

EUROPEAN COMMUNITIES – SELECTED CUSTOMS MATTERS

Notification of an Other Appeal by the European Communities
under Article 16.4 and Article 17 of the Understanding on Rules
and Procedures Governing the Settlement of Disputes (DSU),
and under Rule 23(1) of the Working Procedures for Appellate Review

The following notification, dated 28 August 2006, from the Delegation of the European Commission, is being circulated to Members.

1. Pursuant to Article 16.4 and Article 17 of the DSU and to Rule 23.1 of the Working Procedures for Appellate Review, the European Communities submits its Notice of Other Appeal on certain issues of law in the Report of the Panel on *European Communities – Selected Customs Matters*¹ and certain legal interpretations developed by the Panel.
2. The European Communities seeks review by the Appellate Body of the following:
 - (a) the Panel's decision not to admit certain evidence submitted by the European Communities during the interim review stage, and in particular Exhibits EC-167 to EC-170 (paragraphs 6.5 and 6.6 of the Panel report). This decision is incompatible with Article 15.2 of the DSU and with the Panel's duty to make an objective assessment of the facts as required by Article 11 of the DSU;
 - (b) the Panel's finding regarding the temporal limitations of its terms of reference, according to which it may consider measures, including acts of administration, which were no longer in existence, or not yet in existence, at the time of its establishment (paragraph 7.36 to 7.37 of the Panel Report). These findings are inconsistent with Articles 6.2 and 7.1 of the DSU;
 - (c) the Panel's finding that Article X:3(a) GATT requires uniformity of administrative processes irrespective of their impact on the uniform administration of the laws (paragraphs 7.102 to 7.113 and 7.119 of the Report). This finding is based on an incorrect interpretation of Article X:3(a) GATT;
 - (d) the Panel's finding that Article XXIV:12 GATT cannot be relied upon to attenuate or to derogate from the provisions of the GATT 1994, including Article X:3 GATT, and does not constitute an exception from such provisions (paragraphs 7.140 to 7.145 of the Panel Report). This finding is based on an incorrect interpretation Article XXIV:12 GATT;

¹ WT/DS315/R, circulated on 16 June 2005.

- (e) the Panel's finding that the EC has violated Article X:3(a) GATT with respect to the process leading to the tariff classification of blackout drapery lining (paragraphs 7.266 to 7.276, 8.1(b)(iv) and 8.2(a) of the Panel Report). In reaching this finding, the Panel has erred in its interpretation of Article X:3(a) GATT, and failed to make an objective assessment of the facts as required by Article 11 of the DSU;
 - (f) the Panel's finding that the EC has violated Article X:3(a) GATT with respect to the tariff classification of LCD Monitors with DVI (paragraphs 7.291 to 7.305, 8.1(b)(v) and 8.2(b) of the Panel Report). In reaching this finding, the Panel has erred in its interpretation of Article X:3(a) GATT, and failed to make an objective assessment of the facts as required by Article 11 of the DSU;
 - (g) the Panel's finding that the EC has violated Article X:3(a) GATT with respect to the imposition by the customs authorities of certain Member States of a form of prior approval with respect to the successive sales provision (paragraphs 7.376 to 7.385, 8.1(c)(ii) and 8.2(c) of the Panel Report). In reaching this finding, the Panel has erred in its interpretation of Article X:3(a) GATT, and failed to make an objective assessment of the facts as required by Article 11 of the DSU.
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