

**UNITED STATES – CONTINUED EXISTENCE AND APPLICATION  
OF ZEROING METHODOLOGY**

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 under Rule 23(1) of the Working Procedures for Appellate Review

The following notification, dated 18 November 2008, 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 – Continued Existence and Application of Zeroing Methodology* (WT/DS350/R) (“Panel Report”) and certain legal interpretations developed by the Panel in this dispute.

1. The United States seeks review by the Appellate Body of the Panel’s finding that Members need not consult on a measure prior to requesting a panel to review that measure. In particular the United States seeks review by the Appellate Body of the Panel’s finding that the 14 periodic reviews and sunset reviews that were identified in the EC’s panel request, but not in the EC’s consultations request, were within the Panel’s terms of reference.<sup>1</sup> This finding is in error and is based on erroneous findings on issues of law and related legal interpretations, including an incorrect interpretation of Articles 4, 6, and 7 of the DSU and Articles 17.3, 17.4, and 17.5 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* (“AD Agreement”).

2. The United States seeks review of the Panel’s conclusion that the United States acted inconsistently with its obligations under Article VI:2 of the *General Agreement on Tariffs and Trade 1994* (“GATT 1994”) and Article 9.3 of the AD Agreement by applying simple zeroing in the 29 periodic reviews at issue in this dispute.<sup>2</sup> This conclusion is in error and is based on erroneous findings on issues of law and related legal interpretations, including the improper interpretation and application of Article 17.6(ii) of the AD Agreement, Article 9.3 of the AD Agreement, and Article VI:2 of the GATT 1994.

3. The United States requests the Appellate Body to find that the Panel failed to make “an objective assessment of the matter before it, including 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 with respect to the EC’s claims that the United States acted inconsistently with

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<sup>1</sup>See, e.g., Panel Report, paras. 7.17-7.28; 8.1(a).

<sup>2</sup>See, e.g., Panel Report, paras. 7.162-7.169; 7.178-7.183; 8.1(e).

its obligations under Article 11.3 of the AD Agreement in the eight sunset reviews at issue.<sup>3</sup> The Panel's failure to undertake an objective assessment includes the erroneous finding that the EC made a *prima facie* case that the margins in the underlying prior investigations were obtained through so-called model zeroing.

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<sup>3</sup>See, e.g., Panel Report, paras. 7.192-7.202; 8.1(f).