

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

Recourse to Article 22.2 of the DSU by the European Union

The following communication, dated 29 January 2010, from the delegation of the European Union to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 22.2 of the DSU.

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The European Union hereby requests to circulate the attached request for authorization from the Dispute Settlement Body to suspend the application of concessions or other obligations under the covered agreements pursuant to Article 22.2 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"), in DS294 *United States – Laws, Regulations and Methodology for Calculating Dumping Margin – ("Zeroing")*.

**World Trade Organisation  
Panel Proceedings**

*United States – Laws, Regulations and Methodology for  
Calculating Dumping Margin ("Zeroing")*

**Request by the European Union for authorisation from the DSB to suspend the application to the United States of concessions or other obligations under the covered agreements, pursuant to Article 22.2 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU)**

On 9 May 2006, by DSB action,<sup>1</sup> the DSB adopted the Appellate Body Report<sup>2</sup> and the Panel Report<sup>3</sup> as modified by the Appellate Body Report in *United States – Laws, Regulations and Methodology for Calculating Dumping Margins ("Zeroing")* finding certain measures to be inconsistent with the *Anti-Dumping Agreement* and the *GATT 1994*. On 11 June 2009, by DSB action,<sup>4</sup> the DSB adopted the Appellate Body Report<sup>5</sup> and the Panel Report<sup>6</sup> as modified by the Appellate Body Report in *United States – Laws, Regulations and Methodology for Calculating Dumping Margins ("Zeroing"): Recourse to Article 21.5 of the DSU by the European Communities* finding that the United States failed to bring certain measures found to be inconsistent with the *Anti-Dumping Agreement* and the *GATT 1994* into compliance; failed to comply with the recommendations and rulings of the DSB within the reasonable period of time determined pursuant to Article 21.3 of the *DSU*; and adopted or maintained certain measures inconsistent with the *Anti-Dumping Agreement* and the *GATT 1994*. In this respect, the following Members have to-date invoked the dispute settlement procedures as third parties: Argentina; Brazil; China; Hong Kong, China; India; Japan; Korea; Mexico; Norway; Chinese Taipei; Thailand; and Turkey.

On 23 January 2007, by DSB action,<sup>7</sup> the DSB adopted the Appellate Body Report<sup>8</sup> and the Panel Report<sup>9</sup> as modified by the Appellate Body Report in– *United States – Measures Relating to Zeroing and Sunset Reviews* finding certain measures to be inconsistent with the *Anti-Dumping Agreement* and the *GATT 1994*. On 31 August 2009, by DSB action,<sup>10</sup> the DSB adopted the Appellate Body Report<sup>11</sup> and the Panel Report<sup>12</sup> as modified by the Appellate Body Report in *United States – Measures Relating to Zeroing and Sunset Reviews: Recourse to Article 21.5 of the DSU by Japan* finding that the United States failed to bring certain measures found to be inconsistent with the *Anti-Dumping Agreement* and the *GATT 1994* into compliance; failed to comply with the recommendations and rulings of the DSB within the reasonable period of time determined pursuant to Article 21.3 of the *DSU*; and adopted or maintained certain measures inconsistent with the *Anti-Dumping Agreement* and

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<sup>1</sup> WT/DS294/17, 15 May 2006.

<sup>2</sup> WT/DS294/AB/R and Corr. 1.

<sup>3</sup> WT/DS294/R.

<sup>4</sup> WT/DS294/33, 18 June 2009.

<sup>5</sup> WT/DS294/AB/RW and Corr. 1.

<sup>6</sup> WT/DS294/RW.

<sup>7</sup> WT/DS322/15, 30 January 2007.

<sup>8</sup> WT/DS322/AB/R.

<sup>9</sup> WT/DS322/R.

<sup>10</sup> WT/DS322/35, 7 September 2009.

<sup>11</sup> WT/DS322/AB/RW.

<sup>12</sup> WT/DS322/RW.

the *GATT 1994*. In this respect, the European Union invoked the dispute settlement procedures as a third party.

The European Union hereby requests authorisation from the DSB to suspend the application to the United States of concessions or other obligations under the covered agreements, pursuant to Article 22.2 of the *DSU*.

In considering what concessions or other obligations to suspend, the European Union has applied the principles and procedures in Article 22.3 of the *DSU*.

Consistent with Articles 22.3(a) and 22.3(f) of the *DSU*, the European Union seeks to suspend concessions or other obligations with respect to the same sector(s) as that in which the Panel or Appellate Body has found a violation or other nullification or impairment, that is, with respect to goods. The European Union will provide a list of products to be subject to the suspension when making any request pursuant to Article 22.7 of the *DSU* and/or when publishing the suspending measures.

Consistent with Articles 22.3(a) and 22.3(g) of the *DSU*, the European Union seeks to suspend concessions under the same agreement, that is, the agreements listed in Annex 1A of the *WTO Agreement*, taken as a whole. Also consistent with Article 22.3 and particularly 22.3(a) of the *DSU*, the European Union seeks to suspend concessions or other obligations with respect to the same sector(s) under the *DSU*.

Accordingly, this request is made pursuant to Article 22.3 as a whole, and in particular Article 22.3(a) of the *DSU*.

The nature of the concessions or other obligations to be suspended will take into account (1) the direct trade loss caused by the WTO inconsistent measures (2) the amounts imposed by the WTO inconsistent measures and (3) other nullification or impairment. It will take the form either of a prohibitive tariff (such as, for example, 100 %) on a specified annual value of trade from the United States to the European Union; or of an equivalent *ad valorem* tariff on an equivalent annual value of trade.

In the first case, the annual value of trade from the United States to the European Union to which the prohibitive import tariff of 100 % will be applied is US\$ 311 Million. In the second case, an *ad valorem* import tariff of 13.18 % will be applied to an annual trade value of US\$ 477 Million. The European Union reserves the right to review the calculation as appropriate.

In addition, the European Union requests authorisation to suspend concessions or other obligations under the *DSU*: as long as the United States does not withdraw, with respect to the products covered by the above proceedings, its statement that the zeroing methodology used in review investigations will not be brought into conformity with the covered agreements, the European Union will suspend all concessions and obligations under the *DSU* with respect to any application by the United States of the zeroing methodology to the European Union with respect to products covered by the above proceedings. With respect to any such matters the European Union will proceed directly to the suspension of concessions or other obligations under the agreements listed in Annex 1A of the *WTO Agreement*, taken as a whole; and under the *DSU*.

The level of the suspension of concessions or other obligations with respect to which the European Union requests this authorisation is equivalent to, or less than, the level of the nullification or impairment.

Pursuant to Article 1.1 of the *DSU*, this request complies with the rules and procedures set out in Article 6 of the *DSU*. It is made in writing. No prior consultations were held with the United States. It identifies the relevant measures and provides a brief summary of the legal basis of the complaint sufficient to state the problem clearly. It states under which agreements suspension of concessions or other obligations is sought; and it states the level of nullification or impairment. Any Article 22.6 *DSU* arbitration panel shall have the standard terms of reference, as they result from Article 22 of the *DSU*, other relevant provisions of the *DSU*, and this request.

Pursuant to Article 22.6 of the *DSU*, if the United States objects to the level of suspension proposed, the matter shall be referred to the original panel, if members are available, which shall, applying the rules and procedures of the *DSU* (pursuant to Article 1.1 of the *DSU*), settle any dispute between the European Union and the United States concerning their rights and obligations under Article 22 of the *DSU* taken in isolation or in combination with any other covered agreement. The Panel shall in particular determine, to the extent requested, whether the principles and procedures of Article 22.3 have been applied; whether the level of suspension is equivalent to the level of nullification or impairment; and if the proposed suspension of concessions or other obligations is allowed under the covered agreements.

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