ANNEX F

REQUEST FOR THE ESTABLISHMENT OF A PANEL

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ANNEX F-1

REQUEST FOR THE ESTABLISHMENT OF A PANEL
BY THE EUROPEAN COMMUNITIES

WORLD TRADE ORGANIZATION

WT/DS350/6
11 May 2007

(07-1999)

Original: English

UNITED STATES – CONTINUED EXISTENCE AND APPLICATION OF ZEROING METHODOLOGY

Request for the Establishment of a Panel by the European Communities

The following communication, dated 10 May 2007, from the delegation of the European Communities to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

The European Communities hereby requests that a panel be established by DSB action pursuant to Articles 2.1 and 6.1 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (the "DSU"); Article XXII:2 of the General Agreement on Tariffs and Trade 1994 (the "GATT 1994"); and Articles 17.4 and 17.5 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* (the "*AD Agreement*") with regard to an "as such" measure or measures providing for the practice or methodologies for calculating dumping margins involving the use of zeroing, and the application of zeroing in certain specified anti-dumping measures maintained by the United States of America (the "United States"). On 2 October 2006, the European Communities requested consultations with the United States with a view to reaching a mutually satisfactory solution of the matter. The request was circulated in document WT/DS350/1 dated 3 October 2006. The consultations were held on 14 November 2006 and 28 February 2007 by video-conference on the above-mentioned measures. They have not led to a satisfactory resolution of the matter.

1. The facts

(a) When carrying out assessment and review proceedings of anti-dumping measures (so-called annual "administrative reviews"), the United States re-investigates and determines the margin of dumping on the basis of a comparison of a weighted average "normal value" for each "averaging group" and the prices of individual export transactions. When aggregating the results of these comparisons to determine the total amount or margin of dumping of the product under investigation, the

United States puts at zero any negative amounts of "dumping". As a result, the United States calculates a margin of dumping and collects an amount of anti-dumping duty in excess of the actual margin of dumping practised by the exporters concerned. The United States uses this methodology systematically in all its annual administrative reviews of anti-dumping orders, and indeed in all types of review proceedings (including new shipper and changed circumstances review proceedings) in which it calculates a dumping margin.

The Appellate Body, in the case *United States – Laws, Regulations and Methodology for Calculating Dumping Margins* ("*Zeroing*") (WT/DS294/AB/R), found that the United States' use of zeroing in its "administrative reviews" was inconsistent with Article 9.3 of the AD Agreement and Article VI:2 of GATT 1994. In the same case and in the subsequent case of *United States – Measures relating to Zeroing and Sunset Reviews* (DS 322) it was also confirmed that the United States Department of Commerce (the "DOC") employed a "zeroing methodology" in calculating the margin of dumping in its "administrative reviews" as described above and that that this was inconsistent with Articles 2.4 and 9.3 of the AD Agreement..

This zeroing practice or methodology is applied pursuant, in particular, to:

- DOC's interpretation of Sections 771(35)(A) and (B), Section 731, Section 777A(d), and Section 751(a)(2)(A)(i) and (ii) of the United States Tariff Act of 1930, as interpreted by the United States Statement of Administrative Action, which accompanied the adoption of the United States Uruguay Round Agreements Act, giving effect in the United States to the WTO Agreements, and as upheld by US municipal courts;[1]

- the implementing regulation[2] of the DOC, in particular section 351.414(c)(2);

- the Import Administration Antidumping Manual (1997 edition) (the "IA AD Manual") including the computer program(s) to which it refers;

- DOC's consistent and established practice; and

- DOC's zeroing methodology.

Since the WTO inconsistency of this practice or methodology is already established (notably in DS322) the European Communities does not ask the Panel to rule on the WTO inconsistency of this practice.

(b) The United States uses this practice or methodology in calculating dumping amounts or dumping margins, and in setting and collecting anti-dumping duties. The level of such anti-dumping duties is set in original proceedings, revised in administrative review proceedings or changed circumstances proceedings, and the need for the continued application of anti-dumping duties is decided in sunset review proceedings. In the latter DOC may determine that dumping is likely to continue or recur if the

[1] United States Court of Appeals for the Federal Circuit (04-1107) Corus Staal BV and Corus Steel USA INC. v Department of Commerce and Others, 21 December 2005, applying a US municipal law doctrine of judicial deference to executive interpretations of statute (the so-called "Chevron doctrine"), to the exclusion of a US municipal law doctrine which states that US courts should interpret US law whenever possible in a manner consistent with international obligations (the so-called "Charming Betsy doctrine").

[2] 19 CFR Section 351.

anti-dumping order were revoked, notably because dumping has continued at levels above de minimis after the issuance of the order. To find that dumping has continued after the issuance of the order, DOC relies on dumping margins calculated in the original proceeding and in administrative review proceedings using zeroing[3]. The EC has identified in the annex to this request a number of anti-dumping orders where duties are set and/or maintained on the basis of the above-mentioned zeroing practice or methodology with the result that duties are paid by importers either in excess of the dumping margin which would have been calculated using a WTO consistent methodology or are paid when no such duty would have resulted from the use of a WTO-consistent methodology.

2. The measures at issue and the legal basis of the complaint

The measures at issue and the legal basis of the complaint include, but are not limited to, the following:[4]

The continued application of, or the application of the specific anti-dumping duties resulting from the anti-dumping orders enumerated from I to XVIII in the Annex to the present request as calculated or maintained in place pursuant to the most recent administrative review or, as the case may be, original proceeding or changed circumstances or sunset review proceeding at a level in excess of the anti-dumping margin which would result from the correct application of the Anti-Dumping Agreement (whether duties or cash deposit rates or other form of measure).

In addition to these measures, the administrative reviews, or, as the case may be, original proceedings or changed circumstances or sunset review proceedings listed in the Annex (numbered 1 to 52) with the specific anti-dumping orders and are also considered by the EC to be measures subject to the current request for establishment of the panel in addition to the anti-dumping orders.

This includes the determinations in relation to all companies and includes any assessment instructions, whether automatic or otherwise, issued at any time pursuant to any of the measures listed in the Annex. The anti-dumping duties maintained (in whatever form) pursuant to these orders, and the administrative reviews, or, as the case may be, original proceedings and changed circumstances or sunset review proceedings listed in the Annex are inconsistent with the following provisions:

- Article 2.1 of the *AD Agreement* and Articles VI:1 and VI:2 of the GATT 1994, because the US did not determine a dumping margin for the product as a whole ;

- Articles 2.4 and 2.4.2 of the *AD Agreement*, whether considered in isolation or together with the obligations referred to in the first bullet point, insofar as the comparison made by the United States is unfair, uses an unjustified comparison method, employs zeroing, fails to calculate a margin of dumping for the product, and is otherwise inconsistent with those provisions;

[3] These dumping margins will normally have been established in original proceedings, in which the zeroing methodology condemned in DS 294 will usually have been used; Section 752(c)(3) of the Tariff Act of 1930, Section 315.218(e)(2)(i) of the DOC implementing regulation and paragraphs II.B of the Sunset Policy Bulletin.

[4] The measures at issue include all Issues and Decision Memorandums, and any similar documents; any computer programmes; any calculation memorandums; any other document that is part of the measure or record; and any assessment instructions.

- Article 5.8 of the *AD Agreement* insofar as a *de minimis* dumping margin is erroneously determined not to be *de minimis*;
- Articles 9.1 and 9.3 of the *AD Agreement*, whether considered in isolation or together with the obligations referred to in the first and second bullet points, insofar as there the imposition and collection of an anti-dumping duty in excess of the margin of dumping determined pursuant to Article 2 of the *AD Agreement*;

- Articles 9.5 and 11 (including Articles 11.1, 11.2 and 11.3) of the *AD Agreement*, whether considered in isolation or together with the obligations referred to in the first and second bullet points, insofar as the determinations of dumping made or relied upon by the United States in review investigations are not made in compliance with Article 2 of the *AD Agreement*;

- Articles 11.1 and 11.3 of the AD Agreement insofar as the United States relied on a dumping margin which was not established for the product as a whole and not in conformity with Articles 2.4 and 2.4.2 of the *AD Agreement*;

- Articles 1 and 2.1 of the *AD Agreement* and Articles VI:1 and VI:2 of the GATT 1994 insofar as there is the imposition and collection of an anti-dumping duty which is inconsistent with the *AD Agreement*; and

- Article XVI:4 of the Marrakesh Agreement establishing the World Trade Organization and Article 18.4 of the *AD Agreement* insofar as the United States has not taken all necessary steps, of a general or particular character, to ensure the conformity of its laws, regulations and administrative procedures with the provisions of GATT 1994 and the *AD Agreement*.

The European Communities asks that this request be placed on the agenda for the meeting of the Dispute Settlement Body to be held on 22 May 2007.

ANNEX

CASE I. **STEEL CONCRETE REINFORCING BARS – LATVIA** **US DOC NO A-449-804**[5]	**ADMINISTRATIVE REVIEWS**					
	Period covered by the review	**Final Results (unless otherwise specified)**	**Amended Final Results**	**Company**	**Dumping margin**	**No.**
	1 September 2004 –31 August 2005	71 FR 74900, 13 December 2006		Liepajas Metalurgs	5,94%	1
	1 September 2003–31 August 2004	71 FR 7016, February 10, 2006		Liepajas Metalurgs	5,24%	2
	1 September 2002–31 August 2003	69 FR 74498, December 14, 2004		Liepajas Metalurgs	3,01%	3
	SUNSET REVIEWS					
	DOC Final determination	**ITC Case number**	**ITC Determination**	**Continuation order**		
	72 FR 16767, April 5, 2007	731-TA-878				4

CASE II. **BALL BEARINGS AND PARTS THEREOF – ITALY** **US DOC NO A-475-801**[6]	**ADMINISTRATIVE REVIEWS**					
	Period covered by the review	**Final Results (unless otherwise specified)**	**Amended Final Results**	**Company**	**Dumping margin**	**No.**
	1 May 2004–30 April 2005	71 FR 40064, July 14, 2006		FAG Italy SKF Italy	2,52% 7,65%	5
	1 May 2003–30 April 2004	70 FR 54711, September 16, 2005		FAG Italy SKF Italy	5,88% 2,59%	6
	1 May 2002–30 April 2003	69 FR 55574, September 15, 2004	69 FR 62023, October 22, 2004	Numerous	68,29% to less than 5%	7
	1 May 2001–30 April 2002	68 FR 35623, June 16, 2003		FAG SKF	2,87% 5,08%	8
	SUNSET REVIEWS					
	DOC Final determination	**ITC Case number**	**ITC Determination**	**Continuation order**		
	70 FR 58383, October 6, 2005	731-TA-393	71 FR 51850, August 31, 2006	71 FR 54469, September 15, 2006		9

[5] Original Order: 66 FR 46777, 7 September 2001.
[6] Original Order: 15 May 1989; Continuation Order: 71 FR 54469, 15 September 2006.

CASE III. **BALL BEARINGS AND PARTS THEREOF – GERMANY** **US DOC NO A-428-801**[2]	**ADMINISTRATIVE REVIEWS**					
	Period covered by the review	**Final Results (unless otherwise specified)**	**Amended Final Results**	**Company**	**Dumping margin**	**No.**
	1 May 2004–30 April 2005	71 FR 40064, July 14, 2006		FAG/INA GRW SKF Germany	4,04% 1,14% 7,35%	10
	1 May 2003–30 April 2004	70 FR 54711, September 16, 2005		FAG/INA GRW SKF Germany	5,65% 4,58% 16,06%	11
	1 May 2002–30 April 2003	69 FR 55574, September 15, 2004	69 FR 63507, November 2, 2004	Numerous	70,41% to less than 1%	12
	1 May 2001–30 April 2002	68 FR 35623, June 16, 2003		FAG Torrington Paul Mueller SKF	1,45% 70,41% 0,19% 3,38%	13
	SUNSET REVIEWS					
	DOC Final determination	**ITC Case number**	**ITC Determination**	**Continuation order**		
	70 FR 58383, October 6, 2005	731-TA-392	71 FR 51850, August 31, 2006	71 FR 54469, September 15, 2006		14

CASE IV. BALL BEARINGS AND PARTS THEREOF – FRANCE US DOC NO A-427-801[2]	ADMINISTRATIVE REVIEWS					
	Period covered by the review	**Final Results (unless otherwise specified)**	**Amended Final Results**	**Company**	**Dumping margin**	**No.**
	1 May 2004–30 April 2005	71 FR 40064, July 14, 2006		SKF France SNR	12,57% 11,75%	15
	1 May 2003–30 April 2004	70 FR 54711, September 16, 2005		SKF SNR	8,41% 11,93%	16
	1 May 2002–30 April 2003	69 FR 55574, September 15, 2004	69 FR 62023, October 22, 2004	Numerous	66,42% to less than 7%	17
	1 May 2001–30 April 2002	68 FR 35623, June 16, 2003	68 FR 43712, July 24, 2003	France SNR Roulements SKF	3,52% 6,70%	18
	SUNSET REVIEWS					
	DOC Final determination	**ITC Case number**	**ITC Determination**	**Continuation order**		
	70 FR 58383, October 6, 2005	731-TA-391	71 FR 51850, August 31, 2006	71 FR 54469, September 15, 2006		19

CASE V. STAINLESS STEEL BAR – FRANCE US DOC NO A-427-820[7]	ADMINISTRATIVE REVIEWS					
	Period covered by the review	**Final Results (unless otherwise specified)**	**Amended Final Results**	**Company**	**Dumping margin**	**No.**
	1 March 2004–28 February 2005	71 FR 30873, May 31 2006		Ugitech S.A.	9,68%	20
	1 March 2003–29 February 2004	70 FR 46482, August 10, 2005		Ugitech S.A.	14,98%	21

[7] Original Order: 67 FR 10385, 7 March 2002.

CASE VI. STAINLESS STEEL SHEET AND STRIP IN COILS – GERMANY US DOC NO A-428-825[8]	ADMINISTRATIVE REVIEWS					
	Period covered by the review	**Final Results (unless otherwise specified)**	**Amended Final Results**	**Company**	**Dumping margin**	**No.**
	1 July 2004 – 30 June 2005	71 FR 74897, December 13, 2006		Thyssen Krupp Nirosta Gmbh	2,45%	22
	1 July 2003–30 June 2004	70 FR 73729 December 13, 2005		TKN	9,5%	23
	1 July 2002–30 June 2003	69 FR 75930, December 20, 2004		Thyssen Krupp Nirosta	7,03%	24
	1 July 2001–30 June 2002	69 FR 6262, February 10, 2004		TKN	3,72%	25
	SUNSET REVIEWS					
	DOC Final determination	**ITC Case number**	**ITC Determination**	**Continuation order**		
	69 FR 67896, November 22,2004	731-TA-798	70 FR 41236, July 18, 2005	70 FR 44886, August 4, 2005		26

CASE VII. STAINLESS STEEL PLATE IN COILS – BELGIUM US DOC NO A-423-808[9]	ADMINISTRATIVE REVIEWS					
	Period covered by the review	**Final Results (unless otherwise specified)**	**Amended Final Results**	**Company**	**Dumping margin**	**No.**
	1 May 2003–30 April 2004	70 FR 72789, December 7 2005		Ugine & ALZ Belgium NV	2,96%	27
	1 May 2002–30 April 2003	69 FR 74495, December 14, 2004	70 FR 2999, January 19, 2005	U&A Belgium	2,71%	28
	SUNSET REVIEWS					
	DOC Final determination	**ITC Case number**	**ITC Determination**	**Continuation order**		
	69 FR 61798, October 21 2004	731-TA-788	70 FR 38710, July 5, 2005	70 FR 41202, July 18 2005		29

[8] Original Order : 64 FR 40557, 27 July 1999; Continuation Order: 70 FR 44886, 4 August 2005.
[9] Original Order : 64 FR 25288, 11 May 1999; Continuation Order: 70 FR 41202, 18 July 2005.

CASE VIII. **BALL BEARINGS AND PARTS THEREOF – UK** **US DOC NO A-412-801[2]**	**ADMINISTRATIVE REVIEWS**					
	Period covered by the review	**Final Results (unless otherwise specified)**	**Amended Final Results**	**Company**	**Dumping margin**	**No.**
	1 May 2003–30 April 2004	70 FR 54711, September 16, 2005		Barden/FAG SKF IK	2,78% 61,14%	30
	1 May 2002–30 April 2003	69 FR 55574, September 15, 2004	69 FR 62023, October 22, 2004	Aeroengine Bearings Barden/FAG	61,14% 4,10%	31
	SUNSET REVIEWS					
	DOC Final determination	**ITC Case number**	**ITC Determination**	**Continuation order**		
	70 FR 58383, October 6, 2005	731-TA-399	71 FR 51850, August 31, 2006	71 FR 54469, September 15, 2006		32
CASE IX. **STAINLESS STEEL BAR – GERMANY** **US DOC A-428-830[10]**	**ADMINISTRATIVE REVIEWS**					
	Period covered by the review	**Final Results (unless otherwise specified)**	**Amended Final Results**	**Company**	**Dumping margin**	**No.**
	1 March 2004–28 February 2005	71 FR 42802, July 28, 2006	71 FR 52063, September 1, 2006	BGH Group	0,73%	33
	2 August 2001–28 February 2003	69 FR 113, June 14, 2004		BGH	0,52%	34

[10] Original Order: 67 FR 10382, 7 March 2002.

CASE X. CERTAIN HOT ROLLED CARBON STEEL FLAT PRODUCTS – NETHERLANDS US DOC NO A-421-807[11]	ADMINISTRATIVE REVIEWS					
	Period covered by the review	**Final Results (unless otherwise specified)**	**Amended Final Results**	**Company**	**Dumping margin**	**No.**
	1 November 2004–31 October 2005	70 FR 71523, December 11, 2006 (Preliminary results)		Corus	2.52%	35
	1 November 2002–31 October 2003	70 FR 18366, April 11, 2005		Corus	4,42%	36
	3 May 2001–31 October 2002	69 FR 115, June 16, 2004	69 FR 43801, July 22, 2004	Corus	4,80%	37
	SUNSET REVIEWS					
	DOC Final determination	**ITC Case number**	**ITC Determination**	**Continuation order**		
	72 FR 7604, February 16, 2007 (Preliminary Results)	731-TA-903				38

CASE XI. STAINLESS STEEL BAR – ITALY US DOC NO A-475-829[12]	ADMINISTRATIVE REVIEWS					
	Period covered by the review	**Final Results (unless otherwise specified)**	**Amended Final Results**	**Company**	**Dumping margin**	**No.**
	2 August 2001–28 February 2003	69 FR 113, June 14, 2004		Foroni Ugine-Savoie-Imphy SA	4,03% 33,00%	39

[11] Original Order: 66 FR 55637, 2 November 2001.
[12] Original Order: 67 FR 10384, 7 March 2002.

CASE XII. STAINLESS STEEL SHEET & STRIP IN COILS – ITALY US DOC NO A-475-824[13]	ADMINISTRATIVE REVIEWS					
	Period covered by the review	**Final Results (unless otherwise specified)**	**Amended Final Results**	**Company**	**Dumping margin**	**No.**
	1 July 2002 – 30 June 2003	70 FR 7472, February 14, 2005	70 FR 13009, March 17, 2005	Thyssen Krupp Acciai Speciali Terni SpA	3,73%	40
	1 July 2001–30 June 2002	68 FR 69382 December 12, 2003		Thyssenkrupp Acciai Terni SpA	1,62%	41
	SUNSET REVIEWS					
	DOC Final determination	**ITC Case number**	**ITC Determination**	**Continuation order**		
	69 FR 67896, November 22,2004	731-TA-799	70 FR 41236, July 18, 2005	70 FR 44886, August 4, 2005		42

[13] Original Order: 64 FR 40567, 27 July 1999; Continuation Order: 70 FR 44886, 4 August 2005.

CASE XIII. CERTAIN PASTA – ITALY US DOC NO A-475-818[14]	ADMINISTRATIVE REVIEWS					
	Period covered by the review	**Final Results (unless otherwise specified)**	**Amended Final Results**	**Company**	**Dumping margin**	**No.**
	1 July 2004 – 30 June 2005	72 FR 7011, February 14, 2007		Atar Corticella/Combattenti	18,18% 1,95%	43
	1 July 2003–30 June 2004	70 FR 71464, November 29, 2005		Barilla Corticella/Combattenti Indalco Pagani Riscossa	20,68% 3,41% 2,59% 2,76% 2,03%	44
	1 July 2002–30 June 2003	70 FR 6832, February 9, 2005		Barilla Corticella/Combattenti Indalco PAM Riscossa Russo	7,25% 4% 6,03% 4,78% 1,05% 7,36%	45
	1 July 2001–30 June 2002	69 FR 6255, February 10, 2004	69 FR 81, April 27, 2004	Garofalo Indalco PAM Tomasello Zaffiri	2,57% 2,85% 45,49% 4,59% 7,23%	46
	SUNSET REVIEWS					
	DOC Final determination	**ITC Case number**	**ITC Determination**	**Continuation order**		
	72 FR 5266, February 5, 2007	731-TA-734				47

[14] Original Order 61 FR 143, 24 July 1996; Continuation Order 66 FR 55160, 1 November 2001.

CASE XIV.	SUNSET REVIEWS				
	DOC Final determination	**ITC Case number**	**ITC Determination**	**Continuation order**	**No.**
BRASS SHEET & STRIP – GERMANY **US DOC NO A-428-602**[15]	71 FR 4348, January 26, 2006	731-TA-317	71 FR 14719, March 23, 2006	71 FR 16552, April 3, 2006	48

CASE XV.	ORIGINAL INVESTIGATIONS				
	DOC Final determination	**ITC Case number**	**ITC Determination**	**AD order**	**No.**
PURIFIED CARBOXYMETHYLCELLULOSE – SWEDEN **US DOC NO A-401-808**	70 FR 28278, May 17, 2005	731-TA-1087	70 FR 39334, July 7, 2005	70 FR 39734, July 11, 2005	49

CASE XVI.	ORIGINAL INVESTIGATIONS				
	DOC Final determination	**ITC Case number**	**ITC Determination**	**AD order**	**No.**
PURIFIED CARBOXYMETHYLCELLULOSE – NETHERLANDS **US DOC NO A-421-811**	70 FR 28275, May 17, 2005	731-TA-1086	70 FR 39334, July 7, 2005	70 FR 39734, July 11, 2005	50

CASE XVII.	ORIGINAL INVESTIGATIONS				
	DOC Final determination	**ITC Case number**	**ITC Determination**	**AD order**	**No.**
PURIFIED CARBOXYMETHYLCELLULOSE – FINLAND **US DOC NO A-405-803**	70 FR 28279, May 17, 2005	731-TA-1084	70 FR 39334, July 7, 2005	70 FR 39734, July 11, 2005	51

[15] Original Order: 6 March 1987

CASE XVIII. CHLORINATED ISOCYANURATES – SPAIN US DOC NO A-469-814	ORIGINAL INVESTIGATIONS				
	DOC Final determination	**ITC Case number**	**ITC Determination**	**AD order**	**No.**
	70 FR 24506, May 10, 2005	731-TA-1083	70 FR 36205, June 22, 2005	70 FR 36562, June 24, 2005	52