

ANNEX 2

WORLD TRADE
ORGANIZATION

WT/DS436/7

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**UNITED STATES – COUNTERVAILING MEASURES ON CERTAIN HOT-ROLLED CARBON
STEEL FLAT PRODUCTS FROM INDIA****NOTIFICATION OF AN OTHER APPEAL BY THE UNITED STATES
UNDER ARTICLE 16.4 AND ARTICLE 17 OF THE UNDERSTANDING ON RULES
AND PROCEDURES GOVERNING THE SETTLEMENT OF DISPUTES (DSU),
AND UNDER RULE 23(1) OF THE WORKING PROCEDURES FOR APPELLATE REVIEW**

The following notification, dated 13 August 2014, from the Delegation of the United States, is being circulated to Members.

Pursuant to Article 16 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU") and Rule 23 of the *Working Procedures for Appellate Review*, the United States hereby notifies its decision to appeal to the Appellate Body certain issues of law covered in the Report of the Panel on *United States – Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India* (WT/DS436/R) and certain legal interpretations developed by the Panel in this dispute.

(1) The United States seeks review by the Appellate Body of the Panel's legal interpretation of the term "public body" under Article 1.1(a)(1) of the *Agreement on Subsidies and Countervailing Measures* ("SCM Agreement") that "[t]he relevant entity must be shown to have been vested with governmental authority, or to have actually exercised such authority through the performance of governmental functions."¹ The United States respectfully requests that the Appellate Body modify this interpretation and clarify that an entity may be a public body within the meaning of Article 1.1(a)(1) if a government controls that entity such that the government can use the entity's resources as its own. In that circumstance, when the entity conveys economic resources, it is the government's own resources that are being conveyed.

(2) The United States seeks review of the Panel's legal conclusions that 19 U.S.C. §1677(7)(G) is inconsistent with Articles 15.3 and 15.1, 15.2, 15.4, and 15.5 of the SCM Agreement, both "as such" and "as applied" in the original investigation at issue in this dispute.² These findings are in error, and are based on erroneous findings on issues of law and related legal interpretations, including the Panel's conclusions that "Article 15.3 establishes a necessary pre-condition for cumulative assessment of the effects of the imports in question ... rather than a limitation on the scope of application of Article 15.3"³; that the term "subsidized imports" in other provisions of Article 15 constitutes an "express limitation of the imports to be

¹ Panel Report, para. 7.80.

² Panel Report, paras. 7.356, 7.369, 8.2(c), and 8.2(d).

³ Panel Report, paras. 7.343 and 7.341.

considered" in an injury analysis⁴; and that the context provided by Article VI:6(a) of the *General Agreement on Tariffs and Trade 1994* ("GATT 1994") and Article 3.3 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* ("AD Agreement") does not support the use of cross-cumulation.⁵ The United States respectfully requests that the Appellate Body reverse the Panel's findings and conclude that 19 U.S.C. §1677(7)(G) is not inconsistent with Articles 15.3 and 15.1, 15.2, 15.4, and 15.5 of the SCM Agreement "as such" or as applied in the original investigation at issue in this dispute.

(3) The United States also seeks review of the Panel's conclusion that 19 U.S.C. §1677(7)(G) "requires, in certain circumstances, the [U.S. International Trade Commission] to cumulate the effects of subsidized imports with the effects of dumped, non-subsidized imports."⁶ This finding is based on the Panel's failure to make "an objective assessment of the matter before it, including an objective assessment of the facts of the case" as required by Article 11 of the DSU because the Panel's conclusion is not based on any evaluation of the measure at issue, including its text or other evidence bearing on its meaning. For this reason also, the United States respectfully requests that the Appellate Body reverse the Panel's findings and conclude that 19 U.S.C. §1677(7)(G) is not inconsistent "as such" with Articles 15.3 and 15.1, 15.2, 15.4, and 15.5 of the SCM Agreement.

⁴ Panel Report, paras. 7.346 and 7.360.

⁵ Panel Report, paras. 7.347-7.351.

⁶ Panel Report, paras. 7.322, 7.339, 7.340, and 7.358.