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**UNITED STATES – CONTINUED DUMPING AND
SUBSIDY OFFSET ACT OF 2000**

Notification of an Appeal by the United States
under paragraph 4 of Article 16 of the Understanding on Rules
and Procedures Governing the Settlement of Disputes (DSU)

The following notification, dated 18 October 2002, sent by the United States to the Dispute Settlement Body (DSB), is circulated to Members. This notification also constitutes the Notice of Appeal, filed on the same day with the Appellate Body, pursuant to the *Working Procedures for Appellate Review*.

Pursuant to Article 16 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU") and Rule 20 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 single panel established in response to the requests of Australia, Brazil, Canada, Chile, the European Communities, India, Indonesia, Japan, Korea, Mexico, and Thailand in the disputes *United States – Continued Dumping and Subsidy Offset Act of 2000* ("CDSOA") (WT/DS217/R and WT/DS234/R) and legal interpretations developed by the Panel.

1. The United States seeks review by the Appellate Body of the Panel's legal conclusion that the Continued Dumping and Subsidy Offset Act of 2000 ("CDSOA") is inconsistent with Articles VI:2 and VI:3 of the *General Agreement on Tariffs and Trade* 1994 ("GATT 1994"), Article 18.1 of the *Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade* 1994 ("Antidumping Agreement") and Article 32.1 of the *Agreement on Subsidies and Countervailing Measures* ("SCM Agreement"). These findings are in error, and are based on erroneous findings on issues of law and related legal interpretations with respect to Articles VI:2 and VI:3 of GATT 1994, Article 18.1 of the Antidumping Agreement and Article 32.1 of the SCM Agreement, including, for example:

- (a) the Panel's legal conclusions that the CDSOA acts specifically in response to dumping, the CDSOA has an adverse bearing on dumping, the CDSOA operates against dumping, actions objectively capable of offsetting or preventing dumping or subsidization constitute action against dumping or subsidization, and Article 18.1 of the Antidumping Agreement and Article 32.1 of the SCM Agreement apply to the CDSOA or to specific actions that have an adverse bearing on the practice of dumping or the practice of subsidization;
- (b) the Panel's legal conclusion that Article 18.1 of the Antidumping Agreement and Article 32.1 of the SCM Agreement include a conditions of competition or competitive advantage test;

- (c) the Panel's legal conclusions that the Appellate Body's interpretation of GATT Article VI:2 and the Antidumping Agreement in *US – 1916 Act* applies equally to GATT Article VI:3 and the SCM Agreement, and that Part III and Part V of the SCM Agreement contain the only permissible remedies for subsidization;
- (d) the Panel's legal conclusion that the CDSOA constitutes specific action against the practice of dumping and specific action against the practice of subsidization;
- (e) the Panel's legal conclusion that the CDSOA acts "against" dumping and/or a subsidy because of a claimed adverse impact on the competitive relationship between dumped/subsidized imports and the goods produced by "affected domestic producers," and the improper shifting of the burden of proof to the United States to prove that the CDSOA does not have an adverse bearing on the competitive relationship between dumped/subsidized imports and the goods produced by "affected domestic producers;"
- (f) the Panel's legal conclusion that it need not examine footnote 24 of the Antidumping Agreement and footnote 56 of the SCM Agreement because it had already concluded that the CDSOA constitutes "specific action" against dumping and subsidization;
- (g) the Panel's legal conclusion that the legislative intent of the CDSOA is relevant to determining whether the CDSOA is consistent with WTO obligations; and
- (h) the Panel's legal conclusion that the CDSOA creates a "financial incentive" to file or support dumping/countervail petitions and therefore acts "against" dumping and/or a subsidy.

2. The United States seeks review by the Appellate Body of the Panel's legal conclusion that the CDSOA is inconsistent with Article 5.4 of the Antidumping Agreement and Article 11.4 of the SCM Agreement. These findings are in error, and are based on erroneous findings on issues of law and on related legal interpretations with respect to Article 5.4 of the Antidumping Agreement and Article 11.4 of the SCM Agreement, including, for example:

- (a) the Panel's legal conclusion that the CDSOA violates Article 5.4 of the Antidumping Agreement and Article 11.4 of the SCM Agreement despite its findings that the U.S. has implemented these obligations under various provisions of U.S. law, that the CDSOA does not amend these laws and that U.S. investigating authorities observe the quantitative thresholds;
- (b) the Panel's legal conclusion that the CDSOA renders the quantitative thresholds in Article 5.4 of Antidumping Agreement and 11.4 of the SCM Agreement meaningless;
- (c) the Panel's legal conclusion that the CDSOA violates Article 5.4 of the Antidumping Agreement and Article 11.4 of the SCM Agreement because it "in effect mandates" domestic producers to support the initiation of dumping/countervail investigations and/or creates a financial incentive for domestic producers to support the initiation of dumping/countervail investigations; and
- (d) the Panel's legal conclusion that the United States has not acted in good faith in enacting the CDSOA.

3. The United States seeks review by the Appellate Body of the Panel's legal conclusion that the CDSOA violates Article 18.4 of Antidumping Agreement, Article 32.5 of the SCM Agreement, and Article XVI:4 of the Marrakesh Agreement Establishing the World Trade Organization.

4. The United States seeks review by the Appellate Body of the Panel's legal conclusion that the benefits accruing to the Complaining Parties under the WTO Agreement have been nullified or impaired.

5. The United States seeks review by the Appellate Body of the Panel's legal conclusion that the Panel has the discretion under Article 9.2 to reject a party's request for the Panel to submit separate reports.
