EU Requests WTO consultations with US on ‘zeroing’ in anti-dumping cases – Geneva, 22 September 2006

The European Union has today requested WTO consultations with the United States regarding the continued use of “zeroing” in its dumping calculations. “Zeroing” is a calculation methodology which ignores negative margins of dumping and therefore results in an unfair increase of the dumping liability of EU exporters. The use of zeroing by the United States was first condemned by the WTO in 2004, and more recently in May 2006 at the request of the European Union, and again in August 2006 at the request of Canada. However, these previous rulings left open a number of issues which are now covered by the new request for consultations.

On 9 May 2006, following a complaint of the European Union, the Dispute Settlement Body of the WTO condemned the United States for having used zeroing in 31 specific Anti-Dumping measures and for maintaining a zeroing methodology in original investigations leading to the imposition of anti-dumping measures. The United States has now until 9 April 2007 to revise the 31 specific measures and to stop the use of zeroing in future original investigations.

However, the dispute has left open a number of issues and the implementation of the 9 May ruling will not necessarily provide an adequate remedy. The United States has used Zeroing in 37 anti-dumping measures taken after the initiation of the WTO dispute and therefore not covered by it. Also, in respect of reviews (*i.e.* investigations conducted after the imposition of the anti-dumping measure to review the necessity to maintain it or the level of the duty), the Appellate Body, being limited to issues of law, concluded that there were not a basis for a decision on whether the US zeroing methodology was WTO compatible or not. The new request for consultations covers all those issues.

The most recent rulings of the WTO Appellate Body leave no doubt that the United States will be found in breach of its WTO obligations. The European Union therefore hopes that the United States will accept the inevitable and respond positively to the request for consultations making further actions unnecessary.

Consultations are the first steps in the WTO dispute settlement process. If they prove unsuccessful after 60 days, they entitle the EU to ask for a WTO Panel to be set up to rule on the legality of US practice.

Background

Zeroing is best explained with a simple example: a EU firm sells 1 unit of two models of a certain product in both the EU and US markets.

	Price in EU	Price in US	Difference
Model A	10	12	+ 2
Model B	10	8	- 2
Total 1 (no zeroing)	**20**	**20**	**0**
Total 2 (with zeroing)	**20**	**18**	**- 2**

In the above example, model A is sold in the US at above its EU price, while model B is sold for less than its EU price. In establishing a dumping margin for the whole product, WTO rules require a weighted-average of the prices of both models to be made. On this basis (Total 1), there is no dumping. However, the US “zeroing approach” (Total 2) takes the US price of model B, but considers the US price of model A to be the same as the EU price. By

considering the US price of model to be less than it really is, the US finds a dumping margin of 2 and could therefore impose an anti-dumping duty of 10%, even though a normal weighted average calculation reveals no dumping.

This practice of zeroing was first condemned in the *Bed Linen* case (WTO ruling in March 2001) and led to its abandonment by the EU except in the limited circumstances of “targeted dumping” in which it is authorised. With the condemnation of its anti-dumping duty for use of zeroing in the *Softwood Lumber* case (WTO ruling in August 2004), the US was confronted with the same situation, but continued zeroing leaving no option but to multiply the challenges in the WTO. Currently, the use of zeroing by the United States is being challenged in seven disputes initiated by different WTO Members.

In the *Zeroing* dispute initiated by the EU (DS 294, ruling of May 2006) and in a follow-up of the *Softwood Lumber* dispute (DS 264, ruling of August 2006), the Appellate Body concluded that zeroing is in contradiction with the concept of “margin of dumping” and the obligation to make a fair comparison between export prices and normal value. As both rules are applicable through the whole Anti-Dumping Agreement, the end of zeroing is inevitable in all AD investigations or reviews. The recent Panel report which found zeroing WTO compatible in reviews in a challenge by Japan (dispute DS 322) is thus bound to be reversed.

The US “zeroing” practice is having a significant adverse economic impact on EU exporters in various sectors including steel, chemicals and pasta. In most cases, without “zeroing”, the dumping margin would have been *de minimis* or even negative and, therefore, no anti-dumping duty would have been imposed. Several hundred million dollars of trade volume is involved. Some of the products - hot-rolled steel, stainless steel bars, ball bearings - are major export items and other important products will inevitably be involved in the future if the US is allowed to continue “zeroing”.

On 6 March 2006, the US Department of Commerce published a notice in the Federal Register requesting comments on its intention to cease the practice of "zeroing". However, this initiative is very limited in scope and is far from solving all issues raised by US zeroing. Notably, it does not deal at all with zeroing in reviews.