

**UNITED STATES – SECTION 306 OF THE TRADE ACT OF 1974  
AND AMENDMENTS THERETO**

Request for Consultations by the European Communities

The following communication, dated 5 June 2000, 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.

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My authorities have instructed me to request consultations with the Government of the United States of America (USA) 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 Section 306 of the Trade Act of 1974, as last amended by Section 407 of the Trade and Development Act of 2000 (Public Law 106-200).

Section 306 of the Trade Act of 1974, as amended, (the US measure) provides for a mandatory and unilateral revision of the list of products subject to suspension of GATT 1994 concessions or other Section 301 (a) action 120 days after the application of the first suspension and then every 180 days thereafter, in order to affect imports from Members which have been determined by the United States not to have implemented recommendations made pursuant to a WTO dispute settlement proceeding.

The European Communities considers that the US measure is in breach of the DSU since it mandates unilateral action without any prior multilateral control. In particular, *inter alia*, it mandates suspension of or threatens to suspend concessions or other obligations other than those on which authorization was granted by the DSB. As a practical result, all US concessions bound in its Schedule of Commitments under the GATT 1994 can be unilaterally modified at will.

It also considers that by inevitably creating a structural imbalance between the cumulative level of the suspensions of concessions and the level of nullification and impairment as determined under the relevant DSU procedures, the US measure is in breach of the obligation of equivalence between these two levels under the DSU.

In addition, the EC considers that, by its very nature, the US measure creates a "chilling effect" on the market-place, thus gravely affecting the security and predictability of the multilateral trading system.

The European Communities considers therefore that Section 306 of the Trade Act of 1974, as amended by Section 407 of the Trade and Development Act of 2000, is inconsistent with, in particular, but not necessarily exclusively, the following provisions under the covered agreements:

- Article 3.2, 21.5, 22 and 23 of the DSU;
- Article XVI:4 of the Marrakesh Agreement Establishing the World Trade Organization; and
- Articles I, II and XI of the GATT 1994.

Finally, the EC considers that the US measure in any case nullifies or impairs the benefits accruing directly or indirectly to it under the covered agreements, and in particular the DSU and the GATT 1994.

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

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