

## US – ZEROING (JAPAN)<sup>1</sup> (DS322)

| PARTIES     |               | AGREEMENTS            | TIMELINE OF THE DISPUTE     |                          |
|-------------|---------------|-----------------------|-----------------------------|--------------------------|
| Complainant | Japan         | ADA Arts. 2, 9 and 11 | Establishment of Panel      | 28 February 2005         |
|             |               | GATT 1994 Arts. VI    | Circulation of Panel Report | 20 September 2006        |
| Respondent  | United States |                       | DSU Art. 11                 | Circulation of AB Report |
|             |               | Adoption by the DSB   | 23 January 2007             |                          |

### 1. MEASURE AND PRODUCT AT ISSUE

- Measure at issue: The United States' "zeroing" procedures in the context of original investigations, periodic reviews, new shipper and changed circumstances reviews, and sunset reviews; and the application of "zeroing" in an original investigation, periodic reviews, and sunset review determinations.
- Product at issue: Various carbon steel and bearing products from Japan.

### 2. SUMMARY OF KEY PANEL/AB FINDINGS

*As such claims*

- ADA Arts. 2.1, 2.4, and 2.4.2 and GATT Arts. VI:1 and VI:2 (zeroing in transaction-to-transaction comparisons in original investigations): The Appellate Body reversed the Panel's finding that the United States did not act inconsistently with ADA Arts. 2.1, 2.4, and 2.4.2 by maintaining zeroing procedures in original investigations when calculating margins of dumping on the basis of transaction-to-transaction comparisons. The Appellate Body noted that because dumping and margins of dumping can only be found to exist in relation to the product under investigation, and not at the level of an individual transaction, all of the comparisons of normal value and export price must be considered. By disregarding certain comparison results, the United States acted inconsistently with ADA Art. 2.4.2, with the "fair comparison" requirement of ADA Art. 2.4, given that zeroing artificially inflates the magnitude of dumping.
- ADA Arts. 2.1, 2.4, 9.1-9.3, and 9.5 and GATT Arts VI:1 and VI:2 (zeroing in periodic reviews and new shipper reviews): The Appellate Body reversed the Panel's finding that zeroing in periodic and new shipper reviews was not inconsistent with the ADA and relevant articles of the GATT. The Appellate Body found, instead, that the United States had acted inconsistently with ADA Arts. 9.3 and 9.5 and GATT Art. VI:2, and with the "fair comparison" requirement of ADA Art. 2.4, as explained above.

*As applied claims*

- ADA Arts. 2, 9.1-9.3, 9.5, and 11 and GATT Arts. VI:1 and VI:2 (zeroing in specific periodic and sunset review investigations): The Appellate Body reversed the Panel's finding regarding zeroing used in 11 periodic review determinations and 2 sunset reviews, and found that the United States had acted inconsistently with ADA Arts. 2.4 and 9.3, GATT Art. VI:2, and ADA Art. 11.3.

### 3. OTHER ISSUES<sup>2</sup>

- Measure: The Appellate Body upheld the Panel's finding that the United States' zeroing procedures constituted a measure that could be challenged *as such* in WTO dispute settlement proceedings, and rejected the United States' claim under DSU Art. 11 that the Panel did not assess objectively whether a single rule or norm exists by virtue of which the USDOC applies zeroing, regardless of the basis upon which export price and normal value are compared, and regardless of the type of proceeding in which margins of dumping are calculated.

<sup>1</sup> *United States – Measures Relating to Zeroing and Sunset Reviews*

<sup>2</sup> Other issues addressed: standard zeroing line (measure); ADA Art. 2.4.2 (zeroing in weighted average-to-weighted average comparisons in original investigations); prima facie case; ADA Arts. 2 and 11 (zeroing in new shipper, changed circumstances, and sunset reviews); judicial economy.