

***MOROCCO – DEFINITIVE ANTI-DUMPING MEASURES ON SCHOOL EXERCISE BOOKS FROM  
TUNISIA***

**(DS578)**

**THIRD PARTY SUBMISSION  
OF THE UNITED STATES OF AMERICA**

**August 6, 2020**

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<i>US – Countervailing Duty Investigation on DRAMS (AB)</i>	Appellate Body Report, <i>United States – Countervailing Duty Investigation on Dynamic Random Access Memory Semiconductors (DRAMS) from Korea</i> , WT/DS296/AB/R, adopted 20 July 2005
<i>US – Countervailing Measures on Certain EC Products (21.5 – EC)</i>	Panel Report, <i>United States – Countervailing Measures Concerning Certain Products from the European Communities – Recourse to Article 21.5 of the DSU by the European Communities</i> , WT/DS212/RW, adopted 27 September 2005
<i>US – Cotton Yarn (Panel)</i>	Panel Report, <i>United States – Transitional Safeguard Measure on Combed Cotton Yarn from Pakistan</i> , WT/DS192/R, adopted 5 November 2001, as modified by Appellate Body Report WT/DS192/AB/R

## I. INTRODUCTION

1. The United States welcomes the opportunity to present its views to the Panel.
2. In this submission, the United States will present its views on the standard of review to be applied in the Panel’s evaluation of claims under the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* (“Anti-Dumping Agreement”). The United States may address other matters in its subsequent oral or written submissions.

## II. STANDARD OF REVIEW

3. As set out in Article 11 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (“DSU”), the Panel is “to assist the DSB in discharging its responsibilities under this Understanding and the covered agreements” by “mak{ing} an objective assessment of the matter before it, including an objective assessment of the facts of the case and the applicability of and conformity with the relevant covered agreements.” Pursuant to the Panel’s terms of reference, as established by Article 7.1 of the DSU, the Panel is then to “make such findings as will assist the DSB in making the recommendations or in giving the rulings provided for” in the covered agreements, as required by Article 19.1 of the DSU.

4. With respect to the specific standard of review for anti-dumping measures, Article 17.6 of the Anti-Dumping Agreement provides that:

(i) in its assessment of the facts of the matter, the panel shall determine whether the authorities’ establishment of the facts was proper and whether their evaluation of those facts was unbiased and objective. If the establishment of the facts was proper and the evaluation was unbiased and objective, even though the panel might have reached a different conclusion, the evaluation shall not be overturned;

(ii) the panel shall interpret the relevant provisions of the Agreement in accordance with customary rules of interpretation of public international law. Where the panel finds that a relevant provision of the Agreement admits of more than one permissible interpretation, the panel shall find the authorities’ measure to be in conformity with the Agreement if it rests upon one of those permissible interpretations.

5. The Panel’s task in this dispute then is to assess whether the investigating authority properly established the facts and evaluated them in an unbiased and objective way.<sup>1</sup> The Panel’s task is not to determine whether it would have reached the same results as the investigating authority. Put differently, the Panel’s task is to determine whether a reasonable, unbiased person, looking at the same evidentiary record as the investigating authority, could have—not would have—reached the same conclusions that the investigating authority reached.

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<sup>1</sup> This is consistent with the findings in numerous panel and Appellate Body reports. See, e.g., *US – Countervailing Measures on Certain EC Products (21.5 – EC)*, para. 7.82 (referring to the Appellate Body report in *US – Cotton Yarn (Panel)*, as well as other reports concerning the Anti-Dumping Agreement, and observing that its role was to assess “whether the investigating authorities properly established the facts and evaluated them in an unbiased and objective manner.”). See also *ibid.*, paras. 7.78-7.83.

6. Under the standard of review set out in the WTO Agreement, the Panel must not conduct a *de novo* evidentiary review, but instead should “bear in mind its role as *reviewer* of agency action” and not as “*initial trier of fact*.”<sup>2</sup> Indeed, it would be inconsistent with a panel’s function under Article 11 of the DSU to go beyond its role as reviewer and instead substitute its own assessment of the evidence and judgment for that of the investigating authority.<sup>3</sup>

### III. CONCLUSION

7. The United States appreciates the opportunity to submit its views in connection with this dispute on the proper interpretation of relevant provisions of the Anti-Dumping Agreement.

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<sup>2</sup> *US – Countervailing Duty Investigation on DRAMS (AB)*, paras. 187-188 (emphasis original).

<sup>3</sup> *US – Countervailing Duty Investigation on DRAMS (AB)*, paras. 188-190.