

What is Zeroing?

In 2004 and 2007, the EU launched WTO disputes against the US for the use of a methodology called "zeroing" in the calculation of anti-dumping duty rates. The EU's initiative was followed by a number of countries including Brazil, China, Ecuador, Japan, Korea, Mexico, Thailand and Vietnam who lodged similar cases. The WTO Appellate Body has consistently condemned the practice of zeroing over the past decade as unfair. The US now finally committed itself to comply with the main elements of the WTO ruling, by removing zeroing in all ongoing and future cases.

What is zeroing?

A country has the right to impose anti-dumping duties on foreign products that enter its market at prices lower than the normal value of the product on the foreign market. Zeroing is a calculation device used by the United States to establish this anti-dumping duty. WTO rulings have confirmed that this method increases, often substantially, the exporter's margin of dumping and thus the amount of anti-dumping duty that the exporter has to pay. To illustrate how zeroing works, let's take the example of an EU firm which makes three sales on its home market and three export sales to the US during a certain investigation period. A comparison of such sales is made to determine the dumping margin.

Sale	Home market (EU)	Export market (US)	Difference (dumping)
1.	\$100	\$90	\$10
2.	\$100	\$110	-\$10
3.	\$100	\$100	\$0

In the above example, all three sales taken together, there is **no dumping** under WTO rules, because the *average* home market price (\$100) is the same as the *average* export price (\$100). This is what the **WTO Appellate Body** has ruled. EU practice is consistent with these rulings (following the *Bed Linen* ruling in the WTO in 2001).

When applying zeroing, the **US** also compares the price of the product on the EU market with the price of the product on the US market, but disregards, **by setting at zero, all transactions in which the price of the product on the EU market is smaller than the price on the US market** (the second transaction in the above example). The US authorities would hence, by ignoring all negative price differences in the example, find a **dumping margin of \$10** and therefore apply a duty rate of **3.33%** (i.e. \$10 as a percentage of the total export sales value of \$300). The practice of applying zeroing has an impact in most US anti-dumping cases. The only situation where zeroing does not play a role is where export prices are below normal value for

all transactions, something which only happens when the dumping margin is very high. In most cases, even where the exporter makes a strenuous effort not to dump, some transactions will always fall below the line due, for example, to imprecise model matching and investigation techniques which operate to reduce the export price for certain customers.

The practice of zeroing in the US system

(a) The US system of duty collection

Unlike the EU and almost every other country in the world, the US uses a **retrospective** system of duty collection. This means that when goods enter the US the importer does not pay the duty straight away; instead, the duty is held on deposit pending a final assessment at a later date.

In the case of anti-dumping duties, these are imposed by the US at a certain rate per exporter following the first, or original, investigation. This rate serves as the "cash deposit" rate for a period of one year following the imposition of this duty and each import of goods attracts such a cash deposit. At the end of the first year, a party (exporter, importer, US petitioner) can request an administrative review which involves a recalculation of the dumping margin for the year. This review serves two purposes:

(i) It determines the amount of duty to be paid for the first year. If the dumping margin for the review is below the original duty, the requisite amount of duty to cover the dumping will be collected and the balance of the cash deposit will be released. If the dumping margin for the review is above the original duty rate, an amount of duty in addition to the cash deposit will be collected.

(ii) The dumping margin from the review becomes the new cash deposit rate for future entries.

If no review is requested, the duty is collected at the original cash deposit rate, which does not change.

This procedure is repeated every year. Therefore, it is possible for there to be an administrative review every year and for the cash deposit for an exporter to change every year.

(b) Zeroing in anti-dumping proceedings

At the stage of the original investigation, the US abolished the use of zeroing in 2007, following the first WTO case against zeroing brought in by the EU (DS294 - Zeroing 1). This means that, in the example set out above in Section 1, the US would find no dumping because it "offsets" negative dumping (the -\$10) against positive dumping (\$10). Prior to 2007, the US allowed no such offsets and would have found dumping of \$10. As explained above, the impact of the duty rate from the original investigation is often very limited as regards future duty collection. Its main function is to determine whether the dumping margin is above or below de-minimis (2%); if it is below 2%, the proceeding is terminated.

In administrative reviews¹ however, the US has continued to practise zeroing. In the example in Section 1, it would not allow offsets and would find dumping of \$10. It is at the stage of reviews that about 90% of anti-dumping duties are usually determined.

In so-called sunset reviews, which are carried out every five years to establish if an anti-dumping duty is still justified, the US normally relies, at least in part, on the existence of prior dumping margins to justify the continuation of anti-dumping measures. It also quantifies a "dumping margin likely to prevail" in the absence of measures. To the extent that these dumping margins are affected by zeroing (which they almost always are), zeroing has played a key role also in sunset reviews.

(c) The impact of zeroing

The two main effects are that zeroing inflates the amount of duty collected and that it increases (or sometimes creates) the dumping margin. The removal of zeroing in reviews will therefore lead to a reduction or even removal of the dumping margin.

How can you be sure that the US will really abandon zeroing in reviews?

Section 123 of the Uruguay Round Agreements Act is the legal basis to change a WTO-inconsistent US legislation. Under its new "Section 123" methodology, the US will normally compare weighted average normal values to weighted average export prices, and will offset instances of "negative" dumping against "positive" dumping, thus eliminating zeroing. This approach would seem to satisfy WTO requirements. We can never exclude the possibility that the US, in some instances, will resort to an approach in reviews different from the weighted average-to-weighted average approach. However, there is no indication at this stage that the use of such different approaches will be widespread.

Will zeroing be abandoned in Sunset Reviews?

For the purposes of sunset reviews the US, to the extent that it relies on prior dumping margins to determine the likelihood of future dumping, should rely only on non-zeroed anti-dumping duty rates from the original investigation and any other review investigation. Therefore, it seems that zeroing will be abandoned in the context of sunset reviews as well.

What is a "Section 123 URAA proposal"?

Section 123 of the Uruguay Round Agreements Act is the legal basis to change a WTO-inconsistent US legislation. On 28 December 2010 the US published in the Federal Register Vol 75, No 248 of 28 December 2010 a notice entitled "Anti-dumping proceedings: Calculation of the Weighted Average Dumping Margin and Assessment of the Rate in Certain Antidumping Duty Proceedings". By means of this notice it proposed abandoning the use of zeroing in the context of administrative reviews. The US will now adopt that proposal, with certain minor modifications, and it will apply to a number of ongoing reviews (those for which the preliminary determination occurs 60 days or more after the adoption of the new Section 123 methodology).

What is a "Section 129 URAA review"?

¹ Also in "changed circumstance" and "new shipper" reviews

Section 129 of the Uruguay Round Agreements Act is the legal basis for reviewing all anti-dumping orders in which a WTO-inconsistent methodology was used. Some EU companies have not requested a review of their anti-dumping duty rate for a number of years, while others are subject to a duty calculated with zeroing and will have to wait for some time until their duty rate can be revised on the basis of a review covered by the new Section 123 methodology. For all those cases, the US will initiate Section 129 reviews in order to re-calculate the currently applicable duty rates without zeroing. Those will be applied for the future. As a result, not a single US anti-dumping duty in force against an EU exporter should be based on zeroing.

Which ongoing US administrative reviews do you refer to?

As we understand the US Section 123 methodology, the following reviews should be covered:

Initiated 30 December 2011 (Review 1 November 2010 - 31 October 2011)

Lightweight Thermal Paper from Germany (A-428-840)*,

Initiated 3 October 2011 (Review period 1 August 2010 – 31 July 2011)

Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Romania (A-485-805)

Initiated 26 August 2011 (Review period 1 July 2010 – 30 June 2011)

Pasta from Italy (A-475-818)

Purified carboxymethylcellulose from Finland (A-405-803)

Purified carboxymethylcellulose from the Netherlands (A-421-811)

Initiated 28 June 2011 (Review period 1 May 2010 – 30 April 2011)

Stainless steel plate in coils from Belgium (A-423-808)

Ball bearings from France (A-427-801)

Ball bearings from Germany (A-428-801)

Ball bearings from Italy (A-475-801)

Ball bearings from the UK (A-412-801)

Which are the other US administrative reviews in which the anti-dumping rates will be determined without zeroing?

The following reviews will be subject to Section 129 reviews:

Stainless Steel Plate in Coils from Belgium (A-423-808)

Steel Concrete Reinforcing Bars from Latvia (A-449-804)

Carboxymethylcellulose from Finland (A-405-803)

Pasta from Italy (A-475-818)

Carboxymethylcellulose from the Netherlands (A-421-811)

Stainless Steel Wire Rod from Spain (A-469-807)

Granular Polytetrafluoroethylene Resin from Italy (A-475-703)

Certain Cut-to-Length Carbon Quality Steel Plate from Italy (A-475-826)

For further information:

Roadmap agreed between the EU and US on 6 February 2012

[ADD LINK]

Case information

http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds294_e.htm

http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds350_e.htm