

WORLD TRADE ORGANIZATION

WT/DS294/21

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

Understanding between the United States and the European Communities Regarding Procedures under Articles 21 and 22 of the DSU

The following communication, dated 4 May 2007, from the delegation of the United States and the delegation of the European Communities to the Chairman of the Dispute Settlement Body, is circulated at the request of these delegations.

Please find attached the sequencing agreement, concluded on 4 May 2007, between the United States of America and the European Communities in the dispute referred to above.

Peter F. Allgeier
Ambassador
Permanent Representative
of the United States

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Ambassador
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Agreed Procedures under Articles 21 and 22 of the Dispute Settlement Understanding
United States - Laws, Regulations and Methodology for Calculating Dumping Margins
(WT/DS294)

The Dispute Settlement Body (DSB) adopted the Appellate Body report and the Panel report as modified by the Appellate Body report on 9 May 2006. The European Communities and the United States agreed that the reasonable period of time to implement the DSB recommendations and rulings would be 11 months, expiring on 9 April 2007 (WT/DS294/19).

The European Communities and the United States ("the parties to the dispute") have agreed on the following procedures for the exclusive purposes of this dispute. They are designed to facilitate the resolution of the dispute and reduce the scope for procedural disputes and are without prejudice to either party's views on the correct interpretation of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (DSU):

1. Should the European Communities consider that the situation described in Article 21.5 of the DSU exists, the European Communities will request consultations, which the parties to the dispute will hold within 12 days from the date of circulation of such request. The parties to the dispute agree that at the end of such period for consultations, should either party so state, the parties to the dispute will immediately and jointly consider that such consultations have failed to settle the dispute.

Consequently, the European Communities may at any time request the establishment of a panel pursuant to Article 21.5 of the DSU.

2. At the first DSB meeting at which the European Communities' request for the establishment of an Article 21.5 panel appears on the agenda, the United States shall accept the establishment of that panel.
3. The parties to the dispute shall cooperate to enable the Article 21.5 panel to circulate its report within 90 days of the panel's establishment, excluding such time during which the panel's work may be suspended pursuant to Article 12.12 of the DSU.
4. Either party to the dispute may request the DSB to adopt the report of the Article 21.5 panel at a DSB meeting held at least 20 days after the circulation of the report to the Members unless either party appeals the report.
5. In the event of an appeal of the Article 21.5 panel report, the parties to the dispute shall cooperate to enable the Appellate Body to circulate its report to the Members within 60 days from the date of notification of the appeal to the DSB.
6. In the event of an appeal, either party to the dispute may request the DSB to adopt the reports of the Appellate Body and of the Article 21.5 panel (as modified by the Appellate Body report) at a DSB meeting held within 30 days of the circulation of the Appellate Body report to the Members.
7. In the event that the DSB rules that a measure taken to comply does not exist or is inconsistent with a covered agreement, the European Communities may request authorization to suspend concessions or other obligations in accordance with Article 22 of the DSU after the adoption by the DSB of the Article 21.5 panel report and, where relevant, the Appellate Body report and may request negotiations with the United States with a view to developing mutually acceptable compensation pursuant to Article 22.2 of the DSU.

8. The United States shall not assert that the European Communities is precluded from obtaining such DSB authorization on the grounds that the request was made outside the 30-day time-period specified in Article 22.6 of the DSU. This is without prejudice to the United States' right to have the matter referred to arbitration in accordance with Article 22.6 of the DSU.
9. If the European Communities requests authorization to suspend concessions or other obligations pursuant to Article 22.2 of the DSU, and if the United States objects under Article 22.6 of the DSU to the level of suspension of concessions or other obligations and/or claims that the principles and procedures set forth in DSU Article 22.3 have not been followed, the matter will be referred to arbitration pursuant to DSU Article 22.6.
10. The parties to the dispute will cooperate to enable the arbitrator under Article 22.6 of the DSU to circulate its decision within 60 days of the referral to arbitration.
11. If any of the original panelists is not available for either the Article 21.5 compliance panel or the Article 22.6 arbitration (or both), the parties to the dispute will promptly consult on a replacement, and either party may request the Director-General of the WTO to appoint, within ten days of being so requested, a replacement for the proceeding or proceedings in which a replacement is required. If an original panelist is unavailable to serve in either of the proceedings, the parties to the dispute will further request that, in making this appointment, the Director-General seek a person who will be available to act in both proceedings.
12. The parties to this dispute will continue to cooperate in all matters related to these agreed procedures and not to raise any procedural objection to any of the steps set out herein. If, during the application of these procedures, the parties to the dispute consider that a procedural aspect has not been properly addressed in these procedures, they will endeavor to find a solution within the shortest time possible that will not affect the other aspects and steps agreed herein.

Signed in Geneva, 4 May 2007:

Peter F. Allgeier
Ambassador
Permanent Representative
of the United States

Eckart Guth
Ambassador
Permanent Representative
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