

UNITED STATES – ANTI-DUMPING ACT OF 1916

Request for the Establishment of a Panel by the European Communities

The following communication, dated 11 November 1998, from the Permanent Delegation of the European Commission to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

I have the honour to request the establishment of a panel pursuant to Article XXIII of the General Agreement on Tariffs and Trade (“GATT 1994”), Article 4 and 6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes and Article 17 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (“Anti-Dumping Agreement”) regarding the United States Anti-Dumping Act of 1916 (Act of September 8, 1916, 39, Stat. 756. Title VIII of that Act is codified at United States Code 71-74).

On 4 June 1998 the European Communities requested consultations with the United States of America with a view to reach a mutually satisfactory solution of the matter. The request was circulated in document WT/DS136/1 dated 24 June 1998. Such consultations, which were held on 29 July 1998 in Geneva, have allowed a better understanding of the respective positions, but have not led to a satisfactory resolution of the matter.

Therefore the European Communities request that the Panel consider and find that the 1916 Anti-Dumping Act is inconsistent with the United States of America’s obligations under:

- (1) the provisions of the Marrakesh Agreement establishing the World Trade Organisation (“WTO”), and in particular, but not necessarily exclusively, Article XVI:4, which imposes the obligation to WTO Members to ensure the conformity of their laws with their obligations as provided in the WTO Agreements;
- (2) the provisions of GATT 1994 and the Anti-Dumping Agreement, and in particular, but not necessarily exclusively :
 - Article VI:2 of GATT, which stipulates that anti-dumping duties are the only possible remedies to dumping;
 - Article 1 of the Anti-Dumping Agreement which requires the carrying-out of an investigation (which has to respect a set of procedural rules) prior to the imposition of any duty;

- Article VI of GATT 1994 and Articles 4 and 5 of the Anti-Dumping Agreement which require that the complaining industry satisfies certain requirements before being permitted to bring an anti-dumping complaint;
- Article VI of GATT 1994 and Article 3 of the Anti-Dumping Agreement which specifically define and qualify the concept of “material injury”;
- Article VI:1(a) of GATT 1994 and Articles 2.1 and 2.2 of the Anti-Dumping Agreement which set the actual price in the exporting country as the first and privileged criterion for the calculation of the normal value;
- Article VI:1 of GATT 1994 and Article 2.1. of the Anti-Dumping Agreement, which require the introduction of products into the commerce of another country as a prerequisite for dumping to take place.

In the alternative, the European Communities request that the panel consider and find that the 1916 Act, insofar as it leads to applying stricter disciplines to the sale of imported products at low prices than for the sale of domestic products, is in breach of Article III:4 of GATT 1994.

The European Communities request that the panel be established with the standard terms of reference.
