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UNITED STATES – ANTI-DUMPING MEASURES ON CERTAIN HOT-ROLLED STEEL PRODUCTS FROM JAPAN

Request for the Establishment of a Panel by Japan

The following communication, dated 11 February 2000, from the Permanent Mission of Japan to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

On 29 June 1999 the United States Department of Commerce (the DOC) issued an anti-dumping duty order on "Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan". The anti-dumping duty order (the Order) followed investigations by the DOC and the US International Trade Commission (the ITC) of dumping and injury respectively. The effect of the Order is to apply anti-dumping duties on imports from Japan of the hot-rolled steel products covered by the Order. The investigations were conducted under the US anti-dumping statute (the Tariff Act of 1930, as amended; 19 U.S.C. section 1673, et seq.), and the related ITC and DOC regulations (19 Code of Federal Regulations sections 200-213 and 351-357, respectively). The sequence of events leading up to the US imposition of the Order is as follows:

1. 30 September 1998 - The US steel industry filed an anti-dumping petition with the DOC and the ITC seeking the imposition of anti-dumping duties on imports of hot-rolled flat-rolled carbon-quality steel products from Japan, Russia and Brazil.

2. 15 October 1998 - The DOC initiated anti-dumping duty investigations of imports of hot-rolled steel from Japan, Russia and Brazil (published 22 October 1998 at 63 FR 56607).

3. 17 November 1998 - The ITC made its preliminary determination of injury (published 25 November 1998 at 63 FR 65221).

4. 23 November 1998 - The DOC issued its preliminary determination of "critical circumstances" (published 30 November 1998 at 63 FR 65750).

5. 12 February 1999 - The DOC issued its preliminary determination that certain hot-rolled flat-rolled carbon-quality steel products from Japan were being sold in the United States at less than fair value (published 19 February 1999 at 64 FR 8291).

6. 28 April 1999 - The DOC issued its final determination that certain hot-rolled flat-rolled carbon-quality steel products from Japan were being sold at less than fair value (published 6 May 1999 at 64 FR 24329).

7. 18 June 1999 - The ITC made its final determination of injury (published 23 June 1999 at 64 FR 33514).

The determinations, other than the determination of critical circumstances, at issue have resulted in the application of anti-dumping measures (imposition and collection of anti-dumping duties as provided in Article 9 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the Anti-Dumping Agreement)) on imports of hot-rolled flat-rolled carbon-quality steel from Japan. As regards critical circumstances, the erroneous early determination of critical circumstances had the same chilling effect on imports from Japan as a retroactive imposition of provisional measures under Article 7 of the Anti-Dumping Agreement would have had.

On 18 November 1999, the Government of Japan requested consultations with the Government of the United States under Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (the DSU), Article 17.2 of the Anti-Dumping Agreement and Article XXII:1 of the General Agreement on Tariffs and Trade 1994 (the GATT 1994). The United States and Japan consulted on 13 January 2000, but failed to settle the dispute.

As summarized below, pursuant to Article 6 of the DSU and Article 17 of the Anti-Dumping Agreement, Japan considers that the determinations made by the United States in the investigations of dumping and injury of hot-rolled flat-rolled carbon-quality steel products from Japan, as well as the underlying laws, regulations, policies and procedures, were not in accordance with United States obligations under the Marrakesh Agreement Establishing the World Trade Organization (the Marrakesh Agreement), including the agreements annexed thereto, and have resulted in benefits accruing to Japan directly or indirectly under such agreements being nullified or impaired.

Specifically, the United States was acting in a manner inconsistent with the following provisions of the Anti-Dumping Agreement, of GATT 1994 and of the Marrakesh Agreement:

1. Articles 2, 3, 4, 6 (including Annex I and II), 9, 10 and 18 of the Anti-Dumping Agreement.

2. Articles VI and X of the GATT 1994; and

3. Article XVI of the Marrakesh Agreement.

The specific claims are as follows:

A. DOC'S DETERMINATION OF THE MARGIN OF DUMPING AND ITS PRELIMINARY DETERMINATION OF CRITICAL CIRCUMSTANCES

1. Treatment of Sales between Affiliated Companies in Calculating Normal Value

The DOC's determination of dumping was inconsistent with the requirements of Article 2, in particular Articles 2.2.1 and 2.4 of the Anti-Dumping Agreement in that the DOC employed a methodology which improperly excludes certain home market sales to affiliated parties based on a certain price level.

2. Application of Facts Available

The DOC's determination of dumping was inconsistent with the standards of Articles 2.3 and 6.8 and Annex II of the Anti-Dumping Agreement in its application of "facts available" to Kawasaki Steel Corporation (KSC) under section 776(b) of the Tariff Act of 1930, as amended. In addition, the DOC's determination of dumping was inconsistent with the standards of Articles 2.4 and 6, in particular 6.1, 6.2, 6.6, 6.7, 6.8, 6.13 and Annex I and II of the Anti-Dumping Agreement in its application of facts available to Nippon Steel Corporation (NSC) and NKK Corporation under the same provision.

3. Determination of All Others Rate

The DOC's determination of dumping was inconsistent with Article 9.4 of the Anti-Dumping Agreement in its inclusion of a "facts available" rate of dumping in determining the rate of dumping under section 735(c)(5)(A) of the Tariff Act of 1930, as amended, applicable to companies which were not required to participate in the investigation.

In addition, section 735(c)(5)(A) of the Tariff Act of 1930, as amended, which mandates that the DOC include certain margins determined under section 776 of the Tariff Act of 1930, as amended, in determining all others rate, on its face, is inconsistent with Article 9.4 of the Anti-Dumping Agreement.

4. Establishing Excessive Margins

Due to the above-described inconsistency, the dumping margins determined by the DOC were in excess of the margins that would have been assessed, had the DOC acted properly. Hence, the DOC's actions are inconsistent with Article 9.3 of the Anti-Dumping Agreement.

5. The DOC's Determinations of Critical Circumstances

The DOC's determinations of critical circumstances were inconsistent with Article 10.1, 10.2, 10.4, 10.6 and 10.7 of the Anti-Dumping Agreement in determining the existence of "critical circumstances".

In addition, section 733(e) and 735(a)(3) of the Tariff Act of 1930, as amended, which mandate that the DOC determine the existence of critical circumstances and order the suspension of liquidation under circumstances that do not satisfy the conditions set forth in 10.6 of Anti-Dumping Agreement, on its face, are inconsistent with Articles 10.1, 10.2, 10.4, 10.6 and 10.7 of Anti-Dumping Agreement.

B. THE ITC'S DETERMINATION OF INJURY

1. Determination of Injury by Reason of Subject Imports

The ITC's determination of injury was inconsistent with Articles 3.1, 3.4 and 3.5 of the Anti-Dumping Agreement in that in its examination of the causal relationship between dumped imports and injury to the domestic industry, the ITC improperly failed to base its decision on an objective examination of the facts and an examination of all relevant evidence.

2. Captive Production Provision and its Application

The ITC's determination of injury was inconsistent with Articles 3.1, 3.2, 3.4, 3.5, 3.6, and 4.1 of the Anti-Dumping Agreement in that, in applying section 771(7)(c)(iv) of the Tariff Act of 1930, as amended (the "captive production" provision of US law) and in reaching its conclusions about the state of the US industry, the ITC applied US law requiring it to focus primarily on the merchant market and, therefore, did not properly evaluate all relevant economic factors and indices bearing on the state of the US industry, assess injury and causation in relation to the domestic production of the like product, or undertake an objective examination of all relevant evidence.

In addition, Section 771(7)(c)(iv) of the Tariff Act of 1930, as amended, which contains the captive production provision is, on its face, inconsistent with Articles 3.1, 3.2, 3.4, 3.5, 3.6 and 4.1 of the Anti-Dumping Agreement.

C. INCONSISTENCY WITH ARTICLE VI OF THE GATT 1994

In determining dumping, injury and causality, the United States also acted in a manner inconsistent with Article VI of the GATT 1994.

D. DENIAL OF UNIFORM, IMPARTIAL AND REASONABLE TREATMENT

The Government of the United States conducted investigation and made determinations in a biased fashion, as was the case in the preliminary determination of critical circumstances, the application of "facts available" and the determination of injury. In doing so, the United States acted in a manner inconsistent with Article X:3 of the GATT 1994.

E. CONFORMITY

By maintaining the above-detailed laws, regulations and administrative rulings of general application which are not in conformity with its obligations under the WTO agreements, the United States has acted in a manner inconsistent with Article XVI:4 of the Marrakesh Agreement as well as Article 18.4 of the Anti-Dumping Agreement.

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Accordingly, the Government of Japan requests the establishment of a panel pursuant to Article XXIII of the GATT 1994, Articles 4 and 6 of the DSU and Article 17 of the Anti-Dumping Agreement. The terms of reference shall be the terms set out in Article 7 of the DSU and Article 17 of the Anti-Dumping Agreement. The Government of Japan requests that the establishment of a panel in this matter be included on the agenda of the next meeting of the Dispute Settlement Body.