

**EUROPEAN COMMUNITIES – SELECTED CUSTOMS MATTERS**

Request for Consultations by the United States

The following communication, dated 21 September 2004, from the delegation of the United States to the delegation of the European Communities and to the Chairperson of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

My authorities have instructed me to request consultations with the European Communities pursuant to Articles 1 and 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") regarding

- (a) the non-uniform administration by the European Communities of laws, regulations, judicial decisions and administrative rulings of the kind described in Article X:1 of the GATT 1994 pertaining to the classification and valuation of products for customs purposes and to requirements, restrictions or prohibitions on imports, and
- (b) the failure of the European Communities to institute judicial, arbitral or administrative tribunals or procedures for the purpose, *inter alia*, of the prompt review and correction of administrative action relating to customs matters.

We understand the principal laws and regulations of the European Communities pertaining to the aforementioned subject matter to be:

- Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, including all annexes thereto, as amended (the "Code");
- Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, including all annexes thereto, as amended (the "Commission Regulation");
- Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, including all annexes thereto, as amended (the "Tariff Regulation");
- the Integrated Tariff of the European Communities established by virtue of Article 2 of Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical

nomenclature and on the Common Customs Tariff, including all annexes thereto, as amended (the "TARIC"); and

- for each of the above laws and regulations, all amendments, implementing measures and other related measures.

"Administration" includes administration through all means, including but not limited to laws, regulations, handbooks, manuals, and administrative practices of customs authorities of member States of the European Communities.

While the Code, the Commission Regulation, the Tariff Regulation, the TARIC, and related measures set forth certain rules regarding the classification and valuation of goods for customs purposes, they appear to leave to the discretion of national customs authorities decisions in a number of key areas of customs administration. This has resulted in disparate administration of these customs measures in a number of respects including, but not limited to, the following:

- Differences in the classification and valuation of goods;
- Differences in procedures for the classification and valuation of goods, including the provision of binding classification and valuation information to importers;
- Differences in procedures for the entry and release of goods, including use of automation in some member States but not others, different certificate of origin requirements, different criteria among member States for the physical inspection of goods, different licensing requirements for importation of food products, and different procedures for processing express delivery shipments;
- Differences in procedures for auditing entry statements after goods are released into the stream of commerce in the European Communities;
- Differences in penalties and differences in procedures regarding the imposition of penalties for violation of customs rules; and
- Differences in record-keeping requirements.

Furthermore, Articles 243 through 246 of the Code expressly provide that EC member States are responsible for the implementation of appeals procedures. Accordingly, appeals procedures vary from member State to member State, and the ability to obtain review of a customs decision by a tribunal of the European Communities does not appear to arise until after an importer or other interested party has pursued review through national administrative and/or judicial tribunals.

The United States believes the foregoing manner of administering the Code, the Commission Regulation, the Tariff Regulation, the TARIC, and related measures to be inconsistent with the obligation of the European Communities under Article X:3(a) of the GATT 1994 to administer "in a uniform, impartial and reasonable manner" the laws, regulations, judicial decisions and administrative rulings of general application referred to in Article X:1 of the GATT 1994. Moreover, this arrangement appears to be inconsistent with the obligation of the European Communities under Article X:3(b) of the GATT 1994.

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

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