

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

Notification of an Other Appeal by the United States  
under Article 16.4 and Article 17 of the Understanding on Rules  
and Procedures Governing the Settlement of Disputes (DSU)  
and Rule 23(1) of the Working Procedures for Appellate Review

The following notification, dated 30 January 2006, from the Delegation of the United States, is being circulated to Members.

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Pursuant to Article 16 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU") and Rule 23(1) of the *Working Procedures for Appellate Review*, the United States hereby notifies its decision to appeal to the Appellate Body certain issues of law covered in the Report of the Panel in *United States – Laws, Regulations and Methodology for Calculating Dumping Margins ("Zeroing")* (WT/DS294/R) ("Panel Report") and certain legal interpretations developed by the Panel in this dispute.

The United States seeks review of the Panel's legal conclusion that the United States maintains a "zeroing methodology" that, as it relates to original investigations, is a norm which, as such, is inconsistent with Article 2.4.2 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* ("AD Agreement").<sup>1</sup> This conclusion is in error and is based on erroneous findings on issues of law and related legal interpretations, including the following:

1. The standard used by the Panel to identify "zeroing methodology" as a purported measure for purposes of determining whether there was a breach of Article 2.4.2 of the AD Agreement is erroneous as a matter of law.<sup>2</sup>
2. The Panel's finding that "zeroing methodology" constituted a "measure" because it is a norm is erroneous, as is its subsequent finding that this "measure" breaches Article 2.4.2 of the AD Agreement.<sup>3</sup>

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<sup>1</sup>The Panel's conclusion and the articulation of the reasons therefore are set forth in Panel Report, paragraphs 7.91-7.106 and 8.1(c).

<sup>2</sup>The standard used by the Panel is set forth largely in Panel Report, paragraphs 7.98-7.100.

<sup>3</sup>The Panel's finding is set forth largely in Panel Report, paragraphs 7.101-7.104.

3. The Panel failed to apply a correct analysis in finding that a measure allegedly taken by the United States – the so-called "zeroing methodology" – is "as such" inconsistent with Article 2.4.2 of the AD Agreement, and, in any event, failed to make an objective assessment under Article 11 of the DSU.<sup>4</sup>

4. The Panel relieved the European Communities of its burden of proving the existence of a measure that is inconsistent with Article 2.4.2 of the AD Agreement.<sup>5</sup>

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<sup>4</sup>The Panel's "as such" analysis appears to be set forth in Panel Report, paragraphs 7.104-7.105.

<sup>5</sup>This error is reflected in the Panel's overall analysis set forth in Panel Report, paragraphs 7.91-7.106.