

AS DELIVERED

BEFORE THE WORLD TRADE ORGANIZATION

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

WT/DS322

**CLOSING STATEMENT
AT THE FIRST MEETING WITH THE PANEL**

JAPAN

29 JUNE 2005

1. Mr. Chairman, members of the Panel, and Secretariat staff, Japan appreciates very much the care and attention that you have devoted to our complaint during these past two days. Japan has welcomed the opportunity to answer your thoughtful questions and to clarify our arguments. Japan has also noted the answers that the United States has given – and in some cases not given – to the questions that have been asked of it.

2. At the end of these two days, Japan continues to claim that the United States' zeroing procedures are, as such, inconsistent with the United States' obligations under the *Anti-Dumping Agreement* and the GATT 1994. Moreover, the application of these procedures in the numerous "as applied" measures Japan challenges is also WTO-inconsistent.

3. Mr. Chairman, consistent with the Appellate Body's ruling¹, to conclude that there are no "as such" measures to challenge in this dispute would frustrate the goals of dispute settlement and would force Members to engage in an endless series of "as applied" disputes. Moreover, to allow the United States to escape scrutiny of these measures would offer an unhealthy incentive for all Members to implement trade policy through similar ways.

4. The overwhelming and uncontested evidence shows that the zeroing procedures, embodied in the Standard Zeroing Line, are part of the United States' "administrative procedures" for calculating margins of dumping and have formed part of them for many years. The Standard Zeroing Line, which features in the standard AD Margin Calculation programs and is included in every case-specific program, is instrument or act that embodies or sets forth the zeroing procedures and as such constitute "measure". Evidence shows that by their terms the zeroing procedures are binding and USDOC treats them as such. In the course of the last two days, the United States has admitted that there is no single instance in which it has not included the zeroing procedures in a dumping margin calculation.

5. Mr. Chairman, we have heard arguments from the United States that simply recycle arguments that have been dismissed in earlier disputes. The reasons that led panels and the Appellate Body to reject those arguments previously also compel their rejection in this dispute.

¹ Appellate Body report, United States – Corrosion Resistant Steel, para 82.

6. It is well-established that the *Anti-Dumping Agreement* and the GATT 1994 do not allow administrative procedures that disregard unwanted comparison results. The disregard of comparison results means that the margin of dumping is not for the product as a whole. Instead, it is for a purposefully selected “part” of the product that USDOC knows very well will produce an inflated margin. The bias inherent in that selection means that the comparison is not fair.

7. Japan’s claims regarding the prohibition on zeroing in any anti-dumping proceedings are built upon the straightforward view – endorsed by the text and the Appellate Body – that, throughout the *Anti-Dumping Agreement*, the terms “dumping” and “margins of dumping” have the same meaning, and that the “fair comparison” requirement applies. The logical consequence of this interpretation is that, whenever authorities calculate a margin of dumping, they cannot engage in zeroing. Equally, in making changed circumstances and sunset reviews, authorities cannot rely upon tainted (or flawed) margins of dumping that are calculated using the zeroing procedures.

8. As a result of the zeroing procedures, the United States also violates, as such, Article 3 of the *Anti-Dumping Agreement* because injury determinations are based on flawed evidence of dumping. In addition, because of zeroing, the United States also fails to terminate investigations under Article 5.8 when it is obliged to do so.

9. In closing, Mr. Chairman, I would like to emphasize that Japan has submitted considerable evidence to meet its burden of proving that the United States violates its obligations under the *Anti-Dumping Agreement* and the GATT 1994. In reply, the United States has offered no evidence, whatsoever, to rebut the *prima facie* case that Japan has made. Its legal arguments have also failed to address many of the core issues before the Panel. Japan, for its part, has rebutted the United States’ arguments, in particular that prohibiting zeroing would render redundant the second sentence of Article 2.4.2 of the *Anti-Dumping Agreement*.

10. Finally, I would like to thank you, Mr. Chairman, members of the Panel, and Secretariat staff, for your patience with us during these meetings and for your efforts in working through the issues.