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## **THE WTO DISPUTE SETTLEMENT REPORTS**

The *Dispute Settlement Reports* of the World Trade Organization (the "WTO") include panel and Appellate Body reports, as well as arbitration awards, in disputes concerning the rights and obligations of WTO Members under the provisions of the *Marrakesh Agreement Establishing the World Trade Organization*. The *Dispute Settlement Reports* are available in English. Volumes comprising one or more complete cases contain a cumulative list of published disputes. The cumulative list for cases that cover more than one volume is to be found in the first volume for that case.

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

**Recourse to Article 21.5 of the DSU by Japan**

**Report of the Appellate Body**  
WT/DS322/AB/RW

*Adopted by the Dispute Settlement Body  
on 31 August 2009*

United States, *Appellant*  
Japan, *Appellee*  
China, *Third Participant*  
European Communities, *Third Participant*  
Hong Kong, China, *Third Participant*  
Korea, *Third Participant*  
Mexico, *Third Participant*  
Norway, *Third Participant*  
Separate Customs Territory of Taiwan, Peng-  
ghu, Kinmen and Matsu, *Third Participant*  
Thailand, *Third Participant*

Present:  
Sacerdoti, Presiding Member  
Bautista, Member  
Zhang, Member

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<i>US – Superfund</i>	GATT Panel Report, <i>United States – Taxes on Petroleum and Certain Imported Substances</i> , L/6175, adopted 17 June 1987, BISD 34S/136
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<i>US – Zeroing (EC)</i>	Appellate Body Report, <i>United States – Laws, Regulations and Methodology for Calculating Dumping Margins ("Zeroing")</i> , WT/DS294/AB/R, adopted 9 May 2006, and Corr.1, DSR 2006:II, 417
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<i>US – Zeroing (EC) (Article 21.5 – EC)</i>	Appellate Body Report, <i>United States – Laws, Regulations and Methodology for Calculating Dumping Margins ("Zeroing") – Recourse to Article 21.5 of the DSU by the European Communities</i> , WT/DS294/AB/RW and Corr.1, adopted 11 June 2009

<b>Short Title</b>	<b>Full case title and citation</b>
<i>US – Zeroing (EC)</i> <i>(Article 21.5 – EC)</i>	Panel Report, <i>United States – Laws, Regulations and Methodology for Calculating Dumping Margins ("Zeroing") – Recourse to Article 21.5 of the DSU by the European Communities</i> , WT/DS294/RW, adopted 11 June 2009, as modified by Appellate Body Report WT/DS294/AB/RW
<i>US – Zeroing (Japan)</i>	Appellate Body Report, <i>United States – Measures Relating to Zeroing and Sunset Reviews</i> , WT/DS322/AB/R, adopted 23 January 2007, DSR 2007:I, 3
<i>US – Zeroing (Japan)</i>	Panel Report, <i>United States – Measures Relating to Zeroing and Sunset Reviews</i> , WT/DS322/R, adopted 23 January 2007, as modified by Appellate Body Report WT/DS322/AB/R, DSR 2007:I, 97
<i>US – Zeroing (Japan)</i> <i>(Article 21.5 – Japan)</i>	Panel Report, <i>United States – Measures Relating to Zeroing and Sunset Reviews – Recourse to Article 21.5 of the DSU by Japan</i> , WT/DS322/RW, circulated to WTO Members 24 April 2009

**ABBREVIATIONS USED IN THIS REPORT**

<b>Abbreviation</b>	<b>Description</b>
<i>Ad Note</i>	Interpretive Note to paragraphs 2 and 3 of Article VI of the GATT 1994
<i>Anti-Dumping Agreement</i>	<i>Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994</i>
Customs	United States Customs and Border Protection
DSB	Dispute Settlement Body
DSU	<i>Understanding on Rules and Procedures Governing the Settlement of Disputes</i>
GATS	<i>General Agreement on Trade in Services</i>
GATT 1994	<i>General Agreement on Tariffs and Trade 1994</i>
ILC Draft Articles	Draft Articles on Responsibility of States for internationally wrongful acts, adopted by the International Law Commission at its fifty-third session (2001), annexed to the United Nations General Assembly Resolution A/RES/56/83 (29 January 2002)
original panel	Panel in the original <i>US – Zeroing (Japan)</i> proceedings
original panel report	Report of the panel in the original <i>US – Zeroing (Japan)</i> proceedings, WT/DS322/R, 20 September 2006
Panel	Panel in these <i>US – Zeroing (Japan) (Article 21.5 – Japan)</i> proceedings
Panel Report	Report of the Panel in these <i>US – Zeroing (Japan) (Article 21.5 – Japan)</i> proceedings, WT/DS322/RW
RPT	Reasonable period of time, pursuant to Article 21.3 of the DSU
<i>SCM Agreement</i>	<i>Agreement on Subsidies and Countervailing Measures</i>
USDOC	United States Department of Commerce
<i>Vienna Convention</i>	<i>Vienna Convention on the Law of Treaties</i> , done at Vienna, 23 May 1969, 1155 UNTS 331; 8 International Legal Materials 679
<i>Working Procedures</i>	<i>Working Procedures for Appellate Review</i> , WT/AB/WP/5, 4 January 2005

Abbreviation	Description
WTO	World Trade Organization
<i>WTO Agreement</i>	<i>Marrakesh Agreement Establishing the World Trade Organization</i>

## I. INTRODUCTION

1. The United States appeals certain issues of law and legal interpretations developed in the Panel Report, *United States – Measures Relating to Zeroing and Sunset Reviews – Recourse to Article 21.5 of the DSU by Japan* (the "Panel Report").<sup>1</sup> The Panel was established pursuant to Article 21.5 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (the "DSU") to consider a complaint by Japan concerning the existence and consistency with the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* (the "Anti-Dumping Agreement") and the *General Agreement on Tariffs and Trade 1994* (the "GATT 1994") of measures taken by the United States to comply with the recommendations and rulings of the Dispute Settlement Body (the "DSB") in *US – Zeroing (Japan)*.<sup>2</sup>

2. This dispute concerns the use of the so-called "zeroing" methodology by the United States Department of Commerce (the "USDOC") when calculating margins of dumping.<sup>3</sup> In the original proceedings, the Appellate Body upheld the panel's finding that the United States' zeroing procedures constituted a measure that can be challenged "as such" in dispute settlement proceedings in the World Trade Organization (the "WTO").<sup>4</sup> The original panel found that, by maintaining model zeroing procedures in the context of original investigations, the United States acts inconsistently with Article 2.4.2 of the *Anti-Dumping Agreement*.<sup>5</sup> The Appellate Body also found that:

- (a) the United States acts inconsistently with Articles 2.4 and 2.4.2 of the *Anti-Dumping Agreement* by maintaining zeroing procedures

<sup>1</sup> WT/DS322/RW, 24 April 2009.

<sup>2</sup> The recommendations and rulings of the DSB resulted from the adoption, on 23 January 2007, by the DSB, of the Appellate Body Report, WT/DS322/AB/R, and the Panel Report, WT/DS322/R, in *US – Zeroing (Japan)*. In this Report, we refer to the panel that considered the original complaint brought by Japan as the "original panel", and to its report as the "original panel report".

<sup>3</sup> Before the original panel, Japan used the term "zeroing" to denote the methodology under which the USDOC "disregards intermediate negative dumping margins ... through the USDOC's [Anti-Dumping] Margin Calculation Computer Programme and other related procedures, in the process of establishing the overall dumping margin for the product as a whole". (Original Panel Report, footnote 668 to para. 7.45, quoting the original Request for the Establishment of a Panel by Japan, WT/DS322/8, para. 1(a) (attached as Annex A-2 to the Original Panel Report))

<sup>4</sup> Appellate Body Report, *US – Zeroing (Japan)*, para. 190(a).

<sup>5</sup> Original Panel Report, para. 7.258(a). This finding of the original panel was not appealed.