

**UNITED STATES – LAWS, REGULATIONS AND METHODOLOGY  
FOR CALCULATING DUMPING MARGINS ("ZEROING")**

Notification of an Appeal by the European Communities  
under Article 16.4 and Article 17 of the Understanding on Rules  
and Procedures Governing the Settlement of Disputes (DSU),  
and under Rule 20(1) of the Working Procedures for Appellate Review

The following notification, dated 17 January 2006, from the Delegation of the European Commission, is being circulated to Members.

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Pursuant to Article 16.4 and Article 17 of the DSU the European Communities hereby notifies to the Dispute Settlement Body its decision to appeal to the Appellate Body certain issues of law covered in the Panel report and certain legal interpretations developed by the Panel in the dispute *United States – Laws, Regulations and Methodology for Calculating Dumping Margins ("Zeroing")* (WT/DS294/R). Pursuant to Rule 20(1) of the *Working Procedures for Appellate Review*, the European Communities simultaneously files this Notice of Appeal with the Appellate Body Secretariat.

The European Communities considers that the Panel has failed to correctly apply customary rules of interpretation of public international law, as required by Article 3.2 of the DSU and Article 17.6(ii) of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Anti-Dumping Agreement)*, particularly as reflected in Articles 31 and 32 of the Vienna Convention on the Law of the Treaties.

For the reasons set out in its submissions to the Panel, and for the reasons to be further elaborated in its submissions to the Appellate Body, the European Communities appeals, and requests the Appellate Body to modify or reverse the legal findings and conclusions of the Panel, with respect to the following errors :

- (a) the Panel erred when it found that the United States did not act inconsistently with Articles 9.3 and 2.4 of the *Anti-Dumping Agreement* and Articles VI:1 and VI:2 of the GATT 1994, despite the fact that the United States did not ensure, in the measures at issue described in the third sentence of para 2.6 of the Panel Report, in the context of the "administrative review" proceedings listed in Exhibits EC-16 to EC-31, that the rate and amount of anti-dumping duty did not exceed the true margin of dumping established in accordance with Article 2, because the United States did not calculate a margin of dumping for the product as whole (Panel Report, paras 8.1(f) and (e), and 7.288, 7.284 and 7.248 to 7.285);
- (b) the Panel erred when it found that the United States did not act inconsistently with the obligation to make a fair comparison contained in the first sentence of Article 2.4 of the *Anti-Dumping Agreement* when, in the measures at issue described in the third

sentence of para 2.6 of the Panel Report, in the context of the "administrative review" proceedings listed in Exhibits EC-16 to EC-31, the United States used a methodology that, absent targeted dumping, involved asymmetrical comparison between "normal value" and "export price", in which, at an intermediate stage in the calculation of the margins of dumping, the prices at which export transactions above "normal value" were made were effectively adjusted downwards ("zeroing" any negative intermediate results) (Panel Report, paras 8.1(e), 7.284, 7.248 to 7.275, 7.281 to 7.283 and 7.285);

- (c) the Panel erred when it found that the United States did not act inconsistently with the third to fifth sentences of Article 2.4 of the Anti-Dumping Agreement when, in the measures at issue described in the third sentence of para 2.6 of the Panel Report, in the context of the "administrative review" proceedings listed in Exhibits EC-16 to EC-31, the United States used a methodology that involved, at an intermediate stage in the calculation of the margins of dumping, a zeroing adjustment not demonstrated to have been made for a difference affecting price comparability (Panel Report, paras 8.1(e), 7.284, 7.276 to 7.283 and 7.285);
- (d) the Panel erred when it found that the United States did not act inconsistently with Article 2.4.2 of the Anti-Dumping Agreement when, in the measures at issue described in the third sentence of para 2.6 of the Panel Report, in the context of the "administrative review" proceedings listed in Exhibits EC-16 to EC-31, the United States used a methodology that involved asymmetrical comparison between "normal value" and "export price", and in which, at an intermediate stage in the calculation of the margins of dumping, the prices at which export transactions above "normal value" were made were effectively adjusted downwards ("zeroing" any negative intermediate amounts), without complying with the conditions and obligations set out in that provision (Panel Report, paras 8.1(d), 7.223, 7.142 to 7.222 and 7.285);
- (e) the Panel erred when it found that the Standard Zeroing Methodology used by the United States in "administrative review" proceedings is not inconsistent with Articles 2.4, 2.4.2, 9.3, 11.1, 11.2, 1 and 18.4 of the *Anti-Dumping Agreement*; Articles VI:1 and VI:2 of the GATT 1994; and Article XVI:4 of the *WTO Agreement* (Panel Report, paras 8.1(g) and 7.289 to 7.291);
- (f) the Panel erred when it exercised judicial economy on the question of whether the Manual is a measure inconsistent with Articles 2.4, 2.4.2, 5.8, 9.3, 9.5, 11.1, 11.2, 11.3, 1 and 18.4 of the *Anti-Dumping Agreement*; Articles VI:1 and VI:2 of the GATT 1994; and Article XVI:4 of the *WTO Agreement* (Panel Report, paras 7.107 and 7.289 to 7.294);
- (g) the Panel erred when it found, in the context of "administrative review" proceedings, that Section 351.414(c)(2) of the Regulations is not as such inconsistent with Articles 2.4, 2.4.2, 9.3, 11.1, 11.2, 1 and 18.4 of the *Anti-Dumping Agreement*; Articles VI:1 and VI:2 of the GATT 1994; and Article XVI:4 of the *WTO Agreement* (Panel Report, paras 8.1(g) and 7.289 to 7.291);
- (h) the Panel erred when it found, with respect to new shipper proceedings, changed circumstances proceedings, and sunset proceedings, that the Standard Zeroing Methodology and Section 351.414(c)(2) of the Regulations are not as such inconsistent with Articles 2.4, 2.4.2, 9.3, 9.5, 11.1, 11.2, 11.3, 1 and 18.4 of the *Anti-Dumping Agreement*; Articles VI:1 and VI:2 of the GATT 1994; and Article XVI:4 of the *WTO Agreement* (Panel Report, paras 8.1(h) and 7.292 to 7.294);

- (i) the Panel erred when it exercised judicial economy on the question of whether or not "administrative review" proceedings based on model zeroing are consistent with Article 9.3 of the *Anti-Dumping Agreement* (Panel Report, paras 6.4 to 6.6 and 7.34);
- (j) the Panel erred when it exercised judicial economy on the question of whether or not model zeroing is consistent with Article 2.4 of the *Anti-Dumping Agreement* (Panel Report, paras 8.2, 7.33 and 7.108);
- (k) the Panel erred when it dismissed the EC's claims under Articles 11.1 and 11.2 of the *Anti-Dumping Agreement* (Panel Report, paras 8.1(f), 7.143 and 7.286 to 7.288);
- (l) the Panel erred when it dismissed other of the EC's claims, considered by the Panel to be "dependent" (Panel Report, paras 8.1(f), 8.2, 7.34, 7.109 and 7.286 to 7.288); and
- (m) the Panel failed to make an objective assessment of the matter before it, including (as appropriate) an objective assessment of the facts of the case and the applicability of and conformity with the relevant covered agreements, as required by Article 11 of the DSU.

The EC had also claimed before the Panel that the Standard Zeroing Procedures used by the United States are a measure or part of a measure and are inconsistent with Articles 2.4, 2.4.2, 5.8, 9.3, 1 and 18.4 of the *Anti-Dumping Agreement*, Articles VI:1 and VI:2 of the GATT 1994 and Article XVI:4 of the *WTO Agreement*. It appears to the EC that the Panel has considered these Standard Zeroing Procedures to be part of or a reflection of the methodology that it held to be as such inconsistent with the obligations of the US in the case of original proceedings (and consistent with the obligations of the US in the case of "administrative review" proceedings). However, this is not expressly stated by the Panel and if the Appellate Body should consider this not to be the case (and that bringing the methodology into conformity with the WTO obligations of the US would not necessarily require bringing the Procedures into conformity), the EC conditionally appeals and asks the Appellate Body to find that the Standard Zeroing Procedures are as such inconsistent with the obligations of the US in the case of original proceedings, "administrative review" proceedings, new shipper proceedings, changed circumstances proceedings and sunset proceedings. (Panel Report, paras 8.1(c), 7.106 and 7.96 to 7.97; Panel Report, paras 8.1(g) and 7.289 to 7.291; and Panel Report, paras 8.1(h) and 7.292 to 7.294).

With regard to Practice, the EC appeals the exercise of judicial economy by the Panel with respect to the US Practice of zeroing in original proceedings, "administrative review" proceedings, new shipper proceedings, changed circumstances proceedings and sunset proceedings.

The EC also requests the Appellate Body to complete the analysis of the Panel where it reverses or modifies findings of the Panel and completion of the analysis is necessary to resolve this dispute.

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