UNITED STATES – CONTINUED EXISTENCE AND APPLICATION OF ZEROING METHODOLOGY

WT/DS350

CLOSING STATEMENT OF THE UNITED STATES OF AMERICA AT THE SECOND SUBSTANTIVE MEETING OF THE PANEL

April 22, 2008

Mr. Chairman, members of the Panel:

1. The United States would like to thank the Panel for its hard work and for its questions today. We also would like to thank the Panel again for opening the meeting to WTO Members and to the public. The United States appreciates these steps towards greater transparency at the WTO.

2. The United States will be brief but would like to emphasize a few points in closing.

3. The United States strongly objects to the EC's attempt to have the Panel consider as measures at issue the "application or continued application" of antidumping duties in 18 separate cases. The EC never included these alleged measures as part of its consultation request, and the United States was denied the opportunity to consult with the EC on them. The EC appears to have used the time after its consultation request to devise a theory on how to get at antidumping determinations not yet taken by the United States, and it then introduced the so-called "18 measures" in its panel request.

4. These alleged measures cannot properly be before the Panel under Article 6.2 of the DSU. The EC would like the Panel to treat the duties as some sort of organism, with a life of its own, stretching into the indefinite future. However, the EC ignores the fact that the duty imposed or assessed depends on the underlying administrative determination, whether an original

investigation, an administrative review, a changed circumstances review, or a new shipper review. The EC had to identify the specific determination in its panel request that resulted in a given application or continued application but could not do so because these determinations were not even in existence at the time of panel establishment. The "application or continued application" of antidumping duties cannot fall within the Panel's terms of reference and should be rejected.

5. We would now like to say a few words about the EC's substantive zeroing claims. The EC has repeatedly emphasized its arguments on the application of the Vienna Convention. It has accused the United States of neglecting the customary rules of interpretation of public international law, just because we have not always said the words "Vienna Convention." However, as demonstrated in our written submissions, at the first panel meeting, and before you today, we have applied the customary rules of interpretation to the covered agreements. The ordinary meaning of the text of the Antidumping Agreement and GATT 1994 makes clear that there is no general prohibition on zeroing. To find such a prohibition where there is none would add to the U.S. obligations under the covered agreements, inconsistent with Articles 3.2 and 19.2 of the DSU.

6. The United States would like to remind the Panel of its obligation to make an objective assessment under Article 11 of the DSU. Other panels, in doing so, have found that there is no prohibition on zeroing in periodic reviews. We hope that this Panel will find the same, as a proper interpretation of the covered agreements would lead it to do.

7. Thank you again, Mr. Chairman, and members of the Panel.