

**UNITED STATES – CONTINUED DUMPING AND
SUBSIDY OFFSET ACT OF 2000**

Recourse by Japan to Article 22.7 of the DSU

The following communication, dated 10 November 2004, from the delegation of Japan to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 22.7 of the DSU.

Japan requests that the Dispute Settlement Body consider, at the forthcoming meeting on 24 November 2004, the following agenda item:

United States – Continued Dumping and Subsidy Offset Act of 2000 (WT/DS217)

Recourse by Japan to Article 22.7 of the Understanding on Rules and Procedures Governing the Settlement of Disputes

The Panel and the Appellate Body found that the Continued Dumping and Subsidy Offset Act of 2000 ("CDSOA") was inconsistent with the United States' obligations under the General Agreement on Tariffs and Trade 1994 ("GATT 1994"), the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, the Agreement on Subsidies and Countervailing Measures and the Marrakesh Agreement establishing the World Trade Organization. On 27 January 2003, the Dispute Settlement Body ("DSB") adopted the Appellate Body report and the Panel report as modified by the Appellate Body report. The United States stated that it intended to implement the recommendations and rulings of the DSB but failed to do so within the reasonable period of time, as determined by the arbitrator pursuant to Article 21.3(c) of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU"), which expired on 27 December 2003.

Consequently, on 15 January 2004, Japan requested the authorization to suspend the application to the United States of tariff concessions and related obligations under GATT 1994 in an amount to be determined every year on the basis of the amount of offset payments made to affected domestic producers in the latest annual distribution of anti-dumping and countervailing duties under the CDSOA.

On 23 January 2004, the United States objected to the level of suspension proposed and on 26 January 2004, pursuant to Article 22.6 of the DSU, the matter was referred to arbitration. On 31 August 2004, the arbitrator issued its decision as follows:

V. AWARD OF THE ARBITRATOR

5.1 For the reasons set out above, we determine that, in the matter *United States – Continued Dumping and Subsidy Offset Act of 2000 (Original Complaint by Japan)*,

the level of nullification or impairment suffered by Japan in a particular year can be deemed to be equal to the total of disbursements made under the CDSOA for the preceding year relating to anti-dumping or countervailing duties paid on imports from Japan, multiplied by the coefficient identified in Section III.D above.

5.2 Accordingly, we decide that the suspension by Japan of concessions or other obligations in the form of the imposition of an additional import duty above bound custom duties on a list of products originating in the United States covering, on a yearly basis, a *total value of trade* not exceeding, in US dollars, the amount resulting from the following equation:

Amount of disbursements under CDSOA for the most recent year for which data are available relating to anti-dumping or countervailing duties paid on imports from Japan at that time, as published by the United States' authorities.

multiplied by:

0.72

would be consistent with Article 22.4 of the DSU.

To date, the United States has still not implemented the recommendations and rulings of the DSB with respect to the CDSOA, and no mutually satisfactory solution has been reached.

Article 22.7 of the DSU provides that “[t]he DSB shall be informed promptly of the decision of the arbitrator and shall upon request, grant authorization to suspend concessions or other obligations where the request is consistent with the decision of the arbitrator, unless the DSB decides by consensus to reject the request.” Therefore, Japan hereby requests authorization from the DSB to suspend the application to the United States of tariff concessions and related obligations under GATT 1994, in the form of the imposition of additional import duties on products originating in the United States, at a level not exceeding every year 72% of the amount of CDSOA disbursements relating to anti-dumping or countervailing duties paid on imports from Japan for the most recent year for which data are available at that time.

In accordance with the arbitration award, Japan will notify the DSB every year, prior to the entry into force of a level of suspension of concessions or other obligations, the list indicating the level of additional import duties on the selected products which will be drawn from the list of products attached.

ANNEX: LIST OF PRODUCTS

Note: The imposition of additional duties would apply to the products of the United States to be selected from the products classified in the list below. The list uses the 9-digit code classification found in the Harmonized Tariff Schedule of Japan. The descriptions provided herein are for information purposes only.

descriptions	HS codes					
fish and crustaceans	030212019	030212020	030611000	-	-	-
products of animal origin	050510000	-	-	-	-	-
vegetable products	070959010	090111000	-	-	-	-
cement	252329000	252390000	-	-	-	-
petroleum spirits	271011139	-	-	-	-	-
chemical products	290369900	290490000	291830200	292149000	292429000	293100000
	293229020	293299000	293361000	293399090	293410000	293500000
	293627000	294150000	320300210	350790000	-	-
plastics and articles thereof	391220000	392410000	392690021	-	-	-
paper and articles thereof	481022000	482390200	-	-	-	-
textiles, clothing and textile articles	540241022	550490020	560312230	560312290	560750000	570320100
	570330100	570330200	570500022	590390000	591000020	600532000
	610130011	610443010	610510011	610610011	610610012	610620011
	610620013	610711000	610910011	610990012	611020011	611020019
	611020029	611030014	611430011	611512000	611592500	611593500
	620192200	620193200	620292200	620293200	620332200	620343200
	620432200	620442200	620443200	620449200	620452200	620520000
	620630210	621133200	621143200	621510010	621600500	630710020
	630790010	630790029	650590090	650590010	-	-
base metals and articles thereof	720690010	720690020	720711090	720712010	720712090	720719000
	720810010	720826010	720827010	720827021	720836010	720837011
	720837019	720838010	720839010	720839029	720840039	720851011
	720851019	720851031	720851039	720852011	720852019	720852039
	720853010	720854010	720854029	720915019	720916011	720916019
	720916029	720917011	720917019	720917021	720917029	720918019
	720918029	720925019	720925029	720926011	720926019	720926021
	720926029	720927011	720927019	720927029	720928019	720928029
	721011000	721012000	721020000	721030021	721030029	721061000
	721069000	721070000	721090010	721090020	721114010	721114029

	721119010	721119021	721119029	721123000	721129010	721129090
	721190000	721210000	721220010	721220021	721220029	721230000
	721240000	721250090	721260010	721260020	721391020	721399090
	721410000	721420000	721491010	721499010	721499019	721499090
	721550010	721550019	721550090	721590010	721590020	721650000
	721661000	721699000	721710010	721710090	721720010	721720019
	721720090	721720099	721730099	721790090	721810000	721891000
	721899000	721911000	721912000	721914000	721921000	721922000
	721923000	721924000	721931000	721932000	721933000	721934000
	721935000	721990000	722011000	722012000	722090000	722100000
	722211000	722219000	722220000	722230000	722240000	722410010
	722410030	722490030	722530010	722530020	722540010	722540020
	722550010	722550020	722591030	722592030	722599030	722691010
	722691020	722692020	722694030	722699010	722699020	722699030
	722710000	722790010	722790020	722830010	722830020	722840010
	722840020	722850010	722850020	722860020	722870020	722910000
	722920000	722990021	722990029	730110010	730110020	730210000
	730290000	730300000	730410010	730410020	730421010	730421090
	730429010	730431010	730431020	730439010	730439020	730441020
	730449020	730451010	730451020	730459020	730490030	730490040
	730531010	730531020	730539010	730539020	730590020	730610020
	730620010	730620020	730630011	730630019	730630029	730630090
	730640000	730650000	730660029	730690010	730690020	730719000
	730793000	730840000	730890090	730900000	731010000	731021000
	731210091	731210092	732393000	740921000	741021000	741999090
	820750090	820900090	-	-	-	-
machinery						
	840721000	841410000	841430010	841490010	842290000	842489090
	842720000	843149020	844240000	844311000	844330000	846299000
	846610010	846610090	846630000	846692000	847290000	847310000
	847321000	847790010	848340010	-	-	-
bearings						
	848210000	848220000	848230000	848240000	848250000	848280000
	848291000	848299000	848320010	848320090	848330010	848330090
electrical machinery and equipment and parts thereof						
	850110011	850110019	850140000	850152000	850213000	850519000
	850710010	850980000	851310000	851680000	852110000	852190000
	852540000	852731000	852813000	852822000	853340000	854340000
	854381000	-	-	-	-	-
vehicles						
	871200100	-	-	-	-	-
optical, photographic, cinematographic, measuring, checking instruments and apparatus; parts and accessories thereof						
	900220000	900410000	901180000	901480010	901480090	901790010
	901790090	902740000	902990000	903110000	903130000	-
musical instruments; parts and accessories thereof						
	920999000	-	-	-	-	-

furniture	940161020	940320000	940360190	940390010	940429000	940490090
prefabricated buildings	940600010	-	-	-	-	-
toys and sports requisites	950390019	950490090	950639000	950699000	-	-
miscellaneous manufactured articles	960321000	-	-	-	-	-
