

**UNITED STATES – FINAL ANTI-DUMPING MEASURES
ON STAINLESS STEEL FROM MEXICO**

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

The following notification dated 31 January 2008, from the delegation of Mexico, is being circulated to Members.

Pursuant to Articles 16.4 and 17 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (DSU) and Rule 20(1) of the *Working Procedures for Appellate Review*, Mexico hereby notifies its decision to appeal to the Appellate Body certain issues of law covered in the Panel Report on *United States – Final Anti-Dumping Measures on Stainless Steel from Mexico* (WT/DS344/R) (Panel Report), and certain legal interpretations developed by the Panel in this dispute.

At issue is "simple zeroing," whereby the United States investigating authorities, in a periodic review, compare individual export transactions against average normal values and do not fully take into account the results of comparisons where the export price exceeds the average normal value when such results are aggregated in order to calculate the exporter's or producer's margin of dumping for the product under consideration.¹

In making its findings and conclusions regarding simple zeroing, the Panel failed to interpret the relevant provisions of the *General Agreement on Tariffs and Trade 1994* (GATT 1994) and the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* (*Anti-Dumping Agreement*) in accordance with the customary rules of interpretation of public international law as required by Articles 3.2 and 11 of the DSU and Article 17.6(ii) of the *Anti-Dumping Agreement*. In particular, the relevant interpretations set out in the Panel Report are at odds with the rules of treaty interpretation in Articles 31 and 32 of the *Vienna Convention on the Law of Treaties*.

Mexico seeks review by the Appellate Body of the following:

1. The Panel's findings and conclusions that "simple zeroing" in periodic reviews is "as such" not inconsistent with Articles VI:1 and VI:2 of the GATT 1994 and Articles 2.1, 9.3 of the *Anti-Dumping Agreement*.² These findings and conclusions are based on an erroneous

¹ See Panel Report, paragraphs 7.7 and 7.84-7.97.

² See Panel Report, paragraphs 7.145, 7.149, and 8.1(c).

interpretation and application of these provisions. In particular, the Panel erred in finding that:

- (i) Articles VI:1 and VI:2 of the GATT 1994 and Articles 2.1 and 9.3 of the *Anti-Dumping Agreement* do not require, for purposes of periodic reviews, that "dumping" and "margins of dumping" be determined for the "product" under investigation as a whole and, instead, permit a determination of dumping for individual export transactions³;
 - (ii) Articles VI:1 and VI:2 of the GATT 1994 and Articles 2.1 and 9.3 of the *Anti-Dumping Agreement*, do not require, for the purposes of periodic reviews, that "dumping" and "margins of dumping" be determined for each exporter and producer subject to the proceeding and, instead, permit a determination of dumping for individual importers or import transactions⁴; and
 - (iii) Articles VI:1 and VI:2 of the GATT 1994 and Articles 2.1 and 9.3 of the *Anti-Dumping Agreement*, do not prohibit simple zeroing in periodic reviews.⁵
2. The Panel's findings and conclusions that "simple zeroing" in periodic reviews is "as such" not inconsistent with Article 2.4 of the *Anti-Dumping Agreement*.⁶ This conclusion is based on an erroneous interpretation and application of Articles VI:1 and VI:2 of the GATT 1994 and Articles 2.1 and 9.3 of the *Anti-Dumping Agreement*, as described in paragraph 1.⁷
3. The Panel's findings and conclusions that by applying simple zeroing in the five periodic reviews on *Stainless Steel Sheet and Strip in Coils from Mexico* identified by Mexico in its request for establishment of a panel, the U.S. Department of Commerce (USDOC), did not act inconsistently with Articles VI:1 and VI:2 of the GATT 1994 and Articles 2.1, 2.4 and 9.3 of the *Anti-Dumping Agreement*.⁸ This conclusion is based on an erroneous interpretation and application of these provisions, as described in the above paragraphs.
4. The Panel's findings and conclusions that directly contradict those in adopted Appellate Body reports and force a WTO Member to appeal findings and conclusions that have already been specifically overturned on appeal. In the particular circumstances of this dispute, such findings and conclusions are inconsistent with the function of the Panel which, under Article 11 of the DSU, is to assist the Dispute Settlement Body (DSB) in discharging its responsibilities under the DSU. Underlying those responsibilities are Articles 3.2 and 3.3 of the DSU which establish that the WTO dispute settlement system is a "central element in providing security and predictability" and that the "prompt settlement of situations" is "essential to the effective functioning of the WTO".
5. The Panel's failure to consider in their entirety the claims presented by Mexico relating to the inconsistency of zeroing with Article 2.4 of the *Anti-Dumping Agreement*. By failing to fully address these claims the Panel failed to make an objective assessment of the matter before it as required by Article 11 of the DSU.

³ See, for example, Panel Report, paragraphs 7.117 to 7.123.

⁴ See, for example, Panel Report, paragraphs 7.124 to 7.128.

⁵ See Panel Report, paragraphs 7.129-7.143 and 7.146-7.148.

⁶ See Panel Report, paragraphs 7.145 and 8.1(c).

⁷ See Panel Report, paragraph 7.145.

⁸ See, for example, Panel Report, paragraphs 7.149 and 8.1(d).

Mexico considers that the Panel erred in law in the interpretation and application of Articles VI:1 and VI:2 of the GATT 1994 and Articles 2.1, 2.4, and 9.3 of the *Anti-Dumping Agreement* and acted inconsistently with Article 11 of the DSU. Mexico requests that, upon reversal of the Panel's erroneous findings and conclusions identified above, the Appellate Body resolve this dispute promptly by finding that simple zeroing is "as such" inconsistent with Articles VI:1 and VI:2 of the GATT 1994 and Articles 2.1, 2.4, and 9.3 of the *Anti-Dumping Agreement*, and that the United States violated these provisions by applying simple zeroing in the five periodic reviews identified by Mexico.
