October 9, 2003

Comments of the Government of Japan
on Proposed Revision to the Method of Antidumping Duty Calculations

The Government of Japan hereby presents its comments regarding the proposed revision of the method of antidumping duty calculations, which was announced on September 9, 2003 by the U.S. Department of Commerce [FR Doc. 03-22946].

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The Government of Japan opposes the proposed revision for the following reasons, and strongly requests that the Department of Commerce will seriously consider these comments and take sincere actions accordingly.

The Government of Japan also requests the Department of Commerce to provide further opportunities to make more comments and conduct bilateral consultations between the two Governments, where the Government of Japan can discuss more profoundly not only the issues mentioned below, such as the consistency of the proposed revision with the WTO agreement but also matters not detailed below.

1. Trade Limiting Effect

In recent years, increasing abuse of antidumping measures around the world has been a serious issue. Strengthening of disciplines on antidumping measures has thus been discussed as an important issue of the WTO Doha Development Agenda. Under these circumstances, artificial inflation of dumping margins by proposed revision would severely undermine the global trend towards the promotion of free trade, together with its distorting effects on the original objectives of antidumping as well as safeguards and countervailing duties.

2. Distorting Effect on Safeguards and Countervailing Duties

The proposed revision is contrary to and automatically distorts the core object of antidumping measures themselves. First, the proposed calculation method would expand the sphere of remedies beyond what is necessary to counteract dumping which is causing injury, thus overstepping the intrinsic scope of antidumping measures as well as raising a doubt about its consistency with the WTO agreement. Further, unreasonable expansion of the remedy of antidumping measures will also distort the policy goal of safeguards and counterveiling duties, which are introduced under careful and comprehensive decision by

the President in light of trade and industry policy. These points are further elaborated below.

(1) The proposed revision indirectly amplifies the trade protection effects of safeguards and countervailing duties by artificially inflating dumping margins. The effects of the inflated dumping margin would also survive even after the safeguards or countervailing duties themselves had been terminated, since antidumping measures are reviewed on the basis of previous period of trade record. Consequently, safeguards would have much more enormous benefit on the U.S. industry than they originally intended, in both terms of duration and scale.

(2) Further, the proposed revision is a diversion from the fundamental policy direction of safeguards. Safeguards are emergency measures, introduced under the basic industrial strategy of preventing and remedying serious injuries to the U.S. industry caused by the increase of imports and, in the meantime, of urging structural adjustment of the U.S. industry so that they could compete with imported products. From this perspective, the proposed revision contradicts the core of this objective by unreasonable expansion of the effects of safeguard measures.

3. Lack of Legal Validity

Under the Trade Act of 1930, import duties and additional costs, charges, or expenses are to be deducted in calculation of export prices. While "import duties" are not clearly defined by the Act, the term has been interpreted by practice as "normal" import duties. In other words, temporary and special duties including safeguards and countervailing duties are not such as in the "duties" to be deducted, since they are introduced for specific policy goals such as the structural reform of the U.S. industry or the rectification of an external trade relationship.

The Department of Commerce has taken this interpretation as its practice for long, which has been approved by the Court of International Trade as well. Therefore, there is no reason that the rule should be revised at this moment of time.

(As regards "additional costs, charges, or expenses," it is appropriate to understand that they refer to costs arising from international transport and do not include safeguards and countervailing measures.)