

## UNITED STATES – ANTI-DUMPING ACT OF 1916

### Recourse by the European Communities to Article 22.2 of the DSU

The following communication, dated 7 January 2002, from the Permanent Delegation of the European Commission to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 22.2 of the DSU.

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The European Communities requests that a special meeting of the Dispute Settlement Body be held on 18 January 2002 to consider the following agenda item:

*United States - Anti-Dumping Act of 1916: Recourse by the European Communities to Article 22.2 of the Understanding on Rules and Procedures Governing the Settlement of Disputes.*

Both the Panel and the Appellate Body in this dispute found the United States' Anti-Dumping Act of 1916 (the 1916 Act) to violate Articles VI:1 and VI:2 of the GATT 1994, Articles 1, 4 and 5.5 of the Anti-Dumping Agreement and Article XVI:4 of the WTO Agreement.

On 26 September 2000, the Dispute Settlement Body adopted the Panel and Appellate Body Reports in the case "United States-Anti-Dumping Act of 1916" (WT/DS136).

The resulting recommendations and rulings of the Dispute Settlement Body include, inter alia, the recommendation that the United States bring the 1916 Act into conformity with its obligations under the GATT 1994, the Anti-Dumping Agreement and the WTO Agreement. Arbitration under Article 21.3(c) of the DSU subsequently determined that the "reasonable period of time" for the United States to implement the Dispute Settlement Body's recommendations and rulings would expire on 26 July 2001. Following a US request and in light of the US commitment to repeal the 1916 Act during this session of the U.S. Congress and to terminate pending cases, the Dispute Settlement Body decided to extend the reasonable period of time until 31 December 2001 or to the date on which the current session of the U.S. Congress adjourns, whichever earlier. The United States has failed to implement the recommendations and rulings of the Dispute Settlement Body with respect to its 1916 Act by that date. Therefore, the European Communities is entitled to redress under Article 22 of the DSU.

As a result of the United States' failure to bring its 1916 Act into conformity with the WTO Agreements, or otherwise to comply with the recommendations and rulings of the Dispute Settlement Body in this matter, a number of companies are currently facing judicial proceedings brought in the United States on the basis of the 1916 Act. Moreover, all companies which export to the United States are facing the threat of legal action on the basis of this WTO-incompatible legislation.

In considering what obligations to suspend, the European Communities has applied the principles and procedures set forth in Articles 22.3 and 22.4 of the DSU. At the meeting of the Dispute Settlement Body on 18 January 2002, the European Communities will request authorization from the Dispute Settlement Body to suspend the application of the obligations under GATT 1994 and the Anti-Dumping Agreement in order to adopt an equivalent regulation to the 1916 Act against imports from the United States. This regulation would allow the European Communities to impose on United States companies found to dump their products in the European Communities additional duties corresponding, over the five year projected life of the measures, to three times the amount of the damage suffered by companies in the European Communities when certain specific intents analogous to those required under the 1916 Act are established. This regulation would also mirror other procedural aspects of the United States' measure which have been found to be inconsistent with the WTO obligations of the United States in cases where sufficient evidence of specific intent is present. The investigation would be conducted by the authorities of the European Communities responsible for the application of its anti-dumping legislation as part of the anti-dumping investigation rather than by the courts and the additional duties would not be paid to the complainants.

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