



29 August 2018

(18-5401)

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**UNITED STATES – COUNTERVAILING MEASURES ON  
SUPERCALENDERED PAPER FROM CANADA**

**NOTIFICATION OF AN APPEAL BY 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 27 August 2018, from the Delegation of the United States, is being circulated to Members.

1. 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 hereby notifies its decision to appeal to the Appellate Body certain issues of law covered in the report of the Panel in *United States – Countervailing Measures on Supercalendered Paper from Canada* (WT/DS505/R and WT/DS505/R/Add.1) and certain legal interpretations developed by the Panel.

2. The United States seeks review by the Appellate Body of the Panel's findings that the so-called "ongoing conduct" measure is a "measure" that could be challenged under the DSU.<sup>1</sup> This finding is in error and is based on erroneous findings on issues of law and legal interpretations. The Panel erred in finding that "ongoing conduct" is a measure within the DSU, including DSU Articles 7.1, 19.1, 3.3, and 4.2. The Panel improperly relied on the Appellate Body's approach to "ongoing conduct" expressed in *US – Continued Zeroing* when that approach would not support the Panel's finding of an "ongoing conduct" measure. The Panel also failed to properly apply its own legal approach to the facts to determine the existence of the "ongoing conduct". The United States respectfully requests that the Appellate Body reverse the Panel's findings.

3. The United States seeks review by the Appellate Body of the Panel's finding that the so-called "ongoing conduct" measure is inconsistent with Article 12.7 of the SCM Agreement.<sup>2</sup> This finding is in error and is based on erroneous findings on issues of law and legal interpretations. The Panel failed to provide a basic rationale for its findings as required by Article 12.7 of the DSU. The Panel erred in finding a breach of Article 12.7 of SCM Agreement when that provision permits the use of facts available where the respondent significantly impedes the investigation, an alternative basis for using facts available that the Panel failed to analyze. The Panel's legal conclusion is unsubstantiated by its own reasoning, which does not correspond to the "ongoing conduct" actually found by the Panel, nor with the determinations on the record in the proceeding. Finally, the Panel erred in finding that a request for information on "Other Forms of Assistance" can never be a request for "necessary information". The United States respectfully requests that the Appellate Body reverse the Panel's findings.

4. The Panel erred in making a recommendation under DSU Article 19.1 because it erred in finding that the so-called "Other Forms of Assistance" measure exists and is a "measure" within the meaning of the DSU or because it erred in finding this alleged "measure" is inconsistent with SCM Agreement Article 12.7.<sup>3</sup> Having reversed the Panel's legal conclusion on either basis, the

<sup>1</sup> *US – Supercalendered Paper (Panel)*, paras. 7.301–7.329 and 7.332.

<sup>2</sup> *US – Supercalendered Paper (Panel)*, para. 7.333.

Appellate Body should also, as a consequence, reverse the Panel's recommendation under DSU Article 19.1.

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<sup>3</sup> *US – Supercalendered Paper (Panel)*, para. 8.6.