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

WT/DS344

CLOSING STATEMENT OF THE UNITED STATES OF AMERICA AT THE FIRST SUBSTANTIVE MEETING OF THE PANEL

MAY 23, 2007

Mr. Chairman, members of the Panel:

1. On behalf of the United States' delegation, I would once again like to thank you and the members of the Secretariat for your work on this dispute. We appreciated the opportunity to provide you with preliminary thoughts on your questions and look forward to providing you with additional comments in our written responses and our second submission.

2. We will be very brief in our closing statement. Mexico would have this Panel merely follow the Appellate Body report in *US – Zeroing (Japan)* without engaging in its own analysis. Having failed to include a "single zeroing measure" in its request for establishment of the panel, Mexico even argues that the Panel should find the existence of such a measure because the Appellate Body did so in a separate dispute.

3. Mexico would have the Panel do this in the interest of "security and predictability". Security and predictability is provided by a dispute settlement system that does not add to or diminish the rights and obligations to which the Members agreed. This requires the proper application of customary rules of interpretation of public international law to the agreed upon provisions of the covered agreements. Therefore, any prohibition of zeroing must be found in the text of the Antidumping Agreement. Aside from a prohibition of zeroing in the context of

average-to-average comparisons in original investigations, there is plainly no general prohibition of zeroing.

4. Mexico's proposed obligation to treat non-dumped imports as a remedy for injurious dumping by reducing the assessment of antidumping duties on dumped imports depends upon a definition of dumping that is not based upon the text of the Antidumping Agreement, but on an abstract concept of dumping. Ultimately Mexico's interpretation cannot be reconciled with the commercial, administrative realities to which the Antidumping Agreement must relate.

5. The prior panels addressing this issue have recognized the deficiencies inherent in Mexico's proposed interpretation and have found that the relevant text, the relevant context, and the well-established prior understanding of the terms "dumping" and "margin of dumping" as used in the Antidumping Agreement demonstrate that these concepts are not devoid of meaning except in relation to the product as a whole.

6. As detailed in our first written submission, Mexico's interpretation cannot be reconciled with the ordinary meaning of the terms with which dumping and margins of dumping are defined, and which describe dumping as occurring in the course of ordinary commercial transactions, and which do not define products as "introduced into the commerce" of the importing country "as a whole", or prices of all the products at issue in an assessment proceeding generally being set "as a whole".

7. Mexico's interpretation cannot be reconciled with the Appellate Body's interpretation of the phrase "all comparable export transactions" in *US – Softwood Lumber Dumping*.

8. Nor can it be reconciled with the targeted dumping provision in the second sentence of Article 2.4.2; with the importer- and import-specific obligation to pay antidumping duties; with

the existence of prospective normal value systems of assessment as provided in Article 9; and, with the effective functioning of antidumping duties as a remedy for injurious dumping.

9. Finally, let me reiterate the position of the United States with respect to Mexico's particular claims in this dispute. First, regarding Mexico's "as such" claims, Mexico has failed to establish the existence of any measure that may be challenged "as such", whether the measures are taken as described in Mexico's panel request – as they must be – or as a single measure as described in Mexico's first written submission. Accordingly, Mexico's "as such" claims should be rejected in their entirety.

10. Second, regarding Mexico's "as applied" claim relating to the investigation of stainless steel from Mexico for which the Department of Commerce used average-to-average comparisons without providing offsets for non-dumped comparisons, the United States does not contest that its calculation in this investigation was inconsistent with the obligation to account for "all comparable export transactions" in calculating the "margin of dumping" as these terms were interpreted by the Appellate Body in *US – Softwood Lumber Dumping*.

11. Third, a correct interpretation of the Antidumping Agreement does not impose an obligation to provide offsets for instances of non-dumping in assessment proceedings. Accordingly, Mexico's "as applied" claims with respect to the five periodic reviews should be rejected.

12. Mr. Chairman, Members of the Panel, we appreciate this opportunity to present these closing comments and look forward to continuing to work with you on these issues.