QUESTIONS BY JAPAN ON THE EEC COMMISSION NOTICE CONCERNING THE REIMBURSEMENT OF ANTI-DUMPING DUTIES

1. Japan understands that there were few cases where the EC Commission made reimbursement of anti-dumping duties. How do the procedures in this notice differ from the past practices?

2(1). Item II,2.(c), (Actual dumping margin) states that "any payment of anti-dumping duties ... will be regarded as a cost incurred between importation and resale." According to this provision, is this not the case that (a) even if the resale price of the importers who are related to the exporter has been raised by the amount of the dumping margin, anti-dumping duties will not be reimbursed, and, (b) to request reimbursement of the full amount of the duties, the importer has to raise the resale price as much as the total amount of the dumping margin and the anti-dumping duties, which is in general impossible because of market competition?

2(2). Under Article 8(3) of the Anti-Dumping Code, having compared duties collected with the actual dumping margin, the amount in excess of the margin shall be reimbursed, ensuring the provision of Article VI:2 of the GATT which states that a contracting party may levy ... an anti-dumping duty not greater in amount than the margin of dumping.

However deducting the anti-dumping duties from the resale price by regarding the duties as a cost will enlarge the dumping margin by an unduly large amount. Accordingly it becomes impossible to make a fair comparison between the anti-dumping duties and the actual dumping margin. How do the EC authorities reconcile this practice with the provisions of Article VI:2 of the GATT or Article 8(3) of the Code?

1See document ADP/1/Add.1/Suppl.4, pp.3-5.