

**UNITED STATES –USE OF ZEROING IN ANTI-DUMPING  
MEASURES INVOLVING PRODUCTS FROM KOREA**

**(WT/DS402)**

**Answers of the United States of America  
to Questions from the Panel to the Parties  
in connection with the First Substantive Meeting of the Panel**

**October 18, 2010**

### Table of Reports

<b>Short Form</b>	<b>Full Citation</b>
<i>US – AD Measures on PET Bags</i>	Panel Report, <i>United States – Anti-Dumping Measures on Polyethylene Retail Carrier Bags from Thailand</i> , WT/DS383/R, adopted 18 February 2010
<i>US – Softwood Lumber V (AB)</i>	Appellate Body Report, <i>United States – Final Dumping Determination on Softwood Lumber from Canada</i> , WT/DS264/AB, adopted 31 August 2004
<i>US – Softwood Lumber V (Panel)</i>	Panel Report, <i>United States – Final Dumping Determination on Softwood Lumber from Canada</i> , WT/DS264/R, adopted 31 August 2004, as modified by the Appellate Body Report, WT/DS264/AB/R

**To the United States:**

- 2. Can the United States confirm that the modification to its methodology of calculating the weighted-average dumping margin in investigations using the average-to-average comparison methodology, which took effect on 22 February 2007, did not affect the anti-dumping duty order or the amended final determination in the Diamond Sawblade investigation?**

1. The modified methodology did not affect the anti-dumping duty order or the amended final determination in the Diamond Sawblades investigation. The modified methodology applies to future investigations and investigations pending before the Department as of the February 22, 2007, effective date. The final determination in the Diamond Sawblades investigation was completed in 2006.<sup>1</sup> The amended final determination was published on March 24, 2010; however, it was limited to correcting ministerial errors.<sup>2</sup>

**To both parties:**

- 3. Do the parties agree that the Appellate Body’s findings and reasoning in *US - Softwood Lumber V* extends to the calculation of the “all others” rate in each investigation?**

2. The United States does not agree that the reasoning in *US – Softwood Lumber V (AB)*, which addresses the methodology used to determine the existence of margins of dumping, extends to the “all others” rate determined in investigations. In the *Softwood Lumber V* dispute, Canada, similar to Korea in this dispute, also identified the “all others” rate as being “affected” by zeroing.<sup>3</sup> However, the panel, as upheld by the Appellate Body, correctly focused its reasoning, and findings, on the methodology used to determine the existence of margins of dumping for the individually examined exporters. No specific findings were made with respect to the “all others” rate.<sup>4</sup>

3. Although there were no specific findings that addressed the “all others” rate in the *Softwood Lumber V* dispute, the Department of Commerce did revise the “all others” rate in its

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<sup>1</sup> See Exhibit KOR-4-B.

<sup>2</sup> See Exhibit KOR-3-B (*Notice of Final Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the Republic of Korea*, 71 Fed. Reg. 29310 (May 22, 2006)); see Exhibit KOR-4-B (*Amended Final Determination of Sales at Less Than Fair Value: Diamond Sawblades and Parts Thereof From the Republic of Korea*, 75 Fed. Reg. 14126 (Mar. 24, 2010)).

<sup>3</sup> *US – Softwood Lumber V (Panel)*, para. 4.13 (describing Canada’s argument: “As a result, the dumping margins found by DOC for each company investigated and the ‘all others rate’ were inflated.”).

<sup>4</sup> See *US – Softwood Lumber V (AB)*, paras. 62-117 and 183(a); *US – Softwood Lumber V (Panel)*, paras. 7.196-7.224 and 8.1(a).

implementation of the Dispute Settlement Body’s recommendations and rulings.<sup>5</sup> In other words, the Department redetermined the existence of dumping by recalculating the calculated margins of dumping for the individually investigated exporters. The revised “all others” rate followed, as a consequence.<sup>6</sup> Similarly, to the extent Korea is challenging the individual margins of dumping determined in each of these three original investigations, it is challenging the basis for the imposition of the antidumping measure.<sup>7</sup> Thus, we understand Korea’s challenge of the “all others” rates to be consequential to its challenge to the measures themselves.

4. We note as well that the “all others” rate is not determined using the particular method described in Article 2.4.2 used to calculate individual margins of dumping, but rather is based on the individually calculated margins of dumping. The “all others” rate is not the basis for the imposition of the antidumping measure, but rather is determined once the basis for the imposition of the antidumping measure has been established.

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<sup>5</sup> See Exhibit US-1 (*Notice of Determination Under Section 129 of the Uruguay Round Agreements Act: Antidumping Measures on Certain Softwood Lumber Products from Canada*, 70 Fed. Reg. 22636, 22645 (May 2, 2005) (“all others” rate redetermined as 11.54%)); compare with Exhibit US-2 (*Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Softwood Lumber Products from Canada*, 67 Fed. Reg. 36068, 36069 (May 22, 2002) (“all others” rate determined as 8.43%)).

<sup>6</sup> The United States similarly revised the “all others” rate when it implemented the DSB’s recommendations and rulings following a recent dispute with Thailand although the panel’s findings were limited to the margins calculated for the individually calculated exporters, and no specific findings were made with respect to the “all others” rate. See *US – AD Measures on PET Bags*, paras. 7.24-7.25 and 8.1; see also Exhibit US-3 (*Notice of Implementation of Determination Under Section 129 of the Uruguay Round Agreements Act and Partial Revocation of the Antidumping Duty Order on Polyethylene Retail Carrier Bags From Thailand*, 75 Fed. Reg. 48940 (Aug. 12, 2010)).

<sup>7</sup> See Korea’s First Written Submission, para. 3 (“[T]he USDOC applied the zeroing methodology to determine the dumping margins for certain Korean exporters of the products under investigations. Accordingly, for certain Korean exporters, the determinations and the ensuing anti-dumping orders reflected and included dumping margins that were calculated on the basis of zeroing.”).