

# JAPAN ECONOMIC CURRENTS

A COMMENTARY ON ECONOMIC AND BUSINESS TRENDS

## What's Unfair?—The WTO Rules on Dumping

by Soichiro Sakuma, Nippon Steel Corporation

The proliferation of anti-dumping world-wide has been exponential. At the end of 1993, just prior to the conclusion of the Uruguay Round, only 12 countries had adopted a total of 660 antidumping measures while approximately 1,200 cases were in place in 28 countries at the end of 1999.

At first, it was predominantly the developed countries that used antidumping law—the United States, Australia, Canada and the European Union (EU). Today, developing countries are active users of antidumping measures. As late as 1993, for example, India had no case. But in 1999, it initiated 68 cases, the largest number of antidumping investigations filed

that year. Indonesia, Korea, Mexico, Brazil and South Africa have also emerged as frequent users of antidumping laws.

Interestingly, many of those cases have been filed against traditional antidumping users, such as the US. During the 1990s, 184 cases were initiated against the US – the second most affected country of antidumping measures. China, accounting for 310 cases, was the number one target for antidumping cases in the last decade.

A logical explanation for the spread of antidumping actions is that World Trade Organization (WTO) agreements have reduced or abolished tariffs – the traditional tool to protect domestic industries. As this tool has been scaled back, importing countries have increasingly resorted to antidumping duties as a fairly useful substitute tool.

Not surprisingly, as countries have made increasing use of antidumping measures, they have become a major source of WTO dispute settlement cases. In 1995, only one of a total 25 cases before the WTO panel concerned antidumping. In 2000, by contrast, 11 of 34 dis-

pute settlement cases involved antidumping.

Worse, antidumping duty rates are in most cases extremely high. Some source indicates that an average rate of antidumping duties is in the 30-40 percent range for major user countries. Following the imposition of antidumping duties, a substantial volume of imports sometimes ceases. These duties not only harm the industry of the exporting country but also victimize consumers and industrial end-users of the dutiable products in the importing country.

We clearly need improvement in antidumping rules. Antidumping measures by definition are trade barriers but they are permitted under WTO rules because they are aimed at discouraging much more protectionist actions.

But they may also distort competition. Antidumping duties may be permissibly levied where a product is sold at a lower price for overseas markets than at home, causing injury, even if such a lower price covers its full cost. Selling a product at a lower price than a competitor's constitutes legitimate competition. If companies do so within their own country, they are

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applauded. But if they do the same thing beyond their borders, those activities are often condemned as unfair practices and penalized by antidumping duties.

Today, borders hold less and less meaning for business activity, but that is not true with the antidumping rules. We must continue to improve antidumping rules to minimize the distortion of trade and competition. At a minimum, we can work toward the proper clarification of the present provisions. More ambitiously, we can work to abolish antidumping rules altogether or change its framework. The position of Japanese industry is somewhere in the middle.

Even if this middle road were adopted, WTO antidumping rules would need to be made more automatic, transparent, and efficient, thereby increasing the predictability for companies' foreign business activities. Efforts should be taken to clarify, among other things, the current provisions on price comparison.

For instance, the WTO antidumping rules should explicitly prohibit so-called "zeroing" practices in determining dumping margins. (In order to calculate dumping margins, export prices and normal value of an allegedly dumped good are compared per

category of that good. When individual export prices of a category are higher than its normal value on a weighted average basis, the dumping margin for that category is negative. But in calculating a final weighted average dumping margin for the good as a whole, some investigating authorities count as zero all negative margins and collect only those zero margin categories and other "positive margin" categories. This creates an artificial or inflated dumping margin.) A recent WTO panel decision held that the zeroing practice is inconsistent with the WTO rules, and was upheld by its Appellate Body.

Second, the WTO antidumping rules should be clarified and elaborated to ensure more harmonized enforcement by national antidumping authorities. A good example is the so-called "sunset" clause. Under the WTO, any antidumping duties must expire (or "sunset") after five years unless an investigation determines the expiry would likely lead to the continuation or recurrence of dumping and injury.

When the Uruguay Round adopted the sunset provision, many hoped that antidumping duties would almost automatically expire before the fifth anniversary of their imposition. Unfortunately, this has not been the case because

antidumping legislation varies from country to country.

Some countries, including Australia, Brazil, and Korea have sunset provisions that closely adhere to the WTO article (i.e., antidumping measures may expire automatically, without review.) EU regulations require sufficient evidence from EU producers to extend the antidumping measure. Japanese and Indonesian laws clearly provide that antidumping duties not be left in place more than five years and such duration be specified in antidumping orders. US laws do not strictly adhere to the WTO article. For the most part, US duties endure indefinitely unless the antidumping order is revoked in a five-year review. US regulations and guidelines make revocation a very challenging task.

Third, antidumping rules should be amended with a view to clarifying and strengthening standards or disciplines, so as to support trade liberalization. One way would be to add a "public interest test" (i.e. in the overall economic interest of the country seeking to impose the duty) before duties can be imposed. Currently, antidumping duties may be imposed even if they are contrary to the public interest. Indeed, some national antidumping authorities,

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# Corporate Codes Of Conduct In an Era of Globalization

by Dr. Susan Ariel Aaronson

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As consumers of Sony Walkmans, AOL's online services, and Levis blue jeans demonstrate with their purchases, good business ideas sell around the world.

But consumers and producers sometimes disagree on what constitutes good behavior for multinational firms. Policymakers also have a stake in how corporate behavior is defined. Increasingly, their citizens demand that they ensure global corporations do not despoil the environment, produce defective products, or abuse workers.

The balance has not been an easy one to for policymakers to develop. On one hand, government officials want to encourage further economic integration. All nations, rich and poor alike, need the investment, technology, employment, and cost efficiencies that global firms bring to national economic growth. On the other hand, social activists are pressuring governments to regulate or control irresponsible firms. Most policymakers don't want to regulate at the national level, since such regulation may make their nations less attractive to global investors.

Thus, activists and policymakers who want to promote global business citizenship must find a strategy that holds corporations accountable, while taking care to not thwart

the many benefits that such companies bring to their stakeholders. Such a strategy lies in the development of global codes of corporate conduct.

## The Rise of Codes of Conduct

Voluntary codes of conduct are an attractive alternative to direct regulation by governments. They are formal statements of the values and business practices of a corporation. While non-binding, many companies expect their employees to be guided by such codes in managing the company wherever it operates. Some companies, including many Japanese firms, have had codes of conduct since the 19th century.

There is a bewildering plethora of such codes. According to the International Chamber of Commerce, as of May 2000, there were more than 40 codes of conduct worldwide, either in existence or in preparation, designed to govern the activities of global corporations. The Organization for Economic Cooperation and Development (OECD) has identified more than 246 such codes. Some of these codes are sector specific while others were designed to apply to all companies operating across borders. The codes also differ as to authorship—some were developed by civil society activists; others by executives acting on their

own initiative; and still others were devised by executives working in tandem with activists.

With the notable exception of the Global Reporting Initiative (which is a system of disclosure on environmental, social and economic aspects of corporate performance) and the SA 8000, which sets verifiable standards for certifying corporate performance in human and labor rights, most of these codes lack mechanisms for monitoring and accountability. As a result, many social and environmental activists dismiss them as meaningless, and continue to insist on enforceable international agreements to govern the global commons and work conditions.

Many governments have tried to find a middle way, between directly regulating their multinationals and promoting voluntary adherence to codes of conduct. Some have designed their own codes, while other governments have combined voluntary and governmental initiatives. The British government, for example, sponsors the Ethical Trading Initiative, which set voluntary standards for how workers should be treated as they make goods and services for export. The Canadian government proposed linking the Free Trade Agreement of the Americas (FTAA) to a code on global corporate social responsibility.

## Corporate Codes Of Conduct

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Government organizations at the international level have also developed innovative strategies. In 1977, the International Labor Organization adopted the Tripartite Declaration—a code of conduct for multinational enterprises. This voluntary code addresses social justice, human and labor rights, but it does not address environment, corporate governance, or ethics issues. Consequently, many civil society groups believe its scope is too limited to serve as a universal code of conduct.

In 1999, the United Nations developed the UN Global Compact, which is based on nine basic principles of international law related to human rights, worker rights, and environmental protection. The Global Compact is not really a code, but rather an "aspirational" strategy designed to ensure that firms, like governments, adhere to international law signed by more than 180 nations. However, because it has no means of accountability, activists often criticize the UN Global Compact. Its defenders argue, however, that the Compact is less focused on the behavior of corporations than on channeling corporate goodwill and expertise towards the real problems of the world, such as poverty.

The OECD developed the OECD Guidelines for Multinational Enterprises in 1976, which address the environment, labor standards, human rights, corruption, and competition policy. The OECD Guidelines, revised in 1999 and approved in 2000, are the only global strategy built on the recognition that foreign investment is a crucial tool for economic development in many countries. Unlike other codes, the Guidelines set up a governmental process to encourage positive business behavior. The 33 members of the OECD, as well as non-OECD members Argentina, Brazil, Chile, Venezuela and Israel, have promised to establish a National Contact Point—a governmental mechanism which would be responsible to investigate allegations of violations of the Guidelines. If the National Contact Point finds a complaint to be legitimate, it would be mandated to try to resolve the issue by arbitration. However, if the issue could not be mediated, the National Contact Point would then make a public statement about the complaint. As conceived, the resulting negative publicity would be intended to press the identified corporation into changing its behavior.

Business groups are divided about the potential of these codes, whether they involve government or

not. Some worry that by agreeing to adhere to such codes, business could be held liable in domestic courts. Executives also worry that under the OECD Guidelines, they will be held responsible for the actions of their suppliers or sub-contractors.

### **The Role of Government at the National Level**

There is no one code that can fit all sectors, all corporations, or all the issues that make globalization controversial. Yet the very diversity of codes and their voluntary nature send misleading and confusing signals to market actors.

Governments can provide incentives and, when necessary, disincentives to encourage adherence to codes. For example, the U.S. and British government bestow widely-publicized awards for responsible global business. Many policymakers recognize that they may also need to use disincentives to encourage compliance with voluntary codes. The Netherlands is debating linking adherence to the OECD Guidelines with export credits. This kind of action would be a strong incentive to adherence, should it be approved. But some executives are concerned that this strategy would compromise the voluntary nature of the Guidelines.

## Conclusion

Globalization is forcing policy-makers to develop new strategies for governance. While they must act to minimize the sometimes harmful side effects of economic activities, such as pollution, they don't want to over regulate and

thereby discourage foreign investment. As a result, a growing number of governments are adopting strategies to encourage global corporate social responsibility. Ultimately, it is the behavior of the each global company that counts. ■

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## What's Unfair?—The WTO Rules on Dumping

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such as those in the US, are obliged to impose duties without consideration of the public interest whenever the investigation finds the presence of dumping and injury. Other countries, including the EU, Canada, Thailand, and Malaysia already have "public interest test" provisions, however.

Improvement of antidumping rules is extremely important because their impact on trade is significant and because antidumping measures are very likely to spread for three reasons: First, the global economy increases trade volume and direct investment, particularly in developing countries, which could then

generate potential foreign petitioners seeking for antidumping relief.

Secondly, China, a country of 1.2 billion people and a potential giant user of antidumping measures, will soon join the WTO. In all likelihood, Chinese antidumping cases will increase—more people mean more complaints.

Thirdly, a New WTO Round will further reduce tariff rates applied in developing countries. This could increase antidumping petitions in those developing countries.

If antidumping rules are not improved, we run the risk of the erection of unjustified trade obsta-

cles all over the world. Discussions on the antidumping rules in the New Round will pay off, in that the antidumping rule is one of the most often used tools and has a considerable impact on trade. If a New Round of talks to be launched at the Doha WTO Ministerial does not review the antidumping rule, the next round to do so might not take place within 10 years. Now is the time to discuss this rule for free trade. ■

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## Japan Business Dialogue

*KKC's monthly program featuring Japanese experts on the economy.*

### **"Calligraphy vs. Keyboard: Future of Japanese E-Business,"**

Masanobu Katoh, speaker,  
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Japan risks being left in the Information Age, Masanobu Katoh, General Manager of Fujitsu Ltd.'s Washington, D.C. office, told attendees of the April 11 Japan Business Dialogue. Unless Japan effectively addresses various cultural, social, legal, and regulatory issues, it will continue to lag behind the U.S. and other trading partners in transforming itself into an "information technology" (IT) society.

Katoh identified two Japanese cultural biases that impede the development of e-commerce. Japan is a "calligraphic" society that communicates through the use of kanji (Japanese characters). However, the Internet is "English-centric." Accessing cyberspace requires mastery of a roman-lettered keyboard.

Secondly, Japanese typically shop in neighborhood establishments and convenience stores using cash, rather than purchasing items online using a credit card. Katoh said that many Japanese do not feel completely comfortable with the impersonal nature of online transactions, instead preferring face-to-face transactions.

As a result, Japan is developing a unique approach to e-commerce that embraces the nation's cultural traits and social practices. Neighborhood stores have increasingly become mini-hubs for e-commerce. Store computers allow customers to order merchandise, reserve airline tickets, or even submit college applications. The merchandise typically arrives two days later, and customers may pay with cash. Two other Japanese innovations—temporary Automated Teller Machines (ATMs) and mobile ATMs—have also facilitated e-commerce.

Katoh described important factors necessary to promote e-commerce in Japan. These include financial assistance to build an information infrastructure, technological development with an emphasis on manufacturing sectors, computer literacy and "life-long learning", telecommunication's deregulation. Given the increasingly borderless nature of e-commerce, Katoh said that international rules must be established for all users

A nation's transformation to an IT society depends on how effectively it can combine global standards with local applications, expand cultural diversity, and engage in "local customization," Katoh concluded. ■

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Deregulation of the Japanese electric power business.

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