

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

Request for the Establishment of a Panel by Japan

The following communication, dated 21 May 2002, from the Permanent Mission of Japan to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

On 5 March 2002, President George W. Bush issued "Proclamation 7529 – To Facilitate Positive Adjustment to Competition From Imports of Certain Steel Products" and the "Memorandum of 5 March 2002 - Action Under Section 203 of the Trade Act of 1974 Concerning Certain Steel Products" (published 7 March 2002, 67 FR 10553) imposing definitive safeguard measures on steel imports, including a tariff-rate quota on slabs, and an increase in duties on certain flat steel, tin mill products, hot-rolled bar, cold-finished bar, rebar, certain tubular products, carbon and alloy fittings, stainless steel bar, stainless steel rod, and stainless steel wire, all effective 20 March 2002 ("safeguard measures"). The proclamation was issued following investigations conducted by the US International Trade Commission ("ITC"), and pursuant to the President's own considerations, under the safeguard law of the United States, Sections 201-203 of the Trade Act of 1974, as amended, as well as Section 330(d)(1) of the Tariff Act of 1930, as amended. The proclamation provides that the safeguard measures shall not be applied to products originating in Canada and Mexico based on Sections 311 and 312 of the NAFTA Implementation Act. Products from Jordan and Israel are also exempted under the proclamation based on US free trade agreements with those countries.

The sequence of events leading up to the proclamation were as follows: First were the ITC injury and remedy investigations:

1. 22 June 2001 – The ITC instituted a safeguard investigation of 33 imported steel products on receiving a letter requesting the investigation from the US Trade Representative, followed by a resolution from the Senate Finance Committee also requesting the investigation (published 3 July 2001, 66 FR 35267, and 22 August 2001, 66 FR 44158).
2. 22 October 2001 – The ITC voted on injury, rendering affirmative injury determinations on 12 steel products, evenly divided injury determinations on four steel products and negative injury determinations on 17 steel products (published 28 December 2001, 66 FR 67304).
3. 7 December 2001 – The ITC voted on remedy, recommending tariffs, quotas, or tariff-rate quotas depending on the Commissioner and steel product (published 28 December 2001, 66 FR 67304).

Concurrently and subsequently, the Trade Policy Staff Committee of the Office of the US Trade Representative ("TPSC"), acting on the President's behalf, examined what remedy, if any, the

President should impose in light of the ITC's findings and recommendations and which products should be excluded. On 5 March 2002, the President issued Presidential Proclamation 7529 imposing safeguard measures on ten separately identified steel products (67 FR 10553), taking into consideration the ITC's findings on injury and recommendations on remedy, as well as other pertinent information.

The Government of Japan considers that the determinations made by the United States Government ("USG") in its safeguard investigation and the safeguard measures on imported steel products themselves are inconsistent with US obligations under the Marrakesh Agreement establishing the World Trade Organization (the "WTO Agreement"), including the agreements annexed thereto, and have resulted in the nullification and impairment of benefits accruing to Japan directly or indirectly under such agreements. Specifically, the USG acted inconsistently with the obligations under the following provisions:

1. Articles 2, 3, 4 and 5 of the Agreement on Safeguards;
2. Articles I:1, X:3 and XIX:1 of the General Agreement on Tariffs and Trade 1994 ("GATT1994").

#### Legal Basis of the Complaint

The specific legal bases of the complaint are as follows:

1. Increased Imports

The safeguard measures are inconsistent with Articles 2.1 and 4.2(a) of the Agreement on Safeguards and Article XIX:1 of the GATT 1994 because, *inter alia*, they were imposed in the absence of the requisite increase in import volume.

2. Causation

The safeguard measures are inconsistent with Articles 2.1 and 4.2(b) of the Agreement on Safeguards and Article XIX:1 of the GATT 1994 because, *inter alia*, they were imposed despite the USG's failure to demonstrate causality between increased imports and serious injury and to ensure that serious injury caused by factors other than increased imports was not attributed to increased imports.

3. Like Products

The safeguard measures are inconsistent with Articles 2.1 and 4.1(c) of the Agreement on Safeguards and Articles X:3 and XIX:1 of GATT 1994 because the USG failed to properly define the domestic industries producing products like or directly competitive with the imported products under investigation.

4. Safeguard Measures on Tin Mill Products and Stainless Wire Products

- (i) The safeguard measures are inconsistent with Articles 2.1, 3.1, 4.2(a), (b) and (c) of the Agreement on Safeguards and Articles X:3 and XIX:1 of GATT 1994 because, *inter alia*, the President imposed safeguard measures on tin mill products as a separate like product without making a uniform, impartial and reasonable determination that increased tin mill product imports had caused, or threatened to cause, serious injury to the domestic industry producing the like or directly

competitive product or publishing any report setting forth the findings and reasoned conclusions.

- (ii) The measures on tin mill products and stainless wire products violate Article 3.1, 4.2(c) the Agreement on Safeguards and Article X:3 of GATT 1994 because the President's treatment of the ITC's tie injury votes on these and other products was not uniform, impartial and reasonable nor did the President publish any report setting forth the findings and reasoned conclusions supporting such treatment.

5. Parallelism

The safeguard measures are inconsistent with Articles 2.1 and 2.2 of the Agreement on Safeguards and Article XIX:1 of GATT 1994 in that the sources of imports covered by the safeguards investigation do not parallel the sources of imports falling within the scope of the safeguard measures.

6. The Extent of Measures

The safeguard measures are inconsistent with Article 3.1 and 5.1 of the Agreement on Safeguards and Article XIX:1 of GATT 1994 because, *inter alia*, the measures imposed were more restrictive than those recommended by the ITC, and there was no investigation or published report setting forth the findings and reasoned conclusions on how they were no more restrictive than necessary to prevent or remedy serious injury.

7. Violation of the Principles of Non-Discrimination and Most Favored Nation Treatment

The safeguard measures are inconsistent with Article I:1 of the GATT 1994 and Article 2.2 of the Agreement on Safeguards because, *inter alia*, they exempt imports from WTO Members which are FTA partners of the US, namely, Canada, Mexico, Jordan and Israel, thereby discriminating between products originating in Japan and products originating in such WTO Members.

As a result of these safeguard measures, increased duties have been imposed on imports from Japan of certain flat steel, tin mill products, hot-rolled bar, cold-finished bar, rebar, certain tubular products, carbon and alloy fittings, stainless steel bar, stainless steel rod and stainless steel wire, and a tariff-rate quota has been imposed on imports of slab.

On 20 March 2002, the Government of Japan requested consultations with the USG under Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU"), Article XXII:1 of the GATT 1994 and Article 14 of the Agreement on Safeguards. The United States and Japan held consultations on 11 and 12 April 2002 (with other Members also requesting consultations with the United States) but failed to settle the dispute.

Accordingly, the Government of Japan requests the establishment of a panel pursuant to Articles 4.7 and 6 of the DSU, Article XXIII of the GATT 1994, and Article 14 of the Agreement on Safeguards. The terms of reference shall be the terms set out in Article 7 of the DSU and Article 14 of the Agreement on Safeguards. The Government of Japan requests that the establishment of a panel in this matter be included on the agenda of the next meeting of the Dispute Settlement Body.

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