UNITED STATES – MEASURES RELATED TO ZEROING AND SUNSET REVIEWS

RECOURSE TO ARTICLE 21.5 OF THE DSU BY JAPAN

WT/DS322

EXECUTIVE SUMMARY OF THE SECOND WRITTEN SUBMISSION OF THE UNITED STATES OF AMERICA

OCTOBER 3, 2008

I. INTRODUCTION

1. Japan challenges the U.S. implementation of the Dispute Settlement Body's ("DSB") recommendations and rulings in *US – Zeroing (Japan)*. As explained in the U.S. first written submission, and more fully below, the United States has eliminated all measures that were found to be WTO-inconsistent. This Panel should also reject Japan's attempt to include measures that are outside the scope of this proceeding.

II. THE PANEL SHOULD GRANT THE U.S. REQUEST FOR PRELIMINARY RULINGS

A. The Three Subsequent Administrative Reviews of *Ball Bearings from Japan* Are Outside the Scope of This Proceeding

2. Japan erroneously claims that the United States considers the three subsequent administrative reviews of *Ball Bearings* to be "measures taken to comply" with the DSB's recommendations and rulings in the original dispute. Much of Japan's argument focuses on U.S. statements that the cash deposit rates from the original administrative reviews were superceded by cash deposits rates from subsequent reviews. However, saying that the results of one administrative review were superceded by the results of another administrative review is not the same thing as saying that the subsequent review was a "measure taken to comply" within the meaning of DSU Article 21.5. The measures subject to the DSB's recommendations and rulings were eliminated as an *incidental consequence* of the U.S. antidumping system when the cash deposit rate from one review was replaced by the cash deposit rate from the next review.

3. Japan misrepresents the U.S. arguments concerning the three subsequent administrative reviews. The United States has not asked this Panel to focus on the subjective intent of the United States in adopting the final results in the three administrative reviews. Rather, as the United States has shown, from an objective standpoint, the three subsequent administrative reviews are not measures taken to comply. Concerning the two administrative reviews of *Ball Bearings* that were adopted prior to the DSB's recommendations and rulings, measures taken by a Member prior to adoption of recommendations and rulings typically are not taken for the purpose of achieving compliance with recommendations and rulings and would not be within the scope of an Article 21.5 proceeding. Therefore, the two determinations made long before the DSB's recommendations and rulings cannot be considered measures taken to comply.

4. Japan alleges that the United States argues here, as it did in *US – Softwood Lumber IV (Art. 21.5)* ("*US – SWL IV (Art. 21.5)*"), that an administrative review *initiated* prior to the DSB's recommendations and rulings cannot be a measure taken to comply. The United States, however, makes no such argument in this proceeding, but instead focuses on the date that the final results in the reviews were issued, a factor also considered important in *US – SWL IV (Art. 21.5)*.

5. As to all three of the subsequent reviews of *Ball Bearings*, the U.S. first written submission examined factors that the Appellate Body considered in *US – SWL IV (Art. 21.5)*, and demonstrated why the present dispute is different. It is surprising that Japan thinks that the

United States has asked the Panel to focus solely on "the subjective intent of the implementing Member." Japan's exclusive focus on effects is also disingenuous. The effect of the alleged measure taken to comply was just one factor examined in *US – SWL IV (Art. 21.5)*. Timing was another important element, although in this dispute, the timing of the subsequent administrative reviews demonstrates why they cannot be considered measures taken to comply. Japan is also mistaken to dismiss a Member's intentions altogether. The Appellate Body has considered that although a Member's intentions are not dispositive, they may nonetheless be relevant in determining whether a measure is a measure taken to comply. Here, unlike the alleged measure taken to comply in *US – SWL IV (Art. 21.5),* the final results of the three subsequent reviews were not made "in view of" the DSB's recommendations and rulings. This fact, when considered alongside timing, demonstrates that the three reviews are not measures taken to comply.

6. Japan considers the U.S. arguments concerning the three subsequent reviews as inconsistent. However, it is Japan's own arguments that are plagued by a "fundamental inconsistency." Japan asserts that the three reviews are measures taken to comply, but at the same time argues that the United States has *omitted* to take the necessary action to implement the DSB's recommendations and rulings with respect to the three administrative reviews of *Ball Bearings*. Japan's positions are mutually exclusive.

7. The United States has responded to each of Japan's contradictory arguments. As to the *existence* of measures taken to comply, the United States has shown that the United States removed the WTO-inconsistent cash deposit rate by the expiry of the reasonable period of time ("RPT"). As to Japan's *consistency* claim, the United States has not argued, nor does it argue now, that the three subsequent reviews are measures taken to comply. Moreover, the United States does not advocate an "*intent*-based approach" with respect to measures taken to comply.

8. Japan now tells the Panel that reliance on prior dispute settlement reports is not necessary and that there is no reason to examine the existence of substantive connections between the three subsequent reviews and the DSB's recommendations and rulings. Japan's argument is based on the erroneous proposition that the United States has expressly declared the three subsequent reviews to be measures taken to comply. Moreover, Japan, although dismissing the need to look at substantive connections, proceeds to an examination of the alleged "obvious and important" connections between the DSB's recommendations and rulings and the three subsequent reviews. However, there is no connection between Review Nos. 4 and 5 and the DSB's recommendations and rulings as the final results of these two reviews were issued long before the recommendations and rulings. Japan's attempt to establish close connections as to the 2005-06 administrative review of *Ball Bearings* also fails. This determination did not occur around the same time as U.S. withdrawal of the administrative reviews subject to the DSB's recommendations and rulings, and did not closely correspond to the expiration of the RPT. In addition, unlike the alleged measure taken to comply in *US – SWL IV (Art. 21.5)*, the 2005-06 review did not incorporate elements from a Section 129 determination "in view of" the DSB's recommendations and rulings.

9. Japan, citing *US – SWL IV (Art. 21.5)*, emphasizes the similarity between a specific component (i.e., zeroing) that was found to be WTO-inconsistent in the original proceeding, and a specific component of the three reviews that is challenged here. However, even if the United States used zeroing in all three subsequent reviews, the subject matter of the measures subject to the DSB's recommendations and rulings and the measure at issue was but one factor examined by the Appellate Body in *SWL IV*. For example, the Appellate Body also accorded great importance to the timing of the declared and the undeclared measures taken to comply. Here, timing counsels against a finding that the three administrative reviews are measures taken to comply.

10. In attempting to rebut U.S. arguments on *Australia – Salmon (Art. 21.5)* and *Australia – Leather (Art. 21.5)*, Japan notes that the critical issue in an Article 21.5 proceeding is whether the implementing Member has complied with the DSB's recommendations and rulings. The United States does not disagree. However, Japan is wrong to suggest that the United States considers the question to be whether a Member has complied with its own declared compliance measure. An Article 21.5 proceeding examines, to the extent provided in its terms of reference, whether the Member concerned has adopted a measure taken to comply, and if so, whether that measure is consistent with the covered agreements. Japan also worries about the alleged lack of a remedy were the Panel to find that the three subsequent reviews of *Ball Bearings* fall outside the scope of this proceeding. However, the jurisdiction of an Article 21.5 panel, and the scope of the overall dispute settlement system, is established by the covered agreements, as agreed to by all Members. If Japan or other Members wish to change the rules governing compliance, they must negotiate a change to the covered agreements. And in any event, Japan has obtained relief here in the form of the removal of the specific cash deposit rates that were challenged.

11. Japan continues to assert the relevancy of *US – Upland Cotton (Art. 21.5)* to its argument that the three subsequent administrative reviews are measures taken to comply. However, what Japan fails to comprehend is that in *Upland Cotton*, the Appellate Body was considering the issue of the *existence* of measures taken to comply. Japan also dismisses an important difference between this dispute and the one in *Upland Cotton.* The latter dispute involved an interpretation of the SCM Agreement, and not the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* ("AD Agreement"). The issue of withdrawing an annually-recurring subsidy in the sense of Article 7.8 of the SCM Agreement, addressed by the Appellate Body in *Upland Cotton*, is not pertinent to a dispute concerning compliance with the AD Agreement, which has no provision analogous to Article 7.8.

B. Future Administrative Reviews are Outside the Scope of This Proceeding

12. Japan would like to include in this proceeding any subsequent administrative reviews that it claims are "closely connected" to the DSB's recommendations and rulings. However, under Article 6.2 of the DSU, a panel request must identify the *specific* measures at issue, and under

Article 7.1, the Panel's terms of reference are limited to those specific measures. Here, each determination that sets a margin of dumping is separate and distinct, and under Article 6.2, Japan had to identify each such measure in its panel request. Further, the future measures are outside the scope of this proceeding because they were not in existence at the time of the Panel's establishment. As prior panels have recognized, a measure that did not yet exist at the time of panel establishment cannot be within a panel's terms of reference.

13. Japan cites *Australia – Salmon (Art. 21.5)* to support its argument that subsequent administrative reviews may be challenged. That dispute is inapposite to the facts before this Panel. Unlike in *Australia – Salmon (Art. 21.5)*, Japan here is not challenging future measures that are related to a regulatory standard that was adopted to comply with the recommendations and rulings of the DSB. Rather, Japan is trying to challenge subsequent administrative reviews, which occur upon request of interested parties on a schedule that is established without regard to dispute settlement proceedings and pursuant to rights and obligations established in the AD Agreement.

14. Japan further cites *EC – Bananas III (Art. 21.5) (US)* to argue that a compliance panel may consider a measure adopted years after the end of the RPT. That point, however, is irrelevant here. In the *EC – Bananas III (Art. 21.5)* dispute, the question before that panel did not pertain to a failure to specify the measure, as required by DSU Article 6.2. That panel's findings are therefore inapposite to this dispute.

15. On September 15, 2008, Japan asked the Panel for permission to file a supplemental submission concerning an alleged additional measure taken to comply by the United States – the final results of the 2006-07 administrative review of *Ball Bearings*. Whatever concerns Japan may have had about ripeness of the U.S. preliminary ruling are now irrelevant given Japan's request. The United States objects to Japan's request to file a supplemental submission. Japan never identified the 2006-07 administrative review in its request for establishment, as required by Article 6.2 of the DSU. The 2006-07 review is outside the scope of this Article 21.5 proceeding, and Japan does not have the right to file a submission on this alleged measure.

III. THE UNITED STATES HAS COMPLIED FULLY WITH THE DSB'S RECOMMENDATIONS AND RULINGS WITH RESPECT TO THE FIVE ADMINISTRATIVE REVIEWS

A. Japan Has Failed To Establish that this Dispute Requires the Recalculation of Final Liability Determined in the Five Administrative Reviews

16. Japan asserts that, to properly implement the DSB's recommendations and rulings, the United States must undo action taken with respect to imports that entered the United States prior to the date of implementation. Japan argues that the United States must recalculate the final antidumping liability by revising the importer-specific assessment rates determined in the five

administrative reviews. Japan's theory of implementation would create substantial inequalities between the implementation obligations for retrospective and prospective antidumping systems if implementation obligations in antidumping disputes extended to unliquidated imports which entered the United States prior to the date of implementation. This is because there is no analogous concept of unliquidated entries in a prospective system. Under Japan's theory of implementation, there would be *two* implementation obligations under a retrospective system. The Member would modify the measure as it applies to imports occurring after the date of implementation and recalculate final liability as to any prior unliquidated entries.

17. The additional obligation that Japan argues applies to the five administrative reviews in this dispute is to recalculate the final liability applicable to prior unliquidated entries. The crux of Japan's argument is that this obligation would exist in a prospective system if a refund proceeding under Article 9.3.2 of the AD Agreement was challenged at the WTO and the proceeding remained legally operational after the RPT. Japan's argument is unsubstantiated. Japan provides no evidence that Members operating prospective systems allow WTO obligations to be implemented in refund proceedings, and even if so, that does not mean that the Member would be properly interpreting the covered agreements. Furthermore, the operation of the prospective system of at least one Member demonstrates that Japan's argument is incorrect.

18. Japan also argues that limiting implementation obligations to imports entering after the RPT would create advantages for retrospective systems because it would allow the United States to maintain assessment rates indefinitely without an obligation to change these rates. Japan is incorrect. Once a measure is found to be WTO-inconsistent, the same obligation exists under a retrospective or prospective system, including to refrain from assessing duties on post-implementation entries based on the WTO-inconsistent measure. With respect to the five administrative reviews, the United States has withdrawn the measures and completed subsequent administrative reviews before the end of the RPT, and therefore no antidumping duties will be assessed on imports entering the United States after the end of the RPT on the basis of the five WTO-inconsistent determinations.

19. In each of the five administrative reviews, the United States determined final liability for the entries in dispute. This final liability was established through importer-specific assessment rates that were calculated in each of the administrative reviews. Revising this final liability as Japan requests would not constitute prospective implementation because it would require Commerce to undo past acts as to prior unliquidated entries. In this regard, the wording of Japan's argument is instructive. Japan is arguing that "the United States is required to *recalculate* the importer-specific assessment rate determined in the review to bring it into conformity with WTO law." This use of the term "recalculate" demonstrates that Japan is asking Commerce to undo past acts.

20. Japan references the fact that these entries remain unliquidated under U.S. law after the RPT. Japan's argument is premised on a misunderstanding of liquidation. Liquidation is the

ministerial act whereby U.S. Customs determines what is owed on an entry. For entries subject to an antidumping order, Customs would collect the antidumping duties – as previously determined by Commerce – and also collect regular customs duties. Contrary to Japan's misunderstanding, liquidation has nothing to do with the determination of final liability for antidumping duties; Commerce makes that final determination at the conclusion of an administrative review.

21. The United States calculated the final liability for the entries in the five administrative reviews but did not liquidate these entries. Liquidation did not occur because these entries were subject to domestic litigation in the United States that included court injunctions suspending liquidation during the pendency of the litigation. Japan's theory of U.S. implementation obligations is dependent on the existence of these injunctions because, without them, the United States would have liquidated all of the entries from the five administrative reviews long before the end of the RPT. Japan is attempting to rely on domestic U.S. litigation to alter its WTO rights.

22. In the U.S. retrospective antidumping system, the deadline for liquidation following an administrative review must occur within six months of Commerce's determination of final liability in an administrative review, unless such liquidation is enjoined by domestic litigation. Because WTO disputes will invariably last longer than six months, liquidation will always occur before the conclusion of a WTO dispute – *absent a domestic injunction*. For the five original administrative reviews, liquidation did not occur within six months for exactly this reason. The necessity of these injunctions demonstrates that Japan's attempt to expand implementation obligations to reach these prior unliquidated entries is not grounded in the rights and obligations found in the WTO Agreements.

23. In explaining that "prospective" and "retrospective" relief can only be determined by reference to the date of importation, the United States identified several provisions of the AD Agreement that support its argument, including Articles 8.6, 10.1, 10.6 and 10.8, as well as Article VI:2 of the *General Agreement on Tariffs and Trade 1994* ("GATT 1994") and its interpretative note. In response, Japan principally relies on Articles 18.3 and 9.3 of the AD Agreement to argue that implementation obligations must extend to prior unliquidated entries.

24. With respect to Article 18.3 of the AD Agreement, Japan notes that this provision provides that the AD Agreement applies to any administrative review based on an application made on or after January 2, 1995. Because the five challenged administrative reviews were initiated pursuant to applications made after that date, Japan reasons that there is no manner in which a requirement to revise importer-specific assessment instructions in the five reviews at issue can be viewed as imposing an obligation on the United States retroactively. Article 18.3 of the AD Agreement cannot mean what Japan asserts it means. As an initial matter, Article 18.3 of the AD Agreement simply provides a transition rule with respect to the new provisions of the AD Agreement and does not address the implementation obligations of Members pursuant to the

dispute settlement provisions, nor is it listed as a special or additional dispute settlement rule. Japan's argument also assumes what it wants to prove. Japan claims that a dispute based on a post-WTO entry-into-force application concerning pre-WTO entry-into-force entries could lead to a revision of those pre-entry-into-force entries. However, to reach that result assumes that there is an obligation to revise prior entries, but the validity of that assumption is precisely the question at issue.

25. Furthermore, through Article 18.3 of the AD Agreement, Japan attempts to introduce an implausible definition of "retroactivity" into WTO antidumping disputes. According to Japan, as long as a WTO dispute involves an administrative review that was based on an application received on or after January 2, 1995, then the dispute could result in an obligation to revise that administrative review *in any manner*. Article 18.3 of the AD Agreement cannot support application of such an implausible definition of "retroactive" to the AD Agreement.

26. With respect to Article 9.3 of the AD Agreement, Japan notes that this article contains disciplines that apply to importer-specific assessment instructions. According to Japan, an administrative review by definition determines an importer-specific assessment rate for entries occurring before initiation of the review, before a WTO dispute challenging the administrative review, and long before the end of the RPT. Japan concludes that the U.S. argument that implementation applies only to imports occurring after the date of implementation means that WTO-inconsistent assessment rates need never be brought into conformity, rendering Article 9.3 of the AD Agreement a nullity. U.S. implementation obligations under Article 9.3 of the AD Agreement are the same as those for a Member operating a prospective system. Under either system, if the results of a review pursuant to Article 9.3 are challenged and found to be WTO-inconsistent, implementation does not require the Member to undo the results of the review as to the period examined and (presumably) refund additional duties.

27. Japan's argument under Article 9.3 of the AD Agreement fails to distinguish between obligations that exist under the AD Agreement and implementation obligations under the DSU. The United States does not dispute that Article 9.3 of the AD Agreement obliges WTO Members to ensure that the amount of antidumping duty collected not exceed the margin of dumping established under Article 2 of the AD Agreement. However, the existence of this obligation does not establish that the United States must retroactively recalculate final antidumping liability. Japan attempts to bolster its Article 9.3 argument by citing to *US – Upland Cotton (Art. 21.5) (AB)* and arguing that the United States interpretation of the DSU compromises the effectiveness of the AD Agreement and conflicts with the objectives of the DSU. However, it is Japan's interpretation that would result in significant damage to the dispute settlement system by creating inequality between WTO dispute resolution in prospective and retrospective antidumping systems and by making implementation obligations entirely dependent upon domestic U.S. litigation.

B. Japan's Argument Improperly Relies on the Articles on Responsibility of States for Internationally Wrongful Acts

28. Japan argues that the International Law Commission's ("ILC") Articles on Responsibility of States for Internationally Wrongful Acts ("ILC Articles") confirm Japan's arguments with respect to the five original administrative reviews. The ILC Articles are not incorporated either expressly or implicitly into the covered agreements, and do not constitute an element of WTO law. In addition, when interpreting the provisions at issue in this proceeding, there is no reason for this Panel to invoke the ILC Articles for interpretive guidance or support. There is no provision in the *Vienna Convention* justifying reference to the ILC Articles. Lastly, the ILC Articles are not "relevant rules of international law" for purposes of this dispute. The ILC Articles themselves make plain that they are not intended to apply in the situation presented by this proceeding. Article 55 provides that the ILC Articles "do not apply where and to the extent that the conditions for the existence of an internationally wrongful act or the content or implementation of the international responsibility of a State are governed by special rules of international law." Here, the specific WTO provisions on dispute settlement and compliance trump the general rules as set forth in the ILC Articles.

C. Japan Has Not Established a Violation of DSU Articles 17.14, 21.1, and 21.3, nor a Violation of Article II of the GATT 1994

29. Japan argues that the United States has failed unconditionally to accept the Appellate Body's findings with respect to the five original administrative reviews in this dispute in violation of Article 17.14 of the DSU. Nothing Japan argues can change the fact that the United States unconditionally accepted the recommendations and rulings of the DSB in this dispute. Japan also argues that the alleged U.S. failure to promptly comply with the recommendations and rulings of the DSB concerning the five original administrative reviews is inconsistent with Articles 21.1 and 21.3 of the DSU. The United States maintains that these DSU provisions do not impose a substantive obligation on Members. The panel reports to which Japan cites do not support Japan's claims as to these articles.

30. The United States reiterates its general objection to Japan's Article II claims. These Article II claims are entirely derivative, and the Panel is not required to address them to resolve this dispute. Japan also failed to request findings from the Panel under these Article II claims. Even were the Panel to address Japan's claims under Article II of the GATT 1994, the United States notes that the liability for antidumping duties that Japan claims resulted in collection of duties above the bound rate was incurred prior to the expiration of the RPT. In addition, when the RPT expired, the United States was no longer collecting cash deposits pursuant to the administrative reviews that were subject to the DSB's recommendations and rulings.

D. Japan Has Failed To Establish a Continuing Violation of Articles 2.4 and 9.3 of the AD Agreement and Article VI:2 of the GATT 1994

31. The United States brought the five original administrative reviews into conformity with the AD Agreement and the GATT 1994 by withdrawing each of these measures. As such, these administrative reviews cannot serve as a basis to claim a continued violation of the covered agreements.

IV. THIS PANEL SHOULD NOT REACH THE MERITS OF JAPAN'S CLAIMS CONCERNING THE THREE SUBSEQUENT ADMINISTRATIVE REVIEWS

32. As the United States has explained here and in its prior submission, these reviews of *Ball Bearings from Japan* are not measures taken to comply and are not properly within the scope of this proceeding. Therefore, this Panel should not reach the issue of the WTO consistency of these alleged measures.

V. THE UNITED STATES HAS COMPLIED FULLY WITH THE DSB'S RECOMMENDATIONS AND RULINGS WITH RESPECT TO THE SUNSET REVIEW OF *ANTI-FRICTION BEARINGS*

33. In the underlying dispute, Japan challenged a specific aspect of the *AFB* sunset review, namely the reliance upon margins calculated with zeroing. The Appellate Body found that the United States acted inconsistently with the AD Agreement in that review, "when it relied on margins of dumping calculated in previous proceedings through the use of zeroing." Accordingly, both Japan's challenge and the Appellate Body's finding were limited to the extent the United States relied on margins from previous proceedings calculated *with zeroing*. Japan's assertion that the United States should have presented the arguments defending its reliance upon non-zeroed margins and pre-WTO margins in the original proceeding is unfounded.

34. Japan's reliance on the dispute settlement reports in *US – Gambling (Art. 21.5)* and *US – Shrimp (Art. 21.5)* is misplaced. In this dispute, the United States is not seeking a new finding on that part of the sunset review determination that was already litigated and on which there were recommendations and rulings. Rather, the United States is asking this Panel to examine issues which were never addressed by the panel or the Appellate Body (i.e., the reliance upon margins that were determined *without zeroing* or the margins that predated the AD Agreement).

35. Commerce in the sunset review of *AFB* was required to determine the likelihood of dumping on an order-wide basis, and did so by examining the results from administrative reviews concluded during the sunset review period. Its finding of likelihood of dumping was supported by higher than *de minimis* margins that were calculated without zeroing. In the fifth administrative review, Commerce reviewed twenty-one respondents, eleven of which failed to cooperate. For ten of those eleven respondents, Commerce applied the dumping margin of 106.61 percent that was based upon a petition rate calculated *without* zeroing. These respondents were not subsequently reviewed during the sunset period and their non-zeroed dumping margins represent their most recent dumping experience. These high dumping margins vitiate Japan's

argument that the order should have been terminated. It is entirely unreasonable to interpret the Appellate Body's findings in this dispute as prohibiting the United States from relying upon margins calculated without zeroing. Finally, Japan cites no authority that supports its argument that a Member cannot rely upon pre-WTO margins in making a sunset determination.

VI. THE UNITED STATES HAS COMPLIED WITH THE DSB'S RECOMMENDATIONS AND RULINGS WITH RESPECT TO THE ZEROING PROCEDURES

36. Japan misapprehends the DSB's recommendations and rulings concerning the "zeroing procedures." Those recommendations and rulings applied to the *single measure* known as the "zeroing procedures," regardless of the comparison methodology used or the type of antidumping proceeding. Japan, however, has de-constructed that single measure, and essentially treats each use of zeroing as a separate measure that the United States was required to withdraw.

37. The original panel was explicit that the zeroing procedures were a single measure that applied in all contexts and when using all comparison methodologies. The panel concluded that the "zeroing procedures" were "*a measure* which can be challenged as such." The Appellate Body upheld the panel's conclusion. It is clear that the original panel, and the Appellate Body, considered the zeroing procedures to be a single measure that was *always* applied in *any* comparison methodologies and in *any* antidumping proceeding – "whenever" Commerce calculates margins of dumping or assessment rates. Logically, if the United States stops using zeroing in any one of these different contexts, *as it did*, then the single measure is eliminated or withdrawn.

38. Japan now contradicts the very same position that it took in the original proceeding, and with which the panel and the Appellate Body agreed. Japan, for example, considered the zeroing procedures to be "a *single measure* that applies to W-to-W comparisons, T-to-T comparisons and W-to-T comparisons, used in any type of anti-dumping proceeding." According to Japan's own view, the zeroing procedures were a single measure applied in all contexts. Once the use of zeroing was eliminated in any one of these contexts, then the measure ceased to exist.