

**US – STAINLESS STEEL (MEXICO)<sup>1</sup>**  
**(DS344)**

| PARTIES     |               | AGREEMENT      | TIMELINE OF THE DISPUTE     |                          |
|-------------|---------------|----------------|-----------------------------|--------------------------|
| Complainant | Mexico        | ADA Art. 9.3   | Establishment of Panel      | 26 October 2006          |
|             |               | GATT Art. VI:2 | Circulation of Panel Report | 20 December 2007         |
| Respondent  | United States |                | DSU Art. 11                 | Circulation of AB Report |
|             |               | Adoption       |                             | 20 May 2008              |

**1. MEASURE AND PRODUCT AT ISSUE**

- Measure at issue: US application of the so-called "zeroing methodology" in anti-dumping proceedings as well as the zeroing methodology as such.
- Product at issue: Stainless steel sheet and strip in coils.

**2. SUMMARY OF KEY PANEL/AB FINDINGS**

- ADA Art. 9.3 and GATT Art. VI:2 (imposition and collection of anti-dumping duties): Reversing the Panel, the Appellate Body found that zeroing in administrative reviews is, as such, inconsistent with GATT Art. VI:2 and ADA Art. 9.3 because it results in the levying of anti-dumping duties that exceed the exporter's or foreign producer's margin of dumping—which operates as a ceiling for the amount of anti-dumping duties that can be levied in respect of the sales made by an exporter. The Appellate Body added that it saw no basis in GATT Arts. VI:1 and VI:2 or in ADA Arts. 2 and 9.3 for disregarding the results of comparisons where the export price exceeds the normal value when calculating the margin of dumping for an exporter or foreign producer. Based on the same reasoning, the Appellate Body also found that the United States acted inconsistently with its obligations under GATT Art. VI:2 and ADA Art. 9.3 by using simple zeroing in five specific administrative reviews.
- DSU Art. 11 (effect of previous adopted panel and Appellate Body Reports): The Appellate Body recalled that Appellate Body reports are not binding except with respect to resolving the particular dispute between the parties. The Appellate Body emphasized, however, that this does not mean that subsequent panels are free to disregard the legal interpretations and reasoning contained in previous Appellate Body reports that have been adopted by the DSB. The legal interpretations embodied in adopted panel and Appellate Body reports become part and parcel of the *acquis* of the WTO dispute settlement system. The Appellate Body added that ensuring "predictability" in the dispute settlement system, as contemplated in DSU Art. 3.2, implies that, absent cogent reasons, an adjudicatory body will resolve the same legal question in the same way in a subsequent case. The Appellate Body underscored that the Panel's failure to follow previously adopted Appellate Body Reports addressing the same issues undermines the development of a coherent and predictable body of jurisprudence clarifying Members' rights and obligations under the covered agreements as contemplated under the DSU. Although the Appellate Body said it was deeply concerned about the Panel's decision to depart from well-established Appellate Body jurisprudence clarifying the interpretation of the same legal issues, nevertheless, having reversed all of the Panel's findings that had been appealed, the Appellate Body did not make an additional finding that the panel also failed to discharge its duties under DSU Art. 11.

<sup>1</sup> *United States –Final Anti-Dumping Measures on Stainless Steel from Mexico*