

**UNITED STATES – MEASURES RELATING TO ZEROING
AND SUNSET REVIEWS**

Notification of an Appeal by Japan
under Article 16.4 and Article 17 of the Understanding on Rules
and Procedures Governing the Settlement of Disputes (DSU),
and under Rule 20(1) of the *Working Procedures for Appellate Review*

The following notification, dated 11 October 2006, from the Delegation of Japan, is being circulated to Members.

Pursuant to Articles 16.4 and 17 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU") and Rule 20 of the *Working Procedures for Appellate Review*, Japan hereby notifies its decision to appeal to the Appellate Body certain issues of law covered in the Panel Report on *United States – Measures Relating to Zeroing and Sunset Reviews* (WT/DS322/R) ("Panel Report"), and certain legal interpretations developed by the Panel in this dispute. Japan seeks review by the Appellate Body of the Panel's findings and conclusions that:

1. By maintaining the zeroing procedures for use in original investigations under a transaction-to-transaction comparison method, the United States acts consistently with Articles 2.1, 2.4 and 2.4.2 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* ("Anti-Dumping Agreement"), and Articles VI:1 and VI:2 of the General Agreement on Tariffs and Trade 1994 ("GATT 1994").¹ This conclusion is based on an erroneous interpretation and application of these provisions. In particular, the Panel erred in law in finding that:
 - (i) Articles 2.1 and 2.4.2 and Articles VI:1 and VI:2 do not require that "dumping" and "margins of dumping" be determined for the "product" under investigation as a whole and, instead, permit a determination of dumping for individual export transactions;²
 - (ii) Article 2.4.2 permits the use of the zeroing procedures under the transaction-to-transaction comparison method set out in the first sentence of that provision;³ and,
 - (iii) Article 2.4 is subject to the allegedly "more specific" provisions of Articles 2.4.2 and 9, and the zeroing procedures entail a "fair comparison" of export price and normal value.⁴

¹ See Panel Report, paras. 7.143, 7.161 and 7.259(a).

² See, for example, Panel Report, paras. 7.92 to 7.102, 7.104 to 7.112, 7.118 to 7.120, 7.139, and 7.141 to 7.143.

³ See, for example, Panel Report, paras. 7.118 to 7.120, 7.127 to 7.143.

⁴ See, for example, Panel Report, paras. 7.157 to 7.161.

2. By maintaining the zeroing procedures for use in periodic reviews, the United States acts consistently with Articles 2.1, 2.4, 9.1, 9.2 and 9.3 of the *Anti-Dumping Agreement*, and Articles VI:1 and VI:2 of the GATT 1994.⁵ This conclusion is based on an erroneous interpretation and application of these provisions. In particular, the Panel erred in law in finding that:
 - (i) Articles 2.1, 9.1, 9.2 and 9.3, and Articles VI:1 and VI:2, do not require, for purposes of periodic reviews, that "dumping" and "margins of dumping" be determined for the "product" under investigation as a whole and, instead, permit a determination of dumping for individual export transactions;⁶
 - (ii) Articles 9.1, 9.2 and 9.3, and Articles VI:1 and VI:2, permit, as a consequence, the assessment of the maximum amount of anti-dumping duties payable on the basis of a transaction-specific margin of dumping, instead of a margin of dumping for the "product" as a whole, for the foreign exporter or producer;⁷ and,
 - (iii) Article 2.4 is subject to the "more specific" provisions of Articles 2.4.2 and 9, and the zeroing procedures involve a "fair comparison" of export price and normal value under this provision.⁸
3. By applying the zeroing procedures in eleven periodic reviews identified in Exhibits JPN-11 to JPN-21, the United States acted consistently with Articles 2.1, 2.4, 9.1, 9.2 and 9.3 of the *Anti-Dumping Agreement*, and Articles VI:1 and VI:2 of the GATT 1994.⁹ This conclusion is based on an erroneous interpretation and application of these provisions, as described in paragraph 2 above.¹⁰
4. By maintaining the zeroing procedures for use in new shipper reviews, the United States acts consistently with Articles 2.1, 2.4 and 9.5 of the *Anti-Dumping Agreement*, and Articles VI:1 and VI:2 of the GATT 1994.¹¹ This conclusion is based on an erroneous interpretation and application of these provisions. In particular, the Panel erred in law in finding that:
 - (i) Articles 2.1 and 9.5, and Articles VI:1 and VI:2, do not require that "dumping" and "margin of dumping" be determined for the "product" under investigation as a whole and, instead, permit a determination of dumping for individual export transactions;¹² and,
 - (ii) Article 2.4 is subject to the "more specific" provisions of Articles 2.4.2 and 9, and the zeroing procedures involve a "fair comparison" of export price and normal value.¹³

⁵ See Panel Report, paras. 7.216, 7.219, 7.222, and 7.259(b).

⁶ See, for example, Panel Report, paras. 7.194 to 7.209, 7.216, 7.221 and 7.222.

⁷ See, for example, Panel Report, paras. 7.194 to 7.209, 7.216, 7.221 and 7.222.

⁸ See, for example, Panel Report, paras. 7.218 and 7.219. See also Panel Report, paras. 7.157 to 7.160, and 7.196 to 7.209.

⁹ See Panel Report, paras. 7.227 and 7.259(c).

¹⁰ See Panel Report, paras. 7.226 and 7.227.

¹¹ See Panel Report, paras. 7.216, 7.219, 7.222, and 7.259(b).

¹² See, for example, Panel Report, paras. 7.194 to 7.209, 7.216, 7.221 and 7.222.

¹³ See, for example, Panel Report, paras. 7.218 and 7.219. See also Panel Report, paras. 7.157 to 7.160 and 7.196 to 7.209.

5. By relying, in the two sunset reviews identified in Exhibits JPN-22 and JPN-23, on margins of dumping calculated using the zeroing procedures in previous periodic reviews, the United States acted consistently with Articles 2.1, 2.4 and 11.3 of the *Anti-Dumping Agreement*.¹⁴ This conclusion is in error because it is based on the Panel's erroneous conclusion, described in paragraph 2 above, that the zeroing procedures are permitted in periodic reviews.¹⁵

In sum, Japan considers that the Panel erred in law in the interpretation and application of Articles 2.1, 2.4, 2.4.2, 9.1, 9.2, 9.3, 9.5 and 11.3 of the *Anti-Dumping Agreement*, and Articles VI:1 and VI:2 of the GATT 1994. Japan requests that, upon reversal of the Panel's erroneous findings and conclusions identified above, the Appellate Body resolve this dispute promptly by finding that the United States violates these provisions by maintaining and applying the zeroing procedures.

¹⁴ See Panel Report, paras. 7.257 and 7.259(e).

¹⁵ See also Panel Report, paras. 7.256 and 7.257.