

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

Recourse to Article 21.5 of the DSU by the European Communities

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 25 February 2009, from the Delegation of the United States, is being circulated to Members.

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")*: *Recourse to Article 21.5 of the DSU by the European Communities* (WT/DS294/RW) 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 conclusion that the United States failed to comply with the recommendations and rulings of the Dispute Settlement Body ("DSB") in the original dispute and has acted inconsistently with Article 9.3 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* ("AD Agreement") and Article VI:2 of the *General Agreement on Tariffs and Trade 1994* ("GATT 1994") by publishing determinations, after the end of the reasonable period of time, of the amount of antidumping duty to be assessed based on zeroing in the 2004-2005 administrative reviews in *Hot-Rolled Steel from the Netherlands* and *Stainless Steel Wire Rod from Sweden* and issuing assessment instructions pursuant to the results of those administrative reviews. This conclusion is in error and based on erroneous findings on issues of law and related legal interpretations of DSU Articles 21 and 22.

2. Specifically, the United States requests the Appellate Body to reverse:

- (a) the Panel's finding in paragraph 8.126 of its report<sup>1</sup> that these two administrative reviews of entries that were made in 2004 and 2005 fell within its terms of reference;

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<sup>1</sup> The paragraphs on which the Panel's finding in paragraph 8.126 is based include, for example, paragraphs 8.87-8.125 of the Panel's report.

- (b) (i) the Panel's finding in paragraph 8.208 of its report<sup>2</sup> that, in issuing the final results of the 2004-2005 administrative review in *Hot-Rolled Steel from the Netherlands* and assessment instructions pursuant to those results, the United States acted inconsistently with Article 9.3 of the AD Agreement and Article VI:2 of the GATT 1994, because this review did not fall within the Panel's terms of reference; and
- (ii) the Panel's further finding in paragraph 8.208 of its report that, in issuing the final results of the 2004-2005 administrative review in *Hot-Rolled Steel from the Netherlands* and assessment instructions pursuant to those results, the United States failed to comply with the DSB's recommendations and rulings to bring the original investigation in *Hot-Rolled Steel from the Netherlands* into conformity with the covered agreements, because those assessment reviews were of entries that were made prior to the end of the reasonable period of time, and indeed prior to the DSB's recommendations and rulings in the original dispute;
- (c) (i) the Panel's finding in paragraph 8.213 of its report<sup>3</sup> that, in issuing the final results of the 2004-2005 administrative review in *Stainless Steel Wire Rod from Sweden* and assessment instructions pursuant to those results, the United States acted inconsistently with Article 9.3 of the AD Agreement and Article VI:2 of the GATT 1994, because this review did not fall within the Panel's terms of reference; and
- (ii) the Panel's further finding in paragraph 8.213 of its report that, in issuing the final results of the 2004-2005 administrative review in *Stainless Steel Wire Rod from Sweden* and assessment instructions pursuant to those results, the United States failed to comply with the DSB's recommendations and rulings to bring the original investigation in *Stainless Steel Wire Rod from Sweden* into conformity with the covered agreements, because those assessment reviews were of entries that were made prior to the end of the reasonable period of time, and indeed prior to the DSB's recommendations and rulings in the original dispute; and
- (d) the Panel's conclusions in paragraph 9.1(b)(i) of its report, which are based on the erroneous findings referenced above.

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<sup>2</sup> The paragraphs on which the Panel's findings in paragraph 8.208 are based include, for example, paragraphs 8.87-8.125 and 8.203-8.208 of the Panel's report.

<sup>3</sup> The paragraphs on which the Panel's findings in paragraph 8.213 are based include, for example, paragraphs 8.87-8.125 and 8.210-8.213 of the Panel's report.