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**UNITED STATES – DEFINITIVE SAFEGUARD MEASURES
ON IMPORTS OF CERTAIN STEEL PRODUCTS**

Request for Consultations by Japan

The following communication, dated 20 March 2002, from the Permanent Mission of Japan to the Permanent Mission of the United States and to the Chairman of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

Upon instruction from my authorities, I hereby wish to convey the request of the Government of Japan (GOJ) for consultations with the Government of the United States (USG) pursuant to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), Article XXII:1 of the General Agreement on Tariffs and Trade 1994 (GATT 1994), and Article 14 of the Agreement on Safeguards, with regard to the safeguard measures imposed by the USG on imports of certain steel products.

Under the "Proclamation 7529 of March 5, 2002 – To Facilitate Positive Adjustment to Competition from Imports of Certain Steel Products" and the "Memorandum of March 5, 2002 - Action Under Section 203 of the Trade Act of 1974 Concerning Certain Steel Products" by the President of the United States, published in the Federal Register Vol. 67, No.45 of 7 March 2002, the USG imposed safeguard measures in the form of an increase in duties on imports of certain flat steel, hot-rolled bar, cold-finished bar, rebar, certain welded tubular products, carbon and alloy fittings, stainless steel bar, stainless steel rod, tin mill products and stainless steel wire and in the form of a tariff rate quota on imports of slabs effective as of 20 March 2002. Upon taking this decision to apply the safeguard measures, the USG made notifications under Article 12.1(c) and Article 9, footnote 2, of the Agreement on Safeguards on 12 March 2002.

The GOJ requested the USG to hold prior consultations pursuant to Article 12.3 of the Agreement on Safeguards as a Member having a substantial interest as an exporter of the products concerned on 6 March 2002. The consultation was held in Washington, D.C. on 14 March 2002, and both sides exchanged views on the measures. The GOJ, however, is of the view that the USG did not provide adequate explanation during the consultation as to the consistency of the measures with the relevant provisions of the Agreement on Safeguards and the GATT 1994 and therefore requests to hold the consultations under the DSU upon introduction of the safeguard measures on 20 March 2002.

The GOJ considers that these US safeguard measures are in violation of US obligations under the provisions of the GATT 1994 and of the Agreement on Safeguards, in particular, but not necessarily exclusively, of:

- Articles 2.1 and 2.2 of the Agreement on Safeguards, because, *inter alia*, they are based on the deficient determinations on the like or directly competitive products, absence of "imports

in such increased quantities" and "under such conditions," lack of serious injury or threat thereof, lack of causality, and discriminations based on the source of the products.

- Articles 3.1 and 3.2 of the Agreement on Safeguards, because, *inter alia*, the USG did not allow appropriate means in which the interested parties could present evidence and their views, the report published by the competent authorities did not set forth adequately the finding and reasoned conclusions on all pertinent issues of facts and law, including the justification for the actual measures imposed, as well as abusive recourse to confidentiality in relation to disclosure of information.
- Articles 4.1 and 4.2 of the Agreement on Safeguards, because, *inter alia*, they are, based on lack of serious injury or threat thereof, and lack of causality including the non-attribution requirement.
- Articles 5.1 and 7.4 of the Agreement on Safeguards, since, *inter alia*, they grant relief beyond "the extent necessary to prevent or remedy serious injury and to facilitate adjustment" in terms of the initial degree of the measures as well as at each stage of the progressive liberalization.
- Article 7.1 of the Agreement on Safeguards, since, *inter alia*, they grant relief beyond "the period of time necessary to prevent or remedy serious injury and to facilitate adjustment".
- Article 8.1 of the Agreement on Safeguards, since, *inter alia*, the USG failed to endeavour, in accordance with the provisions of Article 12.3, to maintain a substantially equivalent level of concessions and other obligations between it and the affected Members.
- Articles 12.1, 12.2 and 12.3 of the Agreement on Safeguards, since, *inter alia*, the USG failed to provide immediate notification with all pertinent information and deprived adequate opportunity for prior consultation with WTO Members having a substantial interest as exporters of the product concerned.
- Article I:1 of the GATT 1994, since, *inter alia*, they discriminate between products originating in Japan and products originating in other WTO Members.
- Article II of the GATT 1994, since, *inter alia*, they consist of withdrawal or modification of US concessions without justification under Article XIX of the GATT 1994 nor the Agreement on Safeguards nor any other provisions of the WTO Agreement.
- Article X:3 of the GATT 1994, since they are not based on uniform, impartial and reasonable administration of the relevant US laws and regulations.
- Article XIII of the GATT 1994, as regards the allocation of the tariff rate quota on imports of slabs.
- Articles XIX:1 of the GATT 1994, because, *inter alia*, the USG failed to show, prior to the application of the measures, that the increases in imports and the conditions of importation of the products covered by the above-mentioned measures were the result of "unforeseen development" and of the effect of the US obligations under the GATT 1994.
- Articles XIX:2 of the GATT 1994, because, *inter alia*, the USG failed to give notice in writing to WTO Members as far in advance as may be practical and to afford WTO Members

having a substantial interest as exporters of the product concerned an opportunity to consult with it in respect of the proposed action.

The GOJ reserves its right to raise further factual claims and legal issues during the course of consultations and in any future request for panel proceedings.

The GOJ also reserves all its rights regarding the pursuit of the rights and remedies provided for under the Agreement on Safeguards and the DSU, particularly Article 8 of the Agreement on Safeguards.

We look forward to receiving your reply to this request and to fixing a mutually acceptable date for consultations.
