UNITED STATES – LAWS, REGULATIONS AND METHODOLOGY FOR CALCULATING DUMPING MARGINS ("ZEROING")

WT/DS294

CLOSING STATEMENT OF THE

UNITED STATES OF AMERICA

AT THE FIRST SUBSTANTIVE MEETING OF THE PANEL

March 17, 2005

Mr. Chairman, members of the Panel:

1. On behalf of the United States delegation, I would again like to thank you and the members of the Secretariat for your work on this dispute. We have had a productive couple of days in which we have covered a number of aspects of the issues with which you are faced. We appreciated the opportunity to provide you with preliminary thoughts on your questions and look forward to providing you with additional comments in our written responses and our second submission.

2. We would like to summarize our views on the key issues in dispute, as they have developed so far.

3. As we noted throughout this dispute, it is critical to locate the textual basis for any assertion that Members have particular obligations with respect to zeroing in Article 9.3 assessment proceedings. As yesterday's questions helped to illuminate, the EC alternatively relies on the fair comparison requirement of Article 2.4 and the requirements of Article 2.4.2.

We will not repeat here the interpretive problems that the EC's reliance on the fair comparison language of Article 2.4 causes with respect to the targeted dumping methodology in Article 2.4.2.

4. Instead, we will return again to the distinct purpose of an assessment proceeding under Article 9.3 as compared to an investigation conducted consistent with Article 2.4.2. In an investigation, the authority is determining whether margins of dumping exist such as to justify the application or imposition of an antidumping measure.

5. In an Article 9.3 assessment proceeding, in contrast, the authority is determining the final liability for the payment of antidumping duties for individual imports – liability that is to be paid by importers who purchased goods at less than normal value. Duties are paid on imports based on the particular facts of each particular import transaction. Consistent with this basic concept with regard to the administration of border measures, the United States' retrospective system ensures that individual importers pay antidumping duties based on the extent to which their import transactions were at prices below normal value.

6. This relationship between an Article 9.3 assessment proceeding and the collection of duties on particular imports distinguishes the exercise undertaken pursuant to Article 9.3 from an investigation subject to Article 2.4.2. Nothing in the Agreement requires Members to determine the final liability of any importer based on an exporter's average pricing behavior.

7. Turning to *Softwood Lumber Dumping* for a moment, as we noted in our opening statement, the United States found certain flaws in that report. We would note here one critical flaw for your consideration.

8. In *Softwood Lumber Dumping*, the Appellate Body examined the term "margins of dumping" as it is used in Article 2.4.2 and found that "'margins of dumping' can only be found

for the product under investigation as a whole, and cannot be found to exist for a product type, model, or category of that product."[1]

9. With respect to the term "margins of dumping" as it is used in Article 2.4.2, the United States does not agree that the term is used in GATT 1994 and the Anti-Dumping Agreement with the level of precision ascribed to it by the Appellate Body. In fact, both GATT 1994 and the Anti-Dumping Agreement demonstrate that the drafters used the term to refer both to the results of particular comparisons between normal value and export price AND to the overall results of those comparisons.

10. Article 2.4.2 itself provides three different comparison methodologies. Those that rely on individual export transactions will often result in multiple "margins of dumping" as the term is used in Article 2.4.2. The fact that the term "margins of dumping" could refer to the results of these multiple comparisons, the United States believed, was important context for interpreting Article 2.4.2 – context that the Appellate Body disregarded.[2]

11. It is only with respect to Article 5.8 that the Anti-Dumping Agreement requires Members to convert any price-based margin of dumping into a percentage-based margin of dumping based on the export price.

12. Rather than recognize that the drafters may have used the term "margin(s) of dumping" in more than one way in GATT 1994 and the Anti-Dumping Agreement, the Appellate Body improperly imposed a single meaning to the term as it is used in Article 2.4.2. With respect to

---

[1] *United States - Final Dumping Determination on Softwood Lumber from Canada*, WT/DS264/AB/R, Report of the Appellate Body adopted 31 August 2004 ("*Softwood Lumber Dumping*"), para. 96.

[2] *Id.* at 104-06.

such flaws, this Panel need not follow the reasoning of the Appellate Body in *Softwood Lumber Dumping*.

13. Mr. Chairman, Members of the Panel, we appreciate this opportunity to present these closing comments and look forward to continuing to work with you on these important issues.