JAPAN'S CLOSING STATEMENT

Mr. Chairman, distinguish members of the Division, in closing Japan would like to recall the basic issues in these compliance proceedings.

First, Japan challenges the United States' failure to "bring into conformity", by the end of the RPT, the importer-specific assessment rates established in a series of periodic reviews found to be WTO-inconsistent in the original proceedings; these are Reviews 1, 2, 3, 7, and 8.

For all five original reviews, the United States recognized that it had done "*nothing*" to bring the Reviews into conformity. The Panel's finding to this effect is in paragraph 7.146 of the Panel Report. Instead, the United States believed that it could collect inflated anti-dumping duties, after the end of the RPT, at assessment rates found to be WTO-inconsistent in the original proceedings.

To show that these five original reviews had ongoing legal effects after the RPT, Japan demonstrated that the United States had not collected duties on entries subject to these Reviews by that time. The Panel agreed with Japan, at paragraph 7.139 and footnote 149 of its Report. Thus, the United States was required to take transformative action to bring the five original periodic reviews into conformity, thereby ensuring that its *prospective actions*, after the end of the RPT, pursuant to these five reviews, would be WTO-consistent.

To demonstrate the post-RPT effects of Reviews 1, 2, 7 and 8, Japan provided liquidation instructions and notices *post-dating* the end of the RPT. The Panel accordingly recognized the post-RPT effects of these Reviews at paragraph 7.139 of its Report, including footnote 149. Without bringing the measures into conformity during the RPT, the United States issued liquidation instructions and notices after the end of the RPT to collect inflated duties at importer-specific assessment rates already found to be WTO-inconsistent.

To demonstrate that Review 3 had ongoing legal effects, Japan provided evidence that the U.S. court's final decision was taken after the end of the RPT. During yesterday's session, the United States admitted that domestic court proceedings regarding assessment rates can only continue if duties remain to be collected after the end of the litigation. This confirms the Panel's finding in paragraph 7.139, and footnote 149, that duties were still to be collected on entries covered by Review 3 after the end of the RPT, when the decision of the court was issued. The court's final decision lifts the injunction against liquidation, and allows the

United States to proceed to collect the outstanding duties. At footnote 148 to paragraph 7.139 of its Report, the Panel also found that for one company, the original assessment rate was amended after the end of the RPT – without eliminating the use of zeroing.

The United States provided no rebuttal evidence that, before the end of the RPT, it had taken any liquidation measures pursuant to any of the five original measures, namely, Reviews 1, 2, 3, 7, and 8.

Accordingly, the Panel correctly held that, because the five original reviews would be enforced after the end of the RPT through duty collection, the United States was required to bring the assessment rates into conformity to ensure that its prospective actions, after the end of the RPT, would be WTO-consistent. As the Panel properly found, at paragraph 7.154 of its Report, the United States failed to do so.

Second, Japan challenged the "consistency" with the covered agreement of four periodic reviews as "measures taken to comply"; these are Reviews 4, 5, 6 and 9. Japan claimed that, because the United States applied its zeroing procedures to calculate cash deposit rates and importer-specific assessment rates in these Reviews, they are inconsistent with Articles 9.3 and 2.4 of the *Anti-Dumping Agreement*, and Article VI of the GATT 1994. This is a "classic" zeroing claim – if I can use that term – that focuses on whether the USDOC's use of zeroing in its "dumping" determinations in these four measures was consistent with the *Anti-Dumping Agreement* and the GATT 1994.

Like any other claim regarding an authority's "dumping" determinations – including the claims brought by Japan in the *original* proceedings concerning Reviews 1, 2, 3, 7 and 8 – Japan was not required to demonstrate that the United States had already collected anti-dumping duties pursuant to these determinations, in order to establish the WTO-inconsistency of Reviews 4, 5, 6 and 9. Claims can be, and usually are, brought regarding anti-dumping measures long before duties are collected. Examining these claims, the Panel properly found, at paragraph 7.168 of its Report, that the USDOC's "dumping" determination was WTO-inconsistent because of the "application of zeroing".

Japan is of the view that the Panel's finding on the WTO-inconsistency of Reviews 4, 5, 6 and 9 was squarely within the Panel's mandate because all the jurisdictional requirements were met – that is, these specific measures were properly identified in the panel request; Japan demonstrated that the measures are "taken to comply"; and, further, Japan

demonstrated that the measures are inconsistent with specified provisions of the covered agreements.

We add, however, that in response to a request from the Panel, Japan demonstrated that duties remained to be collected on all four reviews at the end of the RPT. Thus, the dispute involves a "disagreement" regarding measures with ongoing legal effects, and accordingly, the Panel had no discretion to refrain from finding the WTO-inconsistency of these Reviews.

For Reviews 4, 5, and 6, Japan showed that injunctions had been granted in domestic court proceedings enjoining the liquidation of entries, and that the court injunctions were outstanding. This point was never contested by the United States. During yesterday's session, the United States admitted that injunctions can only be granted and maintained in domestic court proceedings if entries are unliquidated. This confirms the Panel's factual findings, at footnotes 101 and 102 to paragraphs 7.74 and 7.75 of its Report, that entries covered by Reviews 4, 5, and 6 were unliquidated during the Panel proceedings, because injunctions had enjoined liquidation. Further, because Review 9 was adopted by the USDOC *during* the Panel proceedings, entries covered by this review were, *by definition*, unliquidated at that time.

Again, the United States provided no rebuttal evidence that, before the end of the RPT, it had taken any liquidation measures pursuant to any of the four measures taken to comply, namely, Reviews 4, 5, 6, and 9.

Third, and finally, Japan challenges a number of duty collection, or liquidation, measures that the United States has taken, since the end of the RPT, in relation to *four of the five original periodic reviews*, namely Reviews 1, 2, 7 and 8. These duty collection measures enforce the original measures by collecting duties in excess of bound tariffs at assessment rates found to be WTO-inconsistent, contrary to Article II:1 of the GATT 1994. We draw your attention to paragraphs 143 to 147 of our Appellee's Submission, which explains the duty collection mechanism. These measures do not benefit from the safe-harbour in Article II:2(b), because they derive from original reviews found to be WTO-inconsistent. Irrespective of the scope of the United States implementation obligation concerning Reviews 1, 2, 7 and 8, those Reviews are still not consistent with GATT Article VI and, therefore, the safe-harbor provision does not apply. The Panel, therefore, properly found, at paragraph 7.208 of its Report, that the duty collection measures violate Article II:1 of the GATT 1994.