WORLD TRADE ORGANIZATION

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UNITED STATES – MEASURES RELATING TO ZEROING AND SUNSET REVIEWS

Recourse to Article 22.2 of the DSU by Japan

The following communication, dated 10 January 2008, 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 an ordinary meeting of the Dispute Settlement Body (DSB) to be held on 21 January 2008 considers the following agenda item:

> *United States – Measures Relating to Zeroing and Sunset Reviews* (WT/DS322) *– Recourse by Japan to Article 22.2 of the Understanding on Rules and Procedures Governing the Settlement of Disputes*

Background to this request

On 23 January 2007, the DSB adopted the Appellate Body Report, and the Panel Report, as modified by the Appellate Body Report. In these reports, it was found that the United States' zeroing procedures,[1] and the application of those procedures in a series of anti-dumping proceedings, are inconsistent with various provisions of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* ("*Anti-Dumping Agreement*") and the *General Agreement on Tariffs and Trade 1994* ("GATT 1994"). In particular:

(i) by maintaining zeroing procedures in original investigations when calculating margins of dumping on the basis of weighted average-to-weighted average comparisons, the United States acts inconsistently with Article 2.4.2 of the *Anti-Dumping Agreement*;[2]

(ii) by maintaining zeroing procedures in original investigations when calculating margins of dumping on the basis of transaction-to-transaction comparisons, the United States acts inconsistently with Articles 2.4 and 2.4.2 of the *Anti-Dumping Agreement*;[3]

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[1] The term "zeroing procedures" refers to the methodology under which the United States Department of Commerce ("USDOC") disregards intermediate negative comparison results in the process of establishing the overall dumping margin for the product as a whole for a foreign producer or exporter. See Appellate Body Report, footnote 3.

[2] Panel Report, para. 7.258(a).

[3] Appellate Body Report, para. 190(b).

(iii) by applying zeroing procedures in the anti-dumping investigation regarding imports of cut-to-length carbon quality steel products from Japan, the United States acted inconsistently with Article 2.4.2 of the *Anti-Dumping Agreement*;[4]

(iv) by maintaining zeroing procedures in periodic reviews, the United States acts inconsistently with Articles 2.4 and 9.3 of the *Anti-Dumping Agreement* and Article VI:2 of the GATT 1994;[5]

(v) by maintaining zeroing procedures in new shipper reviews, the United States acts inconsistently with Articles 2.4 and 9.5 of the *Anti-Dumping Agreement*;[6]

(vi) by applying zeroing procedures in the 11 periodic reviews identified in Japan's Request for the Establishment of a Panel,[7] the United States acted inconsistently with Articles 2.4 and 9.3 of the *Anti-Dumping Agreement* and Article VI:2 of the GATT 1994;[8] and

(vii) by relying on margins of dumping calculated in previous proceedings using the zeroing procedures in the two sunset reviews identified in Japan's Request for the Establishment of a Panel,[9] the United States acted inconsistently with Article 11.3 of the *Anti-Dumping Agreement*.[10]

On 27 December 2006, the United States Department of Commerce ("USDOC") published a notice stating that, with effect from 22 February 2007, it would abandon the use of zeroing in weighted average-to-weighted average comparisons in original anti-dumping investigations, pursuant to the recommendations and rulings of the DSB in dispute WT/DS294. This action also addresses the DSB's recommendations and rulings under point (i) above.

On 20 February 2007, the United States informed the DSB that it intended to comply with its WTO obligations in this dispute but that it would require a reasonable period of time to do so. Pursuant to Article 21.3(b) of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"), Japan and the United States agreed that this reasonable period would be 11 months, expiring on 24 December 2007. On 27 December 2007, the USDOC announced publicly that it had taken steps to implement the DSB's recommendations and rulings under point (iii) above.

Japan's request for authorization to suspend tariff concessions

By 24 December 2007, the United States had not complied with the DSB's recommendations and rulings because it failed to bring the measures found to be inconsistent with the *Anti-Dumping Agreement* and the GATT 1994 into conformity with its obligations under these agreements, except with respect to the zeroing procedures in weighted average-to-weighted average comparisons in anti-dumping original investigations, as referred to in point (i) above, which were abandoned with effect from 22 February 2007 pursuant to the USDOC's notice of 27 December 2006. Additionally, on 27 December 2007, the USDOC announced publicly that it had taken steps to implement the DSB's recommendations and rulings with respect to the anti-dumping investigation regarding imports of cut-to-length carbon quality steel products, as referred to in point (iii) above.

[4] Panel Report, para. 7.258(a).
[5] Appellate Body Report, para. 190(c).
[6] Appellate Body Report, para. 190(d).
[7] WT/DS322/8.
[8] Appellate Body Report, para. 190(e).
[9] WT/DS322/12.
[10] Appellate Body Report, para. 190(f).

Therefore, pursuant to Article 22.2 of the DSU, Japan requests authorization from the DSB to suspend the application to the United States of tariff concessions and other related obligations regarding goods, within the meaning of Article 22.3(f)(i) of the DSU. This request addresses the United States' failure to bring itself into conformity with the recommendations and rulings of the DSB and the United States' obligations under the covered agreements, with respect to the measures found to be inconsistent with the *Anti-Dumping Agreement* and the GATT 1994 as referred to in points (ii), (iv) and (v) above.

In accordance with Article 22.4 of the DSU, the level of the suspension of concessions and other related obligations will be equivalent to the level of the nullification or impairment. In any given year, the level of the nullification or impairment is (a) the total amount of the anti-dumping duties illegally determined , and interest thereon ("excess duties"), plus (b) the annual value of Japan's lost exports to the United States ("trade effects"). In the first year, the amount of excess duties is US$18.7 million and the amount of trade effects is USD $48.6 million.

Japan intends to implement the suspension of tariff concessions and other related obligations under by imposing additional import duties above bound custom duties ("additional duties") on a final list of products originating in the United States, which will be notified to the DSB together with the rate of the additional duties. For the purpose of suspension with regard to item (a) in the previous paragraph, the additional duties will be set so as to collect an amount that does not exceed the total excess duties. In addition, for the purpose of suspension with regard to item (b) in the previous paragraph, the additional duties will be set so as to decrease the value of exports from the United States to Japan by the annual value of Japan's lost exports to the United States. As necessary, for the purposes of both items (a) and (b), Japan will adjust the additional duties imposed from year to year in light of changes in the level of the nullification or impairment, as described in the previous paragraph. In the event of such an adjustment, Japan will notify to the DSB a list indicating the products subject to the additional duties, as well as the rate of the additional duties, in the light of the adjusted level of the nullification or impairment.

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