

UNITED STATES – MEASURES RELATING TO ZEROING AND SUNSET REVIEWS

Recourse to Article 21.5 of the DSU by Japan

Notification of an Appeal by the United States
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 20 May 2009, from the Delegation of the United States, is being circulated to Members.

Pursuant to Article 16 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (“DSU”) and Rule 20 of the Working Procedures for Appellate Review, the United States hereby notifies its decision to appeal to the Appellate Body certain issues of law covered in the report of the panel in *United States – Measures Relating to Zeroing and Sunset Reviews; Recourse to Article 21.5 of the DSU by Japan* (WT/DS322/RW) (“Panel Report”) and certain legal interpretations developed by the panel.

1. The United States seeks review by the Appellate Body of the panel’s finding that Review 9 was within the panel’s terms of reference. In particular, the United States seeks review of the panel’s findings that Japan’s panel request identified Review 9 as a specific measure at issue as required by DSU Article 6.2 and that Review 9 was within the panel’s terms of reference even though Review 9 was not in existence at the time of Japan’s panel request.¹ These findings are in error and are based on erroneous findings on issues of law and related legal interpretations.

2. The United States seeks review by the Appellate Body of the panel’s finding that the United States has failed to comply with the DSB’s recommendations and rulings regarding importer-specific assessment rates determined in Reviews 1, 2, 3, 7, and 8 that apply to entries covered by those reviews that were, or will be, liquidated after the expiry of the reasonable period of time (“RPT”).² The United States also seeks review of the panel’s related legal conclusion that the United States is in continued violation of its obligations under Articles 2.4 and 9.3 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* (“AD Agreement”) and Article VI:2 of the *General Agreement on Tariffs and Trade 1994* (“GATT 1994”).³ These conclusions are in error and are based on erroneous findings on issues of law and related legal interpretations.

3. The United States seeks review by the Appellate Body of the panel’s legal conclusion that the United States is in violation of Articles II:1(a) and II:1(b) of the GATT 1994 with respect to certain

¹See, e.g., Panel Report, paras. 7.100-7.116, 8.1(b).

²See, e.g., Panel Report, paras. 7.139-7.155, 8.1(a).

³See, e.g., Panel Report, paras. 7.154, 8.1(a)(i).

liquidation actions taken after the expiry of the RPT, namely with respect to liquidation instructions of the U.S. Department of Commerce set forth in Exhibits JPN-40A and JPN-77 to JPN-80 and the U.S. Customs and Border Protection liquidation notices set forth in Exhibits JPN-81 to JPN-87.⁴ This conclusion is in error and is based on erroneous findings on issues of law and related legal interpretations.

4. The United States seeks review by the Appellate Body of the panel's legal conclusions with respect to Reviews 4, 5, and 6, as found at paras. 7.74 -7.83, 7.160-7.168, and 8.1(b) of the Panel Report. These conclusions are in error and are based on erroneous findings on issues of law and related legal interpretations.⁵

⁴See, e.g., Panel Report, paras. 7.204-7.208, 8.1(d).

⁵Aside from the fact that Review 9 is not within the terms of reference, the panel's conclusions of law in paragraphs 7.160-7.168, and 8.1(b) with respect to Review 9 are also in error and are based on erroneous findings on issues of law and related legal interpretations.