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UNITED STATES –ANTI-DUMPING ACT OF 1916

Request for Consultations from the European Communities

The following communication, dated 4 June 1998, from the Permanent Delegation of the European Commission to the Permanent Mission of the United States and the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

On behalf of the European Communities, I hereby request consultations with the United States of America pursuant to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes, Article XXIII of the General Agreement on Tariffs and Trade 1994 (GATT 1994) and Article 17.3 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Anti-Dumping Agreement) regarding failure from the part of the United States to repeal its Anti-Dumping Act of 1916 (Act of 8 September 1916, 39 Stat. 756. Title VIII of that Act is codified at United States Code 71-74).

The US Anti-Dumping Act of 1916 is still in force and is applicable to the import and internal sale of any foreign product irrespective of its origin, including products originating in countries which are WTO Members. The 1916 Act exists in the US statute books in parallel with the Tariff Act of 1930 which includes the US implementing legislation of multilateral Anti-Dumping provisions. A Court action brought under the 1916 Act is at present pending before US Courts and there are substantiated indications that further Court actions under the 1916 Act could be brought in the near future. It should be noted that US producers of any product could decide to resort to the 1916 Act.

The 1916 Act renders unlawful the importation of goods and their sale in the US market in certain circumstances when the price is lower than the one in the country of production or in other foreign countries where the goods are exported. It therefore relates to a practice which corresponds to that described in Article VI of GATT 1994 and in the Anti-Dumping Agreement.

The European Communities consider that the 1916 Act is, in several respects, not in conformity with the obligations contained in Article VI of GATT 1994 and the Anti-Dumping Agreement. Infringements relate, notably, to the following provisions:

- Article VI:2 of GATT 1994 specifies that anti-dumping duties are the only possible remedy to dumping whereas the 1916 Act is having recourse to treble damages and fines and/or imprisonment;

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- Article 1 of the WTO Anti-Dumping Agreement requiring the carrying-out of an investigation (which has to respect a set of procedural rules) prior to the imposition of any duty whereas under the 1916 Act measures are applied immediately without the procedural safeguards provided for in the Anti-Dumping Agreement;
- Article VI of GATT 1994 and Articles 4 and 5 of the WTO Anti-Dumping Agreement insofar as they require that the complaining domestic industry satisfies certain requirements before being permitted to bring an anti-dumping complaint whereas an action under the 1916 Act can be brought by any private party;
- Article VI of GATT 1994 and Article 3 of the WTO Anti-Dumping Agreement insofar as they specifically define and qualify the concept of 'material injury' whereas the 1916 Act merely refers to an intent to injure;
- Article VI:1(a) and (b) of GATT 1994 and Articles 2.1 and 2.2 of the WTO Anti-Dumping Agreement insofar as they set the actual price in the exporting country as the first and privileged criterion for the calculation of the normal value whereas the criteria mentioned in the 1916 Act are fully interchangeable;
- Article VI:1 of GATT 1994 and Article 2.1 of the WTO Anti-Dumping Agreement insofar as they require the introduction of products into the commerce of another country as a prerequisite for dumping to take place whereas under the 1916 Act actual sales on the US market are not necessary and a simple quotation from a foreign company is considered to be sufficient.

In addition, the European Communities consider that the 1916 Act, insofar as it leads to applying stricter disciplines to the sale of imported products at low prices than for the sale of domestic products is also contrary to Article III:4 of GATT 1994.

In these circumstances, the European Communities consider that the US Anti-Dumping Act of 1916 is not in conformity with the obligation of the United States under Article XVI:4 of the Marrakesh Agreement establishing the WTO, which requires all Members to "*ensure the conformity of (their) laws, regulations and administrative procedures with (their) obligations as provided in the annexed Agreements*".

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