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In Japan, general anti-dumping legislation is provided by article 8 of the Customs and Tariff Law (Law No. 54 of 1910, *kanzei teiritsu hou* in Japanese), whereas specific details are provided in Ordinance No. 416 of 1994 and the guidelines thereunder. All of these laws and regulations are promulgated in accordance with the rules of the World Trade Organization (WTO), which have been ratified by the Japanese government.

Case precedents

In Japan, until recently, the government had been rather passive in dealing with the imposition of anti-dumping duties (AD duties). The Japanese government has only ever made three final determinations to impose an anti-dumping duty: concerning ferrosilicon manganese from China, South Africa and Norway in 1993; concerning cotton yarns from Pakistan in 1995; and concerning polyester staple fibres from Korea and Chinese Taipei in 2002. As of March 2008, there is one pending anti-dumping investigation concerning electronic manganese ore exported from Australia, South Africa, China and Spain.

In all of the three cases, the Japanese government invariably established that the investigated product dumped into Japan caused injury to the industry of Japan, and consequently the AD duties were levied against the importer of the investigated products. Although at least some of the interested parties answered to the complaint filed by the applicants in these cases, they were not always successful in defending their position. The ferrosilicon manganese case in 1993 is the only case in history where some interested parties successfully executed a price undertaking with the Japanese government. The margin of dumping finally determined by the Japanese government may turn out to be higher than the margin initially alleged by the applicant, although sincere cooperation with the Japanese government's investigation will likely lead to more favourable consequences.

General rules

Article 8 of the Customs and Tariff Law and the related government ordinance provide

for the basic rules on the imposition of AD duties under Japanese law, in accordance with the WTO rules.

AD duties will be imposed against the importer of a product into Japan when the importation of the product would cause its sale price to fall below the normal value of the product, and such importation causes injury to the industry of Japan. However, the methodology for determination of the normal value of a product is not clearly defined in any of Japan's anti-dumping laws or regulations. Generally, the domestic sales price of the investigated product (including similar products, if any) destined for consumption in its country of origin will be regarded as the normal value. However, if there are no domestic sales of the product, the constructed value or, alternatively, its export price to a third country shall be referenced as the normal value.

Procedures

The Ministry of Finance (MoF) and Ministry of Economy, Trade and Industry (METI), the two authorities in charge of anti-dumping measures in Japan, give a public notice (*kokujū*) upon their determination to initiate an anti-dumping investigation concerning a product imported into Japan. Then, the MoF and the METI will issue a questionnaire to the interested parties such as exporters, importers and industrial users of the product.

In this regard, while the anti-dumping regulations in Japan are consistent with the international standards such as the AD Agreement, the specific rules under those regulations are not defined in detail, possibly due to the lack of case precedents.

The questionnaire for the exporter consists of several items, including the general and financial information of the company, the amount of sales destined for domestic consumption in the country of origin and the amount of exports to Japan and to other countries. The respondent will be required to provide data on a variety of cost items for specific, individual purchases and/or sales relating to the investigated products., which include such

adjustment items as packing, freight, warehousing and technical costs, among others.

The difficulties in complying with anti-dumping regulations in Japan consist of the following: it is necessary for non-Japanese respondents not only to collect information to answer the questions but also to translate all Japanese documents into English (and vice versa) by the deadline set out by the MoF and the METI, as is the case with other Asian countries where English is not used as an official language. In theory, the interested parties are entitled to solicit an extension of the deadline; however, as a matter of practice, the Japanese government will not respond to such request on a flexible basis. Furthermore, since the whole of the procedure, including the questionnaire and response, is all in Japanese, it requires considerable time and language skills for foreign companies to communicate with the Japanese government. In order to follow the procedures properly, considering the huge volume of translation requiring consistent terminology in a short time, foreign companies need the assistance of international attorneys. In this regard, unfortunately, due to the lack of case precedents, attorneys who have expertise in anti-dumping cases are rarely found in Japan. Nonetheless, a respondent's failure to comply with the deadline may be regarded as non-cooperation with the investigation by the MoF and the METI,

in which case they may resort only to the facts already available in order to establish the dumping margin.

Generally, the MoF and the METI will, a few months after their collection of data from interested parties, visit each interested party's facility and examine the authenticity of the original data and materials previously filed with the MoF and the METI in the presence of the person(s) responsible for compiling the data within the company. Under the guidelines, each interested party is entitled to receive a list of investigation items at least 17 days prior to the commencement of the on-site verification.

In general, Japanese officers act in strict compliance with the procedures set forth in the relevant laws of Japan and are particularly conscious of the equality between the interested parties. In addition, the investigation teams of the MoF and the METI jointly and simultaneously investigate both the facts of the dumping and any injury to the industry of Japan.

In anti-dumping investigations in Japan, given the lack of case precedents and the broad latitude given to the Japanese government, it is best reserved to experienced attorneys to predict not only the attitude of the Japanese government in each individual investigation, but also each investigation's ultimate outcome. ■

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