

UNITED STATES - ANTI-DUMPING ACT OF 1916

Recourse by Japan to Article 22.2 of the DSU

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

Request for Authorization of Suspension of Concessions or other Obligations

Pursuant to Article 22.2 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), Japan requests authorization from the Dispute Settlement Body (DSB) to suspend the application to the United States of obligations under the General Agreement on Tariffs and Trade 1994 (GATT 1994), the WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (AD Agreement) and the Marrakesh Agreement Establishing the World Trade Organization (the WTO Agreement).

Background

On 26 July 1999, the DSB established a Panel at the request of Japan to examine the conformity of Title VIII of the U.S. Revenue Act of 1916, known as the Anti-Dumping Act of 1916, with the U.S. obligations under GATT 1994, the AD Agreement and the WTO Agreement. Both the Panel and the Appellate Body in this dispute found that the Anti-Dumping Act of 1916 violated the U.S. obligations under GATT 1994, the AD Agreement and the WTO Agreement. They recommended that the DSB request the United States to bring the Anti-Dumping Act of 1916 into conformity with its obligations under the WTO agreements. On 26 September 2000, the DSB adopted the reports of the Panel (WT/DS162/R and Add.1) and the Appellate Body (WT/DS162/AB/R).

On 28 February 2001, the arbitrator determined that ten months was a reasonable period of time for implementation of the recommendations and rulings of the DSB - the period expired on 26 July 2001 (WT/DS162/14). On 12 July 2001, the United States proposed that the reasonable period of time be modified so as to expire on 31 December 2001, or on the date on which the current session of the U.S. Congress adjourns, whichever is earlier (WT/DS162/16). Neither Japan nor the European Communities (co-complainant) objected, and the proposal was approved by the DSB on 24 July 2001.

The United States concedes that legislative action by the U.S. Congress is necessary in order to implement the recommendations and rulings of the DSB in this dispute. On 20 December 2001, the current session of the Congress adjourned. The U.S. Congress has not passed legislation to

implement the recommendations and rulings in this dispute. (Indeed, legislation was not even introduced in the Congress until the last day of the session - 20 December.)

Accordingly, the United States has failed to comply with the recommendations and rulings of the DSB in this matter by the end of the reasonable period of time. Therefore, Japan is entitled to redress under Article 22 of the DSU and to initiate this process by filing this request for authorization to suspend the application to the United States of obligations under GATT 1994, the AD Agreement and the WTO Agreement.

Suspension of Obligations

Since the recommendations and rulings of the DSB were that the Anti-Dumping Act of 1916 as such violated the U.S. obligations under GATT 1994, the AD Agreement and the WTO Agreement, it is not practical to indicate the level of nullification or impairment in terms of monetary value. For this reason, Japan intends to implement the suspension of obligations for some or all of the obligations which the Act violates, Japan believes that the level of suspension below is equivalent to the level of nullification or impairment to Japan which results from the failure of the United States to bring the Anti-Dumping Act of 1916 into conformity.

Japan requests for authorization to suspend the application of relevant obligations under Article VI:1 and VI:2 of GATT 1994, Articles 1, 4, 5 and 18 of the AD Agreement and Article XVI:4 of the WTO Agreement, so as to be allowed to introduce measures which are similar to the U.S. Anti-Dumping Act of 1916, solely against the United States.
