

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

Recourse by the European Communities to Article 22.7 of the DSU

The following communication, dated 10 November 2004, from the delegation of the European Communities to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 22.7 of the DSU.

The European Communities requests that the Dispute Settlement Body considers, at the forthcoming meeting on 24 November 2004, the following agenda item:

- **United States – Continued Dumping and Subsidy Offset Act of 2000**

Recourse by the European Communities to Article 22.7 of the Understanding on Rules and Procedures Governing the Settlement of Disputes

The Panel and the Appellate Body found that the Continued Dumping and Subsidy Offset Act of 2000 ("CDSOA") was inconsistent with the United States' obligations under the General Agreement on Tariffs and Trade 1994 ("GATT 1994"), the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, the Agreement on Subsidies and Countervailing Measures and the Marrakesh Agreement establishing the World Trade Organization. On 27 January 2003, the Dispute Settlement Body ("DSB") adopted the Appellate Body report and the Panel report as modified by the Appellate Body report. The United States stated that it intended to implement the recommendations and rulings of the DSB but failed to do so within the reasonable period of time, as determined by the arbitrator pursuant to Article 21.3(c) of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU"), which expired on 27 December 2003.

Consequently, on 15 January 2004, the European Communities requested the authorization to suspend the application to the United States of tariff concessions and related obligations under GATT 1994 in an amount to be determined every year on the basis of the amount of offset payments made to affected domestic producers in the latest annual distribution of anti-dumping and countervailing duties under the CDSOA.

On 23 January 2004, the United States objected to the level of suspension proposed and on 26 January 2004, pursuant to Article 22.6 of the DSU, the matter was referred to arbitration. On 31 August 2004, the arbitrator issued its decision as follows:

V. AWARD OF THE ARBITRATOR

5.1 For the reasons set out above, we determine that, in the matter *United States – Continued Dumping and Subsidy Offset Act of 2000 (Original Complaint by the European Communities)*, the level of nullification or impairment suffered by the European Communities in a particular year can be deemed to be equal to the total of disbursements made under the CDSOA for the preceding year relating to anti-dumping or countervailing duties paid on imports from the European Communities, multiplied by the coefficient identified in Section III.D above.

5.2 Accordingly, we decide that the suspension by the European Communities of concessions or other obligations in the form of the imposition of an additional import duty above bound custom duties on a list of products originating in the United States covering, on a yearly basis, a *total value of trade* not exceeding, in US dollars, the amount resulting from the following equation:

Amount of disbursements under CDSOA for the most recent year for which data are available relating to anti-dumping or countervailing duties paid on imports from the European Communities at that time, as published by the United States' authorities.

multiplied by:

0.72

would be consistent with Article 22.4 of the DSU.

To date, the United States has still not implemented the recommendations and rulings of the DSB with respect to the CDSOA, and no mutually satisfactory solution has been reached.

Article 22.7 of the DSU provides that "the DSB shall be informed promptly of the decision of the arbitrators and shall upon request, grant authorization to suspend concessions or other obligations where the request is consistent with the decision of the arbitrator, unless the DSB decides by consensus to reject the request." Therefore, the European Communities hereby requests authorization from the DSB to suspend the application to the United States of tariff concessions and related obligations under GATT 1994, in the form of the imposition of additional import duties on products originating in the United States, at a level not exceeding every year 72% of the amount of CDSOA disbursements relating to anti-dumping or countervailing duties paid on imports from the European Communities for the most recent year for which data are available at that time.

In accordance with the arbitration award, the European Communities will notify the DSB every year, prior to the entry into force of a level of suspension of concessions or other obligations, the list of products on which the additional import duty will apply. That list will be drawn from the indicative list attached.

ANNEX: LIST OF PRODUCTS

The products covered by the list are determined by the product description of the European Communities' tariff and statistical nomenclature corresponding to the eight-digit product codes (Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff as last amended by Commission Regulation (EC) No 1810/2004, OJ L 327, 30.10.2004, p. 1). The descriptions hereunder are given for information purposes only.

CN codes	Description of products
07104000	Sweetcorn, uncooked or cooked by steaming or by boiling in water, frozen
48030031	Creped paper for household or sanitary purposes and webs of cellulose fibres 'tissues', in rolls of a width > 36 cm or in square or rectangular sheets with one side > 36 cm and the other side > 15 cm in the unfolded state, weighing ≤ 25 g/m ² per ply
48182010	Handkerchiefs, cleansing or facial tissues and towels, of paper pulp, paper, cellulose wadding or webs of cellulose fibres
48183000	Tablecloths and serviettes of paper pulp, paper, cellulose wadding or webs of cellulose fibres
48185000	Articles of apparel and clothing accessories, of paper pulp, paper, cellulose wadding or webs of cellulose fibres (excl. footwear and parts thereof, incl. insoles, heel pieces and similar removable products, gaiters and similar products, headgear and parts thereof)
48201050	Diaries with calendars, of paper or paperboard
48201090	Writing pads and the like, of paper or paperboard
48203000	Binders (other than book covers), folders and file covers, of paper or paperboard
48205000	Albums for samples or collections, of paper or paperboard
48209000	Blotting pads and similar articles of stationery, of paper and paperboard, and book covers of paper or paperboard (excl. registers, account books, Note books, order books, receipt books, letter pads, memorandum pads, diaries, exercise books, binders, folders, file covers, manifold business forms and interleaved carbon sets, and albums for samples or for collections)
61013010	Men's or boys' overcoats, car-coats, capes, cloaks and similar articles of man-made fibres, knitted or crocheted
61013090	Men's or boys' anoraks, incl. ski-jackets, wind-cheaters, wind-jackets and similar articles of man-made fibres, knitted or crocheted (excl. suits, ensembles, jackets, blazers, bib and brace overalls and trousers)
61023010	Women's or girls' overcoats, car-coats, capes, cloaks and similar articles of man-made fibres, knitted or crocheted
61023090	Women's or girls' anoraks, incl. ski-jackets, wind-cheaters, wind-jackets and similar articles, of man-made fibres, knitted or crocheted (excl. suits, ensembles, jackets, blazers, dresses, skirts, divided skirts, trousers, bib and brace overalls)
61034300	Men's or boys' trousers, bib and brace overalls, breeches and shorts (other than swimwear), knitted or crocheted, of synthetic fibres.
61044300	Women's or girls' dresses of synthetic fibres, knitted or crocheted (excl. petticoats)
61046300	Women's or girls' trousers, bib and brace overalls, breeches and shorts (other than swimwear), knitted or crocheted, of synthetic fibres.
61051000	Men's or boys' shirts of cotton, knitted or crocheted (excl. nightshirts, T-shirts, singlets and other vests)
61052010	Men's or boys' shirts of synthetic fibres, knitted or crocheted (excl. nightshirts, T-shirts, singlets and other vests)

61052090	Men's or boys' shirts of artificial fibres, knitted or crocheted (excl. nightshirts, T-shirts, singlets and other vests)
61061000	Women's or girls' blouses, shirts and shirt-blouses of cotton, knitted or crocheted (excl. T-shirts and vests)
61101110	Jerseys and pullovers containing $\geq 50\%$ by weight of wool and weighing ≥ 600 g/article, knitted or crocheted
61101130	Men's or boys' jerseys, pullovers, cardigans, waistcoats and similar articles, of wool, knitted or crocheted (excl. jerseys and pullovers containing $\geq 50\%$ by weight of wool and weighing ≥ 600 g/article, and wadded waistcoats)
61101190	Women's or girls' jerseys, pullovers, cardigans, waistcoats and similar articles, of wool, knitted or crocheted (excl. jerseys and pullovers containing $\geq 50\%$ by weight of wool and weighing ≥ 600 g/article, and wadded waistcoats)
61101210	Jerseys, pullovers, cardigans, waistcoats and similar articles, of hair of Kashmir 'cashmere' goats, knitted or crocheted, for men or boys (excl. quilted articles)
61101290	Jerseys, pullovers, cardigans, waistcoats and similar articles, of hair of Kashmir 'cashmere' goats, knitted or crocheted, for women or girls (excl. quilted articles)
61101910	Jerseys, pullovers, cardigans, waistcoats and similar articles, of fine animal hair, knitted or crocheted, for men or boys (excl. from hair of Kashmir 'cashmere' goats and quilted articles)
61101990	Jerseys, pullovers, cardigans, waistcoats and similar articles, of fine animal hair, knitted or crocheted, for women or girls (excl. from hair of Kashmir 'cashmere' goats and quilted articles)
61102010	Lightweight fine knit roll, polo or turtle neck jumpers and pullovers of cotton, knitted or crocheted
61102091	Men's or boys' jerseys, pullovers, cardigans, waistcoats and similar articles, of cotton, knitted or crocheted (excl. lightweight fine knit roll, polo or turtle neck jumpers and pullovers and wadded waistcoats)
61102099	Women's or girls' jerseys, pullovers, cardigans, waistcoats and similar articles, of cotton, knitted or crocheted (excl. lightweight fine knit roll, polo or turtle neck jumpers and pullovers and wadded waistcoats)
61103010	Lightweight fine knit roll, polo or turtle neck jumpers and pullovers of man-made fibres, knitted or crocheted
61103091	Men's or boys' jerseys, pullovers, cardigans, waistcoats and similar articles, of man-made fibres, knitted or crocheted (excl. lightweight fine knit roll, polo or turtle neck jumpers and pullovers and wadded waistcoats)
61103099	Women's or girls' jerseys, pullovers, cardigans, waistcoats and similar articles, of man-made fibres, knitted or crocheted (excl. lightweight fine knit roll, polo or turtle neck jumpers and pullovers and wadded waistcoats)
61109010	Jerseys, pullovers, cardigans, waistcoats and similar articles, of flax or ramie, knitted or crocheted (excl. wadded waistcoats)
61109090	Jerseys, pullovers, cardigans, waistcoats and similar articles, of textile materials, knitted or crocheted (excl. of man-made fibres, wool, fine animal hair, cotton, flax or ramie, and wadded waistcoats)
62011210	Men's or boys' overcoats, raincoats, car-coats, capes, cloaks and similar articles, of cotton, of a weight per garment of ≤ 1 kg (excl. knitted or crocheted)
62011290	Men's or boys' overcoats, raincoats, car-coats, capes, cloaks and similar articles, of cotton, of a weight per garment of > 1 kg (excl. knitted or crocheted)
62011310	Men's or boys' overcoats, raincoats, car-coats, capes, cloaks and similar articles, of man-made fibres, of a weight per garment of ≤ 1 kg (excl. knitted or crocheted)
62011390	Men's or boys' overcoats, raincoats, car-coats, capes, cloaks and similar articles, of man-made fibres, of a weight per garment of > 1 kg (excl. knitted or crocheted)

62019200	Men's or boys' anoraks, incl. ski-jackets, wind-cheaters, wind-jackets and similar articles, of cotton (excl. knitted or crocheted, suits, ensembles, jackets, blazers and trousers)
62019300	Men's or boys' anoraks, incl. ski-jackets, wind-cheaters, wind-jackets and similar articles, of man-made fibres (excl. knitted or crocheted, suits, ensembles, jackets, blazers and trousers)
62021100	Women's or girls' overcoats, raincoats, car-coats, capes, cloaks and similar articles, of wool or fine animal hair (excl. knitted or crocheted)
62029300	Women's or girls' anoraks, incl. ski-jackets, wind-cheaters, wind-jackets and similar articles, of man-made fibres (excl. knitted or crocheted, suits, ensembles, jackets, blazers and trousers)
62034231	Men's or boys' trousers and breeches of cotton denim (excl. knitted or crocheted, industrial and occupational, bib and brace overalls and underpants)
62034311	Men's or boys' trousers and breeches of synthetic fibres, industrial and occupational (excl. knitted or crocheted and bib and brace overalls)
62034319	Men's or boys' trousers and breeches of synthetic fibres (excl. knitted or crocheted, industrial and occupational, bib and brace overalls and underpants)
62034390	Men's or boys' shorts of synthetic fibres (excl. knitted or crocheted, underpants and swimwear)
62044200	Women's or girls' dresses of cotton (excl. knitted or crocheted and petticoats)
62044300	Women's or girls' dresses of synthetic fibres (excl. knitted or crocheted and petticoats)
62044400	Women's or girls' dresses of artificial fibres (excl. knitted or crocheted and petticoats)
62044910	Women's or girls' dresses of silk or waste silk (excl. knitted or crocheted and petticoats)
62046231	Women's or girls' cotton denim trousers and breeches (excl. industrial and occupational, bib and brace overalls and panties)
62046311	Women's or girls' trousers and breeches, of synthetic fibres, industrial and occupational (excl. knitted or crocheted and bib and brace overalls)
62046318	Women's or girls' trousers and breeches, of synthetic fibres (not of cut corduroy, of denim or knitted or crocheted and excl. industrial and occupational clothing, bib and brace overalls, briefs and track suit bottoms)
62046390	Women's or girls' shorts of synthetic fibres (excl. knitted or crocheted, panties and swimwear)
62046918	Women's or girls' trousers and breeches, of artificial fibres (not of cut corduroy, of denim or knitted or crocheted and excl. industrial and occupational clothing, bib and brace overalls, briefs and track suit bottoms)
62046990	Women's or girls' trousers, bib and brace overalls, breeches and shorts of textile materials (excl. of wool, fine animal hair, cotton or artificial fibres, knitted or crocheted, panties and swimwear)
62052000	Men's or boys' shirts of cotton (excl. knitted or crocheted, nightshirts, singlets and other vests)
62053000	Men's or boys' shirts of man-made fibres (excl. knitted or crocheted, nightshirts, singlets and other vests)
62063000	Women's or girls' blouses, shirts and shirt-blouses of cotton (excl. knitted or crocheted and vests)
62064000	Women's or girls' blouses, shirts and shirt-blouses of man-made fibres (excl. knitted or crocheted and vests)
63013010	Blankets and travelling rugs of cotton, knitted or crocheted (excl. electric, table covers, bedspreads and articles of bedding and similar furnishing of heading 9404)
63013090	Blankets and travelling rugs of cotton (excl. knitted or crocheted, electric, table covers, bedspreads and articles of bedding and similar furnishing of heading 9404)

63014010	Blankets and travelling rugs of synthetic fibres, knitted or crocheted (excl. electric, table covers, bedspreads and articles of bedding and similar furnishing of heading 9404)
63014090	Blankets and travelling rugs of synthetic fibres (excl. knitted or crocheted, electric, table covers, bedspreads and articles of bedding and similar furnishing of heading 9404)
64021900	Sports footwear with outer soles and uppers of rubber or plastics (excl. waterproof footwear of heading 6401, ski-boots, cross-country ski footwear, snowboard boots and skating boots with ice or roller skates attached)
64031900	Sports footwear, with outer soles of rubber, plastics, leather or composition leather and uppers of leather (excl. ski-boots, cross-country ski footwear, snowboard boots and skating boots with ice or roller skates attached)
64041100	sports footwear, incl. tennis shoes, basketball shoes, gym shoes, training shoes and the like, with outer soles of rubber or plastics and uppers of textile materials
84672199	Drills of all kinds for working in the hand, with self-contained electric motor operating with an external source of power (excl. electropneumatic drills)
87051000	Crane lorries (excl. breakdown lorries)
90031930	Frames and mountings for spectacles, goggles or the like, of base metal
90091100	Electrostatic photocopying apparatus, operating by reproducing the original image directly onto the copy [direct process]
90091200	Electrostatic photocopying apparatus, operating by reproducing the original image via an intermediate onto the copy [indirect process]
94037090	Furniture of plastic (excl. for civil aircraft, medical, dental, surgical or veterinary, and seats)
94060011	Mobile homes
94060038	Buildings, prefabricated, whether or not complete or already assembled, made entirely or mainly of iron or steel (excl. Mobile homes and greenhouses)
96081010	Ball-point pens with liquid ink