

**WORLD TRADE  
ORGANIZATION**

G/ADP/N/1/JPN/2/Suppl.4  
G/SCM/N/1/JPN/2/Suppl.4  
5 April 2004  
(04-1528)

---

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

Original: English

**NOTIFICATION OF LAWS AND REGULATIONS  
UNDER ARTICLES 18.5 AND 32.6 OF THE AGREEMENTS**

JAPAN

Supplement

The following communication, dated 2 April 2004, is being circulated at the request of the Delegation of Japan.

---

Upon instructions from my authorities, I am sending you herewith Japan's notification, which informs the amendments of following instruments: Cabinet Order Relating to Countervailing Duty (Cabinet Order No. 415, December 1994, amended by the Cabinet Order No. 104, March 2004), Cabinet Order Relating to Anti-Dumping Duty (Cabinet Order No. 416, December 1994, amended by the Cabinet Order No. 104, March 2004) and The Guidelines for Procedures Relating to Countervailing and Anti-dumping Duties.

[Provisional Translation]

**I. CABINET ORDER RELATING TO COUNTERVAILING DUTY (NOTIFIED AS G/SCM/N/1/JPN/2, G/SCM/N/1/JPN/2/CORR.1, G/SCM/N/1/JPN/2/CORR.2)**

Article 2 is deleted and replaced by the following.

(Domestic Industry)

Article 2

1. The term "domestic industry" as provided for in paragraph 1 of Article 7 of the Law shall be interpreted as referring to domestic producer whose collective output of the like products constitutes a major proportion of the total domestic production of those products.

2. The domestic producers referred to in the preceding paragraph shall not include the producers who have one or more of the relationships referred to in the following subparagraphs, or the producers who have imported those products or the like products after the date of six months prior to the date when the request has been made under the provisions of paragraphs 5, 18 (including the case where the provisions of this paragraph are applied by paragraph 28) or 23 of Article 7 of the Law or the date, in case such request has not been made under these provisions, when the investigation has been initiated under the provision of paragraph 6, 19 (including the case where the provisions of this paragraph are applied by paragraph 28) or 24 of Article 7 of the Law , except in the case where the import was in a small amount. However, this paragraph is not applied if the producers have imported those products or the like products and submitted the evidence to show that their major business concerning those products and the like products is the domestic production of the like products, or the producers who have one or more of the relationships referred to in the following subparagraphs and submitted the evidence to show that the effect of such relationship does not cause the producer to behave differently from other producers who have no relations referred to in the following subparagraphs, and if such evidence in each cases is recognized as appropriate.

(1) a relation in which the producer controls directly or indirectly the supplier or importer of that product,

(2) a relation in which the producer is controlled directly or indirectly by supplier or importer of that product,

(3) a relation in which the producer is controlled directly or indirectly by a third person who directly or indirectly controls supplier or importer of that product, or

(4) a relation in which supplier or importer of that product controls together directly or indirectly a third person.

**II. CABINET ORDER RELATING TO ANTI-DUMPING DUTY (NOTIFIED AS G/ADP/N/1/JPN/2, G/ADP/N/1/JPN/2/CORR.1, G/ADP/N/1/JPN/2/CORR.2, G/ADP/N/1/JPN/2/SUPPL.1, G/ADP/N/1/JPN/2/SUPPL.3)**

Article 4 is deleted and replaced by the following.

(Domestic Industry)

Article 4

1. The term "domestic industry" as provided for in paragraph 1 of Article 8 of the Law shall be interpreted as referring to domestic producer whose collective output of the like products constitutes a major proportion of the total domestic production of those products.

2. The domestic producers referred to in the preceding paragraph shall not include the producers who have one or more of the relationships referred to in the following subparagraphs or the producers who have imported those products after the date of six months prior to the date when the request has been made under the provisions of paragraphs 4, 21 (including the case where the provisions of this paragraph are applied by paragraph 31) or 26 of Article 8 of the Law or the date, in case such request has not been made under these provisions, when the investigation has been initiated under the provision of paragraph 5, 22 (including the case where the provisions of this paragraph are applied by paragraph 31) or 27 of Article 8 of the Law, except in the case where the import was in a small amount. However, this paragraph is not applied if the producers have imported those products and submitted the evidence to show that their major business concerning those products and the like products is the domestic production of the like products, or the producers who have one or more of the relationships referred to in the following subparagraphs and submitted the evidence to show that the effect of such relationship does not cause the producer to behave differently from other producers who have no relations referred to in the following subparagraphs, and if such evidence in each cases is recognized as appropriate.

(1) a relation in which the producer controls directly or indirectly the supplier or importer of that product,

(2) a relation in which the producer is controlled directly or indirectly by supplier or importer of that product,

(3) a relation in which the producer is controlled directly or indirectly by a third person who directly or indirectly controls supplier or importer of that product, or

(4) a relation in which supplier or importer of that product controls together directly or indirectly a third person.

**III. THE GUIDELINES FOR PROCEDURES RELATING TO COUNTERVAILING AND ANTI-DUMPING DUTIES (NOTIFIED AS G/ADP/N/1/JPN/2/SUPPL.2, G/ADP/N/1/JPN/2/SUPPL.3)**

2. Definitions

The phrase "'ASCM',"ADA'" is inserted after the term "terms". The phrase "' Agreement on Subsidies and Countervailing Measures'," Agreement of Implementation of Article VI of the General Agreement on Tariffs and Trade 1994'" is inserted after the term "mean".

5. Domestic Industry

The following subparagraphs are added after “subparagraph (2)”.

(3) Relation to control

(Cabinet Order Relating to Countervailing Duty: Article 2, paragraph 2.  
Cabinet Order Relating to Anti-Dumping Duty: Article 4, paragraph 2.)

The term "control" as provided for in both the proviso to paragraph 2 of Article 2 of the Cabinet Order Relating to Countervailing Duty and the proviso to paragraph 2 of Article 4 of the Cabinet Order Relating to Anti-Dumping Duty 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 percent 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 subparagraphs B to E of the preceding paragraph (ii) .

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

(Cabinet Order Relating to Countervailing Duty: Article 2, the proviso to paragraph 2.  
Cabinet Order Relating to Anti-Dumping Duty: 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 set out in the proviso to paragraph 2 of Article 2 of the Cabinet Order Relating to Countervailing Duty and the proviso to paragraph 2 of Article 4 of the Cabinet Order Relating to Anti-Dumping Duty 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 application under paragraphs 5, 18 or 23 of Article 7 of the Law, or paragraphs 4, 21 or 26 of Article 8 of the Law,
  - 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 set out in the proviso to paragraph 2 of Article 2 of the Cabinet Order Relating to Countervailing Duty and the proviso to paragraph 2 of Article 4 of the Cabinet Order Relating to Anti-Dumping Duty 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 application under paragraphs 5, 18 or 23 of Article 7 of the Law, or paragraphs 4, 21 or 26 of Article 8 of the Law,
  - C Any other relevant matters which shows that major business concerning those products and the like products is domestic production of the like products.

#### New Paragraph 7

The following paragraph is added after "paragraph 6".<sup>1</sup>

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

(Cabinet Order Relating to Anti-Dumping Duty: Article 6.)

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

---

<sup>1</sup> The numbers of following paragraphs are adjusted according to the insertion of new paragraphs. (e.g., the former paragraph 7 becomes paragraph 8.)

- (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 percent 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 subparagraphs B to E of the preceding paragraph (ii) .

8. Initiation of investigation, etc.

The number “9” is changed into “15” in the phrase “except for paragraph 9 hereunder”.

New Paragraph 10, 11, 12, 13 and 14

The following paragraphs are added after "paragraph 9”.

10. On-the-spot investigation

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

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 or government that granted subsidies in the exporting country (as in paragraph 6 of Article 12 of ASCM or paragraph 7 of Article 6 of ADA), in the following manner:

- (i) Before investigation
  - A Schedule arrangement
    - (a) Confirm the agreement of 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 notice 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 approximately 17 days prior to the visit considering the necessary preparation time.

- (ii) After the investigation
  - A Make a verification report
  - B When making the disclosure of the important facts before the final determination (which refers to the notice provided in Article 12 of the Cabinet Order Relating to Countervailing Duty or Article 15 of the Cabinet Order Relating to Anti-Dumping Duty; this reference is also applicable in subparagraph (2) of paragraph 11 or in subparagraph (2) of paragraph 15), send the verification report to the parties concerned.
  - C Regardless of the preceding paragraph, disclose the verification report to the interested party prior to the disclosure of the important facts, if requested to do so

(2) The provision of the preceding subparagraph (1) applies *mutatis mutandis* to the domestic producer or importer.

#### 11. Facts available

(ASCM: Article 12, paragraph 7.  
ADA: Article 6, paragraph 8; Annex II.)

(1) In any of the following cases, preliminary or final determination may be made on the basis of the facts available referred to in paragraph 7 of Article 12 of ASCM or paragraph 8 of Article 6 of ADA.

- (i) Refusal to answer a questionnaire
- (ii) Insufficient information, with questionnaire only partly answered
- (iii) The accuracy of the submitted information cannot be clarified
- (iv) Significant delay in submitting the necessary information within a reasonable period without good reason

- (v) Other similar circumstances to the above
- (2) Regarding the use of the facts available, the following procedures apply;
- (i) When there is a request to extend the period for answering the questionnaire, an extension will in general be granted, unless such extension would be likely to cause serious delay to the investigation.
  - (ii) When the period for answering the questionnaire has expired, the party shall be encouraged to answer the questionnaire and be reminded of the possibility for using the facts available.
  - (iii) When the answers to the questionnaires are insufficient, further information shall be requested.
  - (iv) When facts available are used and part or all of the submitted information is not accepted, the reason for non-acceptance of the information and the part where facts available is used shall be notified to the interested party, and an opportunity to obtain a more detailed explanation shall be provided in a certain period to the interested party.
  - (v) When part of the submitted information is insufficient, incomplete, or unclear, the interested parties shall be requested to give further explanation at the on-the-spot investigation.
  - (vi) When a preliminary determination is made, the reason for use of facts available as well as the information used and the process involved shall be notified to the interested parties, public notice shall be given, and opportunities shall be provided for the interested parties to defend their interests.
  - (vii) When a disclosure of the important facts is made, the reason for use of facts available as well as the information used and the process involved shall be notified to the interested parties, and an opportunity shall be provided for interested parties to defend their interests.
  - (viii) When a final determination is made, amendments made during the investigation after the preliminary determination shall be notified to the interested parties, and a public notice shall be promulgated.

12. 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 related countries exceeds that which can reasonably be investigated in the examination, samples may be used for the investigation (hereinafter referred to simply as "sampling"), as in paragraph 10 of Article 6 of ADA.
- (i) In principle, when the number of known suppliers in the exporting country exceeds 20
  - (ii) When the number of the types of products in the investigation is so large as to make individual determinations impracticable.



- (2) When conducting the sampling, the following procedures shall be followed
- (i) Send a preliminary questionnaire to all the known suppliers in the exporting country, which inquires about the volumes of exports to Japan and third-countries, sales in the domestic market and volume of production of the product concerned in the period of investigation;
  - (ii) When suppliers have not submitted their answers, encourage them to do so;
  - (iii) Conduct sampling based on the answer if there are more than 20 producers in the exporting country. In this case, even if producers have not submitted their answers, they may be selected for sampling if they are recognised as representative producers in the exporting country;
  - (iv) Notify the implementation of sampling to the selected producers and an opportunity to provide a further explanation shall be given; and
  - (v) Notify on non-selection to the suppliers in the exporting country that replied to the preliminary questionnaire but were not been selected for sampling, and if they requests investigations, the separate investigations will, in principle, be done for them, in the same way as for those selected.
- (3) When conducting sampling, the following points will be considered:
- (i) Approximately 20 producers that have a large volume of exports to Japan will be selected in principle, so that the total amount of exports covered by the investigation exceeds approximately 50% of the total exports of that exporting country;
  - (ii) In the case that there are several countries concerned, selections of producers will be made from each of such countries; and
  - (iii) In the case that the products concerned have a variety of types, try to include all types of products in the selected products, as far as possible.

13. Calculation method of the amount of subsidies to be targeted by countervailing duties

(ASCM: Article 14.)

(1) Basic concept

The method of calculating the amount of representative subsidies is basically as follows. While, calculation method of each subsidy shall be determined appropriately with taking account of characteristics and conditions of each subsidy in 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

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 circumstances whereby the government may make a reasonable return on the investment within a reasonable period, 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.

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.

- (2) Adjustments to the calculation of subsidy amount

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.

14. Treatment after preliminary determination

(Law: Article 7, paragraph 10; Article 8, paragraph 9.)

Treatment after preliminary determination is as follows:

(i) When it can be presumed that importation of the subsidised products or dumped products has occurred resulting in material injury, etc. to the domestic industry caused by such importation, and if it is found necessary to protect such domestic industry, provisional measures may be applied.

(ii) If it cannot be presumed that importation of the subsidised products or dumped products has occurred, but it can be presumed that such importation caused material injury, etc. to the domestic industry, further continuation of investigation shall be considered.

(iii) When material injury, etc. to the domestic industry caused by the importation of the subsidised products or dumped products cannot be presumed, termination of the investigation shall be considered.

15<sup>2</sup>. Undertaking

The paragraph title is amended to “Undertaking” and the former title has become the title of subparagraph (1).

The phrase “, except for subparagraph (2) in this paragraph” is inserted after the phrase “hereinafter the same” in the chapeau of subparagraph (1).

The following subparagraphs are added after “subparagraph (1)”.

(2) The following procedures shall apply to an undertaking

(i) An undertaking (as referred to in the first sentence of paragraph 9 of Article 7 of the Law (including the case where the said sentence is applied *mutatis mutandis* to the

---

<sup>2</sup> The former paragraph 9 is become paragraph 15.

first sentence of paragraph 15, paragraphs 21 and 25 of the said Article) or the offer as referred in the first sentence of paragraph 8 of Article 8 of the Law (including the case where the said sentence is applied *mutatis mutandis* to the first sentence of paragraph 14, paragraphs 24 and 28 of the said Article)) shall be made within 10 days after the disclosure of the important facts.

- (ii) The applicant as referred to in paragraph 1 of Article 4 of the Cabinet Order Relating to Countervailing Duty or paragraph 1 of Article 7 of the Cabinet Order Relating to Anti-Dumping Duty shall be given an opportunity to provide further explanation.
- (3) In any of the following cases, the offered undertaking may be refused:
- (i) When the exporter has not presented a minimum export price that would remove the injury to the domestic industry;
  - (ii) When the government that provided the subsidy has not presented measures to remove the injury to the domestic industry;
  - (iii) When reasonable grounds exist to doubt that the exporter would fulfil such an undertaking;
  - (iv) When objective circumstances exist that would make it difficult to observe the situation of compliance with such an undertaking;
  - (v) When other objective reasons exist that is similar to above cases where it is not appropriate to accept such an undertaking.
- (4) 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 referred to in paragraph 10 of Article 7 of the Law, or paragraph 9 of Article 8 of the Law shall immediately be taken based on the best information available at the time, the investigation shall be completed promptly, and countervailing duty or anti-dumping duty as referred to in paragraph 1 of Article 7 of the Law, or paragraph 1 of Article 8 of the Law, may be imposed.
  - (ii) When an investigation has been completed, countervailing duty or anti-dumping duty as referred to in paragraph 1 of Article 7 of the Law, or paragraph 1 of Article 8 of the Law, may be immediately imposed.
-