

WORLD TRADE ORGANIZATION

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14 August 2003
(03-4200)

Original: English

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

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 11 August 2003, 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 Reports on *United States – Definitive Safeguard Measures on Imports of Certain Steel Products* (WT/DS248/R, WT/DS249/R, WT/DS251/R, WT/DS252/R, WT/DS253/R, WT/DS254/R, WT/DS258/R and WT/DS259/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 application of safeguard measures on imports of certain carbon flat-rolled steel ("CCFRS"); tin mill; hot-rolled bar; cold-finished bar; rebar; welded pipe; fittings, flanges, and tool joints ("FFTJ"); stainless steel bar; stainless steel rod; and stainless steel wire is inconsistent with Articles XIX:1 of the *General Agreement on Tariffs and Trade 1994* ("GATT 1994") and Article 3.1 of the *Agreement on Safeguards* ("Safeguards Agreement")¹ on the grounds that the United States failed to provide a reasoned and adequate explanation demonstrating that "unforeseen developments" had resulted in increased imports of each of these products causing serious injury to the relevant domestic industry. (Paras. 10.148-10.150 and 11.2.) These findings are in error, and are based on erroneous findings on issues of law and related legal interpretations, including, for example,

¹Unless indicated otherwise, reference to articles with Arabic numerals are to articles of the Safeguards Agreement and references to articles with Roman numerals are to articles of GATT 1994.

- (a) that the Panel could not consider data on the record of the U.S. International Trade Commission ("USITC") and cited in other sections of the USITC report in evaluating whether the competent authorities provided their findings and reasoned conclusions with regard to unforeseen developments in accordance with Article 3.1 (paras. 10.133-10.135 and 10.145);
- (b) that the USITC was obliged to explain why the specific products under examination were affected individually by the confluence of unforeseen developments (paras. 10.127 and 10.147); and
- (c) that the USITC did not sufficiently support and explain its conclusion that the displacement of steel on world markets led to increased imports to the United States from all sources (paras. 10.122-10.123, 10.125, 10.143-10.144 and 10.146).

2. The United States seeks review by the Appellate Body of the Panel's legal conclusion that the application of safeguard measures on imports of CCFRS, hot-rolled bar, and stainless steel rod is inconsistent with Articles 2.1 and 3.1, on the grounds that the United States failed to provide a reasoned and adequate explanation of how the facts supported its determinations with respect to increased imports of these products. (Paras. 10.181, 10.183, 10.186-10.187, 10.204, 10.208, 10.210, 10.267, 10.271, 10.277, and 11.2.) These findings are in error, and are based on erroneous findings on issues of law and related legal interpretations, including, for example,

- (a) that increased imports must be "sudden," and must "evidence[] a certain degree of recentness, suddenness, sharpness and significance" (paras. 10.159 and 10.166-10.167);
- (b) that in light of the decrease in imports of CCFRS, hot-rolled bar, and stainless steel rod between interim 2000 and interim 2001, the USITC report did not contain an adequate and reasoned explanation of how the facts support its determinations regarding the absolute and relative increases in imports of these products (paras. 10.181, 10.184, 10.204, 10.208, 10.267, and 10.271); and
- (c) that an increase in imports in 1998 (for CCFRS) and in 2000 (for hot-rolled bar and stainless steel rod) was not recent enough at the time of the USITC determination to support a finding under Article 2.1 that imports of CCFRS, hot-rolled bar, or stainless steel rod are "being imported in . . . increased quantities" (paras. 10.181-10.182, 10.185, 10.207, 10.269).

3. The United States seeks review by the Appellate Body of the Panel's legal conclusion that the determinations regarding both increased imports of tin mill and stainless steel wire and also the causal link between these increased imports and serious injury to the corresponding domestic industry are inconsistent with Articles 2.1, 3.1, and 4.2(b) on the grounds that the explanations given for these determinations consisted of alternative explanations partly departing from each other, which given the different product bases, cannot be reconciled as a matter of substance. (Paras. 10.200, 10.262, 10.422, 10.573, and 11.2.) These findings are in error, and are based on erroneous findings on issues of law and related legal interpretations, including, for example,

- (a) that findings by the competent authorities that are based on differently defined products are impossible to reconcile (paras. 10.194, 10.262, 10.422, and 10.572); and

- (b) that a reasoned and adequate explanation is not contained in a set of findings by the competent authorities that rests on more than one like product definition (paras. 10.194, 10.262, 10.422, and 10.572).

4. The United States seeks review by the Appellate Body of the Panel's legal conclusion that the application of safeguard measures on imports of CCFRS, hot-rolled bar, cold-finished bar, rebar, welded pipe, FFTJ, and stainless steel bar is inconsistent with Articles 2.1, 3.1, and 4.2(b) of the Safeguards Agreement, on the grounds that the United States failed to provide a reasoned and adequate explanation that a "causal link" existed between any increased imports and serious injury or threat of serious injury to the relevant domestic producers with respect to increased imports of these products. (paras. 10.418-10.419, 10.444-10.445, 10.468-10.469, 10.486-10.487, 10.502-10.503, 10.535-10.536, 10.568-10.569, and 11.2) These findings are in error, and are based on erroneous findings on issues of law and related legal interpretations, including, for example,

- (a) that the USITC failed to provide a reasoned and adequate explanation of its finding that there was a causal link between increased imports of CCFRS and the serious injury suffered by the domestic industry; more specifically that:
 - (i) the USITC failed to provide a reasoned and adequate explanation of its finding that there was a coincidence in import and industry trends during the period (paras. 10.374-10.376); and
 - (ii) that the USITC failed to provide a compelling explanation of why the "conditions of competition in the CCFRS market established a causal link between imports and industry trends (para. 10.381);
- (b) that the USITC's definition of CCFRS as a like product prevented the application of a causation analysis consistent with Article 4.2(b) for the industry producing that product (paras. 10.378, 10.380, 10.416-10.417);
- (c) that the USITC failed to provide a compelling explanation that a causal link existed between increased imports of cold-finished bar and the serious injury suffered by the domestic industry (para. 10.458);
- (d) that the USITC's non-attribution analysis failed to separate and distinguish the injurious effects of particular factors other than increased imports so that the injury caused by these factors, together with other factors, was not attributed to increased imports of CCFRS, hot-rolled bar, cold-finished bar, rebar, welded pipe, FFTJ, and stainless steel bar (paras. 10.389, 10.396, 10.401, 10.407-10.410, 10.418-10.419, 10.440, 10.443-10.444, 10.467-10.468, 10.484-10.486, 10.496, 10.499-10.501, 10.529, 10.533-10.535, 10.560, and 10.565-10.568);
- (e) that, in addition to an individual assessment of the effects of other factors causing injury to the domestic industry, Article 4.2(b) calls for "an overall assessment of such 'other factors'" (para. 10.332) or for an evaluation of the "cumulative effects of individual factors" causing injury (paras. 10.409 and 10.567);
- (f) that a competent authority may be required, in certain circumstances, to use an economic modeling analysis to quantify the amount of injury caused by imports and

other factors causing injury as part of its causation analysis under Articles 2.1, 3.1, and 4.2(b) (paras. 10.340-10.342); and

- (g) that the explanation of the competent authorities must be "clear and unambiguous" and "establish explicitly" that injury caused by factors other than increased imports is not attributed to increased imports (para. 10.330).

5. The United States seeks review by the Appellate Body of the Panel's legal conclusion that the application of safeguard measures on imports of CCFRS, tin mill, hot-rolled bar, cold-finished bar, rebar, welded pipe, FFTJ, stainless steel bar, stainless steel rod, and stainless steel wire is inconsistent with Articles 2.1 and 4.2, on the grounds that the United States failed to comply with the requirement of "parallelism" because it had not established that imports from sources subject to the safeguard measure satisfied the conditions for application of a safeguard measure. (Paras. 10.609, 10.615, 10.623, 10.633, 10.643, 10.653, 10.660, 10.670, 10.680, 10.685, 10.692, 10.699, and 11.2) These findings are in error, and are based on erroneous findings on issues of law and related legal interpretations, including, for example,

- (a) that Articles 2.1 and 4.2 make it necessary to account for the fact that excluded imports may have some injurious impact on the domestic industry and that the USITC analysis failed to account for this impact (paras. 10.598, 10.605-10.606, 10.621, 10.629-10.630, 10.639-10.640, 10.650, 10.657, 10.666-10.667, 10.676-10.677, and 10.688);
- (b) that the USITC's findings regarding imports from Israel and Jordan did not establish explicitly or provide a reasoned and adequate explanation that imports from sources not excluded from the measure satisfied the conditions for application of a safeguard measure (paras. 10.607-10.608, 10.622, 10.631-10.632, 10.641-10.642, 10.651-10.652, 10.658-10.659, 10.668-10.669, 10.678-10.679, 10.689-10.690, and 10.698);
- (c) that the views of Commissioner Bragg did not meet the requirements of parallelism with regard to tin mill and stainless steel wire because she "reached findings on the broader category of CCFRS" and "on a broader category including stainless steel wire" (paras. 10.615 and 10.685); and
- (d) that Commissioner Koplan's parallelism analysis regarding stainless steel wire does not contain the required findings that establish explicitly, with a reasoned and adequate explanation, that imports from sources other than Canada, Mexico, Israel, and Jordan satisfy the conditions of Article 2.1 as elaborated by Article 4.2 (para. 10.688).

6. The United States seeks review of the Panel's findings referenced above on the grounds that the Panel acted inconsistently with Article 11 of the DSU in that it failed to make an objective assessment of the matter before it, including an objective assessment of the facts of the case and the applicability of and conformity with GATT 1994 and the Safeguards Agreement. As particular examples,

- (a) the Panel found that the USITC's demonstration of unforeseen developments was not sufficiently supported and explained, even though the Panel found the explanation plausible, cited no alternative explanation, and found no error in the USITC's reasoning or the data used to support that reasoning (paras. 10.145-10.150); and

- (b) made self-contradictory findings (including in paragraphs 10.173, 10.182, 10.192, 10.225, 10.433-10.437, 10.442, and 10.519).

7. The United States also seeks review of the Panel's findings referenced above on the grounds that the Panel acted inconsistently with Article 12.7 of the DSU, in that its report did not set out the basic rationale behind its findings and recommendations.
