

**UNITED STATES – USE OF ZEROING IN ANTI-DUMPING MEASURES  
INVOLVING PRODUCTS FROM KOREA**

**(DS402)**

**OPENING STATEMENT OF THE UNITED STATES OF AMERICA  
AT THE FIRST SUBSTANTIVE MEETING OF THE PANEL**

**October 5, 2010**

Mr. Chairman, members of the Panel:

1. On behalf of the U.S. delegation, I would like to thank you for agreeing to serve on this Panel. We will not offer a lengthy statement, as our first written submission fully presents the U.S. views on the arguments raised by Korea. We are hopeful that our statement today, like our first written submission, will help to narrow the issues presented to the Panel.

2. As stated in our written submission, the United States has fully reviewed the factual evidence presented by Korea and does not contest that the documents submitted by Korea were generated by the Department of Commerce during its conduct of the three original investigations at issue.

3. Further, the United States recalls the Appellate Body’s finding in *US – Softwood Lumber V* that the use of “zeroing” with respect to average-to-average comparisons in investigations was inconsistent with the first sentence of Article 2.4.2 of the Antidumping Agreement,<sup>1</sup> when it interpreted the terms “margins of dumping” and “all comparable export transactions” in an integrated manner.<sup>2</sup> The United States acknowledges this reasoning applies equally to the margins at issue in this dispute.

4. To be clear, as Korea and the United States agree, prior adopted panel and Appellate Body reports are not binding on panels considering other disputes. Rather, the rights and obligations of Members flow from the text of the covered agreements.<sup>3</sup> In that regard, we disagree strongly with the presentation by one third party relating to the status of adopted Appellate Body reports under the DSU and their relation to the role of this Panel. In addressing the issues presented in this dispute, what we have asked you to do, and are confident you will do,

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<sup>1</sup>*Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994.*

<sup>2</sup>*See US – Softwood Lumber V (AB)*, para. 62-117.

<sup>3</sup>U.S. First Written Submission, para. 11, n. 12; Korea’s First Written Submission, para. 24.

is to fulfill your function under Article 11 of the DSU,<sup>4</sup> and make an objective assessment of the matter before you, including an objective assessment of the facts and the conformity of the challenged measures with the relevant covered agreements.

5. Mr. Chairman, members of the Panel, this concludes our opening statement. We would be pleased to respond to any questions you may have.

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<sup>4</sup>*Understanding on Rules and Procedures Governing the Settlement of Disputes.*