Courtesy translation

BEFORE THE WORLD TRADE ORGANIZATION

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

(DS344)

REBUTTAL SUBMISSION BY MEXICO

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I. INTRODUCTION

1. In this dispute, Mexico challenges the U.S. Zeroing Procedures as that measure is manifested in original investigations and periodic reviews conducted by the U.S. Department of Commerce ("USDOC"). As was mentioned in Mexico's First Written Submission,[1] the claims presented by Mexico refer to one specific issue: Zeroing (or the "Zeroing Procedures" as these terms shall be used synonymously herein). In accordance with Mexico's request for the establishment of a panel, Mexico seeks findings that the use of model zeroing by the USDOC in calculating margins of dumping in original investigations and the use of simple zeroing in periodic reviews is inconsistent with the United States' obligations under Article VI:1 and VI:2 of the GATT 1994 and Articles 2.1, 2.4, 2.4.2, and 9.3 of the *Anti-Dumping Agreement*, both "as such" and "as applied" in the contested final determinations involving imports of stainless steel sheet and strip in coils from Mexico.

2. As Mexico explained in its oral statement to the Panel, there are two essential textual foundations to Mexico's claims in this case. The first is the definitions of "dumping" and "margins of dumping" contained in Articles VI:1 and VI:2 of the GATT 1994 and in Article 2.1 of the *Anti-Dumping Agreement*. As the Appellate Body has on multiple occasions found, these terms refer to the dumping of the specific "product" that is under investigation or review (not to individual transactions, models or other sub-groupings within the product). The "product" under investigation or review is the product defined by the investigating authorities taken in its entirety. In the case of the as-applied determinations challenged by Mexico, this would be "stainless steel sheet and strip in coils" as defined by the USDOC. Accordingly, any purported "margins of dumping" that is calculated with respect to stainless steel sheet and strip in coils from Mexico must relate to that product taken as a whole. Any calculation of the margin of dumping that is based on less than, or only part of, the transactions for the product under consideration – such as price differences for certain models or individual transactions – do not reflect the margin of dumping for the "product" at issue and are therefore inconsistent with these fundamental definitions. As the Appellate Body has found, these definitions apply throughout the *Anti-Dumping Agreement* by virtue of Article 2.1.

3. The second essential contextual foundation for Mexico's claim is the fact that the *Anti-Dumping Agreement* and the remedies contained therein are directed toward the conduct of individual producers and exporters. Exporters or producers "dump." Importers do not dump but instead purchase dumped products.

4. As Mexico has previously demonstrated, the USDOC calculates margins of dumping in original investigations and in periodic reviews in two stages. In the first stage, the USDOC makes intermediate comparisons between export prices and normal value. Such intermediate comparisons can be made using different comparison methodologies, including average-to-average, transaction-to-transaction, or average-to-transaction comparisons. Regardless of the comparison methodology applied, the results of such intermediate comparisons are not "margins of dumping" within the meaning of Article VI

[1] *See* Mexico's First Written Submission, paras. 1-2.

of the GATT or Article 2 of the *Anti-Dumping Agreement*. Margins of dumping are instead determined in the second stage, in which the USDOC aggregates the intermediate comparison results to arrive, in the third stage, at a margin of dumping for the exporter or producer for the entire product under investigation or review.

5. Zeroing is concerned with the second step in the margin calculation – the aggregation stage. Zeroing is the rule or norm attributable to the United States of general and prospective effect pursuant to which the USDOC in aggregating intermediate comparison results invariably ignores or treats as zero price comparison results where the export price exceeds the normal value (negative comparison results). Zeroing negative intermediate comparison results violates the covered agreements because the resulting aggregate margin of dumping does not fully, nor does it accurately, reflect the margin of dumping for the product under consideration taken as whole. The margin of dumping resulting from the application of Zeroing at the aggregation stage instead reflects only a part of, or less than, the product under consideration. Moreover, because only negative intermediate comparison results are disregarded or treated as zero, this measure also systematically and unfairly inflates the resulting margin of dumping above its actual magnitude for the product as a whole.

6. The calculation of margins of dumping employing Zeroing results is inconsistent with the definitions of "dumping" and "margins of dumping" as set forth in Articles VI:1 and VI:2 of the GATT 1994 and Article 2.1 of the *Anti-Dumping Agreement* as described above which relate to the dumping of a product taken in its entirety. In the case of periodic reviews, by leading to the collection of duties in excess of the margin of dumping determined under Article 2, this methodology also violates Article 9.3 of the *Anti-Dumping Agreement*. In both original investigations and periodic reviews, by calculating margins of dumping in excess of the margin of dumping for the product as a whole, the resulting calculation is inconsistent with the broad fairness requirement embodied in Article 2.4 of the *Anti-Dumping Agreement*.

7. The foregoing is, in the briefest summary form, Mexico's case. The issue before the Panel is not whether the covered agreements contain an affirmative obligation to "provide offsets" to margins of dumping, as the United States would have it, but rather, whether the covered agreements permit investigating authorities to systematically ignore or alter the results of intermediate price comparisons in calculating margins of dumping. The evidence and legal reasoning supporting Mexico's position on this question is set forth in detail in Mexico's First Written Submission to the Panel.

8. In that submission, Mexico stated that this is not the first time that a WTO Member initiates a dispute settlement proceeding against the United States regarding the same measure: the Zeroing Procedures.[2] Indeed, Mexico also documented that the Appellate Body, in an unbroken line of reports from *EC – Bed Linen* to *US – Zeroing (Japan)*, has consistently interpreted the text of the covered agreements in precisely the same manner as Mexico and has reached precisely the same legal conclusions – namely that Zeroing violates the obligation under the agreements to calculate a single margin of dumping for each exporter or producer for the product under investigation or review.

[2] *See* Mexico's First Written Submission, para. 3.

9. Mexico has urged this Panel to follow the Appellate Body's reasoning in those cases. Mexico has done so in part because following the Appellate Body's interpretations and reasoning (concerning what is clearly the same measure) is appropriate to preserve the security and predictability of the agreements as specified under Article 3.2 of the Dispute Settlement Understanding (DSU). On this issue, the Appellate Body stated in *US – OCTG (Argentina)* that "following the Appellate Body's conclusions in earlier disputes is not only appropriate, but is what would be expected from panels, especially where the issues are the same".[3] Mexico is of the view that the panel "should make an objetivode assessment of the matter before it" in accordance with article 11 of the DSU. However, in order to preserve the security and predictability of the covered agreements, as specified under article 3.2 of the DSU, Mexico has requested this Panel to follow the Appellate Body's reasoning in previous cases. More importantly, Mexico is urging this Panel to follow the Appellate Body's reasoning in those cases because the Appellate Body has correctly interpreted the agreements. The Appellate Body has interpreted the text of the covered agreements in an integrated manner which appropriately considers the text, the context, the purpose, and the objectives of the *Anti-Dumping Agreement* and Article VI of the GATT 1994.

10. In contrast, and as Mexico explains in greater detail below, the arguments advanced by the United States in an effort to preserve their asserted right to selectively zero intermediate comparison results cannot be squared with the text of the agreements – in particular, the definitions of "dumping" and "margins of dumping" that apply throughout the agreement and the context of the agreement, its purpose and objectives, including the objective of the agreement to remedy dumping by exporters or producers. Moreover, in advancing its arguments, the United States relies exclusively on reasoning and conclusions presented in unadopted panel reports that were subsequently reversed by the Appellate Body.

ARGUMENT

II. MEXICO'S "AS SUCH" CLAIMS RELATED TO INVESTIGATIONS AND PERIODIC REVIEWS ARE PROPERLY BEFORE THE PANEL

A. Mexico's "As Such" Claims Are Within the Panel's Terms of Reference

11. In this proceeding, Mexico challenges the Zeroing Procedures as a single measure consisting of an unwritten norm or rule of general and prospective application that is manifested in different procedural settings and with reference to different methods of underlying intermediate comparisons. In its First Written Submission, the United States contends that this measure – and therefore Mexico's "as such" claims – are not within the Panel's terms of reference, stating that instead Mexico has identified "two distinct methodologies [as] being challenged 'as such'."[4] The United States is mistaken.

12. To clarify, Mexico specifically challenges the manifestation of this single measure in two principal contexts in which it arises: in original investigations and in periodic reviews.

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[3] Appellate Body Report, United States – Sunset Reviews of Anti-Dumping Measures on Oil Country Tubular Goods from Argentina (DS268) para. 188.

[4] United States' First Written Submission, para. 29.

However, the structure of Mexico's challenge in no way diminishes the unitary nature of the Zeroing measure at issue. Indeed, the substantive content of the measure is *identical* in both procedural contexts specifically challenged by Mexico, *i.e.*, pursuant to the challenged measure the USDOC systematically and invariably disregards results where the export price exceeds normal value when aggregating intermediate comparison results to determine the margin of dumping for the exporter or producer.

13. During the First Substantive Meeting with the Panel, the Panel addressed a number of questions to Mexico in this regard. Mexico is providing detailed responses to these questions. Rather than reiterate the substance of those responses in this submission, Mexico would direct the Panel to its responses for further clarification and argument with respect to this issue.

B. Mexico Provided Significant – and Sufficient – Evidence of the Existence and Nature of the Zeroing Measure at Issue in this Proceeding

14. In its First Written Submission, the United States asserts that Mexico has not sufficiently evidenced that a "single zeroing measure" exists.[5] This is incorrect. Mexico in fact presented extensive and overwhelming evidence in its First Written Submission, demonstrating the specific content of the Zeroing measure being challenged in this proceeding, that it is attributable to the United States, and that it constitutes a rule of general and prospective effect.[6] In particular, this evidence included the following:

- The standard computer programs used by the USDOC that serve as the basis for programs used in specific original investigations, including an instruction to apply Zeroing through the Zeroing Line.[7]

- Evidence of the application of the Zeroing Procedures in the original investigation of *Stainless Steel from Mexico* and in each of the subsequent six periodic reviews of *Stainless Steel from Mexico*.[8]

- A summary of anti-dumping determinations made by the USDOC since January 2006 demonstrating the *continued* application of Zeroing in both original investigations[9] and periodic reviews.[10]

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5 United States' First Written Submission, para. 40.

6 Mexico's First Written Submission, paras. 46-78, 84-115 and Exhibits MEX-1, MEX-4 to MEX-6.

7 Mexico's First Written Submission, Exhibit MEX-5.

8 Mexico's First Written Submission, Exhibit MEX-5.

9 At least as of the date of submission for Mexico's First Written Submission, the United States had never issued a final anti-dumping determination in any procedural context and under any comparison methodology that did not utilize zeroing. Mexico recognizes that since the filing of its First Written Submission, the United States has issued at least one final anti-dumping determination in which zeroing was not applied in calculating the margin of dumping.

- Consistent public statements made by the USDOC and other government agencies by U.S. authorities, including statements made before the U.S. courts and in response to administrative challenges in specific anti-dumping proceedings, characterizing the Zeroing Procedures as a deliberate policy. [11]

- The fact that the Zeroing Procedures have a basis in the U.S. statutory legal framework by virtue, *inter alia*, of Section 771(35) of the Tariff Act. [12]

- Statements by Ms. Owenby, an acknowledged expert in U.S. anti-dumping procedures, that the Zeroing Procedures as carried out by the USDOC in calculating dumping margins has been performed invariably over an extended period of time. [13]

- Language in the USDOC *Anti-Dumping Manual* indicating that, in order to maintain consistency in calculation procedures, the Zeroing Procedures are included in every margin calculation procedure. The *Anti-Dumping Manual* demonstrates that the United States maintains a standard margin calculation methodology that is reflected in the standard computer programs. [14]

- Concessions by the United States before the WTO dispute settlement panels in other proceedings that the Zeroing Procedures are incorporated into the standard computer programs that are used consistently by the USDOC in performing dumping margin calculations in periodic reviews. [15]

- Concessions by the United States in both *US – Zeroing (EC 1)* and in *US – Zeroing (Japan)* that the United States could not identify *any* instance in which Zeroing was not applied. [16]

- Detailed factual findings by the Panels in *US – Zeroing (EC 1*), *US – Softwood Lumber V*, *US – Zeroing (Japan)*, and *US – Zeroing (Ecuador)*, establishing that the USDOC

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[10] Mexico's First Written Submission, Exhibit MEX-6.

[11] Mexico's First Written Submission, Exhibit MEX-6.

[12] *See* Panel Report, *US – Zeroing (Japan)*, para. 7.53 (noting that a measure is more susceptible to being challenged as such when it has a basis in a legal framework, and further finding that such basis in a legal framework exists for the zeroing measure by virtue of Section 771(35) of the Tariff Act).

[13] Mexico's First Written Submission, Exhibit MEX-1.

[14] Mexico's First Written Submission, Exhibit MEX-4.

[15] *See* Panel Report, *US – Zeroing (EC 1)*, para. 7.103.

[16] *See* Appellate Body Report, *US – Zeroing (EC 1)*, para. 201; Panel Report, *US – Zeroing (EC 1)*, para. 7.103. *See* Appellate Body Report, *US – Zeroing (Japan)*, para. 87.

applied the Zeroing Procedures in all 18 original investigations and 27 periodic reviews directly under consideration in those proceedings.[17]

- Factual findings by the prior dispute settlement panels considering the USDOC's Zeroing Procedures including, most recently, by the Panel in *US – Zeroing (Japan)* which found that the "standard zeroing line . . . has been included in the vast majority of computer program[s] used by the USDOC to calculate margins of dumping . . . and [even] where the line has not been included, the USDOC has used other methods to exclude export prices higher than the normal value from the numerator of the weighted average margin of dumping."[18]

15. Mexico notes that the evidence before this Panel is nearly identical to – and perhaps even more extensive than – the evidence based upon which the Appellate Body in *US – Zeroing (Japan)* found that a single Zeroing measure exists, which can be challenged "as such." The Appellate Body held that such evidence, as evaluated by the Panel below, provided "sufficient evidence…to conclude that the 'zeroing procedures' under different comparison methodologies, and in different stages of anti-dumping proceedings, do not correspond to separate rules or norms, but simply reflect different manifestations of a single rule or norm."[19] Mexico has respectfully requested that this Panel make the same finding in relation to the evidence before it.

16. With respect to the United States' argument that prior findings by the Appellate Body and panels are neither "evidence" for this purpose nor relevant to these proceedings,[20] Mexico disagrees. The measure examined by the panels and the Appellate Body in those prior cases is identical to the measure at issue in this proceeding and the findings by the Appellate Body and panels independently corroborate the evidence put forward in this dispute. They are also relevant insofar as they establish that the US zeroing procedures represent a single rule or norm of general and prospective application which includes the manifestations challenged in this dispute.

17. With respect to the United States' assertion that Mexico has identified no evidence that United States has actually zeroed in all possible contexts, [21] Mexico respectfully disputes this assertion and indeed notes that it is irrelevant to the current proceeding.

18. Mexico is under no obligation to identify evidence that the United States has actually zeroed in every possible context. As noted above, Mexico challenges the manifestation of the single Zeroing measure in two contexts – (1) original investigations and (2) periodic

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17 Panel Report, US – Zeroing (EC 1); Panel Report, US – Softwood Lumber V; Panel Report, US – Zeroing (Japan); and Panel Report, US – Zeroing (Ecuador).

18 Panel Report, *US – Zeroing (Japan)*, para. 7.51 (footnotes omitted).

19 Appellate Body Report, *US – Zeroing (Japan)*, para. 88 (citing Panel Report, *US – Zeroing (Japan)*, para. 7.53, n. 688).

20 United States' First Written Submission, para. 40.

21 United States' First Written Submission, para. 42.

reviews. With respect to these two contexts, Mexico has presented ample evidence that the United States has consistently employed the Zeroing Procedures complained of. Indeed, with the exception of investigations completed after the USDOC's February 22 policy change regarding original investigations using the average-to-average comparison methodology,[22] the USDOC has employed Zeroing Procedures in *every* original investigation and periodic review conducted as of the date of Mexico's First Written Submission. The United States has pointed to no evidence to the contrary.

19. In addition, as to the claim that Mexico has provided no evidence that the USDOC cannot – or will not – change its methodology in future cases, the United States misstates the standard for establishing that a measure exists, which can be challenged "as such." In fact, the standard requires only that Mexico demonstrate the following: (1) the precise content of the measure; (2) the measure is attributable to the United States; and (3) the measure has general and prospective application. In its First Written Submission Mexico fully substantiated its legal "as such" challenge of the Zeroing Procedures.[23] It is the third of the requirements previously mentioned which the United States seems to challenge by making its assertion that the USDOC could undertake a different methodology in future cases. But their challenge fails.

20. As the Appellate Body noted in *US – Zeroing (Japan)*, relying on evidence nearly identical to that presented in the current dispute, "the evidence…'shows that what is at issue goes beyond the simple repetition of the application of a certain methodology to specific case.'"[24] That the USDOC *could* change its methodology is of no significance in this case. The evidence before this Panel demonstrates that the Zeroing measure is a rule or norm that has general and prospective application – indeed, it is a deliberate policy that has been, and continues to be systematically applied by the USDOC.

C. USDOC's Policy Announcement Related to Investigations Has No Effect on Mexico's "As Such" Claims related to Investigations or Reviews

21. The United States notes in its First Written Submission that it has announced a change in policy – as of February 22, 2007 – in which the USDOC intends to provide "offsets for non-dumped comparisons that reduce the total amount of dumping found by the amount by which any comparison reflected an average export price in excess of normal value."[25] This asserted change in policy announced by the USDOC does not detract from – nor does it render moot – Mexico's "as such" challenge with respect to the general and prospective nature of the single Zeroing measure.

22. The measure that remains following the change in policy is no different than the measure originally challenged in Mexico's Request for Consultations, Panel Request and First Written Submission, with the exception that it purportedly no longer manifests itself with

22 *See* Section II.C. *infra*.

23 See Mexico's First Written Submission, paras. 150 to 169.

24 Appellate Body Report, *US – Zeroing (Japan)*, para. 85.

25 United States' First Written Submission, para. 10.

respect to the application of one particular calculation methodology (average-to-average) in one type of proceeding (original investigations). Therefore, while the single measure may no longer manifest itself in such proceedings and methodologies, its application is still "general" and "prospective" with respect to all other manifestations including the other manifestation and methodology challenged—simple zeroing in periodic reviews.

23. Even with respect to average-to-average comparisons in original investigations, the general and prospective effect of the rule or norm on investigations prior to February 22, 2007 – in which the Zeroing measure was uniformly applied by the USDOC – fully remains, because the orders issued as a result of these investigations continue to affect imports being made today. That the United States has undertaken to recalculate dumping margins without Zeroing in a handful of specific investigations is of no consequence to the remaining investigations, the results of all of which were – and continue to be – impacted by Zeroing.

24. Finally, Mexico notes that at the time it filed its request for consultations and request for establishment of a panel in this proceeding, the contested Zeroing Procedures were clearly still being applied as a matter of policy in the USDOC's margin calculations used in original investigations employing the average-to-average comparison methodology. This fact was demonstrated by the list of determinations contained in Mexico's Exhibit MEX-6. Accordingly, whether or not the United States may now claim compliance with regard to Zeroing in this extremely limited context (which is itself a question for potential review by this Panel), that circumstance would not deprive Mexico of its right to a ruling from this Panel on its claim with respect to Zeroing in original investigations.

III. ZEROING IS NOT PERMITTED IN PERIODIC REVIEWS

A. ARTICLE 2.4.2

1. The "All Comparable Transactions" Clause in Article 2.4.2, First Sentence

25. Perhaps the most fundamental difference in point of view between the United States and Mexico in this dispute relates to the significance of the "all comparable export transactions" clause in the first sentence of Article 2.4.2 of the *Anti-Dumping Agreement*. The United States claims that this clause was "integral" to the Appellate Body's original finding in *US – Softwood Lumber V* that Zeroing is prohibited under Article 2.4.2 in the context of average-to-average comparisons in original investigations.[26] Indeed the United States goes so far as to claim that the "all comparable export transactions" clause provides "the only textual basis" for the Appellate Body's determination in that case.[27]

26. The United States' reasons for promoting this argument are obvious. Because the "all comparable export transactions" language qualifies the use of the average-to-average comparison methodology in "the investigation phase," the United States hopes to persuade the Panel that there is no textual basis for recognizing a general prohibition on Zeroing that extends beyond that context.

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26 United States' First Written Submission, para. 54.

27 United States' First Written Submission, para. 57.

27. Mexico strongly disagrees with the United States' position with regard to the significance of the "all comparable export transactions" phrase. As Mexico demonstrates below, the United States has misread the Appellate Body's reasoning in *US – Softwood Lumber V* and subsequent Appellate Body reports. The "all comparable export transactions" language did not significantly guide the Appellate Body's reasoning in those cases and is *not* the textual basis for the general prohibition on Zeroing. It is instead the reference to "margins of dumping" in Article 2.4.2, 9.3, and elsewhere, and the interpretation of that term by the Appellate Body that provides the textual foundation to the general prohibition on Zeroing.

a) *US – Softwood Lumber V*

28. In order to understand the Appellate Body's decision in *US – Softwood Lumber V* it is important to recall the manner in which margins of dumping are calculated by the USDOC.[28] As Mexico noted in its First Written Submission, the United States calculates margins of dumping in original investigations in two steps. In the first step, the USDOC makes intermediate comparisons between export prices and normal values. Such intermediate price comparisons can be made under various methodologies including average-to-average, transaction-to-transaction, or average-to-transaction comparison. Where the average-to-average comparison methodology is used for this purpose, such comparisons are usually made at the sub-group level between specific "models" of the product under investigation. In the second step of the calculation, the USDOC aggregates the results of these intermediate price comparisons to determine the producer or exporter's overall margin of dumping for the product. As the Appellate Body has found, Zeroing occurs at the second, aggregation, stage.[29]

29. In *US – Softwood Lumber V* the Appellate Body examined the Zeroing question with reference to two critical terms contained in the first sentence of Article 2.4.2 – (1) "all comparable export transactions" and (2) "margins of dumping."

30. The analysis of the "all comparable export transactions" phrase is contained in paragraphs 86 through 90 of the Appellate Body's report in *US – Softwood Lumber V*. As indicated therein, the Appellate Body found that this phrase pertains to the structure of intermediate price comparisons in the first step of the margin calculation:

> It is clear from the language of Article 2.4.2 that a weighted average normal value is to be compared with a weighted average of the prices of "comparable" export transactions, and not with prices of "non-comparable" export transactions. At the same time, the word "all" in "all comparable export transactions" makes it clear that Members cannot exclude from a comparison any transaction that is "comparable." Thus, we agree with the Panel that the term "all comparable export transactions" means

[28] The Panel will note that this description of the margins calculation methodology is equally applicable to the determination of margins of dumping in original investigations and periodic reviews, regardless of the comparison methodology applied. *See* Mexico's First Written Submission, paras. 42-45 and 79-82.

[29] *See, e.g.*, Appellate Body Report, *US – Zeroing (EC 1)*, para. 110.

> that a Member "may only compare those export transactions which are comparable, but [] it must compare *all* such transactions."[30]

Thus, the Appellate Body clarified that the "all comparable export transactions" language focused on by the United States pertains to the manner in which intermediate price comparisons are made at the first, intermediate comparison, stage in the calculation, rather than the second, aggregation stage, of the calculation where model zeroing actually occurs.

31. Moreover, and importantly, the Appellate Body in *US – Softwood Lumber V* did not perceive that there was a problem with the manner in which the United States structured the comparisons made in the first stage of the calculation. To the contrary, the Appellate Body expressly found that "[it] is not in dispute in this case that, in the calculation of the weighted average export price for each sub-group, USDOC took into account 'all comparable export transactions," and thus, no comparable export transactions were excluded from the subgroup level."[31] The "all comparable export transactions" language was, accordingly, satisfied.

32. The Appellate Body noted, however, that while the requirements of the "all comparable export transactions" language was satisfied under the USDOC's margin calculation methodology as described above, "the participants have divergent views with respect to the aggregation of the results of the multiple comparisons of 'all comparable export transactions.'"[32] The Appellate Body noted that "this disagreement flows, in essence, from the participants' respective interpretations of the terms 'dumping' and 'margins of dumping' in the *Anti-Dumping Agreement* – whether these terms apply at the product or sub-product level."[33]

33. As Mexico outlined in detail in its First Written Submission, the Appellate Body in *US – Softwood Lumber V* and other Appellate Body reports answered this question by considering the definitions of "dumping" and "margins of dumping" contained in Articles VI:1 and VI:2 of the GATT 1994 and Article 2.1 of the *Anti-Dumping Agreement*, in the context of other provisions of the *Anti-Dumping Agreement*, such as Articles 6.10, 9.2, 2.2.1, ultimately concluding that the these terms permit the investigating authorities to determine such margins of dumping solely with respect to the "product" under investigation taken "as a whole" and not with respect to individual transactions, types, or models, within the product.[34]

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30 Appellate Body Report, *US – Softwood Lumber V*. para. 86 (citing Panel Report, *US – Softwood Lumber V*, para. 7.204 (emphasis original).

31 Appellate Body Report, *US – Softwood Lumber V*, para. 87.

32 Appellate Body Report, *US – Softwood Lumber V*, para. 88.

33 Appellate Body Report, *US – Softwood Lumber V*, para. 90.

34 *See, e.g.*, Appellate Body Report, *US – Softwood Lumber V*, paras. 91-103.

34. Specifically, the Appellate Body turned "first to Article VI:1 of the GATT 1994 and Article 2.1 of the *Anti-Dumping Agreement*, which define "dumping in the context of the GATT 1994 and the *Anti-Dumping Agreement*, respectively."[35] Examining the text of these provisions, the Appellate Body concluded from the use of the term "product" that "[i]t is clear from the text of these provisions that dumping is defined in relation to a product as a whole as defined by the investigating authority. Moreover, we note that the opening phrase of Article 2.1 – "[f]or the purpose of this Agreement" – indicates that the definition of "dumping" as contained in Article 2.1 applies to the entire Agreement. "Dumping", within the meaning of the *Anti-Dumping Agreement*, can therefore be found to exist only for the product under investigation as a whole, and cannot be found to exist only for a type, model, or category of that product."[36] The Appellate Body found further contextual support for this conclusion from the texts of Article VI:2 of the GATT 1994 as well as articles 6.10 and 9.2 of the *Anti-Dumping Agreement*, each of which reference the imposition or determination of margins of dumping with respect to the *product* under investigation (not the model, or transaction).[37] The Appellate Body noted that this definition carries over to the term "margins of dumping" as defined by Article VI:2 of the GATT 1994, second sentence, referring to the margin of dumping being the "price difference determined in accordance with the provisions of paragraph 1."[38] The Appellate Body reasoned that if "dumping" exists only for the product as a whole, then "margins of dumping", which "refers to the magnitude of dumping" must necessarily relate to the product as a whole.[39] The Appellate Body further found that its interpretation of "dumping" and "margins of dumping" as relating to the product as a whole "is in consonance with the need for consistent treatment of a product in an anti-dumping investigation." The Appellate Body in *US – Softwood Lumber V*, stated:

> Thus, having defined the product under investigation, the investigating authority must treat that *product* as a whole for, *inter alia*, the following purposes: determination of the volume of dumped imports, injury determination, causal link between dumped imports and injury to domestic industry, and calculation of the margin of dumping. Moreover, according to Article VI:2 of the GATT 1994 and Article 9.2 of the *Anti-Dumping Agreement*, an anti-dumping duty can be levied only on a dumped product. For all of these purposes, the product under investigation is treated as a whole, and export transactions in the so-called "non-dumped" sub-groups . . . are not excluded.[40]

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35 Appellate Body Report, *US – Softwood Lumber V*, para. 91.

36 Appellate Body Report, *US – Softwood Lumber V*, para. 93.

37 Appellate Body Report, *US – Softwood Lumber V*, para. 94.

38 Appellate Body Report, *US Softwood Lumber V*, para. 95.

39 Appellate Body Report, *US – Softwood Lumber V*, para 96.

40 Appellate Body Report, *US – Softwood Lumber V*, para. 99.

35. It is noteworthy that there is absolutely no reference in any of this discussion to the "all comparable export transactions" language in Article 2.4.2. The focus, instead, is on what is "dumping" and what are "margins of dumping" within the meaning of the Anti-Dumping Agreement. Moreover, contrary to the United States' claim's there was no "shift" in reasoning between this case and subsequent Appellate Body decisions dealing with zeroing in periodic reviews.

36. As is abundantly evident from the above, the Appellate Body's report in *US – Softwood Lumber V* found that the "all comparable export transactions" clause refers to the manner in which intermediate comparisons are made on an average-to-average basis in the first step of the margin calculation and does not speak to or resolve the question of whether Zeroing is permissible where it actually occurs, in the second aggregation step of the calculation. The latter question is instead an issue of interpreting the terms "dumping" and "margins of dumping."

37. In light of the above, the United States' claim in the current dispute with Mexico that the "sole textual basis" for the general prohibition on Zeroing is the term "all comparable export transactions" in the first sentence of Article 2.4.2 is simply wrong. As described above, the "all comparable export transactions" language pertains to the first step of the calculation process in which the investigating authority conducts intermediate price comparisons and requires only that investigating authorities include "all" of the "comparable" export transactions within each of the comparison sub-groups.

b) Subsequent Appellate Body Reports

38. Contrary to the United States' claims, there has been no "shift" in the Appellate Body's reasoning with regard to zeroing. Subsequent Appellate Body reports considering the Zeroing issue are consistent with the reasoning followed in *US – Softwood Lumber V* and confirm that the "all comparable export transactions" language is *not* the textual basis for the general prohibition on Zeroing at the aggregation stage.

39. For example, in *US – Zeroing (EC 1)*, the Appellate Body's determination that Zeroing was not permitted in the periodic reviews challenged by the European Communities turned on the same interpretation of the terms "dumping" and "margins of dumping" described in *US – Softwood Lumber V*. As in that prior case, the Appellate Body found by reference to the text and context of the agreements that the definitions of "dumping" and "margins of dumping" contained in Articles VI:1 and VI:2 of the GATT 1994 and Article 2.1 of the *Anti-Dumping Agreement* necessarily refer to the product taken "as a whole" and that this definition applies throughout the *Anti-Dumping Agreement*, including in periodic review determinations under Article 9.3. Accordingly, while multiple intermediate price comparisons are permitted under the agreements, the requirement to calculate a single margin for the product taken as a whole requires aggregation of these intermediate results and prohibits disregarding or altering the results of any of the intermediate comparisons.[41] The "all comparable export transactions" language contained in the first sentence of Article 2.4.2 was mostly irrelevant to this analysis.

41 *US – Zeroing (EC 1)*, paras. 123-135.

40. Similarly, in *US – Softwood Lumber V (Article 21.5 - Canada)*, the subsequent compliance proceeding following *US – Softwood Lumber V*, the Appellate Body considered the issue of Zeroing in the context of an original investigation where the investigating authorities used the transaction-to-transaction methodology provided for in the first sentence of Article 2.4.2. As in the present dispute with Mexico, the United States argued that the Appellate Body's finding in *US – Softwood Lumber V*, that Zeroing was prohibited under Article 2.4.2 was based on the "all comparable export transactions" clause. The Appellate Body rejected this claim:

> 91. We do not agree with the conclusions that the United States and the Panel draw from the phrase "all comparable export transactions". The Appellate Body has recognized that Article 2.4.2 allows investigating authorities to use "multiple averaging" under the weighted average-to-weighted average comparison methodology. In the case of that methodology, transactions may be divided into groups, for instance, according to model or product type. Because of this possibility, the phrase "all comparable export transactions" implies that two requirements must be met when investigating authorities make the comparison by grouping transactions and averaging them. First, they must include in each group only those export transactions that are "comparable". Secondly, they must include "all" comparable export transactions corresponding to that group, and none of these export transactions may be left out arbitrarily. Such a scenario does not arise in the same way when comparisons are made under the transaction-to-transaction comparison methodology. As transactions are not divided into groups under the transaction-to-transaction comparison methodology, the phrase "all comparable export transactions" is not pertinent to that methodology and, consequently, no inference may be drawn from the fact that this phrase does not appear in relation to the transaction-to transaction methodology. Accordingly, we disagree with the United States' and the Panel's view that the phrase "all comparable export transactions" would be deprived of effect and meaning if zeroing were prohibited under the transaction-to-transaction comparison methodology.
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> 92. Furthermore, we note that the United States made a similar argument in *US – Zeroing (EC 1)* to support its contention that the term "margins of dumping" had a different meaning in Article 9.3 of the *Anti-Dumping Agreement*. The United States emphasized that the phrase "all comparable export transactions", which appears in Article 2.4.2 in connection with the weighted average-to-weighted average comparison methodology, does not appear in Article 9.3. This argument was rejected by the Appellate Body, which found that the USDOC's use of zeroing in the underlying assessment reviews was inconsistent with Article 9.3. The Appellate Body underscored that its previous finding concerning the inconsistency of zeroing under the weighted average-to-weighted average comparison methodology "was based not only on Article 2.4.2,

> first sentence, but also on the context found in Article 2.1 of the *Anti-Dumping Agreement*."[42]

41. Finally, in *US – Zeroing (Japan)*, the Appellate Body again reached its determination finding that Zeroing is generally prohibited under the agreements based on its interpretation of the terms "dumping," "margins of dumping", and "product", rather than the "all comparable export transactions" language contained in the first sentence of Article 2.4.2. With regard to the latter term, the Appellate Body again noted its irrelevance to the issue at hand:

> 124. We do not consider that the absence of the phrase "all comparable export transactions" in the context of the T-T comparison methodology suggests that zeroing should be permissible under that methodology. Because transactions may be divided into groups under the W-W comparison methodology, the phrase "all comparable export transactions" requires that each group include only transactions that are comparable and that no export transaction may be left out when determining margins of dumping under that methodology. Furthermore, the W-W comparison methodology involves the calculation of a weighted average export price. By contrast, under the T-T comparison methodology, all export transactions are taken into account on an individual basis and matched with the most appropriate transactions in the domestic market. Therefore, the phrase "all comparable export transactions" is not pertinent to the T-T comparison methodology. Consequently, no inference may be drawn from the fact that these words do not appear in relation to this methodology.[43]

42. The above analysis should put to rest the erroneous assertion by the United States that the Appellate Body "abandoned" the textual basis for its Zeroing findings and "reinterpreted" the phrase "all comparable export transactions" in the context of its decision in *US – Zeroing (Japan)*. In *both* cases, the "all comparable export transactions" language was appropriately identified as relating to the average-to-average comparison methodology (and where it was found that this phrase prohibits the investigating authorities from excluding any comparable export transactions from the relevant sub-groupings at issue). In *both* cases, the Appellate Body found that the issue of Zeroing does not arise at the intermediate comparison stage but instead arises in the aggregation phase and that the prohibition on Zeroing at issue at that aggregation stage is a function of the definition of the term "margins of dumping" in Articles 2.4.2 and 9.3.

c) Alleged "Redundancy" of the "All Comparable Export Transactions" Clause

43. The preceding discussion of the Appellate Body's reasoning in *US – Softwood Lumber V* also effectively responds to, and refutes, the claim in paragraph 55 of the First Written

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42 Appellate Body Report, *US – Softwood Lumber V (Article 21.5 - Canada)*, paras. 91-92.

43 Appellate Body Report, *US – Zeroing (Japan)*, para. 124.

Submission of the United States that the recognition of a general prohibition on Zeroing renders the "all comparable export transactions" language redundant. As demonstrated above, the prohibition on Zeroing identified in *US – Softwood Lumber V,* and every other Appellate Body decision considering the issue, is not rooted in the "all comparable export transactions" language. Moreover, the "all comparable export transactions" language relates specifically to the manner in which intermediate price comparisons are structured in the first step of the margin calculation where comparisons are made on an average-to-average basis. Thus, the general prohibition on Zeroing identified by the Appellate Body in no way conflicts with or renders "inutile" the "all comparable export transactions" language in the first sentence of Article 2.4.2.

44. As noted above, the United States' methodology for making such intermediate comparisons appears to comply with the "all comparable export transactions" language because the United States normally includes all comparable export transactions within each comparison subgroup.[44] However, to the extent Zeroing takes place at the subsequent aggregation stage, Mexico asserts that such Zeroing is "as such" inconsistent with the agreements for the reasons consistently found by the Appellate Body.

2. "Targeted Dumping" and Alleged "Mathematical Equivalence"

45. The United States' First Written Submission claims that "[t]he mathematical implication of a general prohibition of zeroing…is that the targeted dumping clause would be reduced to inutility."[45] The United States' arguments regarding mathematical equivalence are addressed in Mexico's response to Question 9 of the Panel.

B. ARTICLE 2.1 AND GATT ARTICLE VI

46. As discussed throughout this rebuttal submission and in Mexico's First Written Submission, the general prohibition against Zeroing identified by the Appellate Body is rooted in the term "margin of dumping" in Articles 2.4.2 (as applicable to original investigations) and Article 9.3 (as applicable in periodic reviews). As the Appellate Body has found, these terms are defined in Articles VI:1 and VI:2 of the GATT 1994 and Article 2.1 of the *Anti-Dumping Agreement*, and refer to the "product" under investigation or review taken in its entirety.

47. The United States nevertheless continues to challenge the Appellate Body's conclusion that "margins of dumping" within the meaning of the *Anti-Dumping Agreement* necessarily refers to the margin of dumping for the exporter or producer for the product under investigation or review taken as a whole. The United States insists instead that "dumping" and "margins of dumping" can be interpreted as relating to individual import transactions

[44] Mexico does not challenge this element of the USDOC calculation methodology to the extent the USDOC actually complies with this requirement.

[45] United States' First Written Submission, para. 59.

and other groupings of less than the entire product under review. The United States advances a series of arguments in support of this contention, each of which is erroneous.

1. Reading the Definitional Provisions of Articles VI:1 and VI:2 of the GATT 1994 and Article 2.1 of the *Anti-Dumping Agreement*

48. The United States asserts that Article 2.1 of the *Anti-Dumping Agreement* and Article VI:1 of the GATT 1994 are definitional provisions that, "read in isolation, do not impose independent obligations."[46]

49. Mexico agrees. However, neither Mexico nor the Appellate Body are proposing to read these provisions in isolation. To the contrary, these definitions are being properly read in connection with and specifically to interpret the operative language contained in Article 2.4.2 ("margins of dumping") and Article 9.3 ("margin of dumping").

2. "Real-World" Commercial Conduct

50. The United States next claims that "dumping" refers to "real-world commercial conduct by which a product is imported into a country, *i.e.*, transaction by transaction."[47] Mexico agrees that the term "dumping" refers to the "real-world commercial conduct" by which a "product" is introduced into a country. However, there is nothing in that concept that supports the United States' assertion that the "product" at issue may by reason thereof be interpreted as relating to sales comparisons for individual transactions. To the contrary, as the Appellate Body has repeatedly found, "[a] product under investigation may be defined by an investigating authority. But "dumping" and "margins of dumping" can be found to exist only in relation to that product as defined by that authority. They cannot be found to exist for only a type, model, or category of that product."[48] This interpretation of the term "product" is compelled by text and context of GATT 1994 Article VI and the *Anti-Dumping Agreement* for the reasons previously outlined by Mexico. Subjective views held by the United States regarding purported "real-world commercial conduct" cannot override the text of the agreements.

3. Historical Background Documents

51. As in previous disputes, the United States also seeks to rely on a handful of selected historical "background" documents to bolster its claim that "dumping" has in the past been viewed by certain members as applying at the level of individual import transactions. Included among these documents is a nearly 50-year old report from a "Group of Experts" concerning anti-dumping matters under Article VI of the GATT 1947, two GATT-era panel reports (one of which was not adopted), and three unilateral communications from certain Contracting Parties.

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46 United States' First Written Submission, para. 65.

47 United States' First Written Submission, para. 66.

48 Appellate Body Report, *US – Zeroing (Japan)*, para.115

52. Mexico respectfully disputes the relevance of the United States' references to these documents in interpreting the *Anti-Dumping Agreement*, as it is written. Pursuant to Article 31 of the Vienna Convention, this Panel must look to the ordinary meaning of the terms of the *Anti-Dumping Agreement* "in their context and in the light of [the *Anti-Dumping Agreement*'s] object and purpose." It is only if interpretation under Article 31 of the Vienna Convention leads to an "ambiguous or obscure" meaning and/or a "manifestly absurd or unreasonable" result that this Panel – or any other – would need to resort to supplementary means of interpretation. There is no such meaning or result in this instance.

53. The Appellate Body has concluded in numerous decisions, including, most recently in *US – Zeroing (Japan)*, that Zeroing is inconsistent "as applied" and "as such" in the context of both original investigations and periodic reviews based on the general rules of interpretation under Article 31 of the Vienna Convention. Surely, regardless of the United States' specific objections to these decisions, the findings made therein cannot be deemed to be "manifestly absurd or unreasonable" such that this Panel or any other would need to resort to a review of the negotiating history[49] or documents otherwise referenced by the United States in its First Written Submission.

54. Nevertheless, even if this Panel chose to consider the documents identified by the United States, the Panel would find it to be of no – or at best, extremely limited – probative value in resolving the issues presented. With respect to the United States' reference to the "Group of Experts" report, this report is irrelevant as an interpretive tool with regard to the actual agreement currently in place. It dates back nearly 50 years. Moreover, as negotiating history, it should be noted that two international agreements (the Kennedy Round Anti-dumping Agreement and the Tokyo Round Anti-dumping Code) stand between the "Group of Experts" report and the *Anti-Dumping Agreement*.

55. In any event, the substance of the quote drawn from the "Group of Experts" Report by the United States does not support the United States' contention nor does the quote reflect the complete statement made by the "Group of Experts." To be sure, the "Group of Experts" noted what it deemed to be an "ideal method" for accomplishing its stated principles, *i.e.*, "[rendering] a determination of dumping and material injury in respect of each single importation of the product concerned."[50] But the Group also clearly noted in the sentence immediately following (and notably omitted by the United States in its First Written

[49] Mexico notes that the United States specifically conceded at the meeting with the Panel in *US – Softwood Lumber V* that these materials do not constitute "*travaux préparatoires*." *US – Softwood Lumber V*, para. 107, n. 168. Thus, even if resort to negotiating history were appropriate in this case, these materials would be of questionable relevance. Pursuant to Article 32 of the *Vienna Convention*, "recourse may be had to supplementary means of interpretation, including the preparatory work [the so-called "*travaux préparatoires*"] of the treaty and the circumstances of its conclusion," but – as noted above – only if interpretation under Article 31 leads to an "ambiguous or obscure" meaning and/or a "manifestly absurd or unreasonable" result.

[50] United States' First Written Submission, para. 70 (citing *Anti-Dumping and Countervailing Duties*, Second Report of the Group of Experts, L/1141, adopted on 27 May 1960, BISD 9S/194, para. 7).

Submission) that such a method "was clearly impracticable, particularly as regards to injury."[51]

56. With respect to the United States' reference to communications from Japan, Singapore and Hong Kong,[52] Mexico notes again the rules of interpretation as set forth in the Vienna Convention. There simply is no need to look at negotiating history (if these documents could reasonably be construed as such, which Mexico disputes) because interpretation under Article 31 leads to neither an "ambiguous or obscure" meaning nor a "manifestly absurd or unreasonable" result. Moreover, the fact that these communications indicate that discussions of Zeroing took place in the 1980s is of no probative value in this case.[53]

57. Mexico also respectfully disputes the relevance and precedential value of the referenced GATT panel determinations. The questions raised by – and the evidence presented in – the matter currently before this Panel have been thoroughly examined by multiple WTO panels and the Appellate Body. Given this long line of previous WTO reports, Mexico sees no value in looking to GATT panel determinations for guidance as to how the Panel should evaluate the current dispute. In fact, the United States fails to substantiate why such determinations would be probative under the circumstances.

58. That having been said, Mexico notes that *EC – Cotton Yarn* does not even stand for the proposition set forth by the United States. In that case, Brazil argued that in an environment of high inflation, the EC's Zeroing methodology "had an especially prejudicial effect on the calculation of the dumping margin."[54] Therefore, Brazil argued,

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51 *Anti-Dumping and Countervailing Duties*, Second Report of the Group of Experts, L/1141, adopted on 27 May 1960, BISD 9S/194, para. 8.

52 United States' First Written Submission, para. 73, n. 97.

53 Mexico notes that the 20 June 1988 communication from Japan was submitted only as "background notes." While Japan noted that "certain signatories" were engaging in zeroing, the communication from Japan does not indicate whether Japan viewed that methodology as consistent with the agreements as then in effect, much less a future agreement then under discussion. Moreover, the fact that certain signatories like the EC and the US were illegally engaging in zeroing before the adoption of the *Anti-Dumping Agreement* and before the Appellate Body issued its report in *EC – Bed Linen* is not in dispute. Nor is it particularly relevant inasmuch as the United States has since accepted the unlawfulness of that practice, at least in the context of average-to-average comparisons in original investigations. That the EC and the US were violating the agreement does not make correct their arguments that they did not think their practices violated the Agreement. Likewise, with respect to the October 13, 1989 communication from Singapore, that country's stated intention in offering the communication was to lay out "basic principles and objectives . . . to ensure that anti-dumping rules are not used for protectionist purposes or as disguised safeguards measure . . ." Therefore, Singapore was apparently attempting to clarify that zeroing is contrary to those principles – a point that *supports* Mexico's position in this case. Nor is there anything in this communication that even remotely suggests that it was Singapore's view that zeroing was permitted under the Tokyo Round *Anti-Dumping Code*. Similarly, with respect to the July 3, 1989 communication from Hong Kong, that country noted the protectionist bias, which resulted from "the lack of precision under the [Tokyo Round *Anti-Dumping Code*, which could] lead to the determination of dumping where, in fact, dumping does not exist." Hong Kong provides as one example of this bias "failing to take into account, in calculating export prices, sales at non-dumped sales ('zeroing-down')." As with Singapore's communication, there is nothing in Hong Kong's communication that can be read to suggest that Hong Kong viewed zeroing as permitted under the Tokyo Round *Anti-Dumping Code*.

54 Panel Report, *EC – Cotton Yarn*, para. 498.

the EC acted inconsistently with Article 2:6 because it did not make "due allowance" to account for the effect of Zeroing "when applied to Brazil's inflationary circumstances".[55] The Panel made a finding only on this narrow point – and held that the EC had not violated Article 2:6 for failure "to take into account distortions arising from high domestic inflation combined with frozen exchange rates in comparing normal value and export price."[56] The Panel based its conclusion on its view that (1) the second sentence of Article 2:6 required that due allowances be made for factors that affected price determination – including inflation – prior to the actual comparison of prices and (2) Zeroing was undertaken subsequent to making such allowances. Therefore, contrary to the United States' assertion, the GATT panel in *EC – Cotton Yarn* did not make any specific finding with respect to whether Zeroing was generally consistent with the Anti-dumping Code. Indeed, this was not even the subject of Brazil's challenge.

59. Regarding *EC – Audiocassettes*,[57] Mexico notes that the referenced GATT panel report was not adopted by the GATT Committee on Anti-Dumping practices. This is relevant because the Appellate Body has found that "*unadopted* panel reports 'have no legal status' in the GATT or WTO system since they have not been endorsed through decisions by the CONTRACTING PARTIES to GATT or WTO members."[58] To be sure, the Appellate Body also agreed with the panel below that "a panel could nevertheless find useful guidance in the reasoning of an unadopted panel report that it considered to be relevant."[59] But as noted above, Mexico does not see any merit in looking to either of the referenced GATT reports given the long line of previous WTO reports, which specifically addresses the same issues presented in the current dispute.

60. This Panel's obligation under the DSU is to interpret the text of the agreements in accordance with customary rules of treaty interpretation. The Panel must therefore give effect to the *Anti-Dumping Agreement* as it is written, *i.e.*, the actual text and context, which are transparent to and binding on all members, not just those who participated in negotiations and not just those that administer national anti-dumping proceedings. As the Appellate Body in *US – Softwood Lumber V (Article 21.5 - Canada)* concluded "the historical materials do not provide any additional guidance for the question of whether zeroing under the transaction-to-transaction comparison methodology is consistent with Article 2.4.2 of the *Anti-Dumping Agreement*."[60] This Panel should similarly reject these documents as irrelevant to the proper interpretation of the *Anti-Dumping Agreement*.

4. Use of Term "Product" Throughout GATT 1994 and *Anti-Dumping Agreement*

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55 Panel Report, *EC – Cotton Yarn*, para. 499.

56 Panel Report, *EC – Cotton Yarn*, para. 502.

57 *See* reference to unadopted GATT Panel Report on *EC – Audiocassettes*, in *EC – Bananas*, at n. 3.

58 Appellate Body Report, *Japan –Alcohol*, at 14-15 (citing Panel Report, *Japan –Alcohol*, para. 6.10).

59 Appellate Body Report, *Japan –Alcohol*, at 14-15 (citing Panel Report, *Japan –Alcohol*, para. 6.10).

60 Appellate Body Report, *US – Softwood Lumber V, (Article 21.5 - Canada)* para. 121.

61. As noted, the United States takes issue with the Appellate Body's interpretation of the word "product" as used in connection with "dumping" and "margins of dumping" as referring to the product taken as a whole. According to the United States, there is evidence that the term "product" as used in the GATT 1994 and the *Anti-Dumping Agreement* does not exclusively refer to the "product as a whole." In its First Written Submission the United States offers several additional arguments in this regard. Mexico responds to those arguments as follows.

62. First, the United States' reference to the use of the term "product" in Article VII:3 of the GATT 1994 is not relevant. While Article VII is a part of the GATT 1994, that provision deals exclusively with valuation of imports for customs purposes. As such, the purpose and objectives of Article VII are entirely different from those of Article VI. Article VI is concerned with market-based price discrimination by *exporters or producers* with respect to specified products, whereas the customs valuation provisions of Article VII are concerned with the value of individual import transactions. The two provisions are completely distinguishable in terms of their substantive content and outlook. Accordingly, it is to be expected that Article VI and Article VII of the GATT 1994 might ascribe different meanings to the term "product."

63. In fact, the contrary argument by the United States is reminiscent of the claim made in *US – Softwood Lumber V (Article 21.5 - Canada)* concerning the use of the word "product" in Article II of the GATT. The Appellate Body in that case correctly, and summarily, rejected that comparison noting that "there is no basis for an analogy between establishing the margin of dumping for the "product as a whole" under Article VI:2 of the GATT 1994 and the *Anti-Dumping Agreement*, on the one hand, and the application of a tariff on a product above the bound rate within the meaning of Article II of the GATT 1994, on the other hand."[61] Mexico assumes, that the United States abandoned that argument in this proceeding for similar reasons.

64. Second, the United States makes reference to the term "product" as used in relation to the "levy" of anti-dumping duties on a "product" under Articles VI:2, VI:3, and VI:6(a) and VI:6(b) of the GATT 1994 as further evidence that "product" may refer to individual import transactions.[62] However, there is a flaw in the logic employed by the United States. The United States incorrectly conflates rules concerning the determination of margins of dumping on the one hand with *assessment* or levying of the duties on the other. As Mexico has repeatedly pointed out, margins of dumping must be determined with reference to the product taken as a whole. Assessments, on the other hand, may (and arguably must) be carried out at the level of individual importers, and Mexico has never contended otherwise. However, the assessment of duties against individual importers remains, by virtue of Article 9.3, subject to an overall cap based on the margin of dumping determined for the product (as a whole) under Article 2. Thus, any differing meanings that the United States may attempt to ascribe to the term "product" in relation to the levying of duties at best speaks to the entirely different issue of assessing duties, and does not undercut the requirement that "margins of dumping" be determined for the product as a whole.

61 Appellate Body Report, US – Softwood Lumber V (Article 21.5 - Canada), para. 115.

62 United States' First Written Submission, para. 77.

65. The United States' next argument, based on the fact that dumping is defined as where the export price is "less than" the normal value,[63] does not conflict with Mexico's argument. The definition referred to by the United States identifies the margin of dumping with the "product" under investigation. As repeatedly discussed herein, the "product" at issue refers to the product under investigation as defined by the investigating authorities. Margins of dumping may be calculated only with reference to that product taken as a whole, not with respect to individual transactions or parts thereof.

66. The United States next points to a provision of the GATT heretofore not considered relevant to this dispute, Ad Article VI:1, which deals with "hidden dumping." This reference essentially *supports* Mexico's point that the structure of Article VI should be read to define "product" consistently throughout the *Anti-Dumping Agreement*. Ad Article VI:1 deals with a situation where an affiliated ("associated") importer resells a product in the importing market both below the price at which the product was sold to the importer by its affiliate, and below the normal value for that import. In such a case, the Article permits (but does not require) the administering authority to calculate the "margin of dumping…on the basis of the price at which the goods are resold by the importer." The reference to the "margin of dumping" can hardly be construed as being limited solely to a single importer, if the exporter or producer sells to many importers.

67. The United States also argues that if the Appellate Body's interpretation of the word "product" is adopted, then Article 2.2 of the *Anti-Dumping Agreement* would require constructed value to be calculated for the "product as a whole."[64] The United States' interpretation of this provision is incorrect and again betrays the confusion on the part of the United States concerning the step in the margin calculation process that is at issue here. This same argument was considered and rejected by the Appellate Body in *US – Softwood Lumber V (Article 21.5 – Canada)*:

> As Canada and several third participants point out, there is nothing in the text of Article 2.2 that prohibits an investigating authority from dividing the product under investigation into product types or models. Under the weighted average-to-weighted average comparison methodology, the prohibition of zeroing in Article 2.4.2 is triggered, not at the stage of determining whether to use a constructed normal value for a specific model or type, but, rather, when the results of the comparisons for each model or type are aggregated for purposes of establishing the margin of dumping for the product under investigation. Therefore, a prohibition of zeroing under the transaction-to-transaction comparison methodology provided in Article 2.4.2 does not limit the ability of an investigating authority, when the conditions are met, to use constructed normal value for one particular model or type, but not for others. We fail to see, therefore, the relevance of Article 2.2 for the interpretation of Article 2.4.2 as regards the permissibility of zeroing under the transaction-to-transaction comparison methodology.[65]

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63 United States' First Written Submission, para. 79.

64 United States' First Written Submission, para. 81.

65 Appellate Body Report, US – Softwood Lumber V (Article 21.5 - Canada), para. 104.

68. The error in the United States' position is that it once again ignores the ability of the investigating authorities to make intermediate price comparisons prior to aggregating the results to determine the margins of dumping and that the provisions of Article 2.2 can be applied at this level.

69. For the reasons noted above, the various additional arguments advanced by the United States with regard to its preferred definition of the term "product" are without merit.

C. ARTICLE 9.3

1. Prior Appellate Body Decisions Support Mexico's Claim that the Zeroing Procedures are inconsistent with Article 9.3 of the *Anti-Dumping Agreement*

70. Pursuant to Article 9.3 of the *Anti-Dumping Agreement*: "[t]he amount of the anti-dumping duty shall not exceed the margin of dumping as established under Article 2." The Appellate Body has previously set forth a clear analysis leading to the conclusion that the Zeroing Procedures are inconsistent with Article 9.3 of the *Anti-Dumping Agreement*, and Mexico fully endorses this conclusion.

71. As indicated by the express language of Article 9.3, for the purposes of duty assessment and collection proceedings, the margin of dumping – which sets the maximum amount of the duties to be imposed – must be calculated in accordance with the provisions set forth in Article 2 of the *Anti-Dumping Agreement*, including Article 2.1. As described above in Section III.B., Article 2.1 of the *Anti-Dumping Agreement* and Article VI:2 of the GATT 1994 require that "dumping" and "margins of dumping" must be established for the product under review as a whole. Citing to the Appellate Body Report in *US-Softwood Lumber V*, the Appellate Body in *US – Zeroing (EC 1)* noted that the reference to Article 2 in Article 9.3 confirms that "the amount of the assessed anti dumping duties shall not exceed the margin of dumping as established 'for the product as a whole'".[66]

72. The Appellate Body in *EC – Bed Linen* and *US – Softwood Lumber V* expressly held that the provisions of Article 2.1 of the *Anti-Dumping Agreement* are neither expressly nor implicitly limited to any particular phase or phases of an anti-dumping proceeding.[67] In *US – Softwood Lumber V*, the Appellate Body therein stated "unambiguously" that its conclusion that "the terms 'dumping' and 'margins of dumping' in Article VI of the GATT 1994 and the *Anti-Dumping Agreement* apply to the product under investigation as a whole." As previously demonstrated by Mexico, this conclusion was not based solely on the first sentence of Article 2.4.2, but "also on the context found in Article 2.1 of the *Anti-Dumping Agreement*."[68] Therefore, the requirement to calculate margins of dumping for the product as a whole clearly applies to periodic reviews under Article 9.3.

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66 Appellate Body Report, *US – Zeroing (EC 1)*, para. 127.

67 *See* Section III.B. *supra*.

68 Appellate Body Report, *US – Softwood Lumber V (Article 21.5 – Canada)*, para. 92.

2. Importers do not engage in "dumping"

73. Mexico also disagrees with the United States' claim that, if applied, Mexico's interpretation of Article 9.3 would prevent anti-dumping duties "from fulfilling their intended purpose under Article VI:2 of the GATT 1994, because importers that contribute the most to injurious dumping would be favored over other importers (and domestic competitors) that price fairly."[69] This argument improperly focuses on the behavior of importers rather than the behavior of exporters.

74. At the heart of the U.S. argument is the flawed assumption that the remedy or relief for injurious dumping in the *Anti-Dumping Agreement* – the revision of export prices – can only be achieved by the importer revising its resale prices. However, the importer does not "contribute" to injurious dumping and is not the party that engages in behavior labeled as "dumping." Moreover, even if it could be argued that the importer in some indirect sense contributes to injury to the domestic industry by purchasing dumped product, such behavior by the importer is outside of the scope of activity addressed by the *Anti-Dumping Agreement.*

75. As we previously mentioned, it is well-established that "dumping" describes the price discriminatory behavior engaged in by exporters or foreign producers, not by importers.[70] The importer does not set the export price and does not have any part in setting the normal value for a product, which is the benchmark against which dumping must be measured. Indeed, it is only by altering the export price or the normal value, both of which relate to the exporter, not the importer, that dumping can be eliminated.

76. Mexico does not view the purchase of a dumped product as at all relevant to the interpretation of Article VI of the GATT or any of the provisions of the *Anti-Dumping Agreement*. The United States therefore errs in ascribing "liability" for dumping (a concept separate and distinct from liability for the payment of anti-dumping duties) to importers.

3. The elimination of Zeroing is not inconsistent with prospective systems

77. Mexico also disagrees with the United States that retrospective and prospective systems are intended to be fundamentally different in their operation and results or that Article 9.4(ii) may be interpreted as endorsing the concept of transaction-specific margins of dumping in prospective normal value systems.[71] In fact, although there are operational differences with respect to the administrative collection of duties, the systems are not intended to, and cannot reasonably be interpreted as allowing for different definitions of "dumping," "margins of dumping," or "product" as those terms are uniformly defined for purposes of the entire agreement by Articles VI:1 and VI:2 of the GATT 1994 and Article 2.1 of the *Anti-Dumping Agreement.*

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69 *See* United States' First Written Submission, para. 88.

70 *See* Mexico's First Written Submission, paras. 183-192.

71 *See* United States' First Written Submission, para. 94.

78. Under both retrospective and prospective assessment systems, once an anti-dumping duty order is issued, importers are required to deposit anti-dumping duties. The difference between the systems is that in the prospective system, the duties deposited at the time of importation are definitive, while in the retrospective system they are not. However, "the rules on the *determination* of the margin of dumping are distinct and separate from the rules on the *imposition and collection* of anti-dumping duties."[72] Thus, in order to conform to the requirements of the *Anti-Dumping Agreement*, a collection system must provide for a refund procedure if the duties actually assessed and collected exceed the "margin of dumping" calculated under Article 2. The method of assessment and collection is within the discretion of the administering authorities so long as a refund procedure is in place.

79. This is clearly reflected in the text of Article 9.3.2 concerning prospective normal value systems. That provision expressly states that "[w]hen the amount of an anti-dumping duty is assessed on a prospective basis, provision shall be made for a prompt refund, upon request, of any duty paid in excess of the margin of dumping." The Panel will note two points concerning this language. First, the *Anti-Dumping Agreement* expressly provides for refund procedures "upon request" under prospective anti-dumping duty systems. Second, the text of this provision very clearly distinguishes between "the anti-dumping duty assessed on a prospective basis" and the "margin of dumping," requiring refunds where the former exceeds the latter. The interpretation proffered by the United States holds that the amount assessed on a prospective basis is a "margin of dumping." If that were so, then amounts assessed would always equal the margin of dumping and the entire refund obligation under Article 9.3.2 would be rendered a nullity. That is obviously not a permissible interpretation.

80. Under the prospective normal value system, therefore, a country must ensure that duties are not collected in excess of the margin of dumping by providing importers with an opportunity to request a refund of excess duties. The separate opportunity to obtain a refund is necessary because the margin of dumping is not known at the time of importation. In the retrospective system, by contrast, the opportunity to request an administrative review permits the determination of final duties and the margin of dumping for each exporter or producer under review. At the time of assessment of definitive duties at the conclusion of the review, the administering authority will know the normal value and export price for each import transaction, as well as the margin of dumping for the product, and may limit the assessment of duties to assure that duties are not collected, in aggregate, in excess of the margin of dumping for the product.[73]

81. In sum, if a refund proceeding is requested under Article 9.3.2 of the *Anti-Dumping Agreement* to determine the "actual" "margin of dumping" where a "prospective normal value" operates, the obligations of the administering authorities would be the same as in any other assessment proceeding – the authorities would be required to calculate a margin for the product as a whole – a requirement that precludes the Zeroing of negative price comparisons.

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72 Appellate Body Report, *EC – Bed Linen (Article 21.5)*, para. 124.

73 *See Anti-Dumping Agreement*, Arts. 9.3.1 and 9.3.2.

82. The U.S. argument that Mexico's interpretation of Article 9.3 (requiring the aggregation of the results of all comparisons on an exporter-specific basis) "would require that retrospective reviews be conducted" in all cases, including in prospective normal value systems is also incorrect.[74] As the Appellate Body determined in *US – Zeroing (Japan)*, prospective normal value systems may collect definitive anti-dumping duties from importers, and those importers will not be liable for any additional anti-dumping duties. However, such payments are necessarily subject to refund procedures to the degree that the total amount of anti-dumping duties collected exceeds the "margin of dumping" as determined under Article 2.[75] In a prospective normal value system, therefore, the duty is definitive, because at the time of importation the relevant normal value and export price is known. However, the *possibility* of refund is available to the importer under the *Anti-Dumping Agreement* if the total amount of duties collected from the exporter or producer of the product is greater than the margin of dumping. Thus, as the Appellate Body has found,

> Under any system of duty collection, the margin of dumping established in accordance with Article 2 operates as a ceiling for the amount of anti-dumping duties that could be collected in respect of the sales made by an exporter. To the extent that duties are paid by an importer, it is open to that importer to claim a refund if such a ceiling is exceeded.[76]

83. The United States argues further that Mexico's interpretation of Article 9.3 "would fundamentally alter the anti-dumping practices of numerous Members … and render many of these systems difficult, if not impossible, to administer."[77] Mexico, as a country that employs anti-dumping laws and procedures, does not agree with this assertion of the United States.

D. ARTICLE 2.4

84. In its First Written Submission, the United States argues that there is no independent standard of "fairness" that is violated by Zeroing and that Mexico's argument with regard to Article 2.4 is entirely "consequential" to its Article 9.3 argument.[78] Mexico respectfully disagrees. As Mexico detailed in its First Written Submission, the "fair comparison" language in Article 2.4 "creates an independent obligation," the scope of which is not limited to the general subject matter addressed in paragraph 4 (*i.e.*, price comparison).[79]

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74 United States' First Written Submission, para. 96.

75 Appellate Body Report, *US – Zeroing (Japan)*, para. 162.

76 Appellate Body Report, *US – Zeroing (Japan)*, para. 162.

77 United States' First Written Submission, para. 88.

78 United States' First Written Submission, para. 100.

79 Mexico's First Written Submission, para. 209 (citing Appellate Body Report, *US – Zeroing (EC 1)*, para. 146).

This independent obligation applies to all comparison methodologies employed in all types of proceedings under the *Anti-Dumping Agreement*.

85. The United States argues that resolution of Mexico's claims regarding assessment proceedings depends not on the text of Article 2.4, but on whether it is permissible to interpret the term "margin of dumping" as used in Article 9.3 as applying to transactions.[80] This mischaracterizes Mexico's claims in this regard. Mexico's argument with respect to Article 2.4 is informed by its reading of the term "margin of dumping" as used in Article 9.3, *i.e.*, that where there are any negative intermediate comparison results, the calculation will always exceed the margin of dumping for the individual exporter or producer, in violation of the requirements set forth in Article 9.3. But Mexico does not rely exclusively on this reading in making its Article 2.4 claim.

86. Indeed, in its discussion of the applicability of Article 2.4 to assessment proceedings, Mexico specifically cross-references to an earlier section in its First Written Submission, which details WTO precedent relating to the "inherent bias" of the Zeroing methodology in all types of proceedings. As Mexico noted therein, citing to the Appellate Body findings in *US – Zeroing (Japan)*:

> The Appellate Body has previously made it clear that the use of zeroing under the [transaction-to-transaction] comparison methodology distorts the prices of certain export transactions because the "prices of [certain] export transactions [made] are artificially reduced. In this way the "use of zeroing under the [transaction-to-transaction] comparison methodology artificially inflates the magnitude of dumping, resulting in higher margins of dumping and making a positive determination of dumping more likely." The Appellate Body has further stated that "[t]his way of calculating cannot be described as impartial, even-handed, or unbiased." As the Appellate Body has previously found, under the first sentence of Article 2.4.2, "an investigating authority must consider the results of all the comparisons and may not disregard the results of comparisons in which export prices are above normal value." Therefore we concluded that zeroing in [transaction-to-transaction] comparisons in original investigations is inconsistent with the fair comparison requirement to Article 2.4.[81]

87. Mexico similarly referenced the Appellate Body determination in *US – Corrosion Resistant-Steel Sunset Review*. As stated therein:

> When investigating authorities use a zeroing methodology such as that examined in *EC – Bed Linen* to calculate a dumping

80 United States' First Written Submission, para. 100.

81 Mexico's First Written Submission, para. 211 (citing Appellate Body Report, *US – Zeroing (Japan)*, para. 146 (citations omitted)).

> margin, whether in an original investigation *or otherwise*, that methodology will tend to inflate the margins calculated. Apart from inflating the margins, such a methodology could, in some instances, turn a negative margin of dumping into a positive margin of dumping. As the Panel itself recognized in the present dispute, "zeroing … may lead to an affirmative determination that dumping exists where no dumping would have been established in the absence of zeroing." Thus, the *inherent bias* in a zeroing methodology of this kind may distort not only the magnitude of a dumping margin, but also a finding of the very existence of dumping.[82]

88. The Zeroing methodology, therefore, inflates the margins contrary to the terms of the *Anti-Dumping Agreement* and indeed turns a negative dumping margin into a positive one. It is this fundamental "unfairness" – the biased and distortive effects of Zeroing – which underlies Mexico's argument with respect to Article 2.4.

IV. ARTICLE XVI:4 OF GATT AND ARTICLE 18.4 OF ANTI-DUMPING AGREEMENT

89. The United States asserts that Mexico's claims concerning Article XVI:4 of the WTO Agreement and Article 18.4 of the *Anti-Dumping Agreement* "depend upon a finding of inconsistency with other provisions of the *Anti-Dumping Agreement* and the GATT 1994."[83]

90. Even if the Panel agrees with this position, it should make findings in favor of Mexico's argument (which is set forth in more detail in its First Written Submission) that the Zeroing Procedures are inconsistent with Article XVI:4 of the WTO Agreement and Article 18.4 of the *Anti-Dumping Agreement* because Mexico's claims concerning those "other provisions" are correct and supported by previous Appellate Body findings.[84]

V. AS APPLIED CLAIM WITH RESPECT TO THE ORIGINAL INVESTIGATION

91. In its First Written Submission, the United States recognizes that the USDOC zeroed in the original investigation being challenged "as applied" in this proceeding, and that such Zeroing has been found to be "inconsistent with Article 2.4.2."[85] Mexico welcomes this acknowledgment.

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[82] Mexico's First Written Submission, para. 213 (citing Appellate Body Report, *US – Corrosion-Resistant Steel Sunset Review*, para. 135 (emphasis added, footnote omitted)). This Panel should take note that by explicitly stating that Zeroing Procedures "in an original proceeding *or otherwise*," are inconsistent with the relevant agreements, the Appellate Body made clear that its findings were not limited to margins of dumping found to exist in original investigations.

[83] United States' First Written Submission, para. 103.

[84] Mexico's First Written Submission, paras. 217-221, 248-243.

[85] United States First Written Submission, para. 104.

92. Mexico would note that proper compliance by the United States in this regard is critical. To this end, Mexico would highlight for the Panel the experience with respect to implementation by the United States subsequent to the Appellate Body decisions.

93. In *US – Softwood lumber V*, the United States sought to bring its practice into consistency using zeroing in Transactions to Transaction comparisons in original investigations. Recently, in *US – Zeroing (EC 1)* United States sought to bring its practice into consistency with the relevant agreements on a prospective basis only – and did so only after significant delay.[86] In part, Mexico requested in its First Written Submission a "suggestion" from the Panel with regard to implementation in order to avoid such problems in this dispute.[87]

VI. MEXICO'S REQUEST FOR A SUGGESTION

94. Mexico recognizes that the general rule under Article 19.1 of the DSU with respect to the recommendations of panels is to recommend that the Member concerned bring its measure into conformity with the relevant provisions of the covered agreements at issue. However, Article 19.1 also expressly states that "[i]n addition to its recommendations, the panel or Appellate Body may suggest ways in which the Member concerned could implement the recommendations." As a result, there is no doubt regarding the Panel's authority to make suggestions concerning implementation, as Mexico has requested in this case.

95. Indeed, dispute settlement panels have exercised this discretion in past cases to suggest that implementation be achieved through revocation of the anti-dumping measure. For example, in *Argentina – Definitive Anti-Dumping Duties on Poultry from Brazil* the Panel did not perceive," in light of the nature and extent of the violations in [the] case … how Argentina could properly implement [its] recommendation without revoking the anti-dumping measure at issue." The Panel concluded by suggesting that Argentina repeal its resolution that imposed definitive anti-dumping measures on eviscerated poultry from Brazil.[88]

96. In *Guatemala – Definitive Anti-Dumping Measures on Grey Portland Cement from Mexico*, the Panel found that "because of the 'fundamental' and 'pervasive' nature of the violations" Guatemala should revoke its anti-dumping order at issue. .[89]

97. Panels in disputes involving other types of measures have also suggested that their recommendations be implemented by specific means of outright revocation or repeal of the entire measure at issue. In *United States – Continued Dumping and Subsidies Offset Act of 2000*, the Panel suggested that the U.S. repeal the contested measure.[90] In *United States –*

86 Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation: Change in Effective Date of Final Modification, 72 FR 3783 (26 January 2007).

87 *See also* Section III.I. *supra*.

88 Panel Report, *Argentina – Poultry AD Duties*, paras. 8.3 – 8.7.

89 Panel Report, *Guatemala – Cement II*, paras. 9.4 – 9.7.

90 Panel Report, US – Offset Act ("Byrd Amendment"), para. 8.6.

Restrictions on Imports of Cotton and Man-Made Fibre Underwear, the Panel advised that, due to the broad violations of the *Agreement on Textiles and Clothing*, Article 6, that it had found, compliance be achieved by "prompt removal of the measure."[91]

98. In yet other cases, Panels have made even more specific suggestions with respect to compliance. For example, in *United States – Imposition of Countervailing Duties on Certain Hot-Rolled Lead and Bismuth Carbon Steel Products Originating in the United Kingdom*, the Panel noted that the United States had continued to apply its change-in-ownership methodology in other cases during the course of the dispute and suggested that the United States take "all appropriate steps, including a revision of its administrative practices" to prevent the same violation of the Agreement on Subsidies and Countervailing Measures, Article 10, from arising in the future. [92] Another example is *Brazil – Export Financing Programme for Aircraft*, in which the Panel suggested upon request from Canada that the parties develop mechanisms that would allow Canada to verify Brazil's compliance with the original recommendation of the DSB. The Panel added that it was not clear whether Article 19.1 addresses the issue of surveillance of implementation.[93] In *India – Quantitative Restrictions on Imports of Agricultural, Textile and Industrial Products*, in response to a request that the Panel make specific implementation suggestions, the Panel "highlighted some factors" that it considered to be relevant to the manner in which India should bring its measures into conformity, including India's status as a developing country and the "fragile" nature of trade liberalization where BOP concerns are at issue. The Panel suggested that India and the United States negotiate an implementation/phase-out period in light of these considerations.[94]

99. In light of the precedent discussed above, the United States is incorrect in suggesting that this Panel may not suggest that the United States implement the Panel's recommendations by eliminating the Zeroing Procedures both "as such" and "as applied" in all anti-dumping procedural contexts. In this case, a suggestion to eliminate the offending measure is appropriate in light of the consistent line of Appellate Body decisions finding this very same measure to be inconsistent with the covered agreements.

VII. CONCLUSION

100. For the foregoing reasons, and in order to be consistent with the Mexico's request for the establishment of a panel, Mexico respectfully requests that the Panel find that:

1. Zeroing, as applied in the original investigation of Stainless Steel Sheet and Strip in Coils from Mexico, is inconsistent with Articles VI:1 and VI:2 of the GATT 1994 and Articles

91 Panel Report, *US. – Underwear*, paras. 8.2 – 8.3.

92 Panel Report, *US – Lead Bars*, para. 8.2.

93 Panel Report, *Brazil – Aircraft*, paras. 7.2-7.3.

94 Panel Report, *India – QRs*, paras. 7.1-7.7.

2.1, 2.4, 2.4.2, and 18.4 of the Anti-Dumping Agreement; and Article XVI:4 of the WTO Agreement;

2. Zeroing in original investigations is, as such, inconsistent with Articles VI:1 and VI:2 of the GATT 1994 and Articles 2.1, 2.4, 2.4.2, and 18.4 of the Anti-Dumping Agreement; and Article XVI:4 of the WTO Agreement;

3. Zeroing in periodic reviews is, as such, inconsistent with Articles VI:1 and VI:2 of the GATT 1994 and Articles 2.1, 2.4, 9.3, and 18.4 of the Anti-Dumping Agreement, and Article XVI:4 of the WTO Agreement; and

4. Zeroing, as applied in the five listed periodic reviews of Stainless Steel Sheet and Strip in Coils from Mexico, is inconsistent with Articles VI:1 and VI:2 of the GATT 1994 and Articles 2.1, 2.4, 9.3, and 18.4 of the Anti-Dumping Agreement, and Article XVI:4 of the WTO Agreement.