

***COLOMBIA – ANTI-DUMPING DUTIES ON FROZEN FRIES FROM BELGIUM,
GERMANY AND THE NETHERLANDS***

(DS591)

**ORAL STATEMENT OF THE UNITED STATES OF AMERICA
AT THE THIRD-PARTY SESSION**

July 28, 2021

Mr. Chairperson, Members of the Panel,

1. The United States appreciates the opportunity to appear before you today and provide our views as a third party in this dispute.
2. We will briefly address the decision of Colombia’s investigating authority to include non-dumped imports as part of its injury and causation analysis and the relationship between claims under Article 3 of the Anti-Dumping Agreement.

I. Colombia’s Inclusion of Non-Dumped Imports in its Injury and Causation Analysis

3. Article 3.1 of the Anti-Dumping Agreement sets forth two overarching obligations. The first obligation is that the injury determination must be based on “positive evidence.”¹ The second obligation is that the injury determination must involve an “objective examination” of the volume of the dumped imports, their price effects, and their impact on the domestic industry.²
4. Although Article 3.1 indicates that these obligations extend to every aspect of an investigating authority’s injury analysis,³ Article 3.1 does not articulate the analysis that an authority must undertake to determine whether the “volume of the dumped imports,” “the effect of the dumped imports on prices in the domestic market for like products,” or “the consequent impact of these imports on domestic producers of such products,” cause injury. It is the succeeding paragraphs – Articles 3.2, 3.4, and 3.5 – that do so.

¹ Anti-Dumping Agreement, Art. 3.1; see *Mexico – Anti-Dumping Measures on Rice (AB)*, paras. 163-164.

² Anti-Dumping Agreement, Art. 3.1; see *Mexico – Anti-Dumping Measures on Rice (AB)*, para. 180.

³ See *Thailand – H-Beams (AB)*, para. 106; *China – GOES (AB)*, paras. 130 and 201; *US -Hot Rolled Steel (AB)*, para. 193.

5. For example, Article 3.2 addresses the investigating authority’s consideration “[w]ith regard to the volume of the dumped imports” and “[w]ith regard to the effect of the dumped imports on price.”⁴ Article 3.4 discusses the factors that an authority should evaluate in examining the impact of dumped imports on the domestic industry.⁵ And Article 3.5 specifically addresses the causation and non-attribution analyses.⁶

6. As indicated in our submission, the United States agrees with the European Union that the references to “the dumped imports” throughout Article 3 exclude the imports of any exporter or producer for which an individual margin of dumping is determined to be zero or *de minimis*.⁷ However, while it is true that an investigating authority breaching one or more of the obligations of Articles 3.2, 3.4, and 3.5 of the Anti-Dumping Agreement consequentially breaches Article 3.1, it is not necessarily true – as the European Union suggests⁸ – that an investigating authority breaching one or more of the obligations of Article 3.1 consequentially breaches Articles 3.2, 3.4, and 3.5.

II. Conclusion

7. This concludes the U.S. oral statement. The United States would like to thank the Panel for its consideration of our views and looks forward to responding to the Panel’s questions in writing.

⁴ Anti-Dumping Agreement, Art. 3.2.

⁵ See Anti-Dumping Agreement, Art. 3.4.

⁶ See Anti-Dumping Agreement, Art. 3.5.

⁷ See U.S. Third Party Submission, paras. 31-35.

⁸ See European Union First Written Submission, paras. 241, 259.