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The Honorable Gary Locke
Secretary
U.S. Department of Commerce
14th Street and Constitution Avenue, NW
Washington, DC 20230

Re: Antidumping Proceedings: Calculation of the Weighted Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings (RIN) 0625-AA87

Dear Mr. Secretary:

On behalf of the Board of Directors of the Japan Machinery Center for Trade and Investment (JMC) and its 265 member corporations,¹ I write to express our views on the Department's proposed modifications to certain methodologies and certain provisions on its regulations pursuant to Section 123(g)(1) of the Uruguay Rounds Agreements Act. We sincerely request that the Department of Commerce (the "Department") consider the following points when finalizing the changes to the methodologies and provisions of its regulations. In particular, we request that the Department modify its regulations to fully address the inconsistencies with U.S. obligations under the General Agreement on Tariffs and Trade 1994 ("GATT 1994") and the Agreement on Implementation of Article VI of the GATT 1994 (the "*Anti-Dumping Agreement*") identified by the WTO Dispute Settlement Body.

The Department stated that the objective of its proposed modifications is to "modify its methodology for calculating weighted average margins of dumping and assessment rates to provide offsets for non-dumped comparisons while using monthly average-to-average comparisons in reviews in a manner that parallels the WTO-consistent methodology the Department currently applies in original investigations."² JMC welcomes that the Department

¹ JMC is a non-profit organization that represents Japan's major electronics and machinery manufacturers, trading companies and engineering companies. JMC's activities emphasize multilateral trade and investment rules, bilateral free trade agreements, environmental protection regulations, national industrial policies, trade related security measures, and trade insurance.

² 75 Fed. Reg. 81,533, 81,534 (Dec. 28, 2010).

is taking a positive step to bringing its anti-dumping calculations into conformity with the basic concept of dumping as agreed by WTO Members. As the Appellate Body pointed out, “[t]he concept of dumping relates to the pricing behaviour of exporters or foreign producers; it is the exporter, not the importer, that engages in practices that result in situations of dumping.”³ The proposed modifications to the regulations, however, do not clearly address how the Department will implement this concept, in particular, the following requirements derived therefrom as confirmed by the WTO Appellate Body:

- In administrative reviews, “the authority is required to ensure that the total amount of anti-dumping duties collected from all the importers of that product does not exceed the total amount of dumping found in *all* sales made by the exporter or foreign producer, calculated according to the margin of dumping established for that exporter or foreign producer without zeroing”;⁴
- In new shipper reviews, “negative comparison results may not be disregarded when calculating a margin of dumping for an exporter,”⁵ and
- In sunset reviews, “[a]s the likelihood-of-dumping determinations in the sunset reviews at issue in this appeal relied on margins of dumping calculated inconsistently with the *Anti-Dumping Agreement*, they are inconsistent with Article 11.3 of that Agreement.”⁶

Accordingly, JMC believes that the Department should incorporate the following points in the final provisions of the regulations:

- **The Department’s commitment to allow offsets for non-dumped comparisons in the calculation of anti-dumping duty deposit rates should be stated explicitly in the regulations.** The proposed regulations are silent with respect to the fundamental issue the Department is seeking to address, namely the provision of offsets for non-dumped comparisons. Rather than making this change in calculation methodology explicit in its regulation, the Department essentially proposes only to “withdraw” its past “practice” of denying such offsets.⁷ JMC believes the Department should affirmatively and explicitly state in the regulations that it shall include offsets for non-dumped comparisons in its calculation of the anti-dumping duty deposit rate based on all export transactions with respect to an individual exporter/foreign producer in an administrative review and a new

³ Appellate Body Report, *US – Zeroing (Japan)*, WT/DS322/AB/R, para. 156.

⁴ *Ibid*, para. 156.

⁵ *Ibid*, para. 165.

⁶ *Ibid*, para. 185.

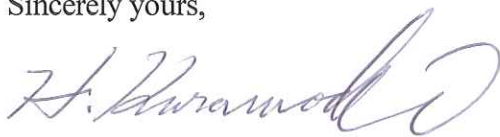
⁷ 75 Fed. Reg. at 81,534.

shipper review. Additionally, the Department should clearly state in the regulations that it will not rely upon rates calculated with zeroing in sunset reviews.

- **The methodology for granting offsets for non-dumped comparisons in the calculation of assessment rates, or the anti-dumping duty to be collected on individual imports or from individual importers, should be clarified.** The proposed change in methodology does not clarify how the Department intends to provide offsets for non-dumped comparisons in calculating assessment rates, or the amount of anti-dumping duty at which individual imports would be liquidated. The Department's current practice is to calculate assessment rates on an importer-specific basis. Where there is only one importer, the calculation of the importer-specific assessment rate without zeroing would be straightforward. However, if there are two or more importers purchasing the subject merchandise from the same foreign producer, and if the margins of dumping generated from imports by one importer are negative while the margins from imports by other importers are positive, the Department's current methodology would fail to offset such positive margins with negative margins. Consequently, the methodology for calculating importer-specific assessment rates should be modified. The Department should revise the regulations to explicitly state that it shall calculate assessment rates, or the assessed amount of anti-dumping duties for individual imports or importers, without realizing the zeroing methodology.

JMC appreciates the Department's consideration of our comments and respectfully requests that the Department incorporate the above comments into its regulations to grant offsets for non-dumped comparisons when calculating the anti-dumping duty deposit rates and assessment rates. We would be happy to answer any questions that the Department may have.

Sincerely yours,



Haruhiko Kuramochi
Executive Managing Director
Japan Machinery Center for Trade and Investment (JMC)

See attached member list