

WORLD TRADE ORGANIZATION

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Committee on Safeguards

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REPLIES TO QUESTIONS POSED BY THE EUROPEAN COMMUNITIES¹ CONCERNING THE NOTIFICATION PROVIDED BY THE UNITED STATES² OF LAWS AND REGULATIONS UNDER ARTICLE 12.6 OF THE AGREEMENT

The following communication, dated 18 April 1996, has been received from the Permanent Mission of the United States.

1. Section 201(a)

Article 2 of the Agreement on Safeguards stipulates that "*A Member may apply a safeguard measure to a product only if that Member has determined ... that such product is being imported into its territory in such increased quantities ... and under such conditions as to cause or threaten to cause serious injury to the domestic industry ...*".

The provision of the United States legislation at issue differs from Article 2 of the above-mentioned Agreement inasmuch as, for the purpose of the adoption of safeguard measures, it requires a determination as to whether a product is being imported in such increased quantities, but does not require a determination as to whether the increased imports are verified as taking place under such conditions as to cause or threaten to cause serious injury to the domestic industry.

Can the United States illustrate the reasons why Section 201(a) appears to be so different from Article 2 of the Agreement on Safeguards?

Response

The notion of "under such conditions" is implicit in any consideration of whether imports are causing or threatening injury. In addition, US law requires a full examination of the economic factors relevant to the effect of imports on the domestic industry. Many of these are listed in Section 202(c) of the Trade Act of 1974. Thus, US law does require the USITC to examine whether the market conditions are such that increased imports can be said to be a significant cause of serious injury.

2. Section 202(e)(4)(A) and Section 203(a)(3)(E)(G)(I)

The provisions at issue concern, respectively, Commission recommendations to the President and safeguard action that may be taken by the President after he has determined that the domestic

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industry has been caused, or is threatened with, serious injury. More particularly, these provisions refer to the international negotiations which the President may initiate and the voluntary export restraint agreements which he may conclude with third countries in order to limit imports into the United States of the products concerned.

Having regard to these provisions, can the United States indicate precisely what international negotiations are referred to?

Regarding the conclusion of export restraint agreements, can the United States provide fuller explanatory information?

In the opinion of the Community, the provisions authorizing the conclusion of restraint agreements are not compatible with Article 11, paragraph 1(b) of the Agreement on Safeguards, which provides as follows: *"Furthermore, a Member shall not seek, take or maintain any voluntary export restraints, orderly marketing arrangements or any other similar measures on the export or the import side. These include actions taken by a single Member as well as actions under agreements, arrangements and understandings entered into by two or more Members"*.

Response

Section 203(a)(3)(E) is consistent with Article 11:1(b) of the Agreement. Article 11:1(b) does not prohibit agreements, but rather prohibits so-called grey area and other measures not taken in conformity with the provisions of Article XIX and in accordance with the Agreement (e.g., not based on a serious injury determination). Indeed, Article 5:2 specifically authorizes a Member applying restrictions "to seek agreement with respect to the allocation of shares in the quota with all other members having a substantial interest in supplying the product concerned." Moreover, Article 11:1(b) itself specifically provides, in a footnote that: "An import quota applied as a safeguard measure in conformity with the relevant provisions of GATT 1994 and the Agreement may, by mutual agreement, be administered by the exporting Member."

Thus, the mere negotiation of limits is not *per se* a violation of Article 11. Under US safeguard law, the President may negotiate agreements only after receiving a report from the ITC containing an affirmative injury determination. Any agreement negotiated would comply with all requirements and limitations contained in the Safeguards Agreement.

The provisions of Sections 202 and 203 concerning international negotiations to address the underlying cause of the injury are separate from the provisions on negotiating agreements with foreign countries limiting export and imports. This is shown by the fact that they are listed in Section 203(a)(3) as separate actions the President may take. The statute does not further define the types of international negotiations that might qualify under these provisions, and, to the best of our knowledge, these provisions have never been applied.

3. Section 203(e)(7)(A)

The provision in question refers to the interval which must elapse between two safeguard measures, in accordance with Article 7, paragraph 5, of the Agreement on Safeguards.

In the opinion of the Community, the two possibilities referred to in points (i) and (ii) of the provision at issue are not alternative but cumulative. This means that the word or should be replaced by and. Two years is in fact the minimum interval provided for by Article 7, paragraph 5, of the Agreement on Safeguards.

Could the United States clarify the scope of the provision in question?

Response

Section 203(e)(7)(A) provides that the interval between actions with respect to the same product shall be the length of the previous action or two years, "whichever is greater."