

US – ZEROING (EC)¹
(DS294)

PARTIES		AGREEMENTS	TIMELINE OF THE DISPUTE	
Complainant	European Communities	ADA Arts. 9.3, 2.4 and 2.4.2	Establishment of Panel	19 March 2004
			Circulation of Panel Report	31 October 2005
Respondent	United States	GATT Art. VI:2	Circulation of AB Report	18 April 2006
			Adoption	9 May 2006

1. MEASURE AT ISSUE

- Measures at issue: US application of the so-called "zeroing methodology" in determining dumping margins in anti-dumping proceedings as well as the zeroing methodology *as such*.

2. SUMMARY OF KEY PANEL/AB FINDINGS

As applied claims

- ADA Art. 9.3 and GATT Art. VI:2 (imposition and collection of anti-dumping duties): Reversing the Panel, the Appellate Body found that the zeroing methodology, *as applied* by the United States in the administrative reviews at issue, was inconsistent with ADA Art. 9.3 and GATT Art. VI:2, as it resulted in amounts of anti-dumping duties that exceeded the foreign producers' or exporters' margins of dumping. Under ADA Art. 9.3 and Art. VI:2 (GATT), investigating authorities are required to ensure that the total amount of anti-dumping duties collected on the entries of a product from a given exporter shall not exceed the margin of dumping established for that exporter.
- ADA Art. 2.4, third to fifth sentences (due allowance or adjustment): The Appellate Body agreed with the Panel that, conceptually, zeroing is not 'an allowance or adjustment' falling within the scope of Art. 2.4, third to fifth sentences, which covers allowances or adjustments that are made to take into account the differences relating to characteristics of the export and domestic transactions, such as differences in conditions and terms of sale, taxation, levels of trade, etc. Thus, the Appellate Body upheld the Panel's finding that zeroing is not an impermissible allowance or adjustment under Art. 2.4, third to fifth sentences.

As such claims

- Zeroing methodology as such: Although it disagreed with some aspects of the Panel's reasoning, the Appellate Body upheld the Panel's finding that the United States' zeroing methodology (which is not in a written form), as it relates to original investigations in which the weighted-average-to-weighted-average comparison method is used to calculate margins of dumping, can be challenged, *as such*, in WTO dispute settlement (given the sufficient evidence before the Panel), and that it is a "norm" that is inconsistent, *as such*, with ADA Art. 2.4.2 (original investigation) and GATT Art. VI:2.

3. OTHER ISSUES²

- Measure: The Appellate Body found that an unwritten rule or norm can be challenged as a measure of general and prospective application in WTO dispute settlement. It emphasized, however, that particular rigour is required on the part of a panel to support a conclusion as to the existence of such a "rule or norm" that is *not* expressed in the form of a written document. A complaining party must establish, through sufficient evidence, at least (i) that the alleged "rule or norm" is attributable to the responding Member; (ii) its precise content; and (iii) that it does have "general and prospective" application.

¹ *United States – Laws, Regulations and Methodology for Calculating Dumping Margins ("Zeroing")*

² Other issues addressed: standard of review (ADA Art. 17.6(ii)); ADA Art. 2.4, first sentence (fair comparison); conditional appeal (Art. 2.4.2); ADA Art. 11.1 and 11.2; "measure" (general (DSU Art. 3.3) and under ADA); mandatory/discretionary distinction; DSU Art. 1.1 (Panel's obligations); prima facie case; judicial economy (Panel); "standard zeroing procedures"; zeroing "practice" as such; dissenting opinion (Panel).