

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

Request by the United States for Arbitration under Article 22.6 of the DSU

The following communication, dated 18 January 2008, from the delegation of the United States to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 22.6 of the DSU.

Regarding the dispute *United States – Measures Relating to Zeroing and Sunset Reviews* (WT/DS322), my authorities have instructed me to inform you that, pursuant to Article 22.6 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"), the United States objects to the level of suspension of concessions or other obligations under the covered agreements proposed by Japan in documents WT/DS322/23 and WT/DS322/24. The level of suspension proposed in those documents is not equivalent to the level of nullification or impairment within the meaning of Article 22.7 of the DSU.

Accordingly, as required by Article 22.6 of the DSU¹, the matter has been referred to arbitration.

The United States notes that this objection is based on its understanding that Japan, in submitting two separate documents, nevertheless intended to comply with the provisions of Article 22 of the DSU. Article 22.2 provides in relevant part that, assuming the situation described in that paragraph has occurred, a party "may request authorization from the DSB to suspend ... concessions or other obligations". Article 22.6 refers to "the request" (emphasis added), and Article 22.7 provides that "the parties concerned shall not seek a second arbitration". Accordingly, there is no basis in the DSU for a complaining party to make multiple requests for authorization. If Japan had intended its two documents to be two separate requests, then one of the documents would have no legal basis under the DSU and would not be eligible for the decision by negative consensus by the DSB provided for in Article 22.6. In that case, the United States would be in a position to decide whether to treat one of the documents as being without legal basis and to block a decision of the DSB to grant the request.

The United States reserves all its rights under the DSU (including Article 2.4 of the DSU) with respect to these two documents.

¹ Pursuant to Article 22.6 of the DSU, "if the Member concerned objects to the level of suspension proposed, ... the matter shall be referred to arbitration".