Mr. David Spooner,
Assistant Secretary for Import Administration
U.S. Department of Commerce
Central Record Unit, Room 1870
Pennsylvania Avenue and 14th Street, N.W., Washington D.C., 20230
Attention: Weighted Average Dumping Margin

Re: Antidumping Proceeding: Calculation of the Weighted Average Dumping Margin During an Antidumping Duty Investigation

Dear Mr. Spooner:

The Government of Japan hereby submits its comments on the notice with regard to "Antidumping Proceeding: Calculation of the Weighted Average Dumping Margin During an Antidumping Duty Investigation" published in the Federal Register Vol. 71, No. 11189 dated March 6, 2006.

The comments by the Government of Japan are attached.

Sincerely,

Kenichiro Urakami
First Secretary
Embassy of Japan
2520 Massachusetts Avenue, N.W.
Washington D.C., 20008

COMMENTS BY THE GOVERNMENT OF JAPAN ON THE CALCULATION OF THE WEIGHTED AVERAGE DUMPING MARGIN DURING AN ANTI-DUMPING DUTY INVESTIGATION

April 4, 2006

In response to the request for comments by Import Administration, International Trade Administration, United States Department of Commerce (USDOC), the Government of Japan hereby submits its views on the USDOC's proposal for calculating the weighted average dumping margin in an antidumping investigation, published on March 6, 2006[1].

The USDOC proposes that "it will no longer make average-to-average comparisons without providing offsets for non-dumped comparisons" in an anti-dumping duty investigation. Japan understands that in this proposal the USDOC expresses its intention to abandon its "zeroing" methodology under which it mechanically disregards negative comparison results between export prices and normal values in calculating an overall, or weighted-average, margin of dumping based on the average-to-average comparisons in original investigations. The Government of Japan appreciates this proposal, if adopted, as an important step forward in reforming otherwise unfair and prejudicial dumping margin calculation methodology the USDOC currently maintains. However, the operation of zeroing, be it the one in other forms of comparison in original investigations or the one in reviews, is not different from the zeroing that was found to be inconsistent with the WTO Agreement in previous WTO cases[2] and that the USDOC proposes to discard. Therefore, the Government of Japan considers that the prohibition of zeroing under the WTO Agreement is not limited to a certain type of price comparison methodology in certain anti-dumping proceedings but extends more generally to any form of comparison methodologies in any anti-dumping proceedings.

For instance, in periodic reviews, the USDOC identifies all comparable export transactions and conducts multiple weighted average-to-transaction comparisons covering all these transactions. Each comparison involves an individual export transaction and a weighted average normal value calculated for a sub-group, or

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[1] 71 Federal Register 11189 (March 6, 2006)

[2] Appellate Body Report, *European Communities – Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India (hereafter EC – Bed Linen), WT/DS141/AB/R*, adopted March 12, 2001, para. 86; *and*, Appellate Body Report, *Unites States – Final Dumping Determination on Softwood Lumber from Canada (hereafter US – Softwood Lumber V), WT/DS264/AB/R*, adopted August 31, 2004, para.183

"model", of the product. To determine the overall amount of "dumping", the USDOC further aggregates the multiple comparison results. However, under the zeroing methodology, the USDOC sums solely the positive comparison results, ignoring every single negative comparison result. In other words, the USDOC disregards – or treats as "zero" value – the negative comparison results for export transactions which the USDOC itself deems to be comparable. Any consequences of the zeroing methodology, such as in periodic reviews, are precisely the same as the consequences of the zeroing used in the context of the average-to-average comparisons in original investigations.

First, by excluding all negative comparison results, the USDOC makes a "dumping" determination that disregards an entire category of the export transactions making up the "product" – namely, those transactions that generate the negative comparison results. "Dumping" is, therefore, *not* determined for the "*product*" that the investigating authority defined, but for a sub-part of it.

In *EC – Bed Linen* and *US – Softwood Lumber V*, the Appellate Body ruled that a partial determination of this type violates the definition of "dumping" in Article 2.1 of the *Anti-Dumping Agreement*, and Article VI of the GATT 1994, because it is *not* made for the "'*product' as a whole*".[3] The Appellate Body also ruled that this definition "*applies to the entire [Anti-Dumping] Agreement*", including all the provisions governing reviews.[4] The zeroing methodology used in reviews also fails to comply with this definition because the amount of "dumping" is determined for a sub-part of the product, not for the "product" as a whole.

Second, zeroing means that an affirmative "dumping" determination is much more likely to be made than not.[5] The reason is that the positive comparison results *included* in the determination relate to export transactions with prices that are *lower* than normal value; in contrast, the *excluded* negative results relate to export transactions with prices *higher* than normal value. The export transactions selected for inclusion in

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[3] Appellate Body Report, *EC – Bed Linen*, para. 53; *and*, Appellate Body Report, *US – Softwood Lumber V*, para. 99.

[4] Appellate Body Report, *US – Softwood Lumber V*, para. 93; *and* Appellate Body Report, *United States – Sunset Review of Anti-Dumping Duties on Corrosion-Resistant Carbon Steel Flat Products from Japan (hereafter US – Corrosion-Resistant Steel Sunset Review), WT/DS244/AB/R, adopted January 9, 2004,* paras. 109 and 126.

[5] Appellate Body Report, *US – Corrosion-Resistant Steel Sunset Review*, para. 135.

the determination, therefore, relate to the sub-part of the product that is most likely to generate an affirmative dumping determination.

As a result, zeroing can produce a "dumping" determination where, in fact, the product as a whole is not dumped.[6] The exclusion of negative comparison results also "inflates" the amount of any "dumping" that is to be determined.[7]

Thus, zeroing systematically prejudices the interests of foreign producers and exporters because the negative comparison results that are favorable to them are purposefully set aside by the USDOC. The Appellate Body has held that a zeroing methodology with these effects involves an "inherent bias" in the comparison of export price and normal value.[8] This is the very antithesis of the "fair comparison" required by Article 2.4 of the *Anti-Dumping Agreement*.

In sum, in terms of either their operation or effect, there is nothing that distinguishes the zeroing methodology the USDOC currently maintains from the zeroing found to be inconsistent with WTO rules in the previous cases. It produces determinations that are for a sub-part of the "product" and its effects are as prejudicial for foreign producers and exporters as the zeroing measures the WTO panels and the Appellate Body previously addressed. Therefore, the Government of Japan strongly urges the USDOC to abandon its zeroing methodology that is used in any form of comparisons in any anti-dumping proceedings, once and for all.

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[6] Appellate Body Report, *US – Corrosion-Resistant Steel Sunset Review*, para. 135.
[7] Appellate Body Report, *EC – Bed Linen*, para. 55; Appellate Body Report, *US – Softwood Lumber V*, para. 101; *and* Appellate Body Report, *US – Corrosion-Resistant Steel Sunset Review*, para. 135.
[8] Panel Report, *United States – Laws, Regulations and Methodology for Calculating Dumping Margins ("Zeroing"), WT/DS294/R,* paras. 7.271 and 7.272. *See also* Appellate Body Report, *US – Corrosion-Resistant Steel Sunset Review*, paras. 134 to 135; and Appellate Body Report, *EC – Bed Linen*, para. 55.