

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

Recourse by Japan to Article 22.2 of the DSU

The following communication, dated 15 January 2004, from the delegation of Japan to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 22.2 of the DSU.

Japan requests that a special meeting of the Dispute Settlement Body (DSB) be held on 26 January 2004 to consider the following agenda item:

United States – Continued Dumping and Subsidy Offset Act of 2000
- *Recourse by Japan to Article 22.2 of the Understanding on Rules and Procedures Governing the Settlement of Disputes*

The panel and the Appellate Body in this dispute found that the Continued Dumping and Subsidy Offset Act of 2000 (CDSOA) was inconsistent with the United States' obligations under the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* (Anti-dumping Agreement), the *Agreement on Subsidies and Countervailing Measures* (SCM Agreement), the *General Agreement on Tariffs and Trade 1994* (GATT 1994) and the *Marrakesh Agreement establishing the World Trade Organisation* (WTO Agreement), namely that:

- the CDSOA is a non-permissible specific action against dumping or a subsidy contrary to Article 18.1 of the Anti-dumping Agreement, Article 32.1 of the SCM Agreement and Articles VI:2 and VI:3 of the GATT 1994;
- consequently, the United States has failed to comply with Article 18.4 of the Anti-dumping Agreement, Article 32.5 of the SCM Agreement and Article XVI:4 of the WTO Agreement; and
- to the extent that the CDSOA is inconsistent with provisions of the Anti-dumping Agreement and the SCM Agreement, the CDSOA nullifies or impairs benefits accruing to the Complaining Parties under those Agreements.

On 27 January 2003, the DSB adopted the Appellate Body report and the report of the Panel, as modified by the Appellate Body report. The United States stated that it intended to implement the recommendations and rulings of the DSB.

A subsequent arbitration pursuant to Article 21.3(c) of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (DSU) determined that the reasonable period of

time for the United States to implement the recommendations and rulings of the DSB would expire on 27 December 2003. The United States has failed to implement those recommendations and rulings by that date.

Therefore, pursuant to Article 22.2 of the DSU, Japan requests the authorization of the DSB to suspend the application to the United States of its tariff concessions under the GATT 1994 in an amount that will be determined every year by the amount of the offset payments made to affected domestic producers in the latest annual distribution under the CDSOA. In accordance with Article 22.4 of the DSU, this amount will be established by adding (i) the amount of offset payments attributed to anti-dumping and countervailing duties collected on products from Japan and (ii) a proportionate amount of the balance of total offset payments less the offset payments attributed to duties collected on products of other Members that are authorized by the DSB to suspend concessions or other obligations in this dispute.

Japan intends to take measures in the form of the imposition of additional import duties above bound custom duties on a final list of products originating in the United States. Every year, the applied rate of the additional duties will be set so as to collect over one year additional duties in an amount no greater than the level of suspension of concessions and other obligations authorized by the DSB. Prior to the adjustment of the duties, Japan will notify to the DSB a detailed list indicating the level of the additional duties on the selected products in the light of the latest annual distribution of offset payments under the CDSOA. It should be noted that the annual amount of those offset payments will vary from year to year. The list of products subject to increased import duties will not be changed.
