(COURTESY TRANSLATION)

BEFORE THE WORLD TRADE ORGANIZATION

UNITED STATES – FINAL ANTI-DUMPING MEASURES ON STAINLESS STEEL FROM MEXICO

(DS344)

OPENING STATEMENT OF MEXICO AT THE SECOND MEETING WITH THE PANEL

Geneva
17 July 2007

I. INTRODUCTION

Mr. Chairman, members of the Panel:

1. In this opening statement, we do not intend to provide an exhaustive presentation of Mexico's case. Instead, we limit our discussion to certain key points concerning Mexico's claims against the United States' Zeroing Measures respecting model zeroing in original investigations and simple zeroing in periodic reviews.

II. MODEL ZEROING IN ORIGINAL INVESTIGATIONS

2. Mexico maintains its request for a finding on this claim. As outlined in Mexico's response to Question 13 of the Panel, the scope of the United States' abandonment of model zeroing in original investigations is incomplete. Accordingly, for implementation reasons, a Panel finding on this claim is necessary. Mexico also maintains its "as such" claim regarding model zeroing in original investigations to the extent that such zeroing in original investigations has not been fully abandoned by the United States, as described in Mexico's response to Question 13 of the Panel. Although the United States has not acknowledged the merits of this claim, Mexico has presented a *prima facie* case with respect to each requisite element of this claim and the United States has not rebutted Mexico's *prima facie* case.

III. SIMPLE ZEROING IN PERIODIC REVIEWS

3. Mexico and the United States have filed detailed submissions on Mexico's claim regarding simple zeroing in periodic reviews. It is clear from a review of these submissions that Mexico has presented a *prima facie* case with respect to each requisite element of this claim and that the United States has not rebutted Mexico's *prima facie* case.

IV. OTHER KEY ISSUES

4. We would like to elaborate upon certain key issues that have been raised by the United States.

A. Evidencing A Measure That Can Be Challenged As Such

5. The Appellate Body has found that an "as such" claim of the kind asserted by Mexico can be sustained where the complaining party establishes clearly through arguments and supporting evidence: (1) that the alleged rule or norm is attributable to the responding Member; (2) its precise content; and (4) that it has general and prospective application.

6. The United States does not appear to seriously challenge the first or second prongs of this test. There is no doubt that the zeroing measure is attributable to the United States, specifically that it is attributable to the USDOC as the investigating authority in U.S. anti-dumping proceedings. Likewise, Mexico has amply documented the specific content of the Zeroing measures as applied by the USDOC in original investigations and periodic reviews and the fact that this measure is invariably applied in all periodic reviews and in all original investigations (at least until February 2007) as rule of general and prospective application.

B. The Mandatory/Discretionary Distinction

7. As it has done in the past, the United States seeks to sidestep these conclusions by asserting that zeroing is not *mandated* under the U.S. anti-dumping laws. In its response to Question 19 of the Panel, the United States argues that "[i]n order to find that a measure, as such, breaches an obligation, the measure must mandate that breach". In making this argument, the

United States mischaracterizes the applicability of the mandatory/discretionary distinction to the facts of this dispute.

8. In both *US – Zeroing (EC)* and *US – Zeroing (Japan)*, there was no issue as to whether zeroing was "mandated" under US law. There is similarly no such issue in this dispute.

C. Mathematical Equivalency

9. Mexico notes that the mathematical equivalency argument was considered and rejected by the Appellate Body in both *US – Softwood Lumber V (21.5)* and *US – Zeroing (Japan)*. The argument has no merit based on these two adopted Appellate Body reports.

10. Although there is no need for Mexico to further rebut the mathematical equivalency argument, in light of the fact that the United States has introduced Exhibit US-10 to support its response to Question 15 of the Panel, Mexico is presenting an example of its own that demonstrates the absence of mathematical equivalency.

11. In order for the U.S. allegation of "inutility" to be sustained in this case, its argument of mathematical equivalency must hold in all possible circumstances. Mexico will employ the figures in the United States' example to show that mathematical equivalency will *not* hold in all possible circumstances. The United States bases its example on the assumption that identical period-long average normal values in both average-to-average and average-to-transaction comparisons must always be used. This assumption was adopted, erroneously in Mexico's view,

by panels in *US – Softwood Lumber V (21.5)* and *US – Zeroing (Japan).*[1] The Appellate Body has neither specifically endorsed nor rejected this assumption in its decisions to date.

12. The statutory provisions governing targeted dumping are set out in 19 U.S.C. § 1677f-1(d)(1)(B) and the regulatory provisions in 19 CFR § 351.414(e) and (f) (**Exhibit MEX-3**).Paragraph (e), *inter alia,* sets out a requirement for contemporaneous monthly average normal values. Thus, the USDOC Regulations explicitly link the "average-to-transaction" method in targeted dumping investigations to the use of contemporaneous monthly average normal values. Moreover, the Regulations specifically link the "average-to-average" method with the use of period-long average normal values.

13. Mexico presents in its example that mathematical equivalency does not exist if intermediate monthly average normal values are used in the average to transaction method and period-long average normal values are used in the average to average method. Mexico offers this example because it is entirely consistent with U.S. domestic law on this subject.

14. The examples provided above demonstrate, by means of the same comparison methodologies specified under the USDOC Regulations for A-T comparisons made in periodic reviews and for A-T comparisons used to evaluate targeted dumping in original investigations, that the U.S. claim of mathematical equivalency, absent zeroing, fails. Indeed, there is plainly no mathematical equivalency between these methods, because the use of monthly normal values in the U.S. system of conducting A-T comparisons removes the prospect of uniform equivalency.

[1] Panel Report, *US – Softwood Lumber V (21.5)*, paras. 5.49-5.51; Panel Report, *US – Zeroing (Japan)*, paras. 7.128-7.129.

V. CONCLUSION

15. Mexico again reminds the Panel that the measure at issue challenged as such by Mexico is identical to the measure decided by the Appellate Body in cases brought by Canada, the EC and Japan. The Appellate Body has consistently determined that this measure is contrary to the United States' obligations under the Agreements. In reaching its determinations, the Appellate Body has considered and rejected virtually all of the arguments presented by the United States in this dispute and has interpreted the text of the Agreements in accordance with recognized principles of international law applicable to dispute settlement proceedings and has applied its reasoning in a coherent and consistent manner.

16. Mr. Chairman, and members of the Panel, these prior decisions must be taken into account. Their reasoning has withstood the arguments posed against them by the United States. Third party submissions in this case overwhelmingly support our case. For the sake of the security and predictability of the WTO system, and to ensure that the Agreements negotiated by the Members are enforced in accordance with their text, we urge you to sustain Mexico's claims in their entirety..