

BEFORE THE WORLD TRADE ORGANIZATION

UNITED STATES – FINAL ANTI-DUMPING MEASURES ON STAINLESS STEEL FROM MEXICO
(DS344)

CLOSING STATEMENT OF MEXICO
AT THE FIRST MEETING WITH THE PANEL

Geneva
23 May 2007

I. INTRODUCTION

Mr. Chairman, members of the Panel:

1. On behalf of the Mexican delegation, it is once again our privilege to appear before you to present the views of Mexico concerning the issues in this dispute.
2. Our closing statement will be brief and will focus on some key points.
3. In its opening statement, the United States equated Mexico's position regarding the security and predictability of WTO dispute settlement to "the Panel need do nothing more than blindly follow prior Appellate Body reports". This is incorrect. This dispute is not about the primacy of Appellate Body reports over panel proceedings nor is it about the doctrine of precedent. Rather, it is about the correct legal interpretation of the relevant provisions of the GATT 1994 and the Anti-dumping Agreement. Mexico asks only that this panel correctly interpret these provisions giving due consideration to prior Appellate Body findings on identical issues.
4. It is notable that in the oral statements of the parties given yesterday, no new issues were raised. The first written submissions of the parties express fully the issues before the Panel.
5. The differences in the positions of Mexico and the United States can be distilled into two questions.
6. First, which WTO terms and provisions form the foundation for the prohibition against zeroing? The United States takes the position that the sole basis for the prohibition is the phrase "all

comparable export transactions” in Article 2.4.2 of the Anti-dumping Agreement. Mexico takes the position that the foundation of the prohibition is found in the meaning of the terms “dumping”, “margins of dumping” and “product” in Articles VI:1 and 2 of GATT 1994 and Article 2.1 of the Anti-dumping Agreement.

7. Second, when interpreting the WTO terms and provisions applicable to the assessment of anti-dumping duties, should the focus be on the importer or the exporter/producer? The United States takes the position that the focus should be on the importer. Mexico takes the position that the focus should be on the exporter/producer.
8. Contrary to the submissions of the United States, the responses to these questions do not give rise to more than one “permissible” interpretation for each response.
9. The response to each question poses a single permissible interpretation. In both instances, the interpretations posed by Mexico are the permissible ones. Mexico’s interpretations attribute a consistent meaning to the applicable terms and provisions as they are used throughout the Anti-dumping Agreement. They take into account the entire context of the Anti-dumping Agreement. They follow the interpretations presented by the Appellate Body in its reports concerning zeroing practices.
10. In contrast, the interpretations posed by the United States do not attribute consistent meaning to the applicable terms and provisions as they are used throughout the Anti-dumping Agreement. They do not take into account the entire context of the Anti-dumping Agreement. Finally, they directly contradict the interpretations presented by the

Appellate Body in its reports concerning zeroing practices. The interpretations posed by the United States are, simply put, not permissible.

11. Embedded in the United States' submissions are arguments that rely on factual scenarios related to the technical application of anti-dumping duties. The findings required in this dispute do not require the Panel to consider the many different factual scenarios regarding the technical application of anti-dumping duties. Rather, they require the Panel to focus on the text of the applicable terms and provisions of GATT 1994 and the Anti-dumping Agreement and interpret those terms and provisions in a manner that is consistent with the rules of interpretation set out in Articles 31 and 32 of the *Vienna Convention of the Law of Treaties* as incorporated in Article 3.2 of the DSU.
12. Thank you once again for agreeing to serve on this Panel and for your efforts, and those of the Secretariat and translators, in preparing for this meeting.
13. This concludes our closing statement. We would be pleased to respond to any questions you may have.