

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

Recourse to Article 21.5 of the DSU by the European Communities

Request for Consultations

The following communication, dated 9 July 2007, from the delegation of the European Communities to the delegation of the United States and to the Chairman of the Dispute Settlement Body, is circulated in accordance with Article 21.5 of the DSU.

On 9 May 2006, the Dispute Settlement Body (the "DSB") adopted the Appellate Body Report and the Panel Report, as modified by the Appellate Body, in the case WT/DS294 *"United States – Laws, Regulations and Methodology for Calculating Dumping Margins ("Zeroing")*". The resulting DSB rulings found that the United States' administrative practice (the *zeroing* methodology in original investigations in which the weighted-average-to-weighted-average comparison method is used) and other measures (15 original investigations¹ and 16 "administrative reviews"² in which zeroing was used), including each of the assessment instructions issued pursuant to any of one of these measures, were inconsistent with Article VI of the General Agreement on Tariff and Trade 1994 ("GATT 1994") and the Agreement on implementation of Article VI of the GATT 1994 (the "AD Agreement"). The DSB recommended that the United States brings those measures into conformity with its obligations under those Agreements.

On 30 May 2006, the United States informed the DSB that it intended to implement the recommendations and rulings of the DSB in a manner consistent with its WTO obligations, but needed a reasonable period of time to do so. The parties agreed under Article 21.3(b) of the Understanding on rules and procedures governing the settlement of disputes ("DSU") that the United States would have until 9 April 2007 to implement the recommendations and rulings of the DSB (WT/DS294/19).

On 27 December 2006, the United States published a notice whereby it announced that it was abandoning "zeroing" in average-to-average comparisons in anti-dumping original investigations (see *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin during an Antidumping Investigation; Final Modification* published in 71 FR 77722). The final modification

¹ Listed in WT/DS294/7/Rev.1, cases 1 to 15 on pages 5-6.

² Listed in WT/DS294/7/Rev.1, cases 16 to 31 on pages 14-15. The term "administrative review" is a term of US municipal law that is not used in the AD Agreement. A US "administrative review" involves an investigation into and a re-calculation of the existence and degree of an exporter's margin of dumping during the review investigation period, contemporaneous with the imports for which final liability is being assessed. An "administrative review" investigation also results in the fixing of a new "cash deposit" rate to be applied prospectively to future imports, pending the next "administrative review".

became effective on 22 February 2007 (see *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin in Antidumping Investigations; Change in Effective Date of Final Modification*, published in 72 FR 3783, 26 January 2007).

Subsequently, the US began a recalculation of the margins of dumping in 12 of the 15 original investigations (the anti-dumping measures having been previously revoked in three of the 15 original investigations). The United States issued its final findings in 11 of the original investigations on 9 April 2007 ("Section 129 determinations")³ which entered into effect on 23 April 2007 (published in 72 FR 25261, 4 May 2007).

On 4 May 2007, the parties concluded an agreement on the procedures under Articles 21 and 22 of the DSU ("sequencing agreement")⁴ with a view to facilitating the procedures for a resolution of the dispute.

The European Communities considers that the following aspects of the measures taken by the US to comply with its WTO obligations are unsatisfactory:

1. The Section 129 determinations entered into force on 23 April 2007, not on the date of 9 April 2007 as agreed by the parties under Article 21.3(b) of the DSU. This is inconsistent with Article 17(14) and Article 21, including 21.3 and 21.3(b) of the DSU and with the agreement between the parties concerning the reasonable period of time.
2. The US failed to properly implement the DSB recommendations and rulings with respect to the 16 administrative reviews found to be inconsistent with the US' WTO obligations since "zeroing" was not eliminated in any of the above-mentioned measures. This is inconsistent with Article 2, including 2.1, 2.4 and 2.4.2, Article 9.3 and Article 11, including Article 11.1 and 11.2 of the *AD Agreement* and Article VI:2 of the GATT 1994.
3. With respect to Case No. 11 - *Stainless Steel Sheet and Strip in Coils from Italy (A-475-824)*, which concerns an original investigation, in respect of which there have been a number of subsequent review investigations, the US failed to properly implement the DSB recommendations and rulings since to date "zeroing" has not been eliminated and duties calculated with zeroing continue to be imposed, collected or liquidated. This is inconsistent with Article 2, including 2.1, 2.4 and 2.4.2, Article 5.8, Article 9.3 and Article 11, including 11.1 and 11.2 of the *AD Agreement* and Article VI:2 of the GATT 1994.
4. With respect to all measures (original investigations and administrative reviews) that were found inconsistent with the US' WTO obligations, the US continues to impose, collect or liquidate anti-dumping duties at a rate inflated by "zeroing" beyond 9 April 2007. With regard to those measures which were revoked by the Section 129 determinations, the US continues to impose, collect or liquidate anti-dumping duties after 9 April 2007. This is inconsistent with Article 2, including 2.1, 2.4 and 2.4.2, Article 5.8, Article 9.3 and Article 11, including 11.1 and 11.2 of the *AD Agreement* and Articles VI:1 and VI:2 of the GATT 1994.
5. In three cases (Case No. 2: *Stainless Steel Bar from France (A-427-820)*, Case No. 4: *Stainless Steel Bar from Italy (A-475-829)* and Case No. 5: *Stainless Steel Bar from the United Kingdom (A-412-822)*) in the Section 129 determinations, which concerned original

³ The term "Section 129 determination" is a term of US municipal law that is not used in the *AD Agreement*. It is used in this consultation request without prejudice to the correct categorisation of the measures at issue under one or more provisions of the *AD Agreement*.

⁴ "Understanding between the United States and the European Communities Regarding Procedures under Articles 21 and 22 of the DSU" (WT/DS294/21, 9 May 2007).

investigations, the US re-determinations led to an unjustified increase in the "all others rate". This is inconsistent with Article 2, Article 5.8, Article 6.8 and Annex II, Article 9, including 9.2, 9.3 and 9.4, and Article 18.1 of the *AD Agreement*.

6. With respect to original investigations in which the recalculation of dumping margins led to the conclusion that some exporters were not dumping or had *de minimis* dumping margins, the US maintained the Anti-Dumping order without establishing whether the remaining amount of dumped imports was causing injury to the domestic industry and whether this volume of dumped imports was not negligible. This is inconsistent with Articles 3.1, 3.2, 3.5, 5.8 of the *AD Agreement* and Article VI:1 of the GATT 1994.
7. With regard to the 15 original investigations and 16 administrative reviews, the US has continued zeroing in the administrative reviews of these measures that now determine the cash deposit rates and in other reviews of these measures. Details of the reviews in question are set out in the annex. This is inconsistent with Article 2, including 2.1, 2.4 and 2.4.2, Article 9.3, and Article 11, including 11.1, 11.2 and 11.3 of the *AD Agreement* and Articles VI:1 and VI:2 of the GATT 1994.

The European Communities therefore considers that there exists a disagreement as to the existence or consistency with a covered agreement of the measures taken to comply with the rulings and recommendations of the DSB.

For the reasons mentioned above, and without prejudice to its rights under the WTO, the European Communities hereby requests the United States of America to enter into consultations under Article XXII:1 of the GATT 1994, Articles 4 and 21.5 of the DSU, Article 17 of the *AD Agreement* and Paragraph 1 of the sequencing agreement, with respect to the issues identified above.

The European Communities reserves its rights in respect of all other aspects of the United States' purported compliance with its obligations in this case.

We look forward to receiving your reply to the present request and to fixing a mutually convenient date for consultations.

ANNEX

I. Reviews of the measures imposed in the 15 original investigations condemned in DS294

Product	MS	DOC Case Number (ITC Case No)	DOC Final Determination	ITC Determination	AD Order	Subsequent reviews
1. Certain hot-rolled carbon steel	NL	A-421-807 (A-903)	66 FR 50408, October 3, 2001 (amended: 66 FR 55637, November 2, 2001)	November 2001	66 FR 59565, November 29, 2001	Administrative Reviews 3 May 2001 – 31 Oct 2002 (69FR 43801, July 22 2004) 4.8% 1 Nov 2002 – 31 Oct 2003 (70FR 18366, April 11, 2005) 4.42% 1 Nov 2004 – 31 Oct 2005 (72FR 34441, June 22, 2007) 2.26%
2. Stainless steel bar	F	A-427-820 (A-913)	67 FR 3143, January 23, 2002	February 2002	67 FR 10385, March 7, 2002	Administrative Reviews: 1 March 2003 – 29 February 2004 (70 FR 46482, August 10, 2005) Ugitech 14.98% 1 March 2004 – 28 February 2005 (71 FR 30873, May 31 2006) Ugitech 9.68% Sunset Review: DOC Final Determination 72 FR 30772, June 4, 2007

Product	MS	DOC Case Number (ITC Case No)	DOC Final Determination	ITC Determination	AD Order	Subsequent reviews
3. Stainless steel bar	G	A-428-830 (A-914)	67 FR 3159, January 23, 2002 (amended: 67 FR 10382, March 7, 2002)	February 2002	67 FR 10382, March 7, 2002	Administrative Reviews: 2 August 2001–28 February 2003 (69 FR 32982, June 14, 2004) BGH 0.52% 1 March 2004–28 February 2005 (71 FR 52063, September 1, 2006) BGH 0.73% Sunset Review: DOC Preliminary Determination 72 FR 29970, May 30, 2007
4. Stainless steel bar	I	A-475-829 (A-915)	67 FR 3155, January 23, 2002 (amended: 67 FR 8228, February 22, 2002)	February 2002	67 FR 10384, March 7, 2002	Administrative Review: 2 August 2001–28 February 2003 (69 FR 32984, June 14, 2004) Foroni 4.03% Ugine 33% Sunset Review: DOC Final Determination 72 FR 30772, June 4, 2007

Product	MS	DOC Case Number (ITC Case No)	DOC Final Determination	ITC Determination	AD Order	Subsequent reviews
5. Stainless steel bar	UK	A-412-822 (A-918)	67 FR 3146, January 23, 2002	February 2002	67 FR 10381, March 7, 2002	Administrative review: 1 March 2005 – 28 February 2006(72 FR 15106, March 30, 2007) Enpar Special Alloys 33.87% Sunset Review: DOC Final Determination 72 FR 30772, June 4, 2007
6. Stainless Steel Wire Rod	SW	A-401-806 (A-774)	63 FR40449, July 29,1998	September 1998	63 FR49329, September 15, 1998	Administrative reviews: 1 Sept. 2004 – 31 August 2005 (72FR 26337, May 9, 2007) Fagersta 19.36% Sunset Review: Continuation order, 69 FR 50167, August 13, 2004
7. Stainless Steel Wire Rod	E	A-469-807 (A-773)	63 FR40391, July 29,1998	September 1998	63 FR 49330, September 15, 1998	Administrative review: 5 March 1998 – 31 August 1999 (66 FR 10988, February 21, 2001) Roldan SA 0,8 % Sunset Review: Continuation Order 69FR 50167, August 13, 2004
8. Stainless Steel Wire Rod	I	A-475-820 (A-770)	63 FR40422, July 29,1998	September 1998	63 FR 49327, September 15, 1998	Sunset Review: Continuation Order 69FR 50167, August 13, 2004

Product	MS	DOC Case Number (ITC Case No)	DOC Final Determination	ITC Determination	AD Order	Subsequent reviews
9. Certain Stainless Steel Plate in Coils	B	A-423-808 (A-788)	64 FR15476, March 31, 1999	May 1999	64 FR 27756, May 21, 1999 (amended by 68 FR 20114 April 24, 2003)	See case 18 below
10. Stainless Steel Sheet and Strip in Coils	F	A-427-814 (A-797)	64 FR30820, June 8, 1999	July 1999	64 FR 40562, July 27, 1999	See Cases 25 & 26 below Measure revoked July 2004 (70 FR 44894, August 4, 2005)
11. Stainless Steel Sheet and Strip in Coils	I	A-475-824 (A-799)	64 FR30750, June 8, 1999	July 1999	64 FR 40567, July 27, 1999	See cases 21 & 22 below
12. Stainless Steel Sheet and Strip in Coils	UK	A-412-818 (A-804)	64 FR30688, June 8,1999	July 1999	64 FR 40555, July 27,1999	Measure revoked: July 2004 (70 FR 44894, August 4, 2005)
13. Certain Cut-to-Length Carbon-Quality Steel Plate	F	A-427-816 (A-816)	64 FR73143, December 29,1999	February 2000	65 FR 6585, February 10, 2000	Measure revoked: February 2005 (70 FR 72787, December 7, 2005)
14. Certain Cut-to-Length Carbon-Quality Steel Plate	I	A-475-826 (A-819)	64 FR73234, December 29,1999	February 2000	65 FR 6585, February 10, 2000	Sunset review: Continuation Order (70FR 72607, December 6, 2005)
15. Certain Pasta	I	A-475-818 A-734)	61 FR30326, June 14, 1996 (amended by 66 FR65889, December 21,2001)	July 1996	61 FR38547 July 24, 1996	See Cases 19 & 20 below

II. Reviews subsequent to the 16 administrative reviews condemned in DS294

Product	MS	No Case	Final Results	Company	Subsequent Reviews
16. Industrial Nitrocellulose	F	A-427-009	66 FR 54213, October 26, 2001	Bergerac NC	Two subsequent Administrative reviews were rescinded, covering the periods : 1 August 2000 – 31 July 2001 1 August 2002 – 31 July 2003 Measure revoked : (69 FR 52231, August 25, 2004)
17. Industrial Nitrocellulose	UK	A-412-803	67 FR 77747, December 19, 2002	Imperial Chemical Industries	Two subsequent Administrative reviews were rescinded, covering the periods : 1 July 2001 – 30 June 2002 1 July 2002 – 30 June 2003 Changed circumstance review (Dec, 2003) confirmed the rate of 3.06% to apply to Troon Investments, successor to ICI Measure revoked : (69 FR 52231, August 25, 2004)
18. Stainless steel plate in coils	B	A-423-808	67 FR 64352, October 18, 2002	ALZ NV & TrefilARBED (affiliated US importer) – Same company Ugine & ALZ, N.V. Belgium (U&A Belgium).	Two subsequent reviews resulting in change to rate: 1 May 2002 – 30 April 2003 (70FR 2999, January 19, 2005) 2.71% 1 May 2003 – 30 April 2004 (70FR 72789, December 7, 2005) 2.96% Sunset Review: Continuation Order 70 FR 41202, July 18, 2005

Product	MS	No Case	Final Results	Company	Subsequent Reviews
19. Certain pasta	I	A-475-818	67 FR 300, January 3, 2002 <u>Amended:</u> 67 FR 5088, February 4, 2002	1) <u>Ferrara</u> 2) <u>Pallante</u> 3) <u>PAM</u>	<u>Ferrara:</u> Order revoked in February 2005 following third consecutive review where the company had <i>de minimis</i> rate (70FR6832, February 9, 2005) <u>Pallante:</u> Order revoked in November 2005 following third consecutive review where the company had <i>de minimis</i> rate (70 FR71464, November 29, 2005) <u>PAM:</u> Two subsequent reviews resulting in change to rate: 1 July 2001 – 30 June 2002 (69FR 6255, February 10, 2004) 45.49% 1 July 2002 – 30 June 2003 (70FR 6832, February 9, 2005) 4.78% Sunset review: DOC Final Determination 72FR 5266 February 5, 2007
20. Certain pasta	I	A-475-818	68 FR 6882, February 11, 2003	Pastifi Garofalo	One subsequent review resulting in change to rate: 1 July 2001 – 30 June 2002 (69 FR 22761, April 27, 2004) 2.57% One review rescinded covering period: 1 July 2002 – 30 June 2003
21. Stainless steel sheet strip coils	I	A-475-824	67 FR 1715, January 14, 2002	Acciai Speciali Terni SpA	See Case 22

Product	MS	No Case	Final Results	Company	Subsequent Reviews
22. Stainless steel sheet strip coils	I	A-475-824	68 FR 6719, February 10, 2003	Acciai Speciali Terni SpA	Two subsequent reviews resulting in change to rate: 1 July 2001 – 30 June 2002 (68FR 69382, December 12, 2003) 1.62% 1 July 2002 – 30 June 2003 (70FR 13009, March 17, 2005) 3.73% Sunset review: Continuation Order 70 FR 44886, August 4, 2005
23. Granular polytetrafluoethylene	I	A-475-703	67 FR 1960, January 15, 2002	Ausimont SpA	See Case 24
24. Granular polytetrafluoethylene	I	A-475-703	68 FR 2007, January 15, 2003	Ausimont SpA	Two subsequent Administrative reviews were rescinded, covering the periods : 1 August 2002 – 31 July 2003 1 August 2003 – 31 July 2004 Changed circumstance review (May,2003) confirmed the rate of 12.08% to apply to Solvay Solexis, successor to Ausimont 1 subsequent review resulting in change to rate: 1 August 2004 – 31 July 2005 (72FR 1980, January 17, 2007) 39.13% Sunset review: Continuation Order 70FR 76026, Dec. 22, 2005
25. Stainless steel sheet strip coils	F	A-427-814	67 FR 6493, February 12, 2002 <u>Amended:</u> 67 FR 12522, March 19, 2002	Ugine	See Case 26

Product	MS	No Case	Final Results	Company	Subsequent Reviews
26. Stainless steel sheet strip coils	F	A-427-814	67 FR 78773, December 26, 2002 <u>Amended:</u> 68 FR 4171, January 28, 2003	Ugine	3 subsequent reviews resulting in change to rate: 1 July 2001 – 30 June 2002 (68FR 69379, December 12, 2003) 2.93% 1 July 2002 – 30 June 2003 (70 FR 7240, February 11, 2005) 9.65% 1 July 2003 – 30 June 2004 (71 FR 6269, February 7, 2006) 12.31% Measure revoked : 70 FR 44894, August 4, 2005
27. Stainless steel sheet strip coils	G	A-428-825	67 FR 7668, February 20, 2002 <u>Amended:</u> 67 FR 15178, March 29, 2002	KTN	See Case 28
28. Stainless steel sheet strip coils	G	A-428-825	68 FR 6716, February 10, 2003 <u>Amended:</u> 68 FR 14193, March 24, 2003	TKN (successor in interest of KTN)	4 subsequent reviews resulting in change to rate: 1 July 2001 – 30 June 2002 (69FR 6262, February 10, 2004) 3.72% 1 July 2002 – 30 June 2003 (69 FR 75930, December 20, 2004) 7.03% 1 July 2003 – 30 June 2004 (70 FR 73729 December 13, 2005) 9.5% 1 July 2004 – 30 June 2005 (71 FR 74897, December 13, 2006) 2.45% Sunset review: Continuation Order 70 FR 44886, August 4 2005

Product	MS	No Case	Final Results	Company	Subsequent Reviews
29. Ball bearings	F	A-427-801	67 FR 55780, August 30, 2002	SKF France SA and Sarma	<p><u>SKF</u>: 4 subsequent reviews resulting in change to rate:</p> <p>1 May 2001 – 30 April 2002 68 FR 43712, July 24, 2003 6.70%</p> <p>1 May 2002 – 30 April 2003 69 FR 55574, September 15, 2004 5.25%</p> <p>1 May 2003 – 30 April 2004 70 FR 54711, September 16, 2005 8.41%</p> <p>1 May 2004 – 30 April 2005 71 FR 40064, July 14, 2006 12.57%</p> <p>Sunset Reviews: Continuation Order 71 FR 54469, September 15, 2006</p>
30. Ball bearings	I	A-475-801	67 FR 55780, August 30, 2002	FAG Italia SpA	<p><u>FAG</u>: 4 subsequent reviews resulting in change to rate:</p> <p>1 May 2001 – 30 April 2002 68 FR 35623, June 16, 2003 2.87%</p> <p>1 May 2002 – 30 April 2003 69 FR 55574, September 15, 2004 4.79%</p> <p>1 May 2003 – 30 April 2004 70 FR 54711, September 16, 2005 5.88%</p> <p>1 May 2004 – 30 April 2005 71 FR 40064, July 14, 2006 2.52%</p>

Product	MS	No Case	Final Results	Company	Subsequent Reviews
				SKF Industrie SpA	<p><u>SKF</u>: 4 subsequent reviews resulting in change to rate:</p> <p>1 May 2001 – 30 April 2002 68 FR 35623, June 16, 2003 5.08%</p> <p>1 May 2002 – 30 April 2003 69 FR 55574, September 15, 2004 1.38%</p> <p>1 May 2003 – 30 April 2004 70 FR 54711, September 16, 2005 2.59%</p> <p>1 May 2004 – 30 April 2005 71 FR 40064, July 14, 2006 7.65%</p> <p>Sunset Reviews: Continuation Order 71 FR 54469, September 15, 2006</p>
31. Ball bearings	UK	A-412-801	67 FR 55780, August 30, 2002	<p>NSK Bearings Europe Ltd</p> <p>The Barden Corporation UK</p>	<p><u>NSK Bearings</u>: No subsequent administrative reviews</p> <p><u>Barden</u>: 1 subsequent administrative review rescinded for period: 1 May 2001 – 30 April 2002</p> <p>2 subsequent reviews resulting in change to rate:</p> <p>1 May 2002 – 30 April 2003 69 FR 55574, September 15, 2004 4.10%</p> <p>1 May 2003 – 30 April 2004 70 FR 54711, September 16, 2005 2.78%</p> <p>Sunset Reviews: Continuation Order 71 FR 54469, September 15, 2006</p>