights of the other company;
- B. Current or former executives or employees of the company who can influence on the decisions on financial and operating or business policies of the other company constitute the majority of the board of directors or equivalent governing body of the other company;
- C. There are contracts or other agreements that control important financial and operating or business policies of the other company;
- D. The company finances the majority of the loans of the other company; and
- E. There are other facts that indicate the company can exercise control over the decision-making body of the other company; or

(iii) When a combination of the voting rights held by the company's own account and the voting rights held by those who are expected to exercise the voting rights in a same way as the company based on the close relationship through investment, personnel affairs, capital, technology, transactions, and so forth, and the voting rights held by those who have agreed to exercise their voting rights in the same way as the company exceeds the majority of voting rights of the other company, and meets any of the conditions of paragraph (ii) B to E of Article 16 hereof.

THE GUIDELINES FOR PROCEDURES RELATING
TO EMERGENCY DUTY, ETC.

1. Status of this Guideline

The operation of the system relating to emergency duties, etc. is governed by the provisions of the relevant domestic laws and regulations of Japan, the General Agreement on Tariffs and Trade 1994 and the Agreement on Safeguards. The objective of enacting this Guideline is to complement the Agreements, laws and regulations above, and to secure the uniform and integrated operation of the system relating to emergency duties, etc. and the system relating to emergency import quota taken against importation of the product pursuant to the provision of paragraph 1 of Article 3 of the Import Trade Control Order, and to contribute to facilitate the operation of these systems. Further, flexible and responsive approaches in individual cases shall not be precluded in applying this Guideline. Moreover, consideration shall be given to internationally established interpretations of each of the above-mentioned Agreements for its application.

2. Definitions

For the purpose of this Guideline, the terms "Law", "Cabinet Order Relating to Emergency Duty, etc.", "Import Trade Control Order" and "Regulations of Emergency Measures" shall mean "Customs Tariff Law (Law No. 54 of 1910)", "Cabinet Order Relating to Emergency Duty, etc. (Cabinet Order No. 417 of 1994)", "Import Trade Control Order (Cabinet Order No. 414 of 1949)" and "Regulations to Govern Emergency Measures to be taken in Response to an Increase in the Importation of Goods (Notification No. 715 of 1994 of the Ministry of International Trade and Industry)", respectively.

3. Uniform and Integrated Operation of Emergency Duties, etc. and Emergency Import Quota Pursuant to Paragraph 1 of Article 3 of the Import Trade Control Order

(1) Initiation and Conclusion of Investigation

(Law: Article 9, paragraphs 6 and 11. Regulations of Emergency Measures: Article 8; Article 19, paragraph 3.)

An investigation under paragraph 6 of Article 9 of the Law (including the case under paragraph 11 of the same Article thereof, to which the paragraph 6 applies *mutatis mutandis*) shall be initiated and concluded in a uniform and integrated manner with the investigation under Article 8 of the Regulations of Emergency Measures (including the case under paragraph 3 of Article 19 thereof, to which Article 8 thereof applies *mutatis mutandis*). Results of these investigations shall also be handled in a uniform and integrated manner.

(2) Conduct of Investigation

(Law: Article 9, paragraphs 6 and 11. Regulations of Emergency Measures: Article 8; Article 19, paragraph 3.)

When a procedure under provisions of the Cabinet Order Relating to Emergency Duty, etc. is conducted in an investigation of emergency duties, etc. (including the treatment of the results of the investigation) under paragraph 6 of Article 9 of the Law (including the case under paragraph 11 of the same Article thereof, to which the paragraph 6 applies *mutatis mutandis*), it shall be conducted in a uniform and integrated manner with a corresponding procedure under the provisions of the

Regulations of Emergency Measures in an investigation under Article 8 of the Regulations of Emergency Measures (including the case under paragraph 3 of Article 19 thereof, to which Article 8 thereof applies *mutatis mutandis*). Evidence shall be used commonly in both investigations.

4. A Major Proportion of the Domestic Industry

(Cabinet Order Relating to Emergency Duty, etc.: Article 1.)

The term a "major proportion" as provided for in Article 1 of the Cabinet Order Relating to Emergency Duty, etc. shall be interpreted as approximately 50 per cent.

5. Submission of Evidence, etc.

(Cabinet Order Relating to Emergency Duty, etc.: Article 4, paragraphs 1, 2, 4, 5 and 7; Article 5, paragraphs 1 and 2; Article 6, paragraphs 1 and 3; Article 7, paragraph 2; Article 8, paragraphs 1, 3 and 4. Regulations of Emergency Measures: Article 12, paragraphs 1, 2, 4, 5 and 7; Article 13, paragraphs 1 and 2; Article 14, paragraphs 1 and 3; Article 15, paragraph 2; Article 16, paragraphs 1, 3 and 4.)

The following items shall be submitted to or presented at the Tariff Policy and Legal Division of the Customs and Tariff Bureau, Ministry of Finance, and shall be addressed to the Minister of Finance. The number of copies of the submission in writing shall be no less than 1 if the same is also submitted in an electronic medium at the time of the submission. The number of copies of the submission in writing shall be no less than 4 if the same in an electronic medium is not submitted.

- The evidence, testimony or document referred to in paragraph 1, 2, 4, 5 or 7 of Article 4 of the Cabinet Order Relating to Emergency Duty, etc.
- The presentation of the view referred to in paragraph 1 or 2 of Article 5 of the same Order.
- The information or document referred to in paragraph 1 or 3 of Article 6 of the same Order.
- The document referred to in paragraph 2 of Article 7 of the same Order.
- The evidence, testimony, presentation of the view or information referred to in paragraph 1, 3 or 4 of Article 8 of the same Order.

When the evidence, testimony, document, presentation of the view, or information under the provisions of the Regulations of Emergency Measures is submitted to or presented at the Office for Trade Remedy Investigations of the Trade Control Department of the Trade and Economic Cooperation Bureau, Ministry of Economy, Trade and Industry, it shall be deemed that the submission or presentation under the provisions of the Cabinet Order Relating to Emergency Duty, etc. corresponding to the provisions of the Regulations of Emergency Measures is made at the Tariff Policy and Legal Division of the Customs and Tariff Bureau, Ministry of Finance.

Testimony as referred to in paragraphs 1 and 2 of Article 4 of the Cabinet Order Relating to Emergency Duty, etc. shall be conducted at the same location on the same date at the same time as the testimony as provided for in paragraphs 1 and 2 of Article 12 of the Regulations of Emergency Measures.

6. Initiation of Investigation, etc

- (1) Council on Customs, Tariff, Foreign Exchange and Other Transactions

(Cabinet Order Relating to Emergency Duty, etc.: Article 2; Article 10, paragraph 2.)

The Minister of Finance shall, when a decision to initiate an investigation under paragraph 6 of Article 9 of the Law (including the case under paragraph 11 of the same Article, to which the paragraph 6 applies *mutatis mutandis*) has been made, notify the members of the Special Duty Group of the Customs Tariff Subcouncil of the Council on Customs, Tariff, Foreign Exchange and Other Transactions and explain to the Special Duty Group, whenever appropriate, the reasons for initiating the investigation.

The Minister of Finance shall, in cases where he/she notifies and gives a public notice pursuant to paragraph 2 of Article 10 of the Cabinet Order Relating to Emergency Duty, etc., report to the Special Duty Group of the Customs Tariff Subcouncil of the Council on Customs, Tariff, Foreign Exchange and Other Transactions on the content thereof.

(2) Investigating Team

(Cabinet Order Relating to Emergency Duty, etc.: Article 11.)

The Minister of Finance shall, when a decision to initiate the investigation under paragraph 6 of Article 9 of the Law (including the case under paragraph 11 of the same Article, to which the paragraph 6 applies *mutatis mutandis*) has been made, after consulting with any Minister who has jurisdiction over the industry in Japan as referred to in paragraph 1 of the same Article and the Minister of Economy, Trade and Industry, establish an investigating team composed of relevant officials of the Ministry of Finance, the said Ministry having jurisdiction over the industry in Japan, and the Ministry of Economy, Trade and Industry.

7. Sending a Questionnaire

(Cabinet Order Relating to Emergency Duty, etc.: Article 4, paragraph 2; Article 5, paragraph 2; Article 6, paragraph 3. Regulations of Emergency Measures: Article 12, paragraph 2; Article 13, paragraph 2; Article 14, paragraph 3.)

When the Minister of Finance sends questionnaires to the interested parties (as referred to in paragraph 1 of Article 4 of the Cabinet Order Relating to Emergency Duty, etc.; hereinafter the same), or industrial users, etc. or representative consumer organizations for the product under investigation (as referred to in paragraph 1 of Article 5 of Cabinet Order Relating to Emergency Duty, etc.; hereinafter the same) to request the submission of evidence as referred to in paragraph 2 of Article 4 of the Cabinet Order Relating to Emergency Duty, etc., to request for the presentation of the view as referred to in paragraph 2 of Article 5 of the same Order, or to request the provision of information as referred to in paragraph 3 of Article 6 of the same Order, the Minister of Finance shall explicitly indicate in the questionnaire in each investigation case the due date for the response to the questionnaire.

The questionnaire in a corresponding procedure under the provisions of the Regulations of Emergency Measures in an investigation under Article 8 of the Regulations of Emergency Measures (including the case under paragraph 3 of Article 19 thereof, to which Article 8 thereof applies *mutatis mutandis*) shall also serve as the questionnaire as specified in the preceding paragraph under the Cabinet Order Relating to Emergency Duty, etc.

8. Holding a Public Hearing

(Cabinet Order Relating to Emergency Duty, etc.: Article 9. Regulations of Emergency Measures: Article 17.)

(1) Establishment of Agenda, etc.

When holding a public hearing as referred to in Article 9 of the Cabinet Order Relating to Emergency Duty, etc. (which shall be conducted in a uniform and integrated manner with the public hearing as provided for in Article 17 of the Regulations of Emergency Measures; the testimony, views or information obtained in the public hearing shall be shared in both hearings; hereinafter referred to as simply "public hearing"), the Minister of Finance shall, after consulting with any Minister who has jurisdiction over the industry in Japan as referred to in paragraph 1 of Article 9 of the Law and the Minister of Economy, Trade and Industry in accordance with paragraph 3 of Article 11 of the of the Cabinet Order Relating to Emergency Duty, etc., establish the agenda, etc. (which means the matters listed in subparagraphs (i) through (iv) of paragraph (2) of Article 8 hereof) of the public hearing.

(2) Public Notice, etc.

When holding a public hearing, the Minister of Finance shall notify in writing such parties as found to be relevant to the agenda established under paragraph (1) of Article 8 hereof (hereinafter referred to as "interested parties, etc.") among the interested parties, or the industrial users, etc. or representative consumer organizations of the following matters in a reasonable period prior to the date of the public hearing in order to request for participation, and shall give a public notice of the same:

- (i) the agenda;
- (ii) the time and the date;
- (iii) the location; and
- (iv) other relevant matters.

(3) Chairperson

An appropriate person of the investigating team shall serve as chair at the public hearing.

(4) Proceedings of the Public Hearing

(i) With respect to the agenda, the chairperson shall request for testimony of the interested parties or the view of the interested parties, industrial users, etc. or representative consumer organizations, or provision of information by the industrial users, etc. or representative consumer organizations.

(ii) The chairperson may limit responses or remove persons who disturb the order or misbehave at the public hearing, if it is found necessary.

(iii) The chairperson may adjourn or continue the public hearing, if it is found necessary. In such case, the chairperson shall notify the attendees to the public hearing of the date and the location of the next hearing in writing, and shall give a public notice of the same.

(iv) The chairperson shall deem that the interested parties, etc., who did not attend the public hearing, did not intend to participate in the public hearing.

(5) Records

Statements at the public hearing shall be recorded in shorthand or in other manner.

THE GUIDELINES FOR PROCEDURES, ETC. RELATING TO EMERGENCY
MEASURES TO BE TAKEN IN RESPONSE TO AN INCREASE
IN THE IMPORTATION OF GOODS

The guidelines for procedures, etc. of Regulations to Govern Emergency Measures to be Taken in Response to an Increase in the Importation of Goods (Notification No. 715 of 1994 of the Ministry of International Trade and Industry) are set out as follows.

1. Objective

Matters necessary to implement the General Agreement on Tariffs and Trade 1994 and the Agreement on Safeguards are set forth in the Regulations to Govern Emergency Measures to be Taken in Response to an Increase in the Importation of Goods (Notification No. 715 of 1994 of the Ministry of International Trade and Industry; hereinafter referred to as "Regulations"). The objective of enacting this Guideline is to complement the Regulations, to secure the uniform and integrated operation of the system relating to measures taken based on the Regulations and measures relating to emergency duties, etc., and to contribute to facilitate the operation of these systems.

Further, flexible and responsive approaches in individual cases shall not be precluded in applying this Guideline. Moreover, consideration shall be given to internationally established interpretations of each of the above-mentioned Agreements for its application.

2. Basic Policy of Operation

(1) An investigation under Article 8 of the Regulations (including the case under paragraph 3 of Article 19 thereof, to which Article 8 thereof applies *mutatis mutandis*) shall be initiated and concluded in a uniform and integrated manner with the investigation under paragraph 6 of Article 9 of the Customs Tariff Law (Law No. 54 of 1910) (including the case under paragraph 11 of the same Article thereof, to which paragraph 6 applies *mutatis mutandis*). Results of these investigations shall also be handled in a uniform and integrated manner.

(2) When a procedure under provisions of the Regulations is conducted in an investigation under Article 8 of the Regulations (including the case under paragraph 3 of Article 19 thereof, to which Article 8 thereof applies *mutatis mutandis*) (including the treatment of the results of the investigation), it shall be conducted in a uniform and integrated manner with a corresponding procedure in an investigation under paragraph 6 of Article 9 of the Customs Tariff Law (including the case under paragraph 11 of the same Article thereof, to which paragraph 6 applies *mutatis mutandis*). Evidence shall be used commonly in both investigations.

3. Domestic Industry

The term a major proportion as provided for in Article 2 of the Regulations shall be interpreted as approximately 50 per cent.

4. Submission of Evidence, etc

(1) Any of the following items shall be submitted to or presented at the Office for Trade Remedy Investigations of the Trade Control Department of the Trade and Economic Cooperation Bureau, Ministry of Economy, Trade and Industry, and shall be addressed to the Minister of Economy, Trade and Industry. The number of copies of the submission in writing shall be no less than one (1) if the same is also submitted in an electronic medium at the time of the submission. The number of copies

of the submission in writing shall be no less than four (4) if the same in an electronic medium is not submitted.

- The evidence, testimony or document referred to in paragraph 1, 2, 4, 5 or 7 of Article 12 of the Regulations;
- The presentation of the view referred to in paragraph 1 or 2 of Article 13 thereof;
- The information or document referred to in paragraph 1 or 3 of Article 14 thereof;
- The document referred to in paragraph 2 of Article 15 thereof; or
- The evidence, testimony, presentation of the view or information referred to in paragraph 1, 3 or 4 of Article 16 thereof.

When the evidence, testimony, document, presentation of the view, or information under the provisions of the Cabinet Order Relating to Emergency Duty, etc. (Cabinet Order No. 417 of 1994; hereinafter referred to as "Cabinet Order Relating to Emergency Duty") is submitted to or presented at the Tariff Policy and Legal Division of the Customs and Tariff Bureau, Ministry of Finance, it shall be deemed that the submission or presentation under the provisions of the Regulations corresponding to the provisions of the Cabinet Order Relating to Emergency Duty is made at the Office for Trade Remedy Investigations of the Trade Control Department of the Trade and Economic Cooperation Bureau, Ministry of Economy, Trade and Industry.

(2) Testimony as referred to in paragraphs 1 and 2 of Article 12 of the Regulations shall be conducted at the same location on the same date at the same time as the testimony as provided for in paragraphs 1 and 2 of Article 4 of the Cabinet Order Relating to Emergency Duty.

5. Initiation of Investigation, etc

The Minister of Economy, Trade and Industry shall, when the Minister decided to initiate the investigation under Article 8 of the Regulations (including the case under paragraph 3 of Article 19 thereof, to which the Article 8 thereof applies *mutatis mutandis*), appoint relevant officials of the Ministry of Economy, Trade and Industry as the investigating officials. The said investigating officials shall also serve as the officials of the Ministry of Economy, Trade and Industry which compose the investigating team under paragraph 6 of Article 9 of the Customs Tariff Law (including the case under paragraph 11 of the same Article thereof, to which the paragraph 6 applies *mutatis mutandis*).

6. Sending a Questionnaire

When the Minister of Economy, Trade and Industry requests the submission of evidence as referred to in paragraph 2 of Article 12 of the Regulations, the presentation of the view as referred to in paragraph 2 of Article 13 thereof, or the provision of information as referred to in paragraph 3 of Article 14 thereof, the Minister of Economy, Trade and Industry shall send questionnaires to the interested parties (as referred to in paragraph 1 of Article 12 of the Regulations; hereinafter the same), or industrial users, etc. or representative consumer organizations for the product under investigation (as referred to in paragraph 1 of Article 13 of the Regulations; hereinafter the same), explicitly indicating the due date for the response to the questionnaire for each investigating matter.

The questionnaire in a corresponding procedure in an investigation under paragraph 6 of Article 9 of the Customs Tariff Law (including the case under paragraph 11 of the same Article thereof, to which paragraph 6 applies *mutatis mutandis*) shall also serve as the questionnaire as specified in the preceding sentence under the Regulations.

7. Holding a Public Hearing

(1) Establishment of Agenda, etc.

When holding a public hearing as referred to in Article 17 of the Regulations (which shall be conducted in a uniform and integrated manner with the public hearing as provided for in Article 9 of the Cabinet Order Relating to Emergency Duty; the testimony, views or information obtained in the public hearing shall be shared in both hearings; hereinafter referred to as simply "public hearing"), the Minister of Economy, Trade and Industry shall establish the agenda, etc. (the matters as listed in subparagraphs (i) through (iv) of paragraph (2) of Article 7 hereof) of the public hearing.

(2) Public Notice, etc.

When holding a public hearing, the Minister of Economy, Trade and Industry shall notify in writing such parties as found to be relevant to the agenda established under paragraph (1) of Article 7 hereof (hereinafter referred to as "interested parties, etc.") among the interested parties, or the industrial users, etc. or representative consumer organizations of the following matters in a reasonable period prior to the date of the public hearing in order to request for participation, and shall give a public notice of the same:

- (i) the agenda;
- (ii) the time and the date;
- (iii) the location; and
- (iv) other relevant matters.

(3) Chairperson

An appropriate person of the investigating team shall serve as the chairperson at the public hearing.

(4) Proceedings of the Public Hearing

(i) With respect to the agenda, the chairperson shall request for testimony of the interested parties or the view of the interested parties, industrial users, etc. or representative consumer organizations, or provision of information by the industrial users, etc. or representative consumer organizations.

(ii) The chairperson may limit responses or remove persons who disturb the order or misbehave at the public hearing, if it is found necessary.

(iii) The chairperson may adjourn or continue the public hearing, if it is found necessary. In such case, the chairperson shall notify the attendees to the public hearing of the date and the location of the next hearing in writing, and shall give a public notice of the same.

(iv) The chairperson shall deem that the interested parties, etc., who did not attend the public hearing, did not intend to participate in the public hearing.

(5) Records

Statements at the public hearing shall be recorded in shorthand or in other manner.

[Provisional Translation]

I. Cabinet Order Relating to Countervailing Duty (Cabinet Order No. 415, December 1994)

Article 5

The phrase "and persons who the Minister of Finance particularly finds as interested parties related to such investigation other than those provided for before in this paragraph, and " is inserted before the phrase "shall publish a notice in the Official Gazette" in paragraph 1 of Article 5. The phrase "and provision of information referred to in paragraph 1 of Article 10" is inserted after the phrase "paragraph 1 of Article 10" in subparagraph (7) of paragraph 1.

Article 7

Following paragraph is inserted after paragraph 3 of the Article 7. This paragraph becomes paragraph 4 and former paragraph 4 becomes paragraph 5.

When the Minister of Finance requested interested parties to present evidence or testify in accordance with the provisions of the first sentence of paragraph 2, the determination referred to in Article 10-2 (excluding the case where the determination was made before requesting the said evidence or testimony) and the determination referred to in Article 12 shall be made after presenting the said evidence or testimony. However, this provision does not apply to the case where the said interested parties do not provide the said evidence or testimony within a reasonable period time.

Article 8

The phrase "paragraph 4 of the preceding Article" is amended to the phrase "paragraph 5 of the preceding Article".

Article 10

Article 10-2 is inserted after Article 10.

(Notification of the Preliminary Determination, etc.)

Article 10-2

The Minister of Finance shall, when the investigation referred to in paragraph 6 of Article 7 of the Law is initiated and the determination to presume the fact of the importation of the subsidized product and the fact of the material injury, etc. to the domestic industry caused by such importation as provided for in paragraph 9 or 10 of the said Article is made, notify to that effect and facts on which the determination is based in writing directly interested parties and shall publish a notice in the Official Gazette.

II. Cabinet Order Relating to Anti-Dumping Duty (Cabinet Order No. 416, December 1994)

Article 8

The phrase "and persons who the Minister of Finance particularly finds as interested parties related to such investigation other than those provided for before in this paragraph, and " is inserted before the phrase "shall give a public notice in the Official Gazette." in paragraph 1 of Article 8. The phrase "and application under paragraphs of Article 12" is amended to the phrase ", application referred to in paragraph 1 of Article 12, presentation of the view referred to in paragraph 1 of Article 12-2 and provision of information referred to in paragraph 1 of Article 13" in subparagraph (7) of paragraph 1.

Article 10

Following paragraph is inserted after paragraph 3 of the Article 10. This paragraph becomes paragraph 4 and former paragraph 4 becomes paragraph 5.

4. When the Minister of Finance requested interested parties to present evidence or testify in accordance with the provisions of the first sentence of paragraph 2, the determination referred to in Article 13-2 (excluding the case where the determination was made before requesting the said evidence or testimony) and the determination referred to in Article 15 shall be made after presenting the said evidence or testimony. However, this provision does not apply to the case where the said interested parties do not provide the said evidence or testimony within a reasonable period time.

Article 11

The phrase "in paragraph 4 of Article 10" is amended to the phrase "in paragraph 5 of Article 10".

Article 12

Article 12-2 is inserted after Article 12.

(Presentation of View)

Article 12-2

1. When the investigation is initiated, any interested party, industrial user of the products under the investigation or any representative-consumer organization of such products may, until the time-limit referred to in subparagraph (7) of paragraph 1 of Article 8 notified to or published in notice in accordance with the provisions of said paragraph, present to the Minister of Finance the document which contains its view on that investigation. However, representative consumer-organizations may present their view, only in cases where the products are commonly sold retail.

2. The Minister of Finance may, if necessary, in the course of investigation, request interested parties, industrial users of such products under investigation or representative consumer-organizations of such products to present their view in writing which are relevant to the investigation.

Article 13

Article 13-2 is inserted after Article 13.

Article 13-2

(Notification of the Preliminary Determination, etc.)

The Minister of Finance shall, when the investigation referred to in paragraph 5 of Article 8 of the Law is initiated and the determination to presume the fact of the importation of the dumped product and the fact of the material injury, etc. to the domestic industry caused by such importation as provided for in paragraph 8 or 9 of the said Article is made, notify to that effect and facts on which the determination is based in writing directly interested parties and shall publish a notice in the Official Gazette.

III. Cabinet Order Relating to Emergency Duty (Cabinet Order No. 417, December 1994)

Article 9

Article 9-2 is inserted after Article 9.

(Public Notice of the Preliminary Determination)

Article 9-2

The Minister of Finance shall, when the investigation referred to in paragraph 6 of Article 9 of the Law is initiated and the determination to presume the fact of import increase of a particular product and the fact of serious injury, etc. to the domestic industry caused by such importation as provided for in paragraph 8 of the said Article is made, publish a notice in the Official Gazette to notify to that effect and facts on which the determination is based.
