

EUROPEAN COMMUNITIES – SELECTED CUSTOMS MATTERS

Request for the Establishment of a Panel by the United States

The following communication, dated 13 January 2005, from the delegation of the United States to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

The United States considers that the manner in which the European Communities ("EC") administers its laws, regulations, decisions and rulings of the kind described in Article X:1 of the *General Agreement on Tariffs and Trade 1994* ("GATT 1994") is not uniform, impartial and reasonable, and therefore is inconsistent with Article X:3(a) of the GATT 1994. For purposes of this request, the laws, regulations, decisions and rulings (collectively, "measures") that the European Communities fails to administer in such a manner pertain to the classification and valuation of products for customs purposes and to requirements, restrictions or prohibitions on imports. The measures consist of:

- Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, including all annexes thereto, as amended (the "Code");
- Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, including all annexes thereto, as amended (the "Commission Regulation");
- Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, including all annexes thereto, as amended (the "Tariff Regulation");
- the Integrated Tariff of the European Communities established by virtue of Article 2 of Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, including all annexes thereto, as amended (the "TARIC"); and
- for each of the above laws and regulations, all amendments, implementing measures and other related measures.

Administration of these measures in the European Communities is carried out by the national customs authorities of EC member States. Such administration takes numerous different forms. The United States understands that the myriad forms of administration of these measures include, but are

not limited to, laws, regulations, handbooks, manuals, and administrative practices of customs authorities of member States of the European Communities.

Lack of uniform, impartial and reasonable administration of the above-identified measures is manifest in differences among member States in a number of areas, including, but not limited to, the following:

- classification and valuation of goods;
- procedures for the classification and valuation of goods, including the provision of binding classification and valuation information to importers;
- procedures for the entry and release of goods, including different certificate of origin requirements, different criteria among member States for the physical inspection of goods, different licensing requirements for importation of food products, and different procedures for processing express delivery shipments;
- procedures for auditing entry statements after goods are released into the stream of commerce in the European Communities;
- penalties and procedures regarding the imposition of penalties for violation of customs rules; and
- record-keeping requirements.

In addition, the European Communities has failed to maintain, or institute as soon as practicable, judicial, arbitral or administrative tribunals or procedures for the purpose, *inter alia*, of the prompt review and correction of administrative action relating to customs matters. The above-identified measures, including in particular Articles 243 through 246 of the Code, expressly provide that EC member States are responsible for the implementation of procedures for appeals from decisions by member State customs authorities. Accordingly, the ability to obtain review of a customs decision by a tribunal of the European Communities does not arise until after an importer or other interested party has pursued review through national administrative and/or judicial tribunals. For this reason, the European Communities is in breach of Article X:3(b) of the GATT 1994.

The EC measures are also inconsistent with Article X:1 of the GATT 1994.

On 21 September 2004, the United States requested consultations with the European Communities pursuant to Articles 1 and 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU") and Article XXII:1 of the GATT 1994 (WT/DS315/1). The United States held consultations with the European Communities in Geneva on 16 November 2004. Unfortunately, these consultations did not resolve the dispute.

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