

UNITED STATES - ANTI-DUMPING ACT OF 1916

Notification of an Appeal by the United States under
paragraph 4 of Article 16 of the Understanding on Rules
and Procedures Governing the Settlement of Disputes (DSU)

The following notification, dated 29 May 2000, sent by the United States to the Dispute Settlement Body (DSB), is circulated to Members. This notification also constitutes the Notice of Appeal, filed on the same day with the Appellate Body, pursuant to the *Working Procedures for Appellate Review*.

Pursuant to Article 16 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU") and Rule 20 of the *Working Procedures for Appellate Review*, the United States hereby notifies its decision to appeal to the Appellate Body certain issues of law covered in the Panel report on *United States – Anti-Dumping Act of 1916* (WT/DS162/R) and certain legal interpretations developed by the Panel.

1. The United States seeks review by the Appellate Body of the Panel's legal conclusion that the 1916 Act is inconsistent with Articles VI:1 and VI:2 of the *General Agreement on Tariffs and Trade 1994* ("GATT 1994") and with Article 18.1 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* ("Anti-dumping Agreement"). These findings are in error, and are based upon erroneous findings on issues of law and on related legal interpretations with respect to Article VI of the GATT 1994 and various provisions of the Anti-dumping Agreement, including:

- (a) the Panel's legal conclusion that Article VI of the GATT 1994 and the Anti-dumping Agreement apply to any measure addressing transnational price discrimination;
- (b) the Panel's legal conclusion that Article VI of GATT 1994 and the Anti-dumping Agreement apply to the 1916 Act;
- (c) the Panel's legal conclusion that the 1916 Act addresses the same type of price discrimination as Article VI of GATT 1994;
- (d) the Panel's legal conclusion that the 1916 Act violates Article VI:2 of the GATT 1994 and Article 18.1 of the Anti-dumping Agreement because those Articles provide that only measures in the form of anti-dumping duties may be applied to counteract dumping as such;
- (e) the Panel's legal conclusion that, by not providing exclusively for the injury test provided in Article VI:1 of the GATT 1994, the 1916 Act violates Article VI:1 of the GATT 1994.

2. The United States seeks review by the Appellate Body of the Panel's failure to find that the 1916 Act, as such, does not mandate action which is inconsistent with U.S. obligations under Article VI of the GATT 1994 and the Anti-dumping Agreement. The Panel's failure to make such a finding is in error and is based upon erroneous legal interpretations related to the distinction between mandatory and non-mandatory measures, including:

- (a) the Panel's legal conclusion that the distinction between mandatory and non-mandatory measures is a defense for which the United States as the defendant bore the burden of proof;
- (b) the Panel's legal conclusion that the distinction between mandatory and non-mandatory measures does not apply to the question of whether the 1916 Act has been interpreted in a way that would make it fall outside the scope of Article VI of GATT 1994 and the Anti-dumping Agreement; and
- (c) the Panel's ascertainment of U.S. law by interpreting it, as would a U.S. court, rather than by examining it and making determinations as a matter of fact.

3. The United States seeks review by the Appellate Body of the Panel's legal conclusion that it possessed jurisdiction to consider claims under Article VI of GATT 1994 and the Anti-dumping Agreement despite the fact that the panel request only invoked Article 17.4 of the Anti-dumping Agreement, and not Article 18.4 of the Anti-dumping Agreement, and the panel request did not identify a final action in the form of an anti-dumping duty, a price undertaking or a provisional measure as required by Article 17.4 of the Anti-dumping Agreement.

4. The United States seeks review by the Appellate Body of the Panel's legal conclusion that, by not providing for a number of procedural requirements, the 1916 Act violates Articles 1, 4.1, 5.1, 5.2, 5.4 and 18.1 of the Anti-dumping Agreement and Article VI:1 of GATT 1994. These findings are in error, and are based upon erroneous findings on issues of law and on related legal interpretations with respect to Article VI of the GATT 1994 and various provisions of the Anti-dumping Agreement, including:

- (a) the Panel's legal conclusion that Article VI of the GATT 1994 and the Anti-dumping Agreement apply to any measure addressing transnational price discrimination;
- (b) the Panel's legal conclusion that Article VI of GATT 1994 and the Anti-dumping Agreement apply to the 1916 Act;
- (c) the Panel's legal conclusion that the 1916 Act addresses the same type of price discrimination as Article VI of GATT 1994.

5. The United States seeks review by the Appellate Body of the Panel's legal conclusion that the 1916 Act violates Article XVI:4 of the Marrakesh Agreement Establishing the World Trade Organization and Article 18.4 of the Anti-dumping Agreement.

6. The United States seeks review by the Appellate Body of the Panel's legal conclusion that the benefits accruing to Japan under the WTO Agreement have been nullified or impaired.
