

**UNITED STATES – ANTI-DUMPING MEASURES ON
OIL COUNTRY TUBULAR GOODS (OCTG) FROM MEXICO**

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 Rule 23(1) of the Working Procedures for Appellate Review

The following notification dated 16 August 2005, from the delegation of the United States, is being circulated to Members.

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 – Anti-dumping Measures on Oil Country Tubular Goods (OCTG) from Mexico* (WT/DS282/R) ("Panel Report") 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 legal conclusion that the Sunset Policy Bulletin is inconsistent with Article 11.3 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* ("Anti-Dumping Agreement"). This conclusion is in error and is based on erroneous findings on issues of law and related interpretations, including:

- (a) The Panel failed to apply the correct burden of proof.¹ Although elsewhere in the report the Panel correctly articulated the standard for burden of proof and making a *prima facie* case², the Panel failed to apply that standard in evaluating whether Mexico made a *prima facie* case with respect to the Sunset Policy Bulletin.³ The Panel also misapplied the Appellate Body's analysis in *United States – Sunset Reviews of Anti-Dumping Measures on Oil Country Tubular Goods from Argentina* in concluding that Mexico had made a *prima facie* case.⁴
- (b) The Panel failed to apply the correct standard in evaluating whether the Sunset Policy Bulletin is inconsistent with Article 11.3 of the Anti-Dumping Agreement.⁵

¹See, e.g., Panel Report, paras. 6.26-6.28, 8.1.

²Panel Report, para. 7.8.

³Panel Report, paras. 6.28, 7.49 and 7.64, footnote 85.

⁴Panel Report, para. 6.27.

⁵Panel Report, paras. 7.55, 7.61, 7.63, footnote 86.

2. The United States seeks review by the Appellate Body, pursuant to Article 11 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"), of the finding that the Sunset Policy Bulletin is inconsistent "as such" with the obligation set forth in Article 11.3 of the Antidumping Agreement.⁶ The Panel failed to make an objective assessment of the matter before it, including a failure to make an objective assessment of the facts of the case, contrary to Article 11 of the DSU. For example, the United States noted that the Panel had failed to identify other factors that formed the basis for Commerce's determination in *Sugar and Syrups from Canada*,⁷ but the Panel simply dismissed the consideration of other factors as "subsidiary".⁸ The Panel also selectively quoted statements from the sunset determinations it analyzed, ignoring exculpatory statements found in the same determinations.⁹ The Panel's analysis was also contradictory¹⁰ and unsupported by the facts.¹¹

⁶Panel Report, para. 8.1.

⁷U.S. Comments on Interim Report, para. 8.

⁸Panel Report, para. 6.35.

⁹*See, e.g.*, paras. 6.35, 7.60. *See* U.S. Comments on Interim Report, paras. 6 and 8-9, Panel Report, para. 6.29.

¹⁰Panel Report, paras. 7.38, 7.40, 7.58, and 7.63.

¹¹Panel Report, paras. 7.45, 7.55, and 7.61.