

**UNITED STATES – SUNSET REVIEW OF ANTI-DUMPING DUTIES ON
CORROSION-RESISTANT CARBON STEEL FLAT PRODUCTS FROM JAPAN**

Notification of an Appeal by Japan
under paragraph 4 of Article 16 of the Understanding on Rules
and Procedures Governing the Settlement of Disputes (DSU)

The following notification, dated 15 September 2003, sent by Japan to the Dispute Settlement Body (DSB), is circulated to Members. This notification also constitutes the Notice of Appeal, filed on the same day with the Appellate Body, pursuant to the *Working Procedures for Appellate Review*.

Pursuant to Article 16 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU") and Rule 20 of the *Working Procedures for Appellate Review*, Japan hereby notifies its decision to appeal to the Appellate Body certain issues of law covered in the Panel Report on *United States – Sunset Review of Anti-Dumping Duties on Corrosion-Resistant Carbon Steel Flat Products from Japan* (WT/DS244/R, dated 14th August 2003) and certain legal interpretations developed by the Panel.

The appeal relates to the following issues of law and legal interpretations developed by the Panel in its Report.

1. The Panel erred in its legal conclusion in paragraphs 7.168 – 7.170 and 7.183 – 7.184 of the Panel Report, and the reasoning leading thereto, that the United States Department of Commerce ("DOC") acted consistently in the anti-dumping sunset review on corrosion-resistant carbon steel flat products from Japan ("CRS sunset review") with Article 2.4 or Article 11.3 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("AD Agreement") by relying on the administrative review margins without making any adjustments for the "zeroed-out" negative margins. The Panel based its conclusion on an erroneous legal interpretation that the term "dumping" in Article 11.3 is not defined by Article 2, and that a responding party should have raised the zeroing issue during the course of the CRS sunset review.
2. The Panel erred in its legal conclusion in paragraph 7.283 of the Panel Report, and the reasoning leading thereto, that DOC acted consistently with Article 11.3 of the AD Agreement in the CRS sunset review in making its likelihood of continuation of dumping determination. The Panel based its conclusion on an erroneous legal interpretation of the requirement to make a determination as to the likelihood of continuation of dumping under Article 11.3.

3. The Panel erred in its legal conclusion in paragraph 7.208 of the Panel Report, and the reasoning leading thereto, that DOC acted consistently with Articles 6.10 and Article 11.3 of the AD Agreement by making its likelihood of continuation of dumping determination in the CRS sunset review on an order-wide basis. The Panel based its conclusion on an erroneous legal interpretation of the applicability of Article 6.10 to sunset reviews conducted under Article 11.3, as well as the evidentiary and substantive requirements under Article 11.3 in conjunction with Articles 2 and 6.10.
4. The Panel erred in its legal conclusions in paragraphs 7.145, 7.195, and 7.246 of the Panel Report, and the reasoning leading thereto, that the Sunset Policy Bulletin, including sections II.A.2, 3 and 4 prescribing the standards to determine the likelihood of continuation or recurrence of dumping and requiring that such a determination be based on an order-wide basis, cannot, by itself, give rise to a WTO violation, and is therefore not a measure challengeable under the WTO Agreement as such.
5. The Panel erred in its legal conclusion in paragraph 7.315 of the Panel Report, and the reasoning leading thereto, that the United States acted consistently with Article 18.4 of the AD Agreement and Article XVI:4 of the Marrakesh Agreement Establishing the World Trade Organization.

Accordingly, Japan requests the Appellate Body to reverse the above findings of the Panel and the corresponding conclusions reached by the Panel in paragraphs 8.1(d)(i) and (iii), 8.1(e)(i) and (ii), 8.1(f)(i) and (ii), 8.1(h) and 8.2 of the Report.
