

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

Recourse to Article 22.2 of the DSU by Japan

Withdrawal of the Request pursuant to Article 22.2 by Japan

The following communication, dated 3 August 2012 from the delegation of Japan, to the Chairperson of the Dispute Settlement Body, is circulated to Members for their information.

This is in reference to the requests of Japan for authorization from the Dispute Settlement Body ("DSB") to suspend the application to the United States of concessions and other obligations 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.

As you recall, on 10 January 2008, Japan made these requests¹ in the dispute *United States – Measures relating to Zeroing and Sunset Reviews* (WT/DS322). On 18 January 2008, the United States objected to the level of suspension of concessions or other obligations proposed by Japan². As a result, the matter was referred to arbitration pursuant to Article 22.6 of the DSU.

On 7 April 2008, Japan initiated compliance proceedings under Article 21.5 of the DSU by filing a request for the establishment of a panel³. On 18 April 2008, the DSB referred the matter to the compliance panel pursuant to Article 21.5 of the DSU ("Article 21.5 Panel").

On 6 June 2008, in accordance with the *Understanding between the United States and Japan Regarding Procedures under Articles 21 and 22 of the DSU* ("Confirmed Procedures")⁴, Japan and the United States (the "Parties") requested the Arbitrator to suspend its work. On 9 June 2008, in accordance with this joint request, the Arbitrator decided to suspend the arbitration proceeding effective as from that date until either party requests the resumption of the proceedings under the certain circumstances described in the Confirmed Procedures.

On 31 August 2009, by adopting the Article 21.5 Panel report (WT/DS322/RW) and the Appellate Body report (WT/DS322/AB/RW)⁵, the DSB found that the measures taken to comply with the DSB's 23 January 2007 recommendations and rulings in this dispute did not exist or were inconsistent with a covered agreement.

¹ WT/DS322/23 and WT/DS322/24.

² WT/DS322/25.

³ WT/DS322/27.

⁴ WT/DS322/26.

⁵ WT/DS322/35.

On 23 April 2010, Japan requested the Arbitrator to resume the arbitration proceeding⁶ in accordance with the Confirmed Procedures.

On 13 December 2010, upon request by the Parties, the Arbitrator suspended its work⁷. Upon request by the Parties, the Arbitrator decided to continue the suspension of its work on 12 September 2011⁸, 7 November 2011⁹, 30 November 2011¹⁰, 9 January 2012¹¹ and 1 February 2012¹².

On 6 February 2012, the Parties signed a Memorandum of Understanding regarding this dispute ("Understanding")¹³. The operative part of the Understanding reads as follows:

- "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*

⁶ WT/DS322/37.

⁷ WT/DS322/38.

⁸ WT/DS322/39.

⁹ WT/DS322/40.

¹⁰ WT/DS322/41.

¹¹ WT/DS322/42.

¹² WT/DS322/43.

¹³ WT/DS322/44.

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."

On 7 February 2012, upon request by the Parties, the Arbitrator decided to continue the suspension of its work until 20 August 2012.

As foreseen in the above quoted paragraphs of the Understanding, the United States has taken the following actions:

- On 7 February 2012, the United States signed the final modification under Section 123 of the Uruguay Round Agreements Act ("URAA") and submitted it for publication¹⁴;
- On 13 February 2012, the United States initiated the Section 129 proceeding of the URAA listed in Annex II, paragraph 2 of the Understanding¹⁵;
- On 6 June 2012, the United States Department of Commerce issued its final determination in the Section 129 proceeding¹⁶; and
- On 8 June 2012, the United States Trade Representative directed the Department of Commerce to implement the Section 129 determination¹⁷.

Accordingly, following these actions taken by the United States, Japan hereby withdraws its requests for authorization from the DSB to suspend the application to the United States of concessions and other obligations made pursuant to Article 22.2 of the DSU in documents WT/DS322/23 and WT/DS322/24.

I would be grateful if this communication could be circulated to the WTO members.

¹⁴ The final modification was published on 14 February 2012. *See* Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification, 77 *FR* 8101, dated 14 February 2012.

¹⁵ Letter of 13 February 2012 from Mr. Ron Kirk, United States Trade Representative, to Mr. John Bryson, United States Secretary of Commerce.

¹⁶ Memorandum of 6 June 2012 from Mr. Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Mr. Paul Piquado, Assistant Secretary for Import Administration, Final Results of Proceedings Under Section 129: Stainless Steel Plate in Coils from Belgium, Steel Concrete Reinforcing Bars from Latvia, Purified Carboxymethylcellulose from Finland, Certain Pasta from Italy, Purified Carboxymethylcellulose from Netherlands, Stainless Steel Wire Rod from Spain, Granular Polytetrafluoroethylene Resin from Italy, Stainless Steel Sheet and Strip in Coils from Japan.

¹⁷ Letter of 8 June 2012 from Mr. Ron Kirk, United States Trade Representative, to Mr. John Bryson, United States Secretary of Commerce, directing the latter to implement the final determination in the Section 129 proceeding; *See also* Notice of Implementation of Determination Under Section 129 of the Uruguay Round Agreements Act: Stainless Steel Plate in Coils from Belgium, Steel Concrete Reinforcing Bars from Latvia, Purified Carboxymethylcellulose from Finland, Certain Pasta from Italy, Purified Carboxymethylcellulose from Netherlands, Stainless Steel Wire Rod from Spain, Granular Polytetrafluoroethylene Resin from Italy, Stainless Steel Sheet and Strip in Coils from Japan, 77 *FR* 36257, dated 18 June 2012.