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**UNITED STATES – ANTI-DUMPING AND COUNTERVAILING MEASURES ON LARGE  
RESIDENTIAL WASHERS FROM KOREA**

**NOTIFICATION OF AN 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 20(1) OF THE WORKING PROCEDURES FOR APPELLATE REVIEW**

The following communication, dated 19 April 2016, from the delegation of the United States, is being circulated to Members.

Pursuant to Article 16 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU") and Rule 20 of the *Working Procedures for Appellate Review*, the United States files this notice of appeal to the Appellate Body on certain issues of law covered in the Report of the Panel on *United States – Anti-Dumping and Countervailing Measures on Large Residential Washers from Korea* (WT/DS464/R & WT/DS464/R/Add.1) 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 interpretation of the "pattern" for purposes of the second sentence of Article 2.4.2 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* (the "AD Agreement").<sup>1</sup> The Panel found that the relevant "pattern" for the purpose of the second sentence of Article 2.4.2 comprises only low-priced export transactions to a particular "target" (be that a purchaser, or a region, or a time period) while other export transactions to other purchasers, regions, or time periods are "non-pattern" transactions. This finding is in error and is based on erroneous findings on issues of law and legal interpretations.<sup>2</sup> The United States respectfully requests that the Appellate Body reverse or modify the Panel's findings.

2. The United States seeks review of the Panel's findings relating to the "scope of application"<sup>3</sup> of the alternative, average-to-transaction comparison methodology. The Panel found that the alternative, average-to-transaction comparison methodology set forth in the second sentence of Article 2.4.2 of the AD Agreement "should only be applied to transactions that constitute the 'pattern of export prices which differ significantly among different purchasers, regions or time periods'."<sup>4</sup> Consequently, the Panel found that the U.S. Department of Commerce ("USDOC") acted inconsistently with the second sentence of Article 2.4.2 of the AD Agreement by applying the alternative, average-to-transaction comparison methodology to all export transactions in the washers anti-dumping investigation.<sup>5</sup> The Panel also found that the USDOC's differential pricing analysis is inconsistent with the second sentence of Article 2.4.2 of the AD Agreement, "as such," because it applies the alternative, average-to-transaction comparison methodology to all export transactions under certain circumstances.<sup>6</sup> These findings by the Panel are in error and are based

<sup>1</sup> See, e.g., Panel Report, paras. 7.23-24, 7.27-29, 7.45-46, 7.119.c, 7.141-142, 7.144, 7.154-157, 7.160-163, 7.187-191, 8.1.a.i, 8.1.a.vi, 8.1.a.ix, and 8.1.a.xii-xvi. As with other findings reflected throughout the Panel Report, this list of the paragraphs in the Panel Report reflecting this legal error is indicative.

<sup>2</sup> See, e.g., Panel Report, paras. 7.23-24, 7.27-29, 7.45-46, 7.119.c, 7.141-142, 7.144, 7.154-157, 7.160-163, 7.187-191.

<sup>3</sup> Panel Report, para. 7.11.

<sup>4</sup> See, e.g., Panel Report, para. 7.29.

<sup>5</sup> See, e.g., Panel Report, paras. 7.29, 8.1.a.i.

<sup>6</sup> See, e.g., Panel Report, paras. 7.119, 8.1.a.vi.

on erroneous findings on issues of law and legal interpretations.<sup>7</sup> The United States respectfully requests that the Appellate Body reverse the Panel's findings.

3. The United States seeks review of the Panel's findings relating to the use of zeroing in connection with the application of the alternative, average-to-transaction comparison methodology set forth in the second sentence of Article 2.4.2 of the AD Agreement.<sup>8</sup> The Panel found that "the USDOC's use of zeroing when applying the [average-to-transaction] comparison methodology is 'as such' inconsistent with the second sentence of Article 2.4.2," and that "the USDOC acted inconsistently with the second sentence of Article 2.4.2 by using zeroing when applying the [average-to-transaction] comparison methodology in the *Washers* anti-dumping investigation."<sup>9</sup> Consequently, the Panel also found that "the use of zeroing in the context of the [average-to-transaction] comparison methodology is 'as such' inconsistent with Article 2.4" of the AD Agreement, "the USDOC acted inconsistently with Article 2.4 by using zeroing in the *Washers* anti-dumping investigation,"<sup>10</sup> and "the use of zeroing by the USDOC when applying the [average-to-transaction] comparison methodology in administrative reviews is inconsistent 'as such' with Article 9.3 of the Anti-Dumping Agreement and Article VI:2 of the GATT 1994."<sup>11</sup> These findings by the Panel are in error and are based on erroneous findings on issues of law and legal interpretations, including an erroneous interpretation and application of the phrase "individual export transactions" in the second sentence of Article 2.4.2 of the AD Agreement.<sup>12</sup> The United States respectfully requests that the Appellate Body reverse the Panel's findings.

4. The United States seeks review of the Panel's finding that the USDOC's differential pricing analysis "is inconsistent 'as such' with the second sentence of Article 2.4.2 because, by aggregating random and unrelated price variations, it does not properly establish 'a pattern of export prices which differ significantly among different purchasers, regions or time periods'."<sup>13</sup> These findings by the Panel are in error and are based on erroneous findings on issues of law and legal interpretations, including an erroneous interpretation of the "pattern clause" of the second sentence of Article 2.4.2 of the AD Agreement.<sup>14</sup> The United States respectfully requests that the Appellate Body reverse the Panel's findings.

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<sup>7</sup> See, e.g., Panel Report, paras. 7.21-7.29.

<sup>8</sup> See Panel Report, paras. 7.172-7.209.

<sup>9</sup> See, e.g., Panel Report, paras. 7.192, 8.1.a.xii, 8.1.a.xiv.

<sup>10</sup> See, e.g., Panel Report, paras. 7.206, 8.1.a.xiii, 8.1.a.xv.

<sup>11</sup> See, e.g., Panel Report, paras. 7.208, 8.1.a.xvi.

<sup>12</sup> See, e.g., Panel Report, paras. 7.187-7.193, 7.206-7.208.

<sup>13</sup> See, e.g., Panel Report, paras. 7.143, 7.147, 8.1.a.ix.

<sup>14</sup> See, e.g., Panel Report, paras. 7.138-7.147.