

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

**WT/DS322**

**RESPONSE OF THE UNITED STATES  
TO JAPAN'S OPENING STATEMENT AT  
THE SECOND SUBSTANTIVE MEETING OF THE PANEL**

**October 19, 2005**

1. The United States appreciates that the Panel has given it an opportunity to respond in writing to comments made by Japan in its oral statements during the second substantive meeting with the Panel. The United States believes that it has fully developed its argument and, in order to avoid repetition, the United States will limit its response to one new argument raised by Japan.
2. Specifically, Japan has argued that when the condition precedent for the application of the average-to-transaction comparison methodology (i.e., “targeted dumping methodology”) has been met, an investigating authority may limit the entire antidumping investigation to only those export transactions that fit within the pattern.<sup>1</sup> Japan has attempted to find support for its argument from Commerce’s regulation with respect to the targeted dumping methodology. Japan argues that this regulation demonstrates that the United States agrees with the proposition that the antidumping investigation can be limited to only those export transactions that fit within the specified pricing pattern.<sup>2</sup>
3. Commerce’s regulation does not support Japan’s position. Commerce’s regulation provides that if targeted dumping is found, Commerce will normally “limit the application of the average-to-transaction method” to those sales that make up the pricing pattern.<sup>3</sup> This does not, however, mean that other export sales are ignored. As Commerce explained in the Preamble to its proposed regulations, “the average-to-average method would [still] be applied to the remaining sales.”<sup>4</sup>
4. Applying the average-to-transaction methodology to the sales that make up the targeted dumping pattern, and the average-to-average methodology to all other sales, all of the sales made

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<sup>1</sup> Japan, Second Written Submission, paras. 69-70.

<sup>2</sup> Japan, Opening Statement at the Second Meeting with the Panel, para. 59.

<sup>3</sup> 19 CFR § 351.414(f)(2).

<sup>4</sup> Antidumping Duties; Countervailing Duties, 61 Fed. Reg. 7308, 7350 (February 27, 1996) (Notice of proposed rulemaking and request for Public Comments) (Exhibit US-6) (attached).

during the period of investigation would ultimately be included in the final calculation of the margin of dumping. Moreover, even with this combination of comparison methodologies, if offsets were required for non-dumped comparisons, the result would be the same as if all comparisons were made using the average-to-average comparison methodology with offsets. Thus, the second sentence of Article 2.4.2 would still be nullified and, contrary to Japan's argument, the U.S. regulations do not prove otherwise.