



# Zeroing, Power and Precedent

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Panel and AB Reports on zeroing <sup>1</sup>				
Type of zeroing	Method for calculating dumping margin (Art 2.4.2)	Type of proceeding		
		Original investigation (Art 5)	Administrative (periodic) review (Art 9.3.1)	Sunset (five-year) review (Art 11.3)
Model zeroing	W-W	<ul style="list-style-type: none"> <li>× <b>ABR, EC – Bed Linen (2001)</b></li> <li>× PR, EC – Tube or Pipe Fittings (2003) (this finding not appealed)</li> <li>× ABR, US – Softwood Lumber V (2004)</li> <li>× ABR, US – Zeroing (EC) (2006)</li> <li>× PR, US – Zeroing (Japan) (2006) (this finding not appealed)</li> <li>× PR, US – Anti-Dumping Measures on Shrimp (2007) (not appealed)</li> <li>× PR, US – Shrimp (Thailand) (2008) (this finding not appealed)</li> <li>× PR, US – Anti-Dumping Measures on PET Bags (2010) (not appealed)</li> <li>× PR, US – Zeroing (Korea) (2011) (not appealed)</li> </ul>		<ul style="list-style-type: none"> <li>× ABR, US – Continued Zeroing (2008)</li> <li>× ABR, US – Zeroing (EC) (Art 21.5 – EC) (2009)</li> </ul>
		<ul style="list-style-type: none"> <li>× ABR, US – Softwood Lumber V (Art 21.5 – Canada) (2006)</li> <li>× ABR, US – Zeroing (Japan) (2007)</li> </ul>		
Simple zeroing	T-T			
	W-T	<ul style="list-style-type: none"> <li>✓ Unadopted GATT PR, EC – AD Duties on Audio Tapes in Cassettes Originating in Japan</li> <li>✓ Adopted GATT PR, EEC – Imposition of AD Duties on Imports of Cotton Yarn from Brazil</li> </ul>	<ul style="list-style-type: none"> <li>× ABR, US – Zeroing (EC) (2006)</li> <li>× ABR, US – Zeroing (Japan) (2007)</li> <li>× ABR, US – Stainless Steel (Mexico) (2008)</li> <li>× ABR, US – Continued Zeroing (2008)</li> <li>× ABR, US – Zeroing (EC) (Art 21.5 – EC) (2009)</li> <li>× ABR, US – Zeroing (Japan) (Art 21.5 – Japan) (2009)</li> <li>× PR, US – Orange Juice (Brazil) (2011) (deadline for appeal extended to 17 June)</li> </ul>	<ul style="list-style-type: none"> <li>× ABR, US – Zeroing (Japan) (2007)</li> <li>× ABR, US – Zeroing (EC) (Art 21.5 – EC) (2009)</li> </ul>

## Appellate Body's legal arguments for prohibiting zeroing

- 'All comparable export transactions': Art 2.4.2
- 'Export prices': Art 2.4.2
- 'Fair comparison': Art 2.4
- Need to establish dumping margin 'for the product as a whole'
- For proceedings other than original investigation: only Art 2 tells you how to calculate dumping margins

## Counterarguments: why zeroing might be permissible

- Rationale for zeroing – conception of dumping
- ADA Art 17.6(ii)
- DSU Art 19.2
- Marrakesh Agreement Art IX:2
- Negotiating history
- Ongoing rules negotiations

## Ramifications of the Appellate Body's stance

- United States practice
  - Compliance with existing decisions
  - Approach to new domestic anti-dumping proceedings
- Doha
  - Rules negotiations (on anti-dumping)
  - DSU review
- NAFTA
- Precedent in WTO disputes
  - AB power over WTO panels
  - AB power over WTO Members