

January 28, 2003

H.E. Mr. Stefán Jóhannesson
Chairman of the Panel
*United States – Definitive Safeguard Measures
on Imports of Certain Steel Products*
(WT/DS248-249, 251-254, 258-259)
World Trade Organization
Centre William Rappard
154 Rue de Lausanne
1211 Geneva 21

Dear Mr. Chairman:

Paragraph 2 of Article 9 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (“DSU”) provides that in circumstances where a single panel has been formed to hear multiple complaints, separate panel reports shall be issued if so requested by a party. In the dispute *United States - Definitive Safeguard Measures on Imports of Certain Steel Products*, the panel requests of the European Communities, Japan, Korea, China, Switzerland, Norway, Brazil, and New Zealand (“Complainants”) are being considered by a single Panel.

The discussions at the meeting of the Dispute Settlement Body on January 27, 2003, have raised new, significant issues concerning the issue of separate panel reports in disputes involving a single panel to examine multiple panel requests related to the same matter. These issues are of urgent concern in this dispute. Some Members took the view that in the case of multiple complaints for which a single panel report was issued, individual parties could not seek adoption of the report only in respect of the panel requested by an individual complainant. The United States does not understand the basis for this position. However, Members’ insistence on this point has made clear that, in order for the United States to ensure that its rights with respect to each of the eight individual complaints at issue in this proceeding (and indeed the rights of the other parties to this dispute) are in no way impaired (as Article 9.2, first sentence, requires), it must seek separate panel reports in this matter.

For example, we note that if Members were correct in their position that adoption of a single panel report is an “all-or-nothing” matter, a Member that did not want the report adopted in its dispute could find itself forced to this result if another party sought adoption of the single report. In this situation, a responding party’s right to seek a solution to one or more of the

individual complaints without adoption of a report (or without an appeal) would be compromised.¹ These considerations could discourage consolidated disputes, increasing burdens on parties, panels, and the Secretariat.

Consequently, my authorities have instructed me to request, pursuant to Article 9.2 of the DSU, the issuance of a separate panel report with regard to each of the disputes consolidated in this dispute.

The United States notes that the Appellate Body recently stated its view that a request under Article 9.2 should be made promptly.² The concerns discussed in this letter arise from the results of yesterday's DSB meeting. Accordingly, under any measure, this request is "prompt."

The United States is also sensitive to the work involved in preparing separate reports. However, if the Panel were to adopt the format used in the *Bananas* dispute of having identical reports with inapplicable paragraphs omitted, the burden and time to accommodate this request would be minimal.

¹ The United States notes that although the panel requests being considered by the Panel raise many common claims, there are several claims that are not common to all the parties. For example:

- claims under Article 5.2 of the *Agreement on Safeguards* appear only in China's request for the establishment of a panel;
- claims under Article XIII of the *General Agreement on Tariffs and Trade 1994* ("GATT 1994") appear only in the requests of China and Korea;
- claims under Article XVI of the Marrakesh Agreement Establishing the World Trade Organization appear only in Brazil's request;
- claims under Article 7.1 appear only in the requests of Norway and Korea;
- claims that China is a developing country for Article 9.1 purposes appear only in China's request, other claims under Article 9.1 appear in the requests of Norway and Korea;
- claims under Article I of GATT 1994 appear only in the requests of Japan, Korea, China, and Brazil; and
- claims under Article X:3 of GATT 1994 appear only in the requests of Japan, Korea, Norway, Brazil, and New Zealand.

² Report of the Appellate Body in *United States – Continued Dumping and Subsidy Offset Act of 2000*, WT/DS217/AB/R, adopted 27 January 2003, para. 314.

The United States is providing a copy of this request directly to the European Commission, Japan, Korea, China, Switzerland, Norway, Brazil, and New Zealand.

Sincerely,

Steven F. Fabry
Senior Legal Advisor

cc: H.E. Mr. Luiz Felipe de Seixas Corrêa, Permanent Mission of Brazil
H.E. Mr. Sun Zhenyu, Permanent Mission of China
H.E. Mr. Carlo Trojan, Permanent Delegation of the European Commission
H.E. Mr. Shotaro Oshima, Permanent Mission of Japan
H.E. Mr. Chung Eui-yong, Permanent Mission of Korea
H.E. Mr. Timothy Groser, Permanent Mission of New Zealand
H.E. Mr. Kåre Bryn, Permanent Mission of Norway
H.E. Mr. Pierre-Louis Girard, Permanent Mission of Switzerland