

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

Recourse to Article 22.6 of the DSU by the United States

Communication from the Arbitrator

The following communication has been received on 10 February 2012, from the Chairman of the Arbitrator, with the request that it be circulated to the Dispute Settlement Body.

In a communication dated 6 February 2012, the European Union and the United States have jointly requested the Arbitrator to suspend its work for a further period of four months and 22 days and informed the Arbitrator of their Memorandum with respect to the dispute (see the request attached).

On the basis of this request, the Arbitrator has decided to suspend its work for a further period.

The suspension can be terminated at any time at the written request of either Party. The suspension will be limited to four months and 22 days, and absent any contrary written communication from the European Union within that period, the suspension will be automatically terminated and the work of the Arbitrator will resume on 29 June 2012.

The last date at which a "contrary written communication" from the European Union referred to above may be received by the Arbitrator is 28 June 2012.

In the event that no such "contrary written communication" or written request for resumption from either party has been received by the Arbitrator by 28 June 2012, it will resume its work on 29 June 2012 and circulate its Decision on 12 July 2012.

ATTACHMENT

Mr. Felipe Jaramillo
Chairman of the Arbitration Panel/Arbitrator¹
*United States – Laws, Regulations and Methodology
for Calculating Dumping Margins (“Zeroing”) - Recourse
to Article 22.6 of the DSU by the United States (DS294)*
World Trade Organization
Centre William Rappard
Rue de Lausanne 154
1211 Geneva 21

6 February 2012

Dear Mr. Jaramillo,

The United States and the European Union (the "Parties") wish to thank you and the other Members of the Arbitration Panel/Arbitrator for being available to serve in the above-referenced proceeding.

The United States and the European Union recall their joint communication to the Arbitration Panel/Arbitrator dated 13 January 2012, and the subsequent communication from the Arbitration Panel/Arbitrator dated 16 January 2012 by which the Arbitration Panel/Arbitrator decided to extend the suspension of its work until 6 February 2012.

The Parties would like to inform the Arbitrator/Arbitration Panel of the attached Memorandum with respect to this dispute. In that context, the United States respectfully requests the Arbitrator/Arbitration Panel to suspend its work for a further period of four months and 22 days (that is, until Thursday 28 June 2012) – on the same terms. In light of that, and having regard to Article 12.12 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU)*,² the European Union joins the United States in making such request, subject to the following conditions.

The Parties hereby agree the following matters, to be incorporated expressly or by reference in any decision by the Arbitration Panel/Arbitrator to extend suspension:

- the suspension can be terminated at any time at the written request of either Party;
- the extension of the suspension will be limited to four months and 22 days, and absent any contrary written communication from the European Union within that period, the suspension will be automatically terminated and the work of the Arbitration Panel/Arbitrator will resume on the day following the expiry of the four months and 22 days;

¹ The Parties recall that they have different views concerning what is the correct terminology to use in these proceedings, but are resolved that this joint letter should not imply that either Party relinquishes its position of principle with respect to that matter.

² The European Union recognizes that the Parties may have different views on whether Article 12.12 of the *DSU* applies or applies by analogy in these proceedings, or whether the Arbitration Panel/Arbitrator has an implied or inherent power to suspend, and that the Parties are resolved that this joint letter should not imply that either Party relinquishes its position of principle with respect to that matter.

- the suspension is without prejudice to any of the Parties' claims and arguments in these dispute settlement proceedings, including the question of whether or not nullification or impairment during any period of suspension is to be accounted for in the suspension of concessions or other obligations;
- this joint request is conditional upon the Arbitration Panel/Arbitrator not deciding that its authority has lapsed pursuant to Article 12.12 of the *DSU* or otherwise as a result of a further suspension. If the Arbitration Panel/Arbitrator considers that will occur then neither Party makes this request for further suspension;
- neither Party will ever claim or argue that the occurrence of a suspension period equal to or in excess of 12 months in this dispute results in a lapse of the authority of the Arbitration Panel/Arbitrator, or otherwise extinguishes or diminishes any right enjoyed by the other Party pursuant to the covered agreements; and
- suspension will not otherwise affect the rights and obligations of either Party under the *Marrakesh Agreement Establishing the World Trade Organization* or in these dispute settlement proceedings.

For the United States

For the European Union

David P. Shark
Chargé d'affaires a.i.

Detlev Brauns
Chargé d'affaires a.i.

Attachement

MEMORANDUM

THE UNITED STATES AND THE EUROPEAN COMMISSION

The United States and the European Commission envisage a roadmap addressing the disputes *United States – Laws, Regulations and Methodology for Calculating Dumping Margins ("Zeroing")* (WT/DS294) and *United States – Continued Existence and Application of Zeroing Methodology* (WT/DS350) which is annexed as an integral part to this document.

This document is not an international agreement between the United States and the European Commission; it does not change the rights and obligations of the United States and the European Union under the WTO Agreement; and it does not otherwise create any legal obligations between the United States and the European Union or between the signatories.

Signed at Geneva on this 6th day of February 2012

(signed)
FOR THE UNITED STATES

(signed)
FOR THE EUROPEAN COMMISSION

ROADMAP

In order for the United States and the European Commission to address the disputes *United States – Laws, Regulations and Methodology for Calculating Dumping Margins ("Zeroing")* (WT/DS294) and *United States – Continued Existence and Application of Zeroing Methodology* (WT/DS350), the United States and the European Commission envisage the following roadmap.

This roadmap, or the taking of any of the steps contemplated by this roadmap by the United States or the European Commission, is without prejudice to either side's position of principle regarding the remedies available under WTO dispute settlement:

The European Commission understands its position of principle to be based on the text of the *Dispute Settlement Understanding* (DSU), and findings and recommendations of the Dispute Settlement Body (DSB) in WT/DS294 and WT/DS350. The European Commission considers that compliance with these DSB findings and recommendations is required with effect from the end of the respective reasonable period of time, and that all anti-dumping duties assessed or collected with zeroing after the end of the reasonable period of time are subject to implementation. The European Commission considers that under the DSU the level of suspension of concessions or other obligations shall be based on the level of nullification or impairment suffered as from the end of the reasonable period of time.

The United States understands its position of principle to be based on the text of the DSU, recommendations and rulings of the DSB in numerous disputes, including WT/DS294 and WT/DS350, and prior awards in arbitrations held under the DSU. The United States considers that every WTO Member is required to comply with its WTO obligations not just from the end of the reasonable period of time, but from the time it becomes a Member of the WTO. The United States considers that under the DSU the level of suspension of concessions or other obligations in any period of time must be equivalent to the nullification or impairment in the corresponding period of time, and that the level is not to include an additional amount based on prior or cumulative levels of nullification or impairment.

I. OPERATIONAL ASPECTS

It is envisaged that:

1. By no later than 7 days after the start date of this roadmap (defined as the signature date of the cover memorandum), and subject to U.S. domestic legal requirements, the United States completes the process under Section 123 of the Uruguay Round Agreements Act to modify its methodologies, as described in the notice *Antidumping Proceedings: Calculation of the Weighted Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings*, 75 FR 81533 (Dec. 28, 2010), by signing the final modification.
2. By no later than 12 days after the start date, the United States begins the Section 129 proceedings listed in the Annex by transmittal of a written request from the Office of the United States Trade Representative to the Department of Commerce.
3. By no later than 4 months after the start date, the United States Department of Commerce issues final determinations in the Section 129 proceedings listed in the Annex.
4. So long as no later than 12 days after the start date the United States begins the Section 129 procedures listed in the Annex and no later than 4 months after the start date the United States Department of Commerce issues final determinations in the Section 129 proceedings listed in the

Annex, the European Union and the United States continue the suspension of the work of the Arbitrator/Arbitration Panel until, as described below, the Arbitrator/Arbitration Panel notifies the DSB that it is not necessary for the Arbitrator/Arbitration Panel to issue an award.

5. Within 15 days after the United States completes the Section 129 proceedings listed in the Annex:

(a) The European Union, by letter to the chair of the Dispute Settlement Body, withdraws its request to the DSB made pursuant to Article 22.2 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* in document WT/DS294/35; and

(b) The European Union and the United States submit a joint letter to the Article 22.6 Arbitrator/Arbitration Panel noting that the European Union has withdrawn its Article 22.2 request; informing the Arbitrator/Arbitration Panel that the United States accordingly no longer makes objections under Article 22.6 of the DSU; and requesting that the Arbitrator/Arbitration Panel notify the DSB that it is not necessary for the Arbitrator/Arbitration Panel to issue an award.

II. CONTINUING DISCUSSIONS

Further discussions with respect to issues related to the disputes are envisaged, including:

1. Monitoring and periodically reviewing the operation of this roadmap.
2. Carrying out additional bilateral consultations regarding the operation of this roadmap within 15 days after the receipt of a request for consultations by either side.
3. Consulting on any remaining issues with respect to the disputes with a view to reaching and notifying to the DSB a mutually agreed solution to the disputes.

III. OTHER MATTERS

1. Except as specified above, the European Union takes no further action under the DSU with respect to the disputes WT/DS294 and WT/DS350.

ANNEX

It is envisaged that:

1. The United States conducts proceedings pursuant to section 129 of the Uruguay Round Agreements Act to revise current cash deposit rates established on the basis of prior administrative review determinations for the following exporters/producers covered by the associated antidumping duty orders. Implementation of the results of the section 129 determinations is effective for subject merchandise entering the United States from the relevant exporter/producer for all unliquidated entries that enter the United States on or after the date the United States completes the section 129 proceedings.

2. For the purposes of this roadmap, the section 129 proceedings are completed on the date by which the U.S. Trade Representative has directed the U.S. Department of Commerce to implement each and every section 129 determination listed below that would result in a change in the current cash deposit rate. Completion of the section 129 proceedings will occur within 7 days of the Department of Commerce issuing its final determinations in the section 129 proceedings.

3. No additional section 129 determinations are necessary.

4. The United States Department of Commerce issues final determinations in the following Section 129 determinations within 4 months after the start date of this roadmap.

1. Stainless Steel Plate in Coils from Belgium

A-423-808

ArcelorMittal Stainless Belgium N.V.

2. Steel Concrete Reinforcing Bars from Latvia

A-449-804

Joint Stock Company Liepajas Metalurgs

3. Carboxymethylcellulose from Finland

A-405-803

CP Kelco

4. Pasta from Italy

A-475-818

09-10

Garofalo

Tomasello

Agritalia

Erasmo

Indalco

Labor

PAM

P.A.P.

Afeltra

Fabianelli

Riscossa

Rustichella

07-08

PAM (for non-selected rate)

Garofalo (for non-selected rate)

IAPC/Pasta Lensi

Pagani

06-07

Divella

Pasta Zara

Gaetano

Felicetti

04-05

Atar

Corticella

Combattenti

03-04

Barilla

02-03

Russo

Di Nola

98-99

LaMolisana

5. Carboxymethylcellulose from the Netherlands

A-421-811

Azko Nobel BV

CP Kelco BV

6. Stainless Steel Wire Rod from Spain

A-469-807

Roldan S.A.

7. Granular Polytetrafluoroethylene Resin from Italy

A-475-703

Solvay Solexis SpA (formerly Ausimont SpA)

8. Certain Cut-to-Length Carbon Quality Steel Plate from Italy*

A-475-826

Palini & Bertoli SpA

* The United States and the European Commission envisage that a section 129 determination will be unnecessary for any administrative reviews covered by this order if there is no domestic court challenge to the determination of the U.S. International Trade Commission leading to the revocation of the order.
