

**UNITED STATES – CONTINUED EXISTENCE AND APPLICATION  
OF ZEROING METHODOLOGY**

Request for Consultations by the European Communities

The following communication, dated 2 October 2006, from the delegation of the European Communities to the delegation of the United States and to the Chairman of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

The European Communities request consultations with the United States of America (the "United States") under Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (the "DSU"); Article XXII:1 of the General Agreement on Tariffs and Trade 1994 (the "GATT 1994"); and Articles 17.2 and 17.3 of the Agreement on implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the "*AD Agreement*") with regard to the practice and methodologies for calculating dumping margins involving the use of zeroing, and the application of zeroing in certain specified anti-dumping measures.

**1. The facts**

- (a) When carrying out reviews of anti-dumping measures, the United States re-investigates and determines the margin of dumping on the basis of a comparison of a weighted average normal value for each "averaging group" and individual export prices. When adding up the results of these comparisons to determine the total amount or margin of dumping of the product under investigation, the United States puts at zero any negative amounts of "dumping". As a result, the United States calculates a margin of dumping and collects an amount of anti-dumping duty in excess of the actual margin of dumping practised by the companies concerned. The United States uses this methodology systematically in all its annual reviews of anti-dumping orders, so-called administrative reviews, and indeed in all types of review (including new shipper and changed circumstances reviews) in which it is required to calculate a dumping margin.

The Appellate Body, in the case *United States – Laws, Regulations and Methodology for Calculating Dumping Margins ("Zeroing")* (WT/DS294/AB/R), found that the United States' use of zeroing in its "administrative reviews" was inconsistent with Article 9.3 of the AD Agreement and Article VI:2 of GATT 1994. The Appellate Body also confirmed that the United States Department of Commerce (the "DOC") employed a "zeroing methodology" in calculating the margin of dumping in its "administrative reviews" as described above.

This zeroing methodology is applied pursuant, in particular, to:

- the implementing regulation<sup>1</sup> of the DOC, in particular section 351.414(c)(2); and
- the Import Administration Antidumping Manual (1997 edition) (the "IA AD Manual") including the computer program(s) to which it refers.

The zeroing methodology described above was applied in the determinations of the margin of dumping by the DOC in the final results of the anti-dumping administrative reviews listed in Annex I, and any assessment instructions issued pursuant to those final results.

- (b) In original investigations, the United States identifies sub-groups of products within the product under investigation ("averaging groups") on a per model basis as well as on the basis of other criteria such as the level of trade. Within each of the averaging groups, a weighted average export price is established and compared to the corresponding weighted average normal value. The results of these comparisons on an "averaging group" basis are added up to establish the dumping margin of the product under investigation as a whole; however, in this process, any negative margins or amounts of "dumping" resulting from the comparison of weighted average normal values with weighted average export prices on an "averaging group" basis are put at zero. As a result, the United States calculates a margin and amount of dumping in excess of the actual margin of dumping practised by the companies concerned. The panel and the Appellate Body in *United States—Laws, Regulations and Methodology for Calculating Dumping Margins ("Zeroing")* (WT/DS294/R and WT/DS294/AB/R) have confirmed that such a methodology is inconsistent with Article 2.4.2 of the AD Agreement. This methodology was used by the DOC for the determination of the margins of dumping in the original investigations listed in Annex III, and in any automatic assessment instructions issued pursuant to those measures.
- (c) In sunset reviews, the US makes determinations with reference to previously established margins of dumping which were usually calculated using a zeroing methodology.<sup>2</sup> In the case listed in Annex II, DOC determined that dumping was likely to continue or recur if the anti-dumping order were revoked, notably because dumping had continued at levels above *de minimis* after the issuance of the order. To find that dumping had continued after the issuance of the order, DOC relied on dumping margins calculated in the original investigation and in administrative reviews using zeroing.

## 2. Subject of consultations

The matters, which the EC would like to raise in the course of the consultations include, but are not limited to, the following:

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<sup>1</sup> 19 CFR Section 351.

<sup>2</sup> These dumping margins will normally have been established in original investigations, in which the zeroing methodology condemned in DS 294 will usually have been used; Section 752(c)(3) of the Tariff Act of 1930, Section 315.218(e)(2)(i) of the DOC implementing regulation and paragraphs II.B of the Sunset Policy Bulletin.

- (a) The United States regulations, zeroing methodology, practice, administrative procedures and measures for determining the dumping margin in reviews mentioned under point 1(a) above and which the EC considers are inconsistent with several provisions of the *AD Agreement*, GATT 1994 and the Marrakesh Agreement establishing the World Trade Organization:
- Articles 2.1 of the *AD Agreement* and Articles VI:1 and VI:2 of the GATT 1994, because the US did not determine a dumping margin for the product as a whole ;
  - Articles 2.4 and 2.4.2 of the *AD Agreement* insofar as the comparison made by the United States is inconsistent with those provisions;
  - Articles 9.1 and 9.3 of the *AD Agreement* insofar as there is as a result the imposition and collection of an anti-dumping duty in excess of the margin of dumping determined pursuant to Article 2 of the *AD Agreement*;
  - Articles 9.5 and 11 (including Articles 11.2 and 11.3) of the *AD Agreement* insofar as the determinations of dumping in review investigations contemplated by these provisions are not made in compliance with Article 2 of the *AD Agreement*;
  - Articles 1 and 2.1 of the *AD Agreement* and Articles VI:1 and VI:2 of the GATT 1994 insofar as there is as a result the imposition and collection of an anti-dumping duty which is inconsistent with the *AD Agreement*; and consequently of
  - Article XVI:4 of the Marrakesh Agreement establishing the World Trade Organization and Article 18.4 of the *AD Agreement* insofar as the United States has not taken all necessary steps, of a general or particular character, to ensure the conformity of its laws, regulations and administrative procedures with the provisions of GATT 1994 and the *AD Agreement*.
- (b) The specific anti-dumping administrative reviews listed in Annex I to the present request, and any assessment instructions issued pursuant to them in which the United States applied the regulations, zeroing methodology, practice, administrative procedures and measures described under point 1(a) above. As a consequence, the European Communities consider that the outcome of the administrative reviews as detailed in Annex I is inconsistent with Articles 1, 2.1 2.4, 2.4.2, 9.1, 9.3, 11.2 and 18.4 of the *AD Agreement*, Articles VI:1 and VI:2 of the GATT 1994 and Article XVI:4 of the Marrakesh Agreement establishing the World Trade Organization for the reasons set out above under point (a).
- (c) The specific dumping determination in the original investigations listed in Annex III to the present request, and any automatic assessment instructions issued pursuant to them, in which the United States applied the zeroing methodology described under point 1(b) above. As a consequence, the European Communities consider that the imposition of definitive duties in the original investigations detailed in Annex III is inconsistent with:

- Articles 2.1 of the *AD Agreement* and Articles VI:1 and VI:2 of the GATT 1994, because the US did not determine a dumping margin for the product as a whole ;
  - Articles 2.4 and 2.4.2 of the *AD Agreement* insofar as the comparison made by the United States is inconsistent with those provisions;
  - Article 5.8 of the *AD Agreement* insofar as a *de minimis* dumping margin is erroneously determined to be not *de minimis*;
  - Articles 9.1 and 9.3 of the *AD Agreement* insofar as there is as a result the imposition and collection of an anti-dumping duty in excess of the margin or amount of dumping as determined pursuant to Article 2 of the *AD Agreement*;
  - Articles 1 and 2.1 of the *AD Agreement* and Articles VI:1 and VI:2 of the GATT 1994 insofar as there is as a result the imposition and collection of an anti-dumping duty which is inconsistent with the *AD Agreement*; and consequently of
  - Article XVI:4 of the Marrakesh Agreement establishing the World Trade Organization and Article 18.4 of the *AD Agreement* insofar as the United States has not taken all necessary steps, of a general or particular character, to ensure the conformity of its laws, regulations and administrative procedures with the provisions of GATT 1994 and the *AD Agreement*.
- (d) The specific Sunset review determination in the case listed in Annex II to the present request. The United States relied in its determination on dumping margins that were calculated in the original investigation and in administrative reviews using the methodology described under point 1(a) above. As a consequence, the European Communities consider that the continuation of the anti-dumping in this case is inconsistent with:
- Articles 11.1 and 11.3 of the *AD Agreement* insofar as the United States relied on a dumping margin which was not established for the product as a whole and not conform to Articles 2.4 and 2.4.2 of the *AD Agreement*;
  - Articles 2.4 and 2.4.2 of the *AD Agreement* insofar as the comparison made by the United States is inconsistent with those provisions;
  - Articles 2.1 of the *AD Agreement* and Articles VI:1 and VI:2 of the GATT 1994, because the US did not determine a dumping margin for the product as a whole ;
  - Articles 9.1 and 9.3 of the *AD Agreement* insofar as there is as a result the imposition and collection of an anti-dumping duty in excess of the margin or amount of dumping as determined pursuant to Article 2 of the *AD Agreement*;

- Articles 1 and 2.1 of the *AD Agreement* and Articles VI:1 and VI:2 of the GATT 1994 insofar as there is as a result the imposition and collection of an anti-dumping duty which is inconsistent with the *AD Agreement*; and consequently of
- Article 18.3 of the *AD Agreement* insofar the United States has not applied the provision of this Agreement to a review of existing measures initiated after the entry into force for the United States of the WTO Agreement
- and Article XVI:4 of the Marrakesh Agreement establishing the World Trade Organization and Article 18.4 of the *AD Agreement* insofar as the United States has not taken all necessary steps, of a general or particular character, to ensure the conformity of its laws, regulations and administrative procedures with the provisions of GATT 1994 and the *AD Agreement*.

The European Communities reserve the right to raise additional claims and legal matters during the course of the consultations.

The European Communities look forward to receiving the United States' reply to this request and to setting a mutually convenient date for these consultations.

**ANNEX: LIST OF CASES**

<b>I. ADMINISTRATIVE REVIEWS</b>							
<b>Product</b>	<b>MS</b>	<b>USDOC No</b>	<b>Final Results</b>	<b>Amended Final Results</b>	<b>Company</b>	<b>Dumping margin</b>	<b>Period covered by the review</b>
1. Ball Bearings	F	A-427-801	68 FR 35623, June 16, 2003	68 FR 43712, July 24, 2003	France SNR Roulements SKF	3,52% 6,70%	1 May 2001–30 April 2002
2. Ball Bearings	G	A-428-801	68 FR 35623, June 16, 2003		FAG Torrington Paul Mueller SKF	1,45% 70,41% 0,19% 3,38%	1 May 2001–30 April 2002
3. Ball Bearings	I	A-475-801	68 FR 35623, June 16, 2003		FAG SKF	2,87% 5,08%	1 May 2001–30 April 2002
4. Stainless Steel Sheet & Strip Coils	I	A-475-824	68 FR 69382 December 12, 2003		Thyssenkrupp Acciai Terni SpA	1,62%	1 July 2001–30 June 2002
5. Certain Pasta	I	A-475-818	69 FR 6255, February 10, 2004	69 FR 81, April 27, 2004	Garofalo Indalco PAM Tomasello Zaffiri	2,57% 2,85% 45,49% 4,59% 7,23%	1 July 2001–30 June 2002
6. Stainless Steel Sheet & Strip coils	G	A-428-825	69 FR 6262, February 10, 2004		TKN	3,72%	1 July 2001–30 June 2002
7. Certain Hot-rolled Carbon Steel Flat	NI	A-421-807	69 FR 115, June 16, 2004	69 FR 43801, July 22, 2004	Corus	4,80%	3 May 2001–31 October 2002
8. Stainless Steel Bar	G	A-428-830	69 FR 113, June 14, 2004		BGH	0,52%	2 August 2001–28 February 2003
9. Stainless Steel Bar	I	A-475-829	69 FR 113, June 14, 2004		Foroni Ugine-Savoie-Imphy SA	4,03% 33,00%	2 August 2001–28 February 2003
10. Antifriction Bearings and Parts thereof	F	A-427-801	69 FR 55574, September 15, 2004	69 FR 62023, October 22, 2004	Numerous	66,42% (43) to less than 7% (3)	1 May 2002–30 April 2003
11. Antifriction Bearings and Parts thereof	G	A-428-801	69 FR 55574, September 15, 2004	69 FR 63507, November 2, 2004	Numerous	70, 41% (43) to less than 7% (4)	1 May 2002–30 April 2003
12. Antifriction Bearings and Parts thereof	I	A-475-801	69 FR 55574, September 15, 2004	69 FR 62023, October 22, 2004	Numerous	68, 29% (43) to less than 5% (3)	1 May 2002–30 April 2003

**I. ADMINISTRATIVE REVIEWS**

<b>Product</b>	<b>MS</b>	<b>USDOC No</b>	<b>Final Results</b>	<b>Amended Final Results</b>	<b>Company</b>	<b>Dumping margin</b>	<b>Period covered by the review</b>
13. Antifriction Bearings and Parts thereof	UK	A 412-801	69 FR 55574, September 15, 2004	69 FR 62023, October 22, 2004	Aeroengine Bearings Barden/FAG	61,14% 4,10%	1 May 2002–30 April 2003
14. Stainless Steel Plate in Coils	B	A-423-808	69 FR 74495, December 14, 2004	70 FR 2999, January 19, 2005	U&A Belgium	2,71%	1 May 2002–30 April 2003
15. Stainless Steel Sheet and Strip in Coils	G	A-428-825	69 FR 75930, December 20, 2004		Thyssen Krupp Nirosta	7,03%	1 July 2002–30 June 2003
16. Steel Concrete Reinforcing Bars	LV	A-449-804	69 FR 74498, December 14, 2004		LM	3,01%	1 September 2002–31 August 2003
17. Certain Pasta	I	A-475-818	70 FR 6832, February 9, 2005		Barilla Corticella/Combattenti Indalco PAM Riscossa Russo	7,25% 4% 6,03% 4,78% 1,05% 7,36%	1 July 2002–30 June 2003
18. Certain hot-rolled carbon steel flat products	NL	A-421-807	70 FR 18366, April 11, 2005		Corus	4,42%	1 November 2002–31 October 2003
19. Stainless steel bar	G	A-428-830	71 FR 42802, July 28, 2006	71 FR 52063, September 1, 2006	BGH Group	0,73%	1 March 2004–28 February 2005
20. Stainless steel bar	F	A-427-820	70 FR 46482, August 10, 2005		Ugitech S.A.	14,98%	1 March 2003–29 February 2004
21. Ball Bearings and parts thereof	F	A-427-801	70 FR 54711, September 16, 2005		SKF SNR	8,41% 11,93%	1 May 2003–30 April 2004
22. Ball Bearings and parts thereof	G	A-428-801	70 FR 54711, September 16, 2005		FAG/INA GRW SKF Germany	5,65% 4,58% 16,06%	1 May 2003–30 April 2004
23. Ball Bearings and parts thereof	I	A-475-801	70 FR 54711, September 16, 2005		FAG Italy SKF Italy	5,88% 2,59%	1 May 2003–30 April 2004
24. Ball Bearings and parts thereof	UK	A-412-801	70 FR 54711, September 16, 2005		Barden/FAG SKF IK	2,78% 61,14%	1 May 2003–30 April 2004

I. ADMINISTRATIVE REVIEWS							
Product	MS	USDOC No	Final Results	Amended Final Results	Company	Dumping margin	Period covered by the review
25. Certain Pasta	I	A-475-818	70 FR 71464, November 29, 2005		Barilla Corticella/Combattenti Indalco Pagani Riscossa	20,68% 3,41% 2,59% 2,76% 2,03%	1 July 2003–30 June 2004
26. Stainless steel plate in coils	B	A-423-808	70 FR 72789, December 7 2005		Ugine & ALZ Belgium NV	2,96%	1 May 2003–30 April 2004
27. Stainless steel sheet and strip in coils	G	A-428-825	70 FR 73729 December 13, 2005		TKN	9,5%	1 July 2003–30 June 2004
28. Steel concrete reinforcing bars	LV	A-449-804	71 FR 7016, February 10, 2006		Liepajas Metalurgs	5,24%	1 September 2003–31 August 2004
29. Stainless Steel Bar	F	A-427-820	71 FR 30873, May 31 2006		Ugitech S.A.	9,68%	1 March 2004–28 February 2005
30. Ball Bearings and parts thereof	F	A-427-801	71 FR 40064, July 14, 2006		SKF France SNR	12,57% 11,75%	1 May 2004–30 April 2005
31. Ball Bearings and parts thereof	G	A-428-801	71 FR 40064, July 14, 2006		FAG/INA GRW SKF Germany	4,04% 1,14% 7,35%	1 May 2004–30 April 2005
32. Ball Bearings and parts thereof	I	A-475-801	71 FR 40064, July 14, 2006		FAG Italy SKF Italy	2,52% 7,65%	1 May 2004–30 April 2005
33. Steel concrete reinforcing bars	LV	A-449-804	71 FR 45031, August 8, 2006 (preliminary results, final results to be issued by early December 2006)		Liepajas Metalurgs	6,03%	1 September 2004–31 August 2005

II. SUNSET REVIEW						
Product	MS	USDOC Case No	DOC Final Determination	ITC Case Number	ITC Determination	Continuation Order
34. Brass sheet & strip	G	A-428-602	71 FR 4348, January 26, 2006	731-TA-317	71 FR 14719, March 23, 2006	71 FR 16552, April 3, 2006

**III. IMPOSITION OF ANTI-DUMPING DUTY**

<b>Product</b>	<b>MS</b>	<b>USDOC Case No</b>	<b>DOC Final Determination</b>	<b>ITC Case Number</b>	<b>ITC Determination</b>	<b>AD Order</b>
35. Purified carboxymethylcellulose	SW	A-401-808	70 FR 28278, May 17, 2005	731-TA-1087	70 FR 39334, July 7, 2005	70 FR 39734, July 11, 2005
36. Purified carboxymethylcellulose	NL	A-421-811	70 FR 28275, May 17, 2005	731-TA-1086	70 FR 39334, July 7, 2005	70 FR 39734, July 11, 2005
37. Purified carboxymethylcellulose	FIN	A-405-803	70 FR 28279, May 17, 2005	731-TA-1084	70 FR 39334, July 7, 2005	70 FR 39734, July 11, 2005
38. Chlorinated Isocyanurates	SP	A-469-814	70 FR 24506, May 10, 2005	731-TA-1083	70 FR 36205, June 22, 2005	70 FR 36562, June 24, 2005

WT/DSS350/1  
G/L/786  
G/ADP/D70/1