## Zeroing, Power and Precedent

**Associate Professor Tania Voon**  
Melbourne Law School  
25 May 2011

### Panel and AB Reports on zeroing

<table>
<thead>
<tr>
<th>Type of zeroing</th>
<th>Method for calculating dumping margin (Art 2.4.2)</th>
<th>Type of proceeding</th>
<th>Original investigation</th>
<th>Administrative (periodic) review (Art 9.1.1)</th>
<th>Sunset (five-year) review (Art 11.3)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Model zeroing</td>
<td>W-W</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
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