

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

Joint Communication from the United States and Japan

The following communication, dated 6 February 2012, from the delegation of the United States and the delegation of Japan to the Chairperson of the Dispute Settlement Body (DSB), is circulated at the request of those delegations.

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The United States and Japan would like to inform the Dispute Settlement Body of the attached Memorandum of Understanding between the United States of America and Japan with respect to the dispute *United States – Measures Relating to Zeroing and Sunset Reviews* (WT/DS322).

We request that you please circulate the attached Memorandum of Understanding to the Members of the Dispute Settlement Body.

## **MEMORANDUM OF UNDERSTANDING BETWEEN THE UNITED STATES OF AMERICA AND JAPAN**

The United States of America ("United States") and Japan ("both sides") have confirmed the following, as documented in this Memorandum of Understanding ("Understanding"), regarding the dispute *United States – Measures Relating to Zeroing and Sunset Reviews* (WT/DS322) ("the dispute").

This Understanding, or the taking of any of the steps contemplated by this Understanding by the United States or Japan, is without prejudice to either side's position of principle regarding the remedies available under WTO dispute settlement or their respective positions regarding the implementation of the recommendations and rulings of the Dispute Settlement Body ("DSB") in the dispute.

### **I. OPERATIONAL ASPECTS**

1. As a measure taken to comply with the DSB recommendations and ruling in the dispute, by no later than 7 days after the start date of this Understanding (defined as the signature date of this Understanding), and subject to U.S. domestic legal requirements, the United States will complete the process under Section 123 of the Uruguay Round Agreements Act (URAA) to modify its methodologies, as described in the notice Antidumping Proceedings: Calculation of the Weighted Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings, 75 FR 81533 (Dec. 28, 2010), by signing the final modification and submitting it promptly for publication.

2. As specified in Annex II, the United States will conduct proceedings under Section 129 of the URAA.

3. By no later than 12 days after the start date, the United States will begin the Section 129 proceeding listed in Annex II, paragraph 2, by transmittal of a written request from the Office of the United States Trade Representative ("United States Trade Representative") to the United States Department of Commerce ("Department of Commerce").

4. By no later than 4 months after the start date, the Department of Commerce will issue a final determination in the Section 129 proceeding listed in Annex II, paragraph 2.

5. The United States and Japan will continue the suspension of the work of the Arbitrator until, as described in paragraph 6, the Arbitrator notifies the DSB that it is not necessary for the Arbitrator to issue an award, on the conditions that: (i) the United States begins the Section 129 procedure listed in Annex II, paragraph 2, no later than 12 days after the start date; (ii) the Department of Commerce issues a final determination in the Section 129 proceeding listed in Annex II, paragraph 2, no later than 4 months after the start date; and (iii) the United States completes the section 129 proceeding in Annex II, paragraph 2.

6. By no later than six months after the start date:

(a) Japan will, by letter to the chair of the DSB, withdraw its requests to the DSB made pursuant to Article 22.2 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU") in documents WT/DS322/23 and WT/DS322/24; and

(b) Japan and the United States will submit a joint letter to the Arbitrator noting that Japan has withdrawn its Article 22.2 requests; informing the Arbitrator that the United States

accordingly no longer makes objections under Article 22.6 of the DSU; and requesting that the Arbitrator notify the DSB that it is not necessary for the Arbitrator to issue an award.

## II. MUTUALLY AGREED SOLUTION

1. At a future date to be mutually determined, both sides will consult with a view to achieving a mutually agreed solution to the dispute.

## III. OTHER PROVISIONS

1. This Understanding will come into operation upon signature.
2. In the event that the United States fails to complete the process under Section 123 of the Uruguay Round Agreements Act by publishing the final modification described in Part I, paragraph 1, unless otherwise decided, this Understanding is void.
3. This Understanding is without prejudice to Japan's right to invoke further proceedings under the DSU, as described in Annex I of this Understanding, regarding the consistency with the WTO agreements of the final modification under Section 123 of the Uruguay Round Agreements Act and its application. Japan will take no other action under the DSU with respect to the dispute.
4. Other than as specifically set forth herein, this Understanding is without prejudice to the rights and obligations of the United States and Japan under the WTO agreements.
5. This Understanding is not a binding agreement under international law.
6. Both sides will, at the request of either side, hold prompt consultations with respect to any issue arising under this Understanding.

(signed)  
FOR THE GOVERNMENT OF THE  
UNITED STATES OF AMERICA

(signed)  
FOR THE GOVERNMENT OF JAPAN

## **ANNEX I**

1. Should Japan consider that the situation described in Article 21.5 of the DSU exists with respect to the final modification and its application affecting (1) entries of merchandise subject to an implemented decision pursuant to section 129 of the URAA in which the final modification is applied, as described in Annex II, or (2) entries of merchandise made after May 1, 2010 and covered by the final results of an administrative review in which the final modification is applied, Japan may request the establishment of a panel pursuant to Article 21.5 of the DSU with respect to the subject matter referred to above.

2. At the first DSB meeting at which Japan's request for the establishment of an Article 21.5 panel appears on the agenda, the United States will accept the establishment of that panel.

3. In the event that as a result of the Article 21.5 proceedings the DSB rules that a measure taken to comply is inconsistent with a covered agreement, Japan may request authorization to suspend concessions or other obligations in accordance with Article 22 of the DSU. The level of suspension of concessions or other obligations requested by Japan will be limited to the level of any nullification or impairment arising from the subject matter referred to in paragraph 1.

4. The United States will not assert that Japan is precluded from obtaining such DSB authorization on the grounds that the request was made outside the 30-day time period specified in Article 22.6 of the DSU. This is without prejudice to the U.S. right to refer the matter to arbitration in accordance with Article 22.6 of the DSU. Both sides will not object to the arbitration on the grounds that the other side seeks a second arbitration within the meaning of Article 22.7 of the DSU.

## ANNEX II

1. The United States will conduct proceedings pursuant to section 129 of the URAA to revise the current cash deposit rates established on the basis of prior administrative review determinations for the following exporters/producers covered by the associated antidumping duty orders. Implementation of the results of the section 129 determinations will be effective for subject merchandise entering the United States from the exporters/producers for all unliquidated entries that enter the United States on or after the date the United States Trade Representative directs the Department of Commerce to implement the determinations.

2. The Department of Commerce will issue a final section 129 determination by no later than four months after the start date with respect to the following exporter/producer, and the United States will complete the section 129 proceeding within 7 days of the final section 129 determination.

Stainless Steel Sheet and Strip in Coils  
A-588-845  
Nippon Kinzoku Co., Ltd.

3. For the purposes of this Understanding, the completion of a section 129 proceeding means:
- (a) where a final section 129 determination would result in a change in the current cash deposit rate, a section 129 proceeding is completed on the date by which the United States Trade Representative has directed the Department of Commerce to implement the final section 129 determination; or
  - (b) where a final section 129 determination would not result in a change in the current cash deposit rate, a section 129 proceeding is completed upon the issuance of the final section 129 determination.

4. In the event that a final and conclusive judgment in *NSK Corporation, et. al v. United States International Trade Commission, et. al* (2011-1362, -1382, 1383, -1454) does not affirm the revocation of the order in *Ball Bearings and Parts Thereof from Japan* (A-588-804), the Department of Commerce will issue a final section 129 determination by no later than four months after the final and conclusive judgment with respect to the following exporters/producers, and the United States will complete the section 129 proceeding within 7 days of the final section 129 determination:

Antifriction Bearings from Japan  
2008-2009 Administrative Review, 75 Fed. Reg. 53661 (Sep. 1, 2010)  
NTN  
NSK  
Aisin Seiki  
JTEKT  
Makino Milling  
Mazda  
Nachi-Fujikoshi  
Nissan  
Sapporo/Tokyo Precision  
Univance  
Yamazaki Mazak

5. No additional section 129 determinations are necessary.

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