

JAPAN'S CLOSING STATEMENT

Mr. Chairman, Members of the Division, staff of the Secretariat, Japan would like to repeat its thanks to you for your efforts in this appeal. Japan will now be very brief.

Turning to the United States' appeal, Japan recalls that the scope of consultations was *never* contested by the United States until this appeal. In any event, Japan's consultations request covered the zeroing procedures in original investigations under all comparison methods. With respect to the existence of the "as such" measure, the evidence of record supports the Panel's finding that the United States maintains a general rule in terms of which negative comparison results are excluded "whenever" the USDOC determines margins of dumping. The United States has failed to demonstrate that the Panel exceeded the bounds of its discretion in making this finding. The Appellate Body should, therefore, reject the United States' appeal.

The Appellate Body has already resolved the interpretative issues that underlie Japan's appeal on the prohibition of zeroing. The United States simply repeats arguments that the Appellate Body has already dismissed in previous appeals. In the interests of the "security and predictability" that dispute settlement promotes, Japan urges the Appellate Body to reject, once again, the United States' arguments and to find, once again, that zeroing is WTO-inconsistent.

In that regard, allow us to return to Mr. Ganesan's question about "televisions". One point that was not made in the discussion is that, under Article 9, anti-dumping duties can be imposed on a product-wide basis on *all future entries of the product*, possibly in excess of the bound tariff agreed for the product. The requirement to determine "dumping" for the "product" as a whole, therefore, ensures *parallelism* between the scope of the dumping determination that justifies imposing duties, and the scope of the duties actually imposed.

Thus, under the *Anti-Dumping Agreement*, a partial dumping determination for seven televisions could be used to justify the imposition of *ad valorem* duties on *all* future entries of televisions. The product-wide definition of "dumping" ensures that the imposition of duties on a product-wide basis, in excess of market access concessions on televisions, is justified.¹

¹ Appellate Body Report, *US – Softwood Lumber V*, para. 99.

Article 5.8 also highlights that an authority must examine the product as a whole: even the United States accepts that an authority cannot terminate an investigation for *some* transactions relating to an exporter, but maintain it for others. Rather, the authority must pursue or terminate an investigation for the product as a whole. In any event, accepting New Zealand's view that dumping can be determined for individual transactions would involve a departure from the Appellate Body's previous rulings.

In sum, Mr. Chairman, the Appellate Body was correct the *first* time it ruled that zeroing was prohibited in *Bed Linen* on the basis of the product-wide definition of "dumping"; the Appellate Body was correct the *second* time it so ruled in the original proceedings in *Lumber*; and it was correct the *third* and *fourth* times it prohibited zeroing in *US – Zeroing (EC)* and *Lumber (Article 21.5)*. The Appellate Body will be correct by ruling in Japan's favor this fifth, and Japan hopes last, ruling that zeroing is prohibited.