

UNITES STATES - SECTIONS 301 - 310 OF THE TRADE ACT OF 1974

Request for Consultations by the European Communities

The following communication, dated 25 November 1998, from the Permanent Delegation of the European Commission 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.

On behalf of the European Communities, I hereby request consultations with the United States pursuant to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) and Article XXII:1 of the General Agreement on Tariffs and Trade 1994 (GATT 1994), with regard to Title III, chapter 1 (sections 301 - 310) of the Trade Act of 1974, as amended (19 U.S.C., paragraphs 2411 - 2420) and in particular sections 306 and 305 of that Act (19 U.S.C., paragraphs 2416 and 2415 respectively).

By imposing specific, strict time limits within which unilateral determinations must be made and trade sanctions must be taken, Sections 306 and 305 of the Trade Act of 1974 do not allow the United States to comply with the rules of the DSU in situations where a prior multilateral ruling under the DSU on the conformity of implementing measures has not yet been adopted by the DSB. Where measures have been taken to implement DSB recommendations, the DSU rules require either agreement between the parties to the dispute or a multilateral finding on non-conformity under Article 21.5 DSU before any determination of non-conformity can be made, let alone any measures of retaliation can be announced or implemented. The DSU procedure resulting in a multilateral finding, even if initiated immediately at the end of the reasonable period of time for implementation, cannot be finalised, nor can the subsequent DSU procedure for seeking compensation or suspension of concessions be complied with, within the time limits of Sections 306 and 305.

The European Communities considers that Title III, chapter 1 (sections 301 - 310) of the Trade Act of 1974, as amended, and in particular Sections 306 and 305 of that Act, are inconsistent with, in particular, but not necessarily exclusively, the following WTO provisions:

- Articles 3, 21, 22 and 23 of the DSU;
- Articles XVI:4 of the Marrakesh Agreement Establishing the World Trade Organization; and
- Articles I, II, III, VIII and XI of GATT 1994.

Through these violations of WTO rules, this legislation nullifies or impairs benefits accruing, directly or indirectly, to the European Communities under GATT 1994. This legislation also impedes important objectives of the GATT 1994 and of the WTO.

The European Communities also requests consultations with the United States under Article XXII:1 of GATT 1994 on the specific determinations and actions the United States has publicly announced by a letter of 14 October 1998, from Erskine Bowles, White House Chief of Staff, to the Honorable Newt Gingrich, Richard Gephardt, Trent Lott and Tom Daschle of the United States Congress and by notices in the Federal Register of 22 October 1998 and 10 November 1998 (Volume 63, No. 204 and 217 respectively), i.e. that the US will:

1. on 15 December 1998, make unilateral determinations under sections 306 of the Trade Act of 1974, as amended (19 U.S.C., paragraph 2416):
 - (a) that the measures which the EC has taken to implement the recommendations of the Dispute Settlement Body (DSB) of 25 September 1997, in the case *EC - regime for the importation, sale and distribution of bananas* (WT/DS27) fail to implement those recommendations; and
 - (b) laying down the precise product scope of a prohibitive 100 percent *ad valorem* duty which the US will, by the date indicated below, apply against EC exports of goods of as much as \$1.5 billion under section 301(a) of the Trade Act of 1974; and
2. as early as 1 February 1999, but in no case later than 3 March 1999, unilaterally implement under section 305 of the Trade Act of 1994, as amended (19 U.S.C., paragraph 2415), the trade sanctions announced on 15 December 1998.

I look forward to receiving your reply to this request for consultations and to setting a mutually convenient date for these consultations.
