WORLD TRADE ORGANIZATION

WT/DS260/4
19 August 2002

(02-4515)

Original: English

EUROPEAN COMMUNITIES – PROVISIONAL SAFEGUARD MEASURES ON IMPORTS OF CERTAIN STEEL PRODUCTS

Request for the Establishment of a Panel by the United States

The following communication, dated 19 August 2002, from the Permanent Mission of the United States to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

The United States considers that provisional safeguard measures taken by the European Communities ("EC") with regard to imports of certain steel products are inconsistent with the EC's commitments and obligations under the *General Agreement on Tariffs and Trade 1994* ("GATT 1994") and the *Agreement on Safeguards* ("Safeguards Agreement"). The measures in question (collectively, the "Safeguard Measures") include Commission Regulation (EC) No 560/2002 of 27 March 2002, as amended by Commission Regulation (EC) No 950/2002 of 3 June 2002, and Commission Regulation (EC) No 1287/2002 of 15 July 2002, as well as any other amendments thereto or extensions thereof, and any related measures. In particular, the Safeguard Measures appear to be inconsistent with:

(1) Article 2.1 of the Safeguards Agreement and Article XIX:1(a) of the GATT 1994, in that the EC applied the Safeguard Measures to certain steel products in the absence of a determination that such products are being imported in such increased quantities, absolute or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products.

(2) Article 4.1(b) of the Safeguards Agreement, in that the EC did not make a determination of the existence of a threat of serious injury based on facts and not merely on allegation, conjecture or remote possibility.

(3) Article 4.2 (a) of the Safeguards Agreement, in that there was no investigation to determine, and no determination of, whether increased imports have caused or are threatening to cause serious injury, in which the EC evaluated all relevant factors of an objective and quantifiable nature having a bearing on the situation of the domestic industry, in particular, the rate and amount of the increase in imports of the product concerned in absolute and relative terms, the share of the domestic market taken by increased imports, changes in the level of sales, production, productivity, capacity utilization, profits and losses, and employment.

(4) Article 4.2 (b) of the Safeguards Agreement, in that there was no investigation demonstrating, and no determination of, the existence of a causal link between increased imports of the product concerned and serious injury or threat thereof on the basis of objective evidence. The EC also failed to ensure that injury caused at the same time by factors other than imports was not attributed to increased imports.

(5) Article 4.2(c) of the Safeguards Agreement, in that the EC failed to publish, in accordance with the provisions of Article 3, a detailed analysis of the case under investigation as well as a demonstration of the relevance of the factors examined.

(6) Article 6 of the Safeguards Agreement, in that the Safeguard Measures were not taken pursuant to a preliminary determination that there is clear evidence that increased imports have caused or are threatening to cause serious injury to the domestic industry that produces like or directly competitive products.

(7) Article 6 of the Safeguards Agreement and Article XIX:2 of the GATT 1994 in that the EC took the Safeguard Measures in the absence of critical circumstances where delay would cause damage which it would be difficult to repair.

(8) Article 3 of the Safeguards Agreement, in that:

(a) the Safeguard Measures were not applied following an investigation by the competent authorities of the Member pursuant to procedures previously established and made public in consonance with Article X of the GATT 1994;

(b) the Safeguard Measures were not applied following an investigation which included reasonable public notice to all interested parties and public hearings or other appropriate means in which importers, exporters and other interested parties could present evidence and their views, including the opportunity to respond to the presentation of other parties and to submit their views, *inter alia*, as to whether or not the application of the Safeguard Measures would be in the public interest;

(c) the EC did not publish a report setting forth findings and reasoned conclusions reached on all pertinent issues of fact and law.

(9) Article 5.1 of the Safeguards Agreement, in that the Safeguard Measures were not applied by the EC only to the extent necessary to prevent or remedy serious injury and to facilitate adjustment.

(10) Article 12.1 of the Safeguards Agreement, in that the EC did not immediately notify the Committee on Safeguards upon:

(a) initiating an investigation relating to serious injury or threat thereof and the reasons for it;

(b) making a finding of serious injury or threat thereof caused by increased imports; and

(c) taking a decision to apply or extend a safeguard measure.

(11) Article 12.4 of the Safeguards Agreement, in that the EC failed to make a notification to the Committee on Safeguards before taking the Safeguard Measures.

(12) Article 2.2 of the Safeguards Agreement and Article I of GATT 1994, in that the EC applied its Safeguard Measures to the goods of some WTO Members, while excluding the goods of other countries whose territories are not part of a free trade area or a customs union and who are not developing country WTO Members.

(13) Articles 2.1, 4, 5.1 and 6 of the Safeguards Agreement and Article XIX of GATT 1994, in that there is a lack of parallelism between the products for which an increase in imports was claimed and the products on which the Safeguards Measures were imposed.

(14) Article XIX:1(a) of GATT 1994, in that there were no unforeseen developments, as a result of which a product is being imported in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers of the like or directly competitive products.

On May 30, 2002, the United States Government requested consultations with the EC pursuant to Article 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (DSU), Article XXII:1 of the GATT 1994 and Article 14 of the Safeguards Agreement. This request was circulated as document WT/DS260/1. The United States and the EC held such consultations on June 27 and July 24, 2002. Unfortunately, the consultations did not resolve the dispute.

Accordingly, the United States requests the Dispute Settlement Body to establish a panel pursuant to Article 6 of the DSU to examine this matter with the standard terms of reference as set out in Article 7.1 of the DSU.