

**UNITED STATES – CUSTOMS BOND DIRECTIVE FOR MERCHANDISE SUBJECT TO
ANTI-DUMPING/COUNTERVAILING DUTIES**

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 29 April 2008, from the Delegation of the United States, is being circulated to Members.

1. Pursuant to Rule 23 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 on *United States – Customs Bond Directive for Merchandise Subject to Antidumping/Countervailing Duties* (WT/DS345/R) (“Panel Report”) and certain legal interpretations developed by the Panel.

2. The United States seeks review by the Appellate Body of the Panel’s legal conclusion that the enhanced bond requirement is not consistent with the Ad Note to Article VI of the *General Agreement on Tariffs and Trade 1994* (“GATT 1994”) because it does not constitute “reasonable” security (e.g., Panel Report, para. 7.130) and, related to this, the Panel’s conclusion that the enhanced bond requirement is not consistent with Articles 1 and 18.1 of the *Agreement on Implementation of Article VI of GATT 1994* (“Antidumping Agreement”) because it is not “in accordance with the provisions of the GATT 1994, as interpreted by the Antidumping Agreement” (e.g., Panel Report, paras. 7.131, 8.2(i)). These findings are in error and are based on erroneous findings on issues of law and legal interpretations, including that additional security may only be considered “reasonable” within the meaning of the Ad Note if a Member demonstrates, first, that antidumping rates in the order “are likely to increase” and, second, properly determines the “likely amount” of the increase (e.g., Panel Report, paras. 7.116-7.126).

3. The United States also seeks review of the Panel’s conclusion that the enhanced bond requirement is not justified pursuant to GATT 1994 Article XX(d) (e.g., Panel Report, para. 7.313), including its finding that unless a Member demonstrates that rates in the order “are likely to increase”, an additional security requirement cannot be considered “necessary” within the meaning of Article XX(d) (e.g., Panel Report, para. 7.312). In these circumstances, the United States additionally requests that the Appellate Body complete the Panel’s analysis with respect to Article XX(d). The Appellate Body would not need to reach the U.S. appeal under this paragraph where the Appellate Body has reversed the Panel findings and conclusions referenced in paragraph 1.
