

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

Understanding between the United States and Japan
Regarding Procedures under Articles 21 and 22 of the DSU

The following communication, dated 10 March 2008, from the delegation of the United States and the delegation of Japan to the Chairman of the Dispute Settlement Body, is circulated at the request of these delegations.

Attached please find the confirmed procedures between the United States and Japan under Articles 21 and 22 of the Dispute Settlement Understanding in *United States – Measures Relating to Zeroing and Sunset Reviews* (WT/DS322).

We kindly request that you circulate this communication to the Members of the DSB.

For the United States of America

For Japan

Peter F. Allgeier
Ambassador

Ichiro Fujisaki
Ambassador

Confirmed Procedures between the United States and Japan
under Articles 21 and 22 of the Dispute Settlement Understanding in the dispute
United States – Measures Relating to Zeroing and Sunset Reviews
(WT/DS322)

The Dispute Settlement Body ("DSB") adopted its recommendations and rulings on 23 January 2007. Japan and the United States (the "Parties") reached an agreement (WT/DS322/20) that the reasonable period of time to implement the DSB's recommendations and rulings would be 11 months, which expired on 24 December 2007. On 10 January 2008, Japan requested authorization from the DSB to suspend the application to the United States of tariff concessions or other obligations pursuant to Article 22.2 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU") as contained in documents WT/DS322/23 and WT/DS322/24. On 18 January 2008, the United States objected to the level of suspension of concessions or other obligations proposed by Japan (WT/DS322/25). As a result, the matter was referred to arbitration in accordance with Article 22.6 of the DSU ("the arbitration").

The Parties have decided on the following procedures under Articles 21 and 22 of the DSU for the exclusive purposes of this dispute. They are designed to facilitate the resolution of the dispute and reduce the scope for procedural disagreements, and are without prejudice to either Party's views on the correct interpretation of the relevant provisions of the DSU:

1. In light of the disagreement between the Parties, within the meaning of Article 21.5 of the DSU, the following procedures will apply:

- (a) Japan need not request consultations with the United States pursuant to Article 4 of the DSU prior to requesting the establishment of a panel pursuant to Article 21.5 of the DSU ("Article 21.5 panel"). However, if Japan requests such consultations, the Parties will hold them within 12 days from the date of circulation of the request. After the consultations have been held, or upon the expiration of the 12-day period for consultations, should either Party so state, the Parties will immediately and jointly consider that such consultations have failed to settle the dispute, in which case Japan may at any time request the establishment of an Article 21.5 panel.
- (b) 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.
- (c) The Parties will cooperate to enable the Article 21.5 panel to circulate its report within 90 days of the panel's establishment, excluding any time during which the work of the Article 21.5 panel may be suspended pursuant to Article 12.12 of the DSU.
- (d) Either Party may request the DSB to adopt the report of the Article 21.5 panel at a DSB meeting held at least 20 days after the circulation of the report to the Members, unless either Party appeals the report.
- (e) In the event of an appeal of the Article 21.5 panel report, the Parties will cooperate to enable the Appellate Body to circulate its report to the Members within 90 days from the date either Party formally notifies its decision to appeal to the DSB.
- (f) In the event of an appeal, either Party may request the DSB to adopt the reports of the Appellate Body and of the Article 21.5 panel (as upheld, modified or reversed by the

Appellate Body) at a DSB meeting held within 30 days following the circulation of the Appellate Body report to the Members.

2. Upon constitution of the arbitrator, the Parties will request the arbitrator to suspend its work. The Parties confirm that this request shall not be construed as a withdrawal by Japan of its request for authorization as contained in documents WT/DS322/23 and WT/DS322/24.

3. The arbitration will resume upon a request made by either Party following the adoption by the DSB of the Article 21.5 Panel report and, if any, the Appellate Body report, if:

- (a) The DSB finds that a measure taken to comply with the DSB's 23 January 2007 recommendations and rulings in this dispute does not exist or is inconsistent with a covered agreement, or
- (b) There is no disagreement between the Parties that a measure taken to comply does not exist with regard to certain measures subject to the DSB's 23 January 2007 recommendations and rulings.

4. The Parties will cooperate to enable the arbitrator under Article 22.6 of the DSU to circulate its decision within 60 days of the resumption of its work.

5. The Parties will continue to cooperate in all matters related to these confirmed procedures and will not raise any procedural objection to any of the steps set out herein. If during the application of these procedures, the Parties consider that a procedural aspect has not been properly addressed in these procedures, they will endeavor to find a solution within the shortest time possible that will not affect the other aspects and steps confirmed herein.

For the United States of America

For Japan

Peter F. Allgeier
Ambassador

Ichiro Fujisaki
Ambassador

Geneva, 10 March 2008
