

**UNITED STATES – FINAL ANTI-DUMPING MEASURES
ON STAINLESS STEEL FROM MEXICO**

Recourse to Article 21.5 of the DSU by Mexico

Request for Consultations

The following communication, dated 19 August 2009, from the delegation of Mexico to the delegation of the United States and to the Chairman of the Dispute Settlement Body, is circulated in accordance with Article 21.5 of the DSU.

The Government of Mexico hereby requests consultations with the Government of the United States pursuant to Articles 21.5 and 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"), Article XXII of the General Agreement on Tariffs and Trade 1994 ("GATT 1994"), Article 17 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("*Anti-Dumping Agreement*") and paragraph 1 of the Agreement between Mexico and the United States Regarding Procedures under Articles 21 and 22 of the Dispute Settlement Understanding ("*Sequencing Agreement*")¹, with respect to the issues identified below.

I. BACKGROUND TO THE REQUEST

1. On 20 May 2008, the Dispute Settlement Body ("DSB") adopted the Appellate Body Report and the Panel Report, as modified by the Appellate Body Report, in *United States – Final Anti-Dumping Measures On Stainless Steel From Mexico* (WT/DS344) (*US – Zeroing (Mexico)*).² The DSB found that:

- (i) Model zeroing in original investigations is, "as such", inconsistent with Article 2.4.2 of the *Anti-Dumping Agreement*³;
- (ii) the United States Department of Commerce ("USDOC") acted inconsistently with Article 2.4.2 of the *Anti-Dumping Agreement* in the investigation on *Stainless Steel Sheet and Strip in Coils from Mexico* by using model zeroing⁴;
- (iii) simple zeroing in periodic reviews is, "as such", inconsistent with Article VI:2 of the GATT 1994 and Article 9.3 of the *Anti-Dumping Agreement*⁵; and

¹ WT/DS344/17.

² Minutes of DSB Meeting, WT/DSB/M/250, para. 74 (20 May 2008).

³ Panel Report, *US – Zeroing (Mexico)*, para. 8.1(a).

⁴ *Ibid.*, para. 8.1(b).

- (iv) the United States acted inconsistently with Article VI:2 of the GATT 1994 and Article 9.3 of the *Anti-Dumping Agreement* by applying simple zeroing in the five periodic reviews at issue in this dispute (and identified as cases 1 to 5 in the Annex to this request).⁶

2. On 2 June 2008, the United States informed the DSB that it intended to comply with its WTO obligations in this dispute but that it would require a reasonable period of time to do so.⁷ The United States requested 15 months, ending on 20 August 2009, to take legislative action and/or administrative action pursuant to Section 123 of the *Uruguay Round Agreements Act* to implement the recommendations and rulings of the DSB with respect to simple zeroing used in periodic reviews.⁸ Mexico and the United States, however, were unable to agree on a reasonable period of time for implementation.⁹

3. On 11 August 2008, Mexico requested that the reasonable period of time be determined through binding arbitration pursuant to Article 21.3(c) of the DSU.¹⁰ On 20 October 2008, the Arbitrator determined that the reasonable period of time ("RPT") for the United States to implement the recommendations and rulings of the DSB was 11 months plus 10 days from the date of adoption of the Panel and Appellate Body Reports. The RPT ended on 30 April 2009.¹¹

4. On 18 May 2009, Mexico and the United States concluded the *Sequencing Agreement* with a view to facilitating the procedures for a resolution of this dispute under Articles 21 and 22 of the DSU.

II. IMPLEMENTATION ACTION AND INACTION DECLARED BY THE UNITED STATES

5. On 27 December 2006, the USDOC published a notice stating its intention to abandon the use of zeroing in average-to-average comparisons in anti-dumping original investigations, pursuant to the recommendations and rulings of the DSB.¹² The final modification became effective on 22 February 2007.¹³

6. At the DSB meeting on 20 May 2009, the United States informed the DSB that it had issued a new final determination on 31 March 2009, recalculating the margin of dumping in the original investigation of *Stainless Steel Sheet and Strip in Coils from Mexico* without model zeroing.¹⁴ The USDOC published a notice confirming implementation of this determination, effective

⁵ Appellate Body Report, *US – Zeroing (Mexico)*, para. 165(a).

⁶ *Ibid.*, para. 165(b).

⁷ Minutes of DSB Meeting, WT/DSB/M/251, para. 9 (2 June 2008).

⁸ *US – Zeroing (Mexico)*, Award of the Arbitrator, Arbitration under Article 21.3 (c) of the DSU, WT/DS344/15, paras. 6-21 (31 Oct 2008).

⁹ *Ibid.*, para. 2.

¹⁰ *Ibid.*

¹¹ *Ibid.*, para. 65.

¹² *Anti-Dumping Proceedings: Calculations of the Weighted-Average Dumping Margin during an Anti-Dumping Investigation*, 71 Fed. Reg. 77722 (Department of Commerce) (27 Dec. 2006) (final modification).

¹³ *Anti-Dumping Proceedings: Calculations of the Weighted-Average Dumping Margin in Anti-Dumping Investigations*, 72 Fed. Reg. 3783 (Department of Commerce) (26 January 2007) (change in effective date of final modification).

¹⁴ *Issues and Decision Memorandum for the Final Results of Proceeding Under Section 129 of the Uruguay Round Agreements Act: Anti-Dumping Measures on Stainless Steel from Mexico*, A-201-822 (31 March 2009).

23 April 2009.¹⁵ The determination revised the "all others" anti-dumping duty cash deposit rate, prospectively for subject imports from 23 April 2009 forward, but did not affect the anti-dumping duty cash deposit rate for the sole respondent, ThyssenKrupp Mexinox S.A. de C.V.¹⁶

7. With respect to the administrative reviews that were challenged "as applied", the United States informed the DSB that "any prospective effect of those reviews has been eliminated and all entries of merchandise under the five reviews have been liquidated for customs purposes."¹⁷ With respect to other rulings and recommendations in the dispute, the United States informed the DSB that it "has also been conferring with Mexico about the steps that the United States has taken to comply with the recommendations and rulings of the DSB."¹⁸

III. MEASURES AT ISSUE AND CLAIMS MADE IN THESE PROCEEDINGS

8. Mexico considers that the United States has failed to implement the recommendations and rulings of the DSB in this dispute and is therefore in breach of its WTO obligations. The claims on which Mexico is seeking consultations with the United States are the following:

- (i) As described in paragraph 1(iii) of this Request, the DSB made recommendations and rulings to the effect that the use of simple zeroing in periodic reviews is "as such" inconsistent with Article VI:2 of the GATT 1994 and Article 9.3 of the *Anti-Dumping Agreement*. The United States has not taken any steps to eliminate simple zeroing in periodic reviews and has therefore failed to implement the DSB's recommendations and rulings by the end of the RPT or thereafter. By continuing to maintain and use simple zeroing in periodic reviews and failing to implement the DSB's recommendations and rulings, the United States has acted and continues to act inconsistently with Articles 17.14, 21.1 and 21.3 of the DSU and, as indicated in the DSB's recommendations and rulings, Article VI:2 of the GATT 1994 and Article 9.3 of the *Anti-Dumping Agreement*.
- (ii) As described in paragraph 1(iv) of this Request, the DSB made recommendations and rulings to the effect that the United States acted inconsistently with Article VI:2 of the GATT 1994 and Article 9.3 of the *Anti-Dumping Agreement* by applying simple zeroing in the five periodic reviews originally challenged in this dispute (and identified in the Annex to this Request as cases 1 to 5). The United States has not taken any steps to implement the DSB's recommendations and rulings regarding the use of simple zeroing in cases 1 to 5. By continuing to maintain and use the simple zeroing measure in these five periodic reviews and failing to implement the DSB's recommendations and rulings, the United States acts inconsistently with Articles 17.14, 21.1 and 21.3 of the DSU and, as indicated in the DSB's recommendations and rulings, Article VI:2 of the GATT 1994 and Article 9.3 of the *Anti-Dumping Agreement*.
- (iii) This Request also concerns five closely related subsequent periodic reviews of the same anti-dumping duty order on stainless steel sheet and strip in coils from Mexico (identified in the Annex as cases 6 to 10) as well as any other subsequent closely

¹⁵ *Implementation of the Findings of the WTO Dispute Settlement Panel and Appellate Body in United States – Final Anti-Dumping Measures on Stainless Steel from Mexico*, 74 Fed. Reg. 19527 (Department of Commerce) (29 April 2009) (notice of determination under Section 129 of the *Uruguay Round Agreements Act*).

¹⁶ See US Customs and Border Protection Message No. 9126204 (6 May 2009).

¹⁷ Statement of the United States, Meeting of the Dispute Settlement Body of 20 May 2009.

¹⁸ *Ibid.*

related measures taken by the United States in connection with the anti-dumping order on stainless steel sheet and strip in coils from Mexico. The foregoing includes, but is not limited to, any anti-dumping duty determinations and measures that derive mechanically therefrom, that have a close nexus to the above-mentioned five periodic reviews originally challenged in this dispute. Since the end of the RPT, the United States has improperly continued to impose, assess and/or collect anti-dumping duties in excess of the proper margin of dumping, and evidences its intention to continue to do so, through the five subsequent periodic reviews at issue, any amendments thereto, any measures closely related thereto, any future subsequent periodic reviews, and the United States Government instructions and notices. The United States thereby improperly imposes duties on the importation of Mexican goods in excess of the duties permitted under the United States' Schedule of Concessions. The United States' failure to take measures to eliminate simple zeroing and, thereby, to bring itself into conformity with its WTO obligations, is inconsistent with Articles 17.14, 21.1 and 21.3 of the DSU. As a result of this omission, the United States continues to act inconsistently with Article 9.3 of the *Anti-Dumping Agreement* and Article VI:2 of the GATT 1994, as indicated in the DSB's recommendations and rulings.

- (iv) Further, the United States' measures taken to comply as described herein, in so far as they exist, are inconsistent with Article 9.3 of the *Anti-Dumping Agreement* and Articles II:1(a), II:1(b), VI:1 and VI:2 of the GATT 1994 for the reasons given in the previous paragraph.

9. Mexico reserves all of its WTO rights in respect of the purported compliance by the United States with its obligations in this dispute. It also reserves the right to raise further factual and legal claims in the course of the consultations.

10. Mexico looks forward to receiving the US Government's response to this Request in order to set a mutually convenient date for consultations.

ANNEX

**STAINLESS STEEL SHEET AND STRIP IN COILS FROM MEXICO
(USDOC CASE NO. A-201-822)**

CASE	PERIOD OF REVIEW	PUBLICATION
1	4 January 1999 - 30 June 2000	<i>Stainless Steel Sheet and Strip in Coils from Mexico</i> , 67 FR 6490 (USDOC) (12 February 2002), subsequently amended as <i>Stainless Steel Sheet and Strip in Coils from Mexico</i> , 67 FR 15542 (USDOC) (2 April 2002).
2	1 July 2000 - 30 June 2001	<i>Stainless Steel Sheet and Strip in Coils from Mexico</i> , 68 FR 6889 (USDOC) (11 February 2003), subsequently amended as <i>Stainless Steel Sheet and Strip in Coils from Mexico</i> , 68 FR 13686 (USDOC) (20 March 2003).
3	1 July 2001- 30 June 2002	<i>Stainless Steel Sheet and Strip in Coils from Mexico</i> , 69 FR 6259 (USDOC) (10 February 2004).
4	1 July 2002 – 30 June 2003	<i>Stainless Steel Sheet and Strip in Coils from Mexico</i> , 70 FR 3677 (USDOC) (26 January 2005).
5	1 July 2003 - 30 June 2004	<i>Stainless Steel Sheet and Strip in Coils from Mexico</i> , 70 FR 73444 (USDOC) (12 December 2005).
6	1 July 2004 - 30 June 2005	<i>Stainless Steel Sheet and Strip in Coils from Mexico</i> , 71 FR 76978 (USDOC) (22 December 2006).
7	1 July 2005 - 30 June 2006	<i>Stainless Steel Sheet and Strip in Coils from Mexico</i> , 73 FR 7710 (USDOC) (11 February 2008), as subsequently amended 73 FR 14215 (17 March 2008).
8	1 July 2006 - 30 June 2007	<i>Stainless Steel Sheet and Strip in Coils from Mexico</i> , 74 FR 6365 (USDOC) (9 February 2009).
9	1 July 2007- 30 June 2008	<i>Preliminary Determination - Stainless Steel Sheet and Strip in Coils from Mexico</i> , 74 FR 39622 (USDOC) (7 August 2009).
10	1 July 2008 - 30 June 2009	<i>Initiation - Stainless Steel Sheet and Strip in Coils from Mexico</i> , 74 FR ____ (USDOC) (__ August 2009).