WORLD TRADE ORGANIZATION

WT/DS248/R
WT/DS249/R
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WT/DS253/R
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UNITED STATES – DEFINITIVE SAFEGUARD MEASURES ON IMPORTS OF CERTAIN STEEL PRODUCTS

Final Reports of the Panel

The reports of the Panel on *United States – Definitive Safeguard Measures on Imports of Certain Steel Products* are being circulated to all Members, pursuant to the DSU. The reports are being circulated as an unrestricted document from 11 July 2003 pursuant to the Procedures for the Circulation and Derestriction of WTO Documents (WT/L/452). Members are reminded that in accordance with the DSU only parties to the dispute may appeal a panel report. An appeal shall be limited to issues of law covered in the Panel report and legal interpretations developed by the Panel. There shall be no *ex parte* communications with the Panel or Appellate Body concerning matters under consideration by the Panel or Appellate Body.

Note by the Secretariat:

These Panel Reports shall be adopted by the Dispute Settlement Body (DSB) within 60 days after the date of its circulation unless a party to the dispute decides to appeal or the DSB decides by consensus not to adopt the report. If the Panel Reports are appealed to the Appellate Body, they shall not be considered for adoption by the DSB until after the completion of the appeal. Information on the current status of these Panel Reports is available from the WTO Secretariat.

In the disputes WT/DS248, WT/DS249, WT/DS251, WT/DS252, WT/DS253, WT/DS254, WT/DS258 and WT/DS259, as explained in paragraph 10.725 of the Panel's Findings, the Panel decided to issue its Reports in the form of a single document constituting eight Panel Reports, each of the Reports relating to each one of the eight complainants in this dispute. The document comprises a common cover page, a common Descriptive Part and a common set of Findings in relation to the complainants' claims that the Panel decided to address. This document also contains Conclusions and Recommendations that, unlike the Descriptive Part and the Findings, are particularised for each of the complainants. Specifically, in the Conclusions and Recommendations, separate document numbers/symbols have been used for each of the complainants (WT/DS248 for the European Communities, WT/DS249 for Japan, WT/DS251 for Korea, WT/DS252 for China, WT/DS253 for Switzerland, WT/DS254 for Norway, WT/DS258 for New Zealand and WT/DS259 for Brazil). In addition, separate pagination has been used in the Conclusions and Recommendations for each individual complainant. For instance, the pagination of the Recommendations and Conclusions for the European Communities' complaint is A-1 to A-4, that for Japan is B-1 to B-4, that for Korea is C-1 to C-4, that for China is D-1 to D-4, that for Switzerland is E-1 to E-4, that for Norway is F-1 to F-4, that for New Zealand is G-1 to G 4 and that for Brazil is H-1 to H-4.

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Argentina – Footwear (EC)	Appellate Body Report, *Argentina – Safeguard Measures on Imports of Footwear*, WT/DS121/AB/R, adopted 12 January 2000, DSR 2000:I, 515.
Argentina – Hides and Leather	Panel Report, *Argentina – Measures Affecting the Export of Bovine Hides and Import of Finished Leather*, WT/DS155/R and Corr.1, adopted 16 February 2001.
Argentina – Poultry Anti-Dumping Duties	Panel Report, *Argentina – Definitive Anti-Dumping Duties on Poultry from Brazil*, WT/DS241/R, adopted 19 May 2003.
Argentina – Textiles and Apparel	Appellate Body Report, *Argentina – Measures Affecting Imports of Footwear, Textiles, Apparel and Other Items*, WT/DS56/AB/R and Corr.1, adopted 22 April 1998, DSR 1998:III, 1003.
Australia – Salmon	Appellate Body Report, *Australia – Measures Affecting Importation of Salmon*, WT/DS18/AB/R, adopted 6 November 1998, DSR 1998:VIII, 3327.
Border Tax Adjustments	Report of the Working Party on Border Tax Adjustments, adopted 2 December 1970, BISD 18S/97.
Brazil – Aircraft	Appellate Body Report, *Brazil – Export Financing Programme for Aircraft*, WT/DS46/AB/R, adopted 20 August 1999, DSR 1999:VIII, 3327.
Canada – Periodicals	Panel Report, *Canada – Certain Measures Concerning Periodicals*, WT/DS31/R and Corr.1, adopted 20 July 1997, as modified by the Appellate Body Report, WT/DS31/AB/R, DSR 1997:I, 481.
Chile – Price Band System	Panel Report, *Chile – Price Band System and Safeguard Measures Relating to Certain Agricultural Products*, WT/DS207/R, 3 May 2002, adopted 23 October 2002, as modified by the Appellate Body Report, WT/DS207AB/R.
EC – Asbestos	Appellate Body Report, *European Communities – Measures Affecting Asbestos and Asbestos-Containing Products*, WT/DS135/AB/R, adopted 5 April 2001.
EC – Bananas III	Appellate Body Report, *European Communities – Regime for the Importation, Sale and Distribution of Bananas*, WT/DS27/AB/R, adopted 25 September 1997, DSR 1997:II, 591.
EC – Bananas III (US)	Panel Report, *European Communities – Regime for the Importation, Sale and Distribution of Bananas – Complaint by the United States*, WT/DS27/R/USA, adopted 25 September 1997, as modified by the Appellate Body Report, WT/DS27/AB/R, DSR 1997:II, 943.
EC – Hormones	Appellate Body Report, *EC Measures Concerning Meat and Meat Products (Hormones)*, WT/DS26/AB/R, WT/DS48/AB/R, adopted 13 February 1998, DSR 1998:I, 135.
EC – Poultry	Appellate Body Report, *European Communities – Measures Affecting the Importation of Certain Poultry Products*, WT/DS69/AB/R, adopted 23 July 1998, DSR 1998:V, 2031.
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Japan – Alcoholic Beverages II	Panel Report, *Japan – Taxes on Alcoholic Beverages*, WT/DS8/R, WT/DS10/R, WT/DS11/R, adopted 1 November 1996, as modified by the Appellate Body Report, WT/DS8/AB/R, WT/DS10/AB/R, WT/DS11/AB/R, DSR 1996:I, 125.
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US – Lamb	Appellate Body Report, *United States – Safeguard Measures on Imports of Fresh, Chilled or Frozen Lamb Meat from New Zealand and Australia*, WT/DS177/AB/R, WT/DS178/AB/R, adopted 16 May 2001.
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US – Section 129(c)(1) URAA	Panel Report, *United States – Section 129(c)(1) of the Uruguay Round Agreements Act*, WT/DS221/R, adopted 30 August 2002.
US – Shrimp	Appellate Body Report, *United States – Import Prohibition of Certain Shrimp and Shrimp Products*, WT/DS58/AB/R, adopted 6 November 1998, DSR 1998:VII, 2755.
US – Stainless Steel	Panel Report, *United States – Anti-Dumping Measures on Stainless Steel Plate in Coils and Stainless Steel Sheet and Strip from Korea*, WT/DS179/R, adopted 1 February 2001.
US – Underwear	Panel Report, *United States – Restrictions on Imports of Cotton and Man-made Fibre Underwear*, WT/DS24/R, adopted 25 February 1997, as modified by the Appellate Body Report, WT/DS24/AB/R, DSR 1997:I, 31.

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US – Wheat Gluten	Appellate Body Report, *United States – Definitive Safeguard Measures on Imports of Wheat Gluten from the European Communities*, WT/DS166/AB/R, adopted 19 January 2001.
US – Wool Shirts and Blouses	Appellate Body Report, *United States – Measure Affecting Imports of Woven Wool Shirts and Blouses from India*, WT/DS33/AB/R and Corr.1, adopted 23 May 1997, DSR 1997:I, 323.

LIST OF ABBREVIATIONS

AD Agreement	Anti-Dumping Agreement
AUV	Average Unit Value
BOF	Basic Oxygen Furnaces
CCFRS	Certain Carbon Flat-Rolled Steel
COGS	Costs of Goods Sold
CR	Confidential Report
DSB	Dispute Settlement Body
DSU	Dispute Settlement Understanding
ERW	Electric Resistance Weld
FFTJ	Fittings, Flanges and Tool Joints
FTA	Free-trade areas
GATT 1947	General Agreement on Tariffs and Trade 1947
GATT 1994	General Agreement on Tariffs and Trade 1994
GOES	Grain Oriented Electrical Steel
HS	Harmonized System
LDLP	Large Diameter Line Pipe
MFN	Most-Favoured Nation
NAFTA	North American Free Trade Agreement
OCTG	Oil Country Tubular Goods
PR	Public Report
SCM Agreement	Subsidies and Countervailing Measures Agreement
SG&A	Selling, General and Administrative
TPSC	Trade Policy Staff Committee
USITC	United States International Trade Commission
USTR	United States Trade Representative
VRA	Voluntary Restriction Agreement

I. INTRODUCTION

A. FACTUAL BACKGROUND

1. Initiation of safeguards investigation by the USITC

1.1 On 22 June 2001, the USTR requested the initiation of a safeguard investigation under Section 201 of the Trade Act of 1974 to determine whether certain steel products were being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing products like or directly competitive with the imported products.[1]

1.2 Four broad groups of products were covered by this request:

(a) certain carbon and alloy flat products;

(b) certain carbon and alloy long products;

(c) certain carbon and alloy pipe and tubes;

(d) stainless steel and alloy tool steel products.[2]

1.3 A number of products were excluded from the request. These included wire rod and line pipe (covered by existing Section 201 relief or specifically excluded in the Section 201 relief), certain OCTGs, certain stainless steel products, certain semi-finished steel products, certain carbon and alloy flat-rolled products and certain tin mill flat-rolled products.[3]

1.4 The USITC initiated its investigation on 28 June 2001. Public notice of this investigation was published on 3 July 2001.[4] It provided for hearings on injury commencing on 17 September 2001 and hearings on remedy commencing on 5 November 2001 and allowed for submissions of pre- and post-hearing briefs by interested parties.

1.5 The United States notified the initiation of the safeguard investigation to the Committee on Safeguards on 4 July 2001 and this notification was circulated to WTO Members on 9 July 2001.[5]

2. USITC injury determination

1.6 Pre-hearing briefs on injury were filed by 10 September 2001 and hearings took place from 17 September 2001 to 5 October 2001. Post-hearing briefs were allowed from 27 September 2001 to 9 October 2001 for the various steel products under investigation.

1.7 To collect data, the USITC split the four broad product categories into 33 product classes:[6]

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[1] USTR request to the USITC to initiate a safeguard investigation under Section 201 of the Trade Act of 1974, Exhibit CC-1.

[2] Ibid., Annex I.

[3] Ibid., Annex II.

[4] USITC, Institution and Scheduling of Investigation, Investigation No. TA-201-73, Federal Register Vol. 66 of 3 July 2001, p. 35267, Exhibit CC-2.

[5] Notification under Article 12.1(a) of the Agreement on Safeguards on initiation of an investigation and the reasons for it (G/SG/N/6/USA/10 of 9 July 2001), Exhibit CC-3.

(a) seven carbon and alloy flat products[7] covering: (i) slabs; (ii) plate; (iii) hot-rolled steel; (iv) cold-rolled steel; (v) coated steel; (vi) GOES; (vii) tin- mill products;

(b) ten carbon and alloy long products[8] comprising: (i) billets; (ii) hot-rolled bar; (iii) cold-finished bar; (iv) rebar; (v) rails; (vi) heavy structural shapes; (vii) fabricated units; (viii) wire; (ix) nails, staples and woven cloth; (x) strand, rope, cable and cordage;

(c) five carbon and alloy pipe and tube[9] divided into: (i) welded pipe; (ii) seamless pipe; (iii) welded OCTG; (iv) seamless OCTG; (v) fittings, flanges and tool joints;

(d) 11 stainless steel and alloy tool steel products[10] classified in: (i) slabs; (ii) plate; (iii) bar; (iv) rod; (v) wire; (vi) cloth; (vii) seamless tubular products; (viii) welded tubular products; (ix) fittings and flanges; (x) tool steel; (xi) rope.

1.8 From the 33 products sub-categories for which data had been collected, the USITC defined 27 separate domestic industries. These were:

(a) three domestic industries producing carbon and alloy flat products: (i) certain carbon flat-rolled steel (comprising slabs, plate, hot-rolled, cold-rolled and coated products); (ii) GOES; (iii) tin mill products[11];

(b) ten domestic industries producing carbon and alloy long products comprising: (i) billets; (ii) hot-rolled bar; (iii) cold-finished bar; (iv) rebar; (v) rails; (vi) heavy structural shapes; (vii) fabricated units; (viii) wire; (ix) nails, staples and woven cloth; (x) strand, rope, cable and cordage (including stainless steel rope)[12];

(c) four domestic industries producing carbon and alloy pipe and tube split into: (i) welded pipe; (ii) seamless pipe; (iii) OCTG both welded and seamless; (iv) fittings, flanges and tool joints[13];

(d) ten domestic industries producing stainless steel products divided into: (i) semi finished products (slabs, blooms, billets and ingots); (ii) plate; (iii) bar; (iv) rod; (v) wire; (vi) cloth; (vii) seamless tubular products; (viii) welded tubular products; (ix) fittings and flanges; (x) tool steel.[14]

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[6] USITC, Certain Steel Products, Inv. No. TA-201-73, USITC Pub. 3479 (Dec. 2001): Volume I – Determinations and Views of the Commissioners; (hereinafter USITC Report, Vol. I"), Exhibit CC-6, p. 32, footnote 40 and p. 36, footnote 62.

[7] USITC Report, Vol. I, Appendix A, pp. 9 and 10, Descriptions and Harmonized Tariff Schedules (HTS) subheadings.

[8] USITC Report, Vol. I, Appendix A, pp. 11 to 13, Descriptions and Harmonized Tariff Schedules (HTS) subheadings.

[9] USITC Report, Vol. I, Appendix A, pp. 13 and 14, Descriptions and Harmonized Tariff Schedules (HTS) subheadings.

[10] USITC Report, Vol. I, Appendix A, pp. 14 to 16, Descriptions and Harmonized Tariff Schedules (HTS) subheadings.

[11] USITC Report, Vol. I, p. 36.

[12] USITC Report, Vol. I, p. 79.

[13] USITC Report, Vol. I, p. 147.

[14] USITC Report, Vol. I, p. 190.

1.9 On 22 October 2001, the USITC voted on injury and made negative determinations for the following 15 product groups (based on the 33 product categories it had investigated):

(a) for carbon and alloy billets, imports have not increased[15];

(b) for 13 products comprising: (i) carbon and alloy GOES[16]; (ii) rails[17]; (iii) heavy structural shapes[18]; (iv) fabricated units[19]; (v) wire[20]; (vi) nails, staples and woven cloth[21]; (vii) strand, rope, cable and cordage (including stainless steel rope)[22]; (viii) seamless pipe[23]; (ix) OCTG (including seamless and welded)[24]; (x) stainless steel slabs[25] (xi) plate[26]; (xii) cloth[27]; (xiii) seamless tubular products[28] and (xiv) welded tubular products[29]; there was no injury;

1.10 The United States notified these negative determinations to the Committee on Safeguards on 26 October 2001 and this notification was circulated to WTO Members on 1 November 2001.[30]

1.11 The USITC made affirmative injury determinations for eight of these product groups:

(a) for seven products, including (1) certain carbon flat-rolled steel[31], (2) carbon and alloy hot-rolled bar[32], (3) carbon and alloy cold-finished bar[33], (4) carbon and alloy rebar[34], (5) carbon and alloy fittings, flanges and tool joints[35], (6) stainless steel bar[36] and (7) stainless steel rod[37], imports were a substantial cause of serious injury;

(b) for carbon and alloy welded pipe, imports were a substantial cause of threat of serious injury[38];

1.12 For four products, the USITC delivered divided determinations:[39]

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[15] USITC Report, Vol. I, p. 117.
[16] USITC Report, Vol. I, p. 67.
[17] USITC Report, Vol. I, p. 118.
[18] USITC Report, Vol. I, p. 122.
[19] USITC Report, Vol. I, p. 127.
[20] USITC Report, Vol. I, p. 132.
[21] USITC Report, Vol. I, p. 142.
[22] USITC Report, Vol. I, p. 136.
[23] USITC Report, Vol. I, p. 186.
[24] USITC Report, Vol. I, p. 181.
[25] USITC Report, Vol. I, p. 224.
[26] USITC Report, Vol. I, p. 228.
[27] USITC Report, Vol. I, p. 239.
[28] USITC Report, Vol. I, p. 242.
[29] USITC Report, Vol. I, p. 246.
[30] Information to be notified to the Committee where a safeguard investigation is terminated with no safeguard measure imposed (G/SG/N/9/USA/4 of 1 November 2001), Exhibit CC-4.
[31] USITC Report, Vol. I, p.55.
[32] USITC Report, Vol. I, p. 95.
[33] USITC Report, Vol. I, p. 104.
[34] USITC Report, Vol. I, p. 111.
[35] USITC Report, Vol. I, p. 174.
[36] USITC Report, Vol. I, p. 208.
[37] USITC Report, Vol. I, p. 217.
[38] USITC Report, Vol. I, p. 158.

(a) for carbon and alloy tin mill products, three Commissioners found that imports were not a substantial cause of injury[40], whereas three Commissioners ruled the opposite[41];

(b) for stainless steel wire, three Commissioners found no injury[42], two Commissioners found that imports were a substantial cause of threat of serious injury[43] and one Commissioner found that imports were a substantial cause of serious injury[44];

(c) for stainless steel fittings and flanges, three Commissioners found no injury[45], but three Commissioners found that imports were a substantial cause of serious injury[46];

(d) for stainless steel tool steel, three Commissioners found no injury[47], two Commissioners found that imports were a substantial cause of serious injury[48] and one Commissioner found that imports were a substantial cause of threat of serious injury[49];

1.13 The United States notified these affirmative and divided determinations to the Committee on Safeguards on 26 October 2001 and this notification was circulated on 1 November 2001.[50]

3. Remedy recommendation by the USITC

1.14 On 26 October 2001, the TPSC requested public comments on potential safeguard action on imports of certain steel products, including the possibility to request products exclusions.[51]

1.15 Pre-hearing briefs on remedy were filed by 29 October 2001 and hearings on remedy took place from 6 to 9 November 2001. Post-hearing briefs were allowed from 13 to 15 November 2001 for the various steel products under investigation.

1.16 On 19 December 2001, the USITC forwarded its remedy recommendations, together with its injury determinations, in its report to the US President.

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[39] Under United States' law, when the USITC vote is equally divided, both the affirmative and the negative determinations are forwarded to the President and he may consider either one to be the determination of the USITC.

[40] USITC Report, Vol. I, p. 74.

[41] USITC Report, Vol. I, dissenting opinion of Commissioner Devaney, reflected in p. 36, footnote 64, p. 48, footnote 63 and p. 55, footnote 224; separate views on injury of Commissioner Bragg, p. 295; separate and dissenting views of Commissioner Miller on injury with respect to tin mill products, p. 307.

[42] USITC Report, Vol. I, p. 235.

[43] USITC Report, Vol. I, separate views of Chairman Koplan on injury, pp. 255 and 258 and separate views on injury of Commissioner Bragg, p. 302.

[44] USITC Report, Vol. I, separate views of Commissioner Devaney on injury, pp. 342 and 345.

[45] USITC Report, Vol. I, p. 250.

[46] USITC Report, Vol. I, separate views of Chairman Koplan on injury, pp. 255 and 266; separate views on injury of Commissioner Bragg, p. 303; separate views of Commissioner Devaney on injury, pp. 347 and 350.

[47] USITC Report, Vol. I, p. 231.

[48] USITC Report, Vol. I, separate views on injury of Commissioner Bragg, p. 301; separate views of Commissioner Devaney on injury, pp. 336 and 340.

[49] USITC Report, Vol. I, separate views of Chairman Koplan on injury, pp. 255 and 262.

[50] Notification under Article 12.1(b) of the Agreement on Safeguards on finding a serious injury or threat thereof caused by increased imports (G/SG/N/8/USA/8 of 1 November 2001), Exhibit CC-5.

[51] Public Comments on Potential Action Under Section 203 of the Trade Act of 1974 With Regard to Imports of Certain Steel, Federal Register, Vol. 66, No. 208, 26 October 2001, p. 54312.

1.17 For the eight products for which affirmative injury determinations had been made, the USITC recommended a four-year programme of tariffs and tariff-rate quotas:[52]

(a) an additional duty of 20% *ad valorem*, to be reduced to 17% the second year, 14% the third year and 11% the fourth year for: (i) certain carbon flat-rolled steel (excluding slabs); (ii) carbon and alloy hot-rolled bar; (iii) carbon and alloy cold-finished bar; and (iv) stainless steel rod;

(b) an additional duty of 15% *ad valorem*, to be reduced to 12% the second year, 9% the third year and 6% the fourth year for (v) stainless steel bar;

(c) an additional duty of 13% *ad valorem*, to be reduced to 10% the second year, 7% the third year and 4% the fourth year for (vi) carbon and alloy fittings, flanges and tool joints;

(d) an additional duty of 10% *ad valorem*, to be reduced to 8% the second year, 6% the third year and 4% the fourth year for (vii) carbon and alloy rebar;

(e) a tariff-rate quota with an additional duty on imports in excess of year 2000 United States imports of 20% *ad valorem*, to be reduced to 17% the second year, 14% the third year and 11% the fourth year for (viii) carbon and alloy welded pipe;

(f) a tariff-rate quota with an additional duty of 20% *ad valorem* on imports in excess of 7 million short tons, to be reduced to 17% for imports in excess of 7.5 million short tons the second year, 14% for imports in excess of 8 million short tons the second year and 11% for imports in excess of 8.5 million short tons the second year for (ix) slabs.

1.18 In addition, the USITC recommended that the remedy on certain carbon flat-rolled steel (including slabs) apply to Mexico but not to Canada, the remedy on carbon and alloy hot-rolled bar, cold-finished bar and stainless steel bar apply to Canada but not Mexico, the remedy on carbon and alloy rebar and stainless steel rod not apply to either Canada or Mexico and the remedy on carbon and alloy fittings, flanges and tool joints apply to both Canada and Mexico. The USITC recommended that the remedy on carbon and alloy welded pipe not apply to Mexico but was equally divided concerning its application to Canada.[53]

1.19 The USITC further recommended that no remedy apply to Israel, to beneficiaries of the Caribbean Basin Economic Recovery Act, the Andean Trade Preference Act, or to Jordan.[54]

1.20 The USITC finally recommended that the remedy on carbon and alloy welded pipe not apply to certain large diameter products, as primary producers of these products did not object to such exclusion.[55]

1.21 Dissenting opinions on remedy from some Commissioners proposed higher additional duty rates (up to 40%)[56] or three year programme of quotas, as well as other treatment in respect of imports from Canada and Mexico.[57]

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[52] USITC Report, Vol. I, pp. 2 and 3.
[53] USITC Report, Vol. I, p. 3.
[54] USITC Report, Vol. I, p. 3.
[55] USITC Report, Vol. I, pp. 3, 378 and 379.

4. Request for supplementary information

1.22 Following issuance of the USITC Report, the United States submitted to the Committee on Safeguards a supplementary notification regarding the USITC determinations with respect to serious injury or threat thereof to the domestic industry producing certain steel products.[58] In this notification, the USITC recommendations were referred to as "proposed measures".

1.23 On 3 January 2002, the USTR requested additional information from the USITC on: (i) unforeseen developments; (ii) economic analysis of remedy options; and (iii) injury for imports from all sources other than Canada and Mexico for the products for which the USITC recommended the application of the remedy to Canada and/or Mexico.[59]

1.24 This request for additional information was notified to the Committee on Safeguards on 15 January 2002 and the notification was circulated to WTO Members on 15 January 2002.[60]

1.25 The USITC produced supplementary information on the economic analysis of remedy options on 9 January 2002[61] and on unforeseen developments and on injury for imports from all sources other than Canada and/or Mexico on 4 February 2002.[62]

1.26 On 14 March 2002, the United States notified the Committee on Safeguards that copies of the public versions of the supplementary information provided by the USITC were available for review in the Secretariat of the WTO and this supplementary notification was circulated on 18 March 2002.[63]

5. Trade Policy Staff Committee actions

1.27 In addition to the information requested of the USITC, the USTR conducted its own separate investigation through the multi-agency TPSC.

1.28 On 26 October 2001, before the USITC finished its investigation, the TPSC requested public comments on the potential safeguard action on imports of certain steel products, including domestic producers' written proposals on adjustment actions, requests to exclude products, and what action (if

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[56] USITC Report, Vol. I, pp. 3 and 4.

[57] USITC Report, Vol. I, p. 5.

[58] Notification under Article 12.1(b) of the Agreement on Safeguards on finding a serious injury or threat thereof caused by increased imports (G/SG/N/8/USA/8/Suppl. 1 of 7 January 2002), Exhibit CC-8.

[59] Letter from Mr. R. B. Zoellick to Mr. S. Koplan, 3 January 2002 (USTR supplementary information request), Exhibit CC-7.

[60] Notification under Article 12.1(b) of the Agreement on Safeguards on finding a serious injury or threat thereof caused by increased imports (G/SG/N/8/USA/8/Suppl. 2, 15 January 2002), Exhibit CC-9.

[61] USITC supplementary information on the economic analysis of remedy options on 9 January 2002, Exhibit CC-10 (hereinafter referred to as First Supplementary Report).

[62] USITC supplementary information on unforeseen developments and "affirmative" injury determination for imports from all sources other than Canada and/or Mexico on 4 February 2002, Exhibit CC-11 (hereinafter referred to as Second Supplementary Report).

[63] Notification pursuant to Article 12.1(c) and Article 9, Footnote 2, of the Agreement on Safeguards on taking a decision to apply a safeguard measure (G/SG/10/USA/6/Suppl. 2 and G/SG/11/USA/5/Suppl. 2, 18 March 2002), Exhibit CC-12.

any) the President should take in response to affirmative injury and remedy findings by the USITC.[64] Written comments in response to these submissions were also permitted.

1.29 In addition, during January 2002, the TPSC held a series of meetings with various parties. The meetings were scheduled informally, via e-mail correspondence, and conducted informally. Unlike the USITC hearings, opposing parties were not present and no formal transcript was maintained. Rather, parties met individually with TPSC staff from as many as fifteen federal agencies to summarize their positions and answer questions.

6. Presidential Proclamation

1.30 Under Proclamation No. 7529 of 5 March 2002, bearing the title "To Facilitate Positive Adjustment to Competition from Imports of Certain Steel Products" , completed by a Memorandum for the Secretary of Treasury, the Secretary of Commerce and the USTR, the US President imposed definitive safeguard measures on imports of certain steel products.[65]

1.31 The United States notified these definitive safeguard measures and Proclamation No. 7529 to the Committee on Safeguards on 12 March 2002 and these notifications were circulated to WTO Members on 14 and 15 March 2002.[66]

1.32 The products concerned by these definitive safeguard measures are not only those for which the USITC reached affirmative determinations, but also two of the four products for which the USITC made divided determinations.

1.33 On 26 March 2002, the United States made a supplementary notification to the Committee on Safeguards under Article 12.1(b) of the Agreement on Safeguards on finding a serious injury or threat thereof caused by increased imports for carbon and alloy tin mill products and stainless steel wire. In the same notification, the United States provided supplementary information to be notified where a safeguard investigation is terminated with no safeguard measure imposed with respect to stainless steel tool steel and stainless steel flanges and fittings.[67]

1.34 Proclamation No. 7529 lists 11 distinct safeguard measures applicable to 15 steel products. These measures are:

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[64] Trade Policy Staff Committee: Public Comments on Potential Action Under Section 203 of the Trade Act of 1974 With Regard to Imports of Certain Steel, 66 Fed. Reg. 54312, 54323 (26 Oct. 2001) (Exhibit CC-59).

[65] Proclamation No. 7529 of 5 March 2002, "To Facilitate Positive Adjustment to Competition from Imports of Certain Steel Products", Federal Register, Vol. 67, No. 45, 7 March 2002, p. 10553; Memorandum for the Secretary of Treasury, the Secretary of Commerce and the USTR of 5 March 2002 on the "Action Under Section 203 of the Trade Act of 1974 Concerning Certain Steel Products by the President of the United States of America", Federal Register Vol. 67, No. 45 of 7 March 2002, p. 10593, Exhibit CC-13.

[66] Notifications pursuant to Article 12.1(c) and Article 9, Footnote 2, of the Agreement on Safeguards on taking a decision to apply a safeguard measure (G/SG/10/USA/6 and G/SG/11/USA/5, 14 March 2002 and G/SG/10/USA/6/Suppl. 1 and G/SG/11/USA/5/Suppl. 1, 15 March 2002). Exhibit CC-14. Two corrigenda were notified on 18 March 2002 (G/SG/N/10/USA/6/Corr.1 and G/SG/N/11/USA/5/Corr.1, 20 March 2002 and G/SG/N/10/USA/6/Corr.2 and G/SG/N/11/USA/5/Corr.2, 25 March 2002), Exhibit CC-15.

[67] Notification under Article 12.1(b) of the Agreement on Safeguards on finding a serious injury or threat thereof caused by increased imports and Information to be notified to the Committee where a safeguard investigation is terminated with no safeguard measure imposed (G/SG/N/8/USA/8/Suppl. 3 and G/SG/N/9/USA/4/Suppl. 1, 28 March 2002), Exhibit CC-16.

(a) A tariff of 30% imposed on imports of "Certain Flat Steel[68] other than Slabs", that is: (i) plate[69]; (ii) hot-rolled steel[70]; (iii) cold-rolled steel[71]; (iv) coated steel.[72]

(b) A tariff rate quota on the fifth product of the product group "Certain Flat Steel", that is slabs.[73] The out-of-quota tariff (applicable beyond 5.4 million short tons) is 30%.

(c) A tariff of 30% is imposed on imports of tin mill products[74];

(d) A tariff of 30% is imposed on imports of hot-rolled bar[75];

(e) A tariff of 30% is imposed on imports of cold-finished bar[76];

(f) A tariff of 15% is imposed on imports of rebar[77];

(g) A tariff of 15% is imposed on imports of certain tubular products[78];

(h) A tariff of 13% is imposed on imports of carbon and alloy fittings and flanges[79];

(i) A tariff of 15% is imposed on imports of stainless steel bar[80];

(j) A tariff of 8% is imposed on imports of stainless steel wire[81];

(k) A tariff of 15% is imposed on imports of stainless steel rod.[82]

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[68] This category comprises slabs, plate, hot-rolled, cold-rolled and coated steel and is referred to elsewhere in this Report as certain carbon flat-rolled steel (CCFRS).

[69] As defined in the superior text to subheadings 9903.72.50 through 9903.72.60 in the Annex to the Proclamation.

[70] As defined in the superior text to subheadings 9903.72.62 through 9903.72.77 in the Annex to the Proclamation.

[71] As defined in the superior text to subheadings 9903.72.80 through 9903.72.98 in the Annex to the Proclamation.

[72] As defined in the superior text to subheadings 9903.72.99 through 9903.73.14 in the Annex to the Proclamation.

[73] As defined in the superior text to subheadings 9903.72.30 through 9903.72.48 in the Annex to the Proclamation.

[74] As defined in the superior text to subheadings 9903.73.15 through 9903.73.27 in the Annex to the Proclamation.

[75] As defined in the superior text to subheadings 9903.73.28 through 9903.73.38 in the Annex to the Proclamation.

[76] As defined in the superior text to subheadings 9903.73.39 through 9903.73.44 in the Annex to the Proclamation.

[77] As defined in the superior text to subheadings 9903.73.45 through 9903.73.50 in the Annex to the Proclamation.

[78] As defined in the superior text to subheadings 9903.73.51 through 9903.73.62 in the Annex to the Proclamation.

[79] As defined in the superior text to subheadings 9903.73.66 through 9903.73.72 in the Annex to the Proclamation.

[80] As defined in the superior text to subheadings 9903.73.74 through 9903.73.81 in the Annex to the Proclamation.

[81] As defined in the superior text to subheadings 9903.73.91 through 9903.73.96 in the Annex to the Proclamation

1.35 The safeguard measures were effective from 20 March 2002 at 12:01 a.m., EST.[83] Nevertheless, the US President instructed the Secretary of Treasury to prescribe by regulation a date at which estimated duties should be deposited.

1.36 Accordingly, on 20 March 2002, the United States Customs Services published a notice[84] indicating that the deposit of estimated duties on imports would be deferred until 19 April 2002. This did not affect collection of duties with effect from the entry into force of Proclamation No. 7529. This notice was notified to the Committee on Safeguards on 26 March 2002 and this notification was circulated on 27 March 2002[85] (Exhibit CC-17).

7. Country exclusions

1.37 On the basis of the Supplementary Report of the USITC of 4 February 2002, the US President decided to exclude imports from Canada and Mexico from all the safeguard measures.[86] Imports from Israel and Jordan were also excluded.[87]

1.38 Imports from developing Members of the WTO, whose share of total imports allegedly does not exceed 3% individually and 9% collectively, were exempted from the safeguard measures. On this basis, the following imports were not excluded from the safeguard measures:[88]

(a) Slabs and certain flat steel from Brazil;

(b) Carbon and alloy fittings and flanges from India, Romania and Thailand;

(c) Carbon and alloy rebar from Moldova, Turkey and Venezuela;

(d) Certain tubular products from Thailand.

8. Product exclusions

1.39 In addition to the exclusions mentioned in the request to initiate a safeguard investigation of 22 June 2002 and accounted for in the scope of the definitive safeguard measures[89], Proclamation No. 7529 provided for additional products exclusions.[90] These additional exclusions did not only concern certain tubular products of large diameter, for which the USITC recommended not to apply any safeguard action[91], but also a large number of other products.[92]

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[82] As defined in the superior text to subheadings 9903.73.83 through 9903.73.89 in the Annex to the Proclamation.

[83] Proclamation, clause (8).

[84] Notice on payment of duties on certain steel products, Federal Register Vol. 67, No. 54, 20 March 2002, p. 12860.

[85] Notifications pursuant to Article 12.1(c) and Article 9, Footnote 2, of the Agreement on Safeguards on taking a decision to apply a safeguard measure (G/SG/10/USA/6/Suppl. 3 and G/SG/11/USA/5/Suppl. 3, 27 March 2002), Exhibit CC-17. This notification also comprised technical corrections to the Annex to Proclamation No. 7529.

[86] Proclamation, para. 8.

[87] Proclamation, para. 11.

[88] Proclamation, para. 12 and Annex to the Proclamation, para. 11. (d).

[89] Annex to the Proclamation, para. 11. (b) (i) to (ix).

[90] Annex to the Proclamation, pp. 10558 to 10592 of the Federal Register, para. 11. (b), Exhibit CC-13.

[91] Annex to the Proclamation, para. 11.(b)(xlviiii)(A) to (G), reflecting the USITC Report, Vol. I, pp. 378 and 379, footnote 123.

1.40 The United States President further instructed the USTR to determine whether particular products should be excluded and, if so, within 120 days of the date of the Proclamation (not later than 3 July 2002), to publish a notice in the Federal Register to exclude them from the safeguard measures.[93]

1.41 In this context, on 5 April 2002, the USTR decided to exclude particular products from the safeguard action.[94] This decision was notified to the Committee on Safeguards on 11 April 2002 and this notification was circulated to WTO Members on 12 April 2002.[95]

1.42 On 18 April 2002, the USTR specified the procedures to be applied to further consider remaining exclusions requests.[96] Requestors and objectors were directed to file standardized questionnaires, respectively by 23 April 2002 and 13 May 2002. New exclusions requests were allowed by 20 May 2002.

1.43 On 21 May 2002, the USTR indicated that the same procedures would apply with respect to new exclusions requests filed by 20 May 2002.[97] On 3 June 2002, the USTR further explained that the same procedures would apply in the annual review process through which future new exclusion requests would be accepted.[98]

1.44 On this basis, the USTR published the list of exclusion requests filed before 5 March 2002 on 23 April 2002 and a first list of 150 new exclusion requests on 5 June 2002, a second list of 134 new exclusion requests on 14 June 2002, a third list of 135 new exclusion requests on 19 June 2002 and a fourth list of new exclusion requests on 27 June 2002.

1.45 The USTR also released a first list of exclusions concerning 61 products on 7 June 2002, a second list of exclusions for 47 products on 17 June 2002 and a third list of exclusions relating to 116 products on 24 June 2002.

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[92] Annex to the Proclamation, para. 11.(b)(x)to (xlviii) and (xlix).

[93] Annex to the Proclamation, para. 11. (c) and Memorandum, Federal Register, Vol. 67, No. 45, 7 March 2002, p. 10596.

[94] Exclusion of Particular Products From Actions Under Section 203 of the Trade Act of 1974 With Regard to Certain Steel Products; and Conforming Changes to the Harmonized Tariff Schedule of the United States, Federal Register, Vol. 67, No. 65, 5 April 2002, p. 16484.

[95] Notifications pursuant to Article 12.1(c) and Article 9, Footnote 2 of the Agreement on Safeguards on taking a decision to apply a safeguard measure (G/SG/10/USA/6/Suppl. 4 and G/SG/11/USA/5/Suppl. 4, 12 April 2002), Exhibit CC-18.

[96] Procedures for Further Consideration of Requests for Exclusions of Particular products from Actions With Regard to Certain Steel products Under Section 203 of the Trade Act of 1974, as Established in the Presidential Proclamation 7529 of March 5, 2002, Federal Register, Vol. 67, No. 75, 18 April 2002, p. 19307, Exhibit CC-19.

[97] Procedures for Consideration of New Requests for Exclusions of Particular Products from Actions With Regard to Certain Steel products Under Section 203 of the Trade Act of 1974, as Established in the Presidential Proclamation 7529 of 5 March 2002, Federal Register, Vol. 67, No. 98, 21 May 2002, p. 35842, Exhibit CC-20.

[98] New Requests for Exclusions of Particular products from Actions With Regard to Certain Steel products Under Section 203 of the Trade Act of 1974, as Established in the Presidential Proclamation 7529 of 5 March 2002; Information Collection and Procedures for Consideration, Federal Register, Vol. 67, No. 106, 3 June 2002, p. 38301, Exhibit CC-21.

1.46 By the deadline of 3 July 2002 provided for in Proclamation No. 7519 to consider pending exclusion requests, the President issued a new Proclamation[99], further extending this deadline until 31 August 2002. The three lists of product exclusions previously released were annexed to that Proclamation.

1.47 On 8 July, the USTR published a fifth list of 82 new exclusion requests. The USTR also released a fourth list of exclusions comprising 23 products on 11 July 2002 and a fifth list of exclusions concerning 14 products on 19 July 2002. The latest product specific exclusions were granted on 22 August 2002.[100]

II. WTO PROCEDURAL ASPECTS

A. CONSULTATIONS UNDER ARTICLE 12.3 OF THE AGREEMENT ON SAFEGUARDS

2.1 In its notification under Article 12.1(b) of the Agreement on Safeguards on finding a serious injury or threat thereof caused by increased imports of 28 December 2001, the United States offered to consult with Members of the WTO having a substantial interest as exporters of one or more of the products covered by the investigation.[101]

2.2 Brazil, the European Communities, Korea and New Zealand requested consultations with the United States under Article 12.3 of the Agreement on Safeguards, but each reserving their right to further consultations once the actual measures had been imposed.

2.3 In Proclamation No. 7529, the US President instructed the USTR to conduct, prior to the date of effective application of the definitive safeguard measures, consultations under Article 12.3 of the Agreement on Safeguards with any Member of the WTO having a substantial interest as an exporter of a product subject to the safeguard measures.[102] Korea requested consultations on 27 February 2002. The consultations took place in Washington, D.C. on 15 March 2002. On 6 March 2002, Japan requested consultations. These consultations took place in Washington D.C. on 14 March 2002. On 7 March, New Zealand and the European Communities requested consultations and Brazil made its request on 11 March 2002. All three sets of consultations were held in Geneva on 19 March 2002. Subsequently, on 12, 18 and 26 March 2002, Norway, China and Switzerland respectively also requested consultations with the United States. The consultations with Norway and China were held on 25 March and 22 March 2002 respectively, in Washington D.C., and the consultations with Switzerland were held in Geneva on 12 April 2002.

B. DISPUTE SETTLEMENT CONSULTATIONS

2.4 On 7 March 2002, the European Communities initiated the procedures under Article 4 of the DSU, Article XXII:1 of the GATT 1994 and Article 14 of the Agreement on Safeguards by requesting the United States to enter into dispute settlement consultations.[103] Similar requests were made by

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[99] Proclamation No. 7576 of 3 July 2002, To Provide for the Efficient and Fair Administration of Safeguard Measures on Imports of Certain Steel Products, Federal Register, Vol. 67, No. 130, 8 July 2002, p. 45285.

[100] Fact sheet: Exclusion of products from safeguard on steel products, 22 August 2002, Exhibit CC-91; List of additional products to be excluded from the Section 201 safeguards measures, as established in Presidential Proclamation 7529 of 5 March 2002, August 22, 2002, Exhibit CC-92.

[101] G/SG/N/8/USA8/Suppl.1, 7 January 2002.

[102] Memorandum, Federal Register, Vol. 67, No. 45, 7 March 2002, p. 10596 (Exhibit CC-13).

[103] See document WT/DS 248/1

Japan[104] and Korea[105] on 20 March 2002. China[106], Switzerland[107] and Norway[108] also requested consultations with the United States on 26 March, 3 and 4 April 2002 respectively. Consultations were held in Geneva on 11-12 April 2002 jointly with the European Communities, Japan, Korea, China, Switzerland and Norway.

2.5 New Zealand[109] and Brazil[110] later requested dispute settlement consultations with the United States on 14 and 21 May 2002 respectively. These consultations took place in Geneva on 13 June 2002.

C. SINGLE PANEL UNDER ARTICLE 9.1 OF THE DSU

2.6 Given that none of the dispute settlement consultations succeeded in resolving the dispute, the parties proceeded separately to request the establishment of panels to examine the issues arising from the consultations.

2.7 In accordance with Article 6 of the DSU, the DSB established multiple panels to examine similar matters raised by the complainants:

(a) The European Communities was the first to present a request for the establishment of a panel.[111] The first panel to address this request was set up on 3 June 2002.

(b) Japan and Korea requested the establishment of a panel.[112] The United States opposed these requests at the special meeting of the DSB held on 3 June 2002. However, a single panel was established under Article 9.1 of the DSU at the special meeting of the DSB held on 14 June 2002 to consider the requests made by Japan, Korea and, previously, by the European Communities.

(c) China, Switzerland and Norway requested the establishment of a panel on 27 May and 3 June 2002.[113] The United States opposed China's first panel request at the special DSB meeting of 7 June 2002 and did the same with Switzerland's and Norway's first panel requests at the special meeting of the DSB of 14 June 2002. Requests made by China, Switzerland and Norway were accepted at the special meeting of the DSB of 24 June 2002. Under Article 9.1 of the DSU, these requests were referred to the single panel already established to consider the requests made by the European Communities, Japan and Korea.

2.8 A procedural agreement was concluded on 27 June 2002 between, on the one hand, the European Communities, Japan, Korea, China, Switzerland, Norway and New Zealand and, on the other hand, the United States.[114] Pursuant to this procedural agreement, the United States accepted the

[104] WT/DS249/1.
[105] WT/DS251/1.
[106] WT/DS252/1.
[107] WT/DS253/1.
[108] WT/DS254/1.
[109] WT/DS258/1.
[110] WT/DS259/1.
[111] WT/DS248/12.
[112] WT/DS249/6 and WT/DS251/7 respectively.
[113] WT/DS252/5, WT/DS253/5 and WT/DS254/5 respectively.
[114] WT/DS248/13, WT/DS249/7, WT/DS251/8, WT/DS252/6, WT/DS253/6, WT/DS254/6, WT/DS258/10.

shortening of the 60-day period for consultations under Article 4.7 of the DSU and the establishment of the panel pursuant to the first request presented by New Zealand, as well as the establishment of a single panel under Article 9.1 of the DSU for all the complainants involved. In return, the complainants agreed not to ask the Director-General to appoint the panelists before 15 July 2002 and agreed on longer time limits for submissions.

2.9 As noted above, New Zealand and Brazil had also requested dispute settlement consultations with the United States on 14 and 21 May 2002 respectively. These consultations took place in Geneva on 13 June 2002.

2.10 New Zealand requested the establishment of a panel on 28 June 2002.[115] The United States accepted this first panel request at the special meeting of the DSB of 8 July 2002. Under Article 9.1 of the DSU, this request was also referred to the single panel already established to consider the requests presented by the European Communities, Japan, Korea, China, Switzerland and Norway.

2.11 On 18 July 2002, a procedural agreement was also concluded between Brazil and the United States.[116] Under this agreement, the United States accepted the shortening of the 60-day period for consultations and the establishment of a panel pursuant to the first request presented by Brazil.[117] Both Brazil and the United States also accepted that, in accordance with Article 9.1 of the DSU, their dispute would be referred to the panel that had already been established to consider the requests of the European Communities, Japan, Korea, China, Switzerland, Norway and New Zealand.

2.12 Pursuant to the two agreements between the parties referred to above and in accordance with Article 9.1 of the DSU, the DSB agreed that all these disputes would proceed according to one single panel, whose mandate would be to examine all the requests for a panel mentioned above.[118]

2.13 This single Panel was established with the following standard terms of reference:

> "To examine, in the light of the relevant provisions of the covered agreements cited by the European Communities, Japan, Korea, China, Switzerland, Norway, New Zealand and Brazil in documents WT/DS248/12, WT/DS249/6, WT/DS251/7, WT/DS252/5, WT/DS253/5, WT/DS254/5, WT/DS258/9 and WT/DS259/10, the matter referred to the DSB by the European Communities, Japan, Korea, China, Switzerland, Norway, New Zealand and Brazil in those documents, and to make such findings as will assist the DSB in making the recommendations or in giving the rulings provided for in those agreements."[119]

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[115] WT/DS258/9.
[116] WT/DS259/9.
[117] WT/DS259/10.
[118] WT/DS248, WT/DS249, WT/DS251, WT/DS252, WT/DS253, WT/DS254, WT/DS258 and WT/DS259.
[119] WT/DS248/15, WT/DS249/9, WT/DS251/10, WT/DS252/8, WT/DS253/8, WT/DS254/8, WT/DS258/12, WT/DS259/11.

2.14 The Director-General was requested to determine the composition of this single Panel with reference to paragraphs 7 and 10 of Article 8 of the DSU on 15 July 2002. On 25 July, the Director-General appointed the following persons to serve as the Panel:

Chairman:	Mr Stefán Jóhannesson
Members:	Mr Mohan Kumar Ms Margaret Liang

2.15 Canada, Chinese Taipei, Cuba, Malaysia Mexico, Thailand, Turkey and Venezuela reserved their rights to participate in the Panel proceedings as third parties. By a letter dated 23 October 2002, Malaysia informed the Panel of its decision to withdraw as a third party from the Panel proceedings.

2.16 On 29 July 2002, the Panel met with the parties for its organizational meeting. On 31 July 2002, the panel wrote to the parties issuing some preliminary organizational rulings and indicating the rules of procedure to be followed by the Panel.

2.17 On 29, 30 and 31 October 2002, the Panel had its first substantive meeting with the parties. The Panel sent questions to the parties on 31 October 2002 and parties forwarded their answers to the Panel's questions on 12 November 2002. On 10, 11 and 12 December 2002, the Panel had its second substantive meeting with the parties. The Panel sent questions to the parties on 13 December 2002. The Panel extended the deadline for responding to the Panel's questions from 21 December 2002 to 6 January 2003. The United States requested permission to comment further on some of the complainants' answers. On 16 January 2003, the Panel authorized all the parties to provide further comments on some of the panel's questions.

2.18 On 28 January 2003, the United States requested the Panel to issue separate reports pursuant to Article 9.2 of the DSU. On 30 January 2003, the complainants opposed that request. A series of communications between the parties followed. On 3 February 2003, the Panel wrote to the parties that a decision on the United States' request would be issued with the Interim Panel Report but that, in any case, should the United States' request be accepted by the Panel, all such separate Panel Reports would have the same descriptive part. The letter reads as follows:

> "On 28 January 2003, the Panel received a request from the United States pursuant to Article 9.1 of the DSU that the Panel issue eight separate panel reports rather than one consolidated report. This request was made by the United States in light of the fact that during the previous DSB meeting (held on 27 January 2003) some complainants expressed 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 asserted in its letter that it did not understand the basis for this "all-or-nothing" approach because, for example, 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. The United States noted in its letter that while it was sensitive to the work involved in preparing separate reports, in the *EC – Bananas III* dispute, the panel wrote one master report, and issued identical separate reports for each co-complainant, omitting inapplicable paragraphs where necessary.
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> On 30 January, the complainants wrote to the Panel opposing the request that had been made by the United States for a number of reasons, notably because the request had not been made in a timely fashion; that complying with the request would result

in additional delays; that had the complainants known that multiple reports would be issued, they would have presented their arguments differently and that the United States request was contrary to the procedural arrangements negotiated between all the parties (WT/DS248/13, WT/DS249/7, WT/DS251/8, WT/DS252/6, WT/DS253/6, WT/DS254/6, WT/DS258/10 and WT/DS259/9) and contrary to the Panel's working procedures.

On 31 January, late morning, the Secretariat, on behalf of the Panel, sent a fax to all parties informing them that the Panel was considering the US request of 28 January and the complainants' letter of opposition dated 30 January and that, by close-of-business Monday, 3 February, the Panel's response would be communicated to the parties, including the date of issuance of the descriptive part in disputes WT/DS248, WT/DS249, WT/DS251, WT/DS252,WT/DS253, WT/DS254, WT/DS258 and WT/DS259.

On 31 January, late afternoon, the United States responded to the complainants' letter of 30 January. For the United States, the complainants appeared to confuse the fact that a single panel had been established to consider the separate panel requests with the question of whether that single panel must issue a single report. In the United States' view, the fact that this dispute has been operating as a single proceeding in no way means that the results of the single proceeding would be a single report. The United States insisted that it had never waived its rights under Article 9.2 of the DSU and that the Panel's working procedures do not exclude the possibility of multiple reports. It submitted that, up to this point, the United States had considered that even though it could have requested separate reports, its rights were sufficiently protected with a single report. That situation changed since the last DSB meeting when the United States became aware of the complainants' interpretation of Article 9 of the DSU, which, according to the United States, threatens the United States' dispute settlement rights. For the United States, its request of 28 January 2003 is, indeed, timely. To the complainants' claim that they would have structured their arguments differently had the United States made its request earlier, the United States responded that, throughout the proceedings, individual complainants had maintained their autonomy by raising different claims, arguments, answers to questions, etc. The United States added that the complainants have not indicated how they would have proceeded differently if they had known beforehand that there would be a single panel report. The United States essentially submitted that, in any case, the complainants cannot have more rights under a single report than under multiple reports, since they can have no more rights under a single proceeding than they would have had under separate proceedings. For the United States, the only difference between a single report and separate reports is that the latter approach would make perfectly clear that each complainant has rights only with regard to those claims that it raised. Finally, the United States reiterated that the Panel could use, for instance, the model used in the in the *EC – Bananas III* dispute, in which the panel wrote one master report, and issued separate reports with regard to each complaint that excised the findings not relevant to that complainant; such an approach for this dispute should minimize any burden to the Secretariat and not delay issuance of the reports.

On 31 January, early evening, Japan, Switzerland and, subsequently, the European Communities, asked the Panel to ignore the second letter from the United Sates of 31 January and to rule on the US request on the basis of only the first US letter of 28 January 2003 and the complainants' letter of 30 January. Those complainants raised

strong objection to the timing and manner in which the United States had chosen to file the letter of 31 January to the Panel, claiming, *inter alia*, that in so doing, the United States was fully aware that some of the complainants' capitals were already closed for the weekend. Japan argued that the United States was simply trying to delay the Panel's decision and that, in the process, the United States had totally ignored due process and fair play. For the European Communities, all of the arguments that had been raised by the United States were answered either by the text of the DSU, the Appellate Body Report in the *Byrd Amendment* case or the complainants' letter. The European Communities stated that it does not consider that the issuance of a single panel report, rather than multiple reports, reduces or adds to the rights of any of the parties. It also does not consider that multiple panel reports are needed to make this clear. Finally, the European Communities noted that all complainants have an interest in the complaints of the others as evidenced by the fact that they are all third parties in each other's cases.

Afterwards, in the evening of 31 January (just before the receipt of the European Communities' communication mentioned in the preceding paragraph), the United States responded that Japan and Switzerland's communications appeared to assume that complainants have the right to respond to the arguments that the United States has made but the United States should not have the right to respond to the arguments that the complainants have made.

Japan responded by reiterating that the United States was only trying to prolong the debate, burden the Panel and the Secretariat with further communications, and delay the solution of this important dispute. Japan queried why the United States waited a full day, until the evening of Friday, 31 January 2003 to re-start the exchange of communications. Finally, Japan reiterated that the Panel should make its decision only on the basis of the complainants' letter of 30 January 2003 and the first US letter of 28 January 2003.

* * * * *

The Panel is well aware of the time-limit obligations provided for in the DSU including those mentioned in Articles 12.8 and 20, and of the importance of proceeding expeditiously with this dispute (as with all disputes).

The Panel is also well aware of the provisions of Article 9 of the DSU, including the Panel's obligation to ensure that the rights that all parties would have enjoyed had separate panels been proceeded with be taken into account.

The Panel also recalls that the establishment of a single panel was agreed to by the parties. Further, the coordination of the complainants' oral presentations at both substantive meetings of the Panel (as well as parties' answers to the Panel's questions) was encouraged by the Panel and agreed to by all parties. The Panel notes in this regard that the United States, in its letter of 31 January, recognized that a single panel process may benefit all parties, reduce delays and ensure respect of WTO Members' rights in dispute settlement.

The Panel has decided that it will examine and assess the request made by the United States while it is completing its legal analysis of the complainants' claims. The Panel will form a conclusion on this US request, including whether separate panel reports

can be issued when a single panel has been established and when multiple disputes are being examined according to a single panel process and whether an answer to this question is necessary for the settlement of the present dispute. The Panel will communicate to the parties its decision on such matters when it issues its Interim Panel Report.

The Panel notes, however, that as indicated in Article 15 of the DSU, a Panel Report shall contain a Descriptive Part which includes a description of the factual and legal allegations and arguments of the parties to the dispute. The Panel believes that the Descriptive Part of any panel report should include an objective reflection of the relevant panel process. Therefore, in light of (i) the circumstances of the single panel process followed for the disputes WT/DS248, WT/DS249, WT/DS251, WT/DS252, WT/DS253, WT/DS254, WT/DS258and WT/DS259; (ii) the timing of the US request, that is, a few days before the issuance of the Descriptive Part; (iii) the fact that the Panel is examining a series of safeguard measures that are in place for only three years; (iv) the need to ensure due process, the Panel is of the view that a single Descriptive Part should, in any case, be issued by the Panel. Should the Panel reach the conclusion that multiple Panel Reports are to be issued, all such Panels Report will have the same Descriptive Part.

The parties will note when they receive the draft Descriptive Part of the Panel Report this week, that the Panel has tried to ensure that collective and individual complainant's claims, allegations and arguments are properly reflected, together with the relevant United States' defenses. As provided for in Article 15.1 of the DSU, all parties will be invited to comment and suggest changes to this draft Descriptive Part to ensure that it is an objective reflection of all the parties' legal and factual allegations and arguments.

The draft Descriptive Part in disputes WT/DS248, WT/DS249, WT/DS251, WT/DS252, WT/DS253, WT/DS254, WT/DS258 and WT/DS259 will, therefore, be issued on Thursday, 6 February 2003 and, pursuant to Article 15 of the DSU, all parties will be invited to comment on such draft Descriptive Part by 5 p.m. on Wednesday 19 February 2003.

Finally, the Panel would like to reassure the parties that, irrespective of the Panel's ultimate decision on whether or not to issue separate panel reports, the Panel's work will not be unduly delayed. The Panel is exercising its utmost efforts to proceed as expeditiously as possible in its examination of the complainants' claims, bearing in mind that the parties have submitted more than 3,500 pages of submissions, oral statements and answers to questions together with more than 3,000 pages of exhibits in support of numerous claims both under GATT 1994 and the Agreement on Safeguards, all of which raise complex and sensitive issues of facts and law."

2.19 On 6 February 2003, the Panel issued its draft Descriptive Part, pursuant to Article 15.1 of the DSU. On 19 February 2003, the Panel received comments from the parties on the draft Descriptive Part. On 26 March 2003, the Panel issued its Interim Reports to the parties. On 9 and 16 April 2003, the Panel received comments from the parties. On 2 May 2003, the Panel issued its Final Reports to the parties.

III. CLAIMS MADE BY THE COMPLAINANTS[120]

A. EUROPEAN COMMUNITIES

3.1 The European Communities claims that:

(a) The precondition of "unforeseen developments" laid down in Article XIX:1 of the GATT 1994 was not satisfied;

(b) There were no increased imports, as required by Article 2.1 of the Agreement on Safeguards, for many of the imported products under investigation;

(c) For certain products, there was an incorrect definition of the relevant domestic industries that produce like or directly competitive products to those allegedly being imported in increased quantities, as required by Articles 2.1 and 4.2(a) in conjunction with Article 4.1(c) of the Agreement on Safeguards;

(d) There was no serious injury or threat of serious injury being suffered by the relevant domestic industries, as required by Articles 2.1 and 4.2(a) of the Agreement on Safeguards;

(e) Any increase in imports that may have occurred did not cause any serious injury or threat of serious injury that may have been suffered by the relevant domestic industries, as required by Articles 2.1 and 4.2(b) of the Agreement on Safeguards, in particular because injury was not being suffered by the relevant domestic industries and because injury or threat thereof caused by other factors was attributed to imports;

(f) The United States safeguard measures are not applied only to the extent necessary to prevent or remedy serious injury, as required by Article 5.1 of the Agreement on Safeguards;

(g) There is a lack of parallelism between the products for which an increase in imports within the meaning of Article 2.1 of the Agreement on Safeguards was found or claimed, and the products in respect of which the protective measures were imposed, contrary to the principle inherent in Articles 2.1, 4.2 and 5.1 of the Agreement on Safeguards;

(h) Neither the Report of the investigation nor the other relevant documents set forth adequately the findings and reasoned conclusions on all pertinent issues of fact and law, including the justification for the measures actually imposed and for all other elements mentioned above, as required by Article 3.1 of the Agreement on Safeguards; nor did they provide the analysis and demonstration required by Article 4.2(c) of the Agreement on Safeguards.

[120] The claims set out in this section are as they appear in the parties' respective requests for establishment of a panel and are found in consecutive order in WT/DS248/12, WT/DS249/6, WT/DS251/7, WT/DS252/5, WT/DS253/5, WT/DS254/5, WT/DS258/9 and WT/DS259/10.

B. JAPAN

3.2 Japan claims that:

(a) The safeguard measures are inconsistent with Articles 2.1 and 4.2(a) of the Agreement on Safeguards and Article XIX:1 of the GATT 1994 because, *inter alia*, they were imposed in the absence of the requisite increase in import volume;

(b) The safeguard measures are inconsistent with Articles 2.1 and 4.2(b) of the Agreement on Safeguards and Article XIX:1 of the GATT 1994 because, *inter alia*, they were imposed despite the United States Government's failure to demonstrate causality between increased imports and serious injury and to ensure that serious injury caused by factors other than increased imports was not attributed to increased imports;

(c) The safeguard measures are inconsistent with Articles 2.1 and 4.1(c) of the Agreement on Safeguards and Articles X:3 and XIX:1 of GATT 1994 because the USG failed to properly define the domestic industries producing products like or directly competitive with the imported products under investigation;

(d) The safeguard measures are inconsistent with Articles 2.1, 3.1, 4.2(a), (b) and (c) of the Agreement on Safeguards and Articles X:3 and XIX:1 of GATT 1994 because, *inter ali*a, the President imposed safeguard measures on tin mill products as a separate like product without making a uniform, impartial and reasonable determination that increased tin mill product imports had caused, or threatened to cause, serious injury to the domestic industry producing the like or directly competitive product or publishing any report setting forth the findings and reasoned conclusions;

(e) The measures on tin mill products and stainless wire products violate Article 3.1, 4.2(c) the Agreement on Safeguards and Article X:3 of GATT 1994 because the President's treatment of the USITC's tie injury votes on these and other products was not uniform, impartial and reasonable nor did the President publish any report setting forth the findings and reasoned conclusions supporting such treatment;

(f) The safeguard measures are inconsistent with Articles 2.1 and 2.2 of the Agreement on Safeguards and Article XIX:1 of GATT 1994 in that the sources of imports covered by the safeguards investigation do not parallel the sources of imports falling within the scope of the safeguard measures;

(g) The safeguard measures are inconsistent with Article 3.1 and 5.1 of the Agreement on Safeguards and Article XIX:1 of GATT 1994 because, *inter alia*, the measures imposed were more restrictive than those recommended by the USITC, and there was no investigation or published report setting forth the findings and reasoned conclusions on how they were no more restrictive than necessary to prevent or remedy serious injury;

(h) The safeguard measures are inconsistent with Article I:1 of the GATT 1994 and Article 2.2 of the Agreement on Safeguards because, *inter alia*, they exempt imports from WTO Members which are FTA partners of the United States, namely, Canada,

Mexico, Jordan and Israel, thereby discriminating between products originating in Japan and products originating in such WTO Members.

C. KOREA

3.3 Korea claims that:

(a) The United States failed to comply with the provisions of Articles 2.1 and 4 of the Agreement on Safeguards and Article XIX of GATT 1994 with respect to the determination of the relevant domestic industries that produce like or directly competitive products;

(b) The United States also failed to satisfy the obligations contained in Articles 2, 3 and 4 of the Agreement on Safeguards as well as Article XIX of GATT 1994 with respect to the investigation, findings, and decision regarding increased imports, serious injury, threat of serious injury and causation. The United States was in violation of Article X:3(a) as well with respect to tin mill products;

(c) The United States is in breach of Article XIX:1 of GATT 1994 as regards the requirement to demonstrate that "unforeseen developments" led to the increase in imports. In this respect, not only did the United States fail to conduct separate analyses for each product concerned, but also the explanations were insufficient to satisfy the requirement;

(d) The United States violated Article 2.2 of the Agreement on Safeguards and Articles I, XIII and XIX of GATT 1994 for failing to apply the safeguard measures to all imports irrespective of their sources on an MFN basis;

(e) The United States' violation of Article 2.2 of the Agreement on Safeguards and Articles I and XIX of GATT 1994 was compounded with the violation of Article X:3 of GATT 1994 and Article 3 of the Agreement on Safeguards. In order to exempt imports from Canada and Mexico, the US President reversed the USITC's findings made in accordance with Section 311(a) of the NAFTA Implementation Act without providing sufficient, if any, explanation;

(f) The United States violated Article 2.1 of the Agreement on Safeguards in conjunction with Articles 2.2 and 4.2 of the Agreement on Safeguards by failing to meet the requirement of parallelism between the investigation and the measures;

(g) The United States committed violations under Article 3 of the Agreement on Safeguards, in conjunction with Articles 2, 4 and 5 of the Agreement on Safeguards, because it failed to afford an opportunity for sufficient participation by interested parties, to conduct an adequate investigation, to provide critical information on which it relied, and to set forth in the published report the findings and reasoned conclusions on all pertinent issues of fact and law, including the justification for the actual measure imposed and the justification for the exclusion of Canada, Mexico, Israel and Jordan;

(h) The safeguard measures exceeded the extent necessary to prevent or remedy serious injury and to facilitate adjustment, and thus are in violation of Article 5 of the

Agreement on Safeguards. The measures were not limited to the serious injury caused by increased imports;

(i) The safeguard measures are also in violation of Article 7.1 of the Agreement on Safeguards because the duration of the measures extends beyond the period of time necessary to remedy or prevent serious injury;

(j) The United States also violated various procedural provisions of Article 12 of the Agreement on Safeguards by failing to provide "adequate opportunity" for consultations regarding the application of safeguard measures, to provide pertinent information, and to make appropriate notifications;

(k) The United States is in breach of Article 8.1 of the Agreement of the Agreement on Safeguards because a substantially equivalent level of concessions between exporting Members and the United States has not been maintained;

(l) The United States violated Article 9.1 of the Agreement on Safeguards by failing, *inter alia*, to exclude developing countries in a non-discriminatory manner.

D. CHINA

3.4 China claims that:

(a) The United States violated Article XIX:1 of the GATT 1994, since the precondition of the "unforeseen developments" was not satisfied;

(b) The United States violated Article 2.1 of the Agreement on Safeguards, since there were no increased imports for many of the imported products under investigation;

(c) The United States violated Articles 2.1, 4.2(a) and 4.2(b) of the Agreement on Safeguards, since, for certain products, there was an incorrect definition of "the product concerned" in order to determine any increase of imports and since some of the United States measures do not apply to "a product";

(d) The United States violated Articles 2.1 and 4.2(a) in conjunction with Article 4.1(c) of the Agreement on Safeguards, since, for certain products, there was an incorrect definition of the relevant domestic industries that produce like or directly competitive products to those allegedly being imported in increased quantities;

(e) The United States violated Articles 2.1 and 4.2(a) of the Agreement on Safeguards, since there was no serious injury or threat of serious injury being suffered by the relevant domestic industries;

(f) The United States violated Articles 2.1 and 4.2(b) of the Agreement on Safeguards, since any increase in imports that may have occurred did not cause any serious injury or threat of serious injury that may have been suffered by the relevant domestic industries, in particular because injury was not being suffered by the relevant domestic industries and because injury or threat thereof caused by other factors was attributed to imports;

(g) The United States violated Article 5.1 of the Agreement on Safeguard, since the United States safeguard measures are not applied only to the extent necessary to prevent or remedy serious injury;

(h) The United States violated Articles 2.1, 4.2 and 5.1 of the Agreement on Safeguards since there is a lack of parallelism between the products for which an increase in imports was found or claimed and the products in respect of which the protective measures were imposed;

(i) The United States violated Article 5.2 of the Agreement on Safeguards and Article XIII of the GATT 1994, since the determination and the allocation of the tariff rate quota for slabs were incorrect and/or discriminatory;

(j) The United States violated Article 9.1 of the Agreement on Safeguards, since imports of some steel products from China as a developing country, were not excluded from the application of the safeguard measures;

(k) The United States violated Article I:1 of the GATT 1994 and Article 2.2 of the Agreement on Safeguards, since the United States measures discriminate between products originating in China and products originating in other countries;

(l) The United States violated Article 3.1 of the Agreement on Safeguards, since neither the Report of the Investigation nor the other relevant documents set forth adequately the findings and reasoned conclusions on all pertinent issues of fact and law, including the justification for the measures actually imposed and for all other elements mentioned above; and Article 4.2(c) of the Agreement on Safeguards, since the above-mentioned documents did not provide the analysis and demonstration required;

(m) The United States violated Articles 12.1,12.2 and 12.3 of the Agreement on Safeguard since the United States failed to provide immediate notification with all pertinent information and deprived adequate opportunity for prior consultation with China having a substantial interest as exporters of the products concerned;

(n) The United States violated Article 8.1 of the Agreement on Safeguards, since the United States failed to endeavour, in accordance with Article 12.3, to maintain a substantially equivalent level of concessions and other obligations between it and China;

(o) The United States violated Article II of the GATT 1994, since the measures consist of withdrawal or modification of United States concessions without justification under Article XIX of the GATT 1994, nor the Agreement on Safeguards, nor any other provisions of the WTO Agreement.

E. SWITZERLAND

3.5 Switzerland claims that:

(a) The precondition of "unforeseen developments" laid down in Article XIX:1 of the GATT 1994 was not satisfied;

(b) The safeguard measures were imposed in the absence of the requisite increase in import volume for many of the imported products under investigation and are therefore inconsistent with Articles 2.1 and 4.2 of the Agreement on Safeguards;

(c) The determination of the relevant domestic industries that produce like or directly competitive products to those allegedly being imported in increased quantities, as required by Articles 2.1 and 4 of the Agreement on Safeguards, is incorrect;

(d) The safeguard measures are inconsistent with Article 2.1 in conjunction with Articles 2.2 and 4.2 of the Agreement on Safeguards, in that the requirement of parallelism between the scope of the investigation of the injury arising from imported products and the scope of the safeguard measures is not met;

(e) The United States failed to demonstrate, as required by Articles 2.1 and 4.2 (b) of the Agreement on Safeguards, causality between the increased imports and serious injury and to ensure that serious injury caused by factors other than increased imports was not attributed to increased imports;

(f) The safeguard measures exceeded the extent necessary to prevent or remedy serious injury and to facilitate adjustment, and thus are in violation of Article 5(1) of the Agreement on Safeguards. The safeguard measures were not limited to the serious injury caused by increased imports;

(g) The United States violated Article 8.1 of the Agreement on Safeguards because they failed to maintain a substantially equivalent level of concessions and other obligations between the exporting Member and the United States;

(h) Neither the Report of the investigation nor the other relevant documents set forth adequately the findings and reasoned conclusions on all pertinent issues of fact and law, including the justification for the measures actually imposed and for all other elements mentioned above, as required by Article 3.1 of the Agreement on Safeguards; nor did they provide the analysis and demonstration required by Article 4.2 (c) of the Agreement on Safeguards.

F. NORWAY

3.6 Norway claims that:

(a) The United States is in breach of Article XIX:1 of GATT 1994 because, *inter alia*, the United States failed to show, prior to the application of the measures, that increases in imports and conditions of importation of products covered by the above-mentioned measures were the result of "unforeseen developments";

(b) The United States also failed to satisfy the obligations contained in Articles 2, 3 and 4 of the Agreement on Safeguards as well as Article XIX of GATT 1994 with respect to the investigation, findings, and decision regarding increased imports, serious injury, threat of serious injury and causation. With respect to tin mill products the United States was also in violation of Article X:3(a), since the measure is not based on a uniform, impartial and reasonable administration of the relevant US laws and regulations;

(c) The United States failed to comply with the provisions of Articles 2.1 and 4 of the Agreement on Safeguards and Article XIX of GATT 1994 with respect to the determination of the relevant domestic industries that produce like or directly competitive products;

(d) There is a lack of parallelism between the products for which an increase in imports within the meaning of Article 2.1 of the Agreement on Safeguards was found and claimed, and the products in respect of which the protective measures were imposed, contrary to the principle inherent in Articles 2.1, 4.2 and 5.1 of the Agreement on Safeguards. The United States measures are thus in violation of the said Articles;

(e) The safeguard measures exceeded the extent necessary to prevent or remedy serious injury and to facilitate adjustment, and thus are in violation of Articles 5.1 and 7.1 of the Agreement on Safeguards;

(f) The United States committed violations under Article 3 of the Agreement on Safeguards, in conjunction with Articles 2, 4 and 5 of the Agreement on Safeguards, because neither the USITC Report of the investigation nor the other relevant documents set forth adequately the findings and reasoned conclusions on all pertinent issues of fact and law, including the justification for the measures actually imposed and for all other elements mentioned above, nor did they provide the analysis and demonstration required;

(g) The safeguard measures are inconsistent with Article I:1 of the GATT 1994 and Article 9.1 of the Agreement on Safeguards because of failure to correctly apply the criteria for non-application.

G. NEW ZEALAND

3.7 New Zealand claims:

(a) The United States has failed to demonstrate "unforeseen developments" as provided for in Article XIX:1 of the GATT 1994 ;

(b) The United States has failed to comply with the requirement of Article 2.1 of the Agreement on Safeguards that there be a requisite increase in imports before a safeguard measure is imposed;

(c) The United States has failed to correctly determine the domestic industry that produces like or directly competitive products, as required by Articles 2.1 and 4.2(a) of the Agreement on Safeguards;

(d) The United States has failed to demonstrate serious injury or threat of serious injury being suffered by the relevant domestic industries, as required by Articles 2.1 and 4.2(a) of the Agreement on Safeguards;

(e) The United States failed to demonstrate the existence of the requisite causal link between the alleged increased imports and the alleged serious injury or threat thereof, as required by Articles 2.1 and 4.2(a) of the Agreement on Safeguards. Furthermore, the United States attributed to imports injury caused by other factors, contrary to Article 4.2(b) of the Agreement on Safeguards;

(f) The United States failed to apply its safeguard measures only to the extent necessary to prevent or remedy serious injury as required by Article 5.1 of the Agreement on Safeguards;

(g) The United States granted relief beyond the period of time necessary to prevent or remedy any alleged serious injury and to facilitate adjustment, contrary to the requirements of Article 7 of the Agreement on Safeguards;

(h) The United States failed to satisfy the requirement of parallelism between the products for which an increase in imports within the meaning of Article 2.1 of the Agreement on Safeguards was found or claimed, and the products in respect of which the protective measures were imposed, contrary to the principles inherent in Articles 2.1, 2.2, 4.2 and 5.1 of the Agreement on Safeguards;

(i) The United States failed to apply its safeguard measures to product being imported irrespective of its source, as required by Article 2.2 of the Agreement on Safeguards;

(j) The United States failed to adequately set forth findings and reasoned conclusions on all pertinent issues of fact and law, including the justification for measures actually imposed and for all other elements mentioned above, as required by Article 3.1 of the Agreement on Safeguards; nor did it provide the analysis and demonstration required by Article 4.2(c) of the Agreement on Safeguards;

(k) The United States failed to meet its obligations under Article 8.1 of the Agreement on Safeguards regarding the maintenance of a substantially equivalent level of concessions and other obligations to that existing under GATT 1994;

(l) The United States did not administer in a uniform, impartial and reasonable manner, its laws, regulations, decisions and rulings relevant to the steel safeguard and therefore acted contrary to Article X:3(a) of the GATT 1994.

H. BRAZIL

3.8 Brazil claims that:

(a) The United States violated Articles 2.1 and 4 of the Agreement on Safeguards and Article X:3 of the GATT 1994 because, *inter alia*, the determinations and resulting measures were not based on proper determinations of "like or directly competitive products" or of the domestic producers of products like or directly competitive with the imported products;

(b) The United States violated Article 2.1 and 4 of the Agreement on Safeguards and Article XIX:1 of the GATT 1994 because, *inter alia*, the determinations of injury were not based on a proper determination of serious injury to the domestic industry;

(c) The United States violated Article 2:1 and 4 of the Agreement on Safeguards and Article XIX:1 of the GATT 1994 because, *inter alia*, the determinations were deficient in terms of the requirements that imports be "in such increased quantities, absolute or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products";

(d) The United States violated Articles 2.1 and 4.2(b) of the Agreement on Safeguards and Article XIX:1 of the GATT 1994 because, *inter alia*, the determination failed to establish the necessary causal link between increased imports and injury and failed to ensure that injury from other factors was not attributed to imports;

(e) The United States violated Article XIX:1(a) of the GATT 1994 and Article 3:1 of the Agreement on Safeguards because, *inter alia*, of failure to establish that the increased imports and the conditions of their importation were the result of "unforeseen developments" and the effects of obligations assumed under the GATT 1994;

(f) The United States violated Article I:1 of the GATT 1994 and Article 2.2 of the Agreement on Safeguards because, *inter alia*, the measures discriminate based on source;

(g) The United States violated Article 2.1 of the Agreement on Safeguards, read in conjunction with Article 2.2, and Article 4.2(b) of the same Agreement because, *inter alia*, the determination failed to respect the requirement of parallelism between the scope of the investigation of injury and the scope of the safeguards measures;

(h) The United States violated Article 3 of the Agreement on Safeguards and Article X:3 of the GATT 1994 because, *inter alia*, of the failure to afford an opportunity for sufficient participation by interested parties and to conduct an adequate investigation, including undue reliance on confidentiality restriction to bar disclosure of information and the failure to set forth in the published report the findings and reasoned conclusions on all pertinent issues of fact and law, including the justifications for the exclusion of Canada and Mexico, the actual measures imposed by the President, and the treatment afforded to tin mill products;

(i) The United States violated Article 5 of the Agreement on Safeguards because, *inter alia*, the relief exceeded that necessary to prevent or remedy serious injury and to facilitate adjustment;

(j) The United States actions are also inconsistent with Article XVI of the Marrakesh Agreement establishing the WTO because the United States has failed to ensure conformity of its laws, regulations and administrative procedures with the obligations under the Agreement on Safeguards and the GATT 1994.

IV. CONCLUSIONS, RECOMMENDATIONS AND SUGGESTIONS REQUESTED BY THE COMPLAINANTS

A. EUROPEAN COMMUNITIES

4.1 The European Communities requests the Panel to find that:

(a) The United States has, inconsistently with Article 2.1 of the Agreement on Safeguards, grouped together many different products for the purposes of determining whether there are increased imports under such conditions as to cause injury and has, inconsistently with Article 2.1 and Article 4.2(a) in conjunction with Article 4.1(c) of the Agreement on Safeguards, failed to identify the domestic industries producing like or directly competitive products to those allegedly being imported in increased quantities;

(b) The United States has, inconsistently with Article 2.1 of the Agreement on Safeguards, imposed its safeguard measures in the absence of a sharp, sudden, recent and significant increase in imports;

(c) The United States has, inconsistently with Articles 2.1, 3.1, 4.2(a) and 4.2(c) of the Agreement on Safeguards, failed to provide an adequate and reasoned explanation of the existence of serious injury and has failed to examine the financial state of the domestic industry as a whole as required by Article 4.2(a) in conjunction with Article 4.1(a) and 4.1(c) of the Agreement on Safeguards;

(d) The United States has, inconsistently with Articles 2.1 and 4.2 of the Agreement on Safeguards, failed to establish any causal link between any increased imports and any serious injury since it simply examined whether the other causes of injury were not a source of injury to the domestic industry equal to or greater than the injury allegedly caused by increased imports and has not, or has not explained in a clear and unambiguous manner, demonstrated how it has ensured that injury caused by other factors is not attributed to increased imports and in particular that injury caused by imports from countries which have been excluded from the safeguard measures (i.e. Canada, Mexico, Israel and Jordan) has not been attributed to increased imports from other sources;

(e) The United States has, inconsistently with Articles 5.1 of the Agreement on Safeguards, failed to ensure that its safeguard measures are applied only to the extent necessary to prevent or remedy serious injury caused by increased imports;

(f) The United States has, inconsistently with to the principle inherent in Articles 2.1, 4.2 and 5.1 of the Agreement on Safeguards, failed to ensure parallelism between the products for which an increase in imports within the meaning of Article 2.1 of the Agreement on Safeguards was claimed, and the products in respect of which the safeguard measures were imposed;

(g) Neither the Report of the investigation nor the other relevant documents set forth adequately the findings and reasoned conclusions on all pertinent issues of fact and law, including the justification for the measures actually imposed and for all other elements mentioned above, as required by Article 3.1 of the Agreement on Safeguards; nor did they provide the analysis and demonstration required by Article 4.2(c) of the Agreement on Safeguards.

4.2 The European Communities considers that the above violations of the GATT 1994 and of the Agreement on Safeguards have nullified and impaired benefits accruing to it under the WTO Agreement and accordingly asks the Panel to recommend that the United States bring its safeguard measures into conformity with the above provisions by repealing them.

B. JAPAN

4.3 Japan requests the Panel:

(a) To find that the safeguard measures imposed by the United States on certain steel products are inconsistent with the Agreement on Safeguards and GATT 1994, including:

(i) the requirement to define the domestic industry as those producers producing a product like or directly competitive with the imported product, particularly with regard to the various flat-rolled products, as set forth in Articles 2.1 and 4.1(c) of the Agreement on Safeguards and Article XIX:1 of GATT 1994, and to make such a decision in a uniform, impartial, and reasonable manner as required by Article X:3(a) of GATT 1994;

(ii) the requirement to find that increased imports of tin mill and stainless wire products had caused serious injury to the industries producing those specific products, or identifying a published report supporting such decisions, as required by Articles 2.1, 3.1 and 4.2(c) of the Agreement on Safeguards, and to make such a decision in a uniform, impartial, and reasonable manner as required by Article X.3(a) of GATT 1994;

(iii) the requirement that the measures be imposed only if increased imports exist, as set forth in Articles 2.1 and 4.2(a) of the Agreement on Safeguards and Article XIX:1 of GATT of 1994;

(iv) the requirement that increased imports cause serious injury to a domestic industry producing a like or directly competitive product, – and that such injury is not falsely attributed to imports, as set forth in Articles 2.1 and 4.2(b) of the Agreement on Safeguards and Article XIX:1 of GATT 1994;

(v) the requirement that the sources of imports covered by an affirmative injury finding parallel the sources against which the measures are imposed, as set forth in Articles 2.1 and 2.2 of the Agreement on Safeguards and Article XIX:1 of GATT 1994;

(vi) the requirement that the measure be applied *only to the extent necessary*, as required by Articles 3.1 and 5.1 of the Agreement on Safeguards and Article XIX:1 of GATT 1994; and

(vii) the requirement that measures be imposed on imports *irrespective of their source*, as set forth in Article 2.2 of the Agreement on Safeguards and Article I:1 of GATT 1994.

(b) Find, pursuant to Article 3.8 of the DSU, that as a consequence of the infringement of the above cited provisions, the United States has nullified and impaired the benefits accruing to Japan under the Agreement on Safeguards and GATT 1994;

(c) Recommend that the DSB request that the United States Government bring its safeguard measures on certain steel products into conformity with the WTO Agreement; and

(d) Suggest to the DSB that in order to conform, the United States must terminate the measure.

C. KOREA

4.4 Korea considers that the Untied States is in violation of its obligations under GATT 1994 and the Agreement on Safeguards in the following respects:

(a) The United States failed to comply with the provisions of Articles 2.1 and 4 of the Agreement on Safeguards and Article XIX of GATT 1994 with respect to the determination of the relevant domestic industries that produce like or directly competitive products;

(b) The United States also failed to satisfy the obligations contained in Articles 2, 3 and 4 of the Agreement on Safeguards as well as Article XIX of GATT 1994 with respect to the investigation, findings, and decision regarding increased imports, serious injury, threat of serious injury and causation. The United States was in violation of Article X:3(a) as well with respect to tin mill products;

(c) The United States is in breach of Article XIX:1 of GATT 1994 as regards the requirement to demonstrate that "unforeseen developments" led to the increase in imports. In this respect, not only did the United States fail to conduct separate analyses for each product concerned, but also the explanations were insufficient to satisfy the requirement;

(d) The United States violated Article 2.2 of the Agreement on Safeguards and Articles I, XIII and XIX of GATT 1994 by failing to apply the safeguard measures to all imports irrespective of their sources on an MFN basis;

(e) The United States' violation of Article 2.2 of the Agreement on Safeguards and Articles I and XIX of GATT 1994 was compounded with the violation of Article X:3 of GATT 1994 and Article 3 of the Agreement on Safeguards. In order to exempt imports from Canada and Mexico, the United States President reversed the USITC's findings made in accordance with Section 311(a) of the NAFTA Implementation Act without providing sufficient, if any, explanation;

(f) The United States violated Article 2.1 of the Agreement on Safeguards in conjunction with Articles 2.2 and 4.2 of the Agreement on Safeguards by failing to meet the requirement of parallelism between the investigation and the measures;

(g) The United States committed violations under Article 3 of the Agreement on Safeguards, in conjunction with Articles 2, 4 and 5 of the Agreement on Safeguards, because it failed to afford an opportunity for sufficient participation by interested parties, to conduct an adequate investigation, to provide critical information on which it relied, and to set forth in the published report the findings and reasoned conclusions on all pertinent issues of fact and law, including the justification for the actual measure imposed and the justification for the exclusion of Canada, Mexico, Israel and Jordan;

(h) The safeguard measures exceeded the extent necessary to prevent or remedy serious injury and to facilitate adjustment, and thus are in violation of Article 5 of the Agreement on Safeguards. The measures were not limited to the serious injury caused by increased imports;

(i) The safeguard measures are also in violation of Article 7.1 of the Agreement on Safeguards because the duration of the measures extends beyond the period of time necessary to remedy or prevent serious injury;

(j) The United States also violated various procedural provisions of Article 12 of the Agreement on Safeguards by failing to provide "adequate opportunity" for consultations regarding the application of safeguard measures, to provide pertinent information, and to make appropriate notifications;

(k) The United States is in breach of Article 8.1 of the Agreement on Safeguards because a substantially equivalent level of concessions between exporting Members and the United States has not been maintained;

(l) The United States violated Article 9.1 of the Agreement on Safeguards by failing, *inter alia*, to exclude developing countries in a non-discriminatory manner.

4.5 Accordingly, Korea requests that the Panel consider and find that the United States measures concerning imports of certain steel products are inconsistent with the above-listed provisions of the WTO Agreement.

D. CHINA

4.6 China requests the Panel to:

(a) Find that the United States safeguard measures on certain steel products, imposed by Proclamation No. 7529 of 5 March 2002, entitled "To Facilitate Positive Adjustment to Competition from Imports of Certain Steel Products" and explained in a Memorandum of 5 March 2002, entitled "Action Under Section 203 of the Trade Act of 1974 Concerning Certain Steel Products by the President of the United States of America" (published in the Federal Register Vol. 67, No. 45 of 7 March 2002), are inconsistent with:

(i) Article XIX:1 of the GATT 1994, since the precondition of the "unforeseen developments" was not satisfied;

(ii) Articles 2.1, 4.2(a) and 4.2(b) in conjunction with Article 4.1(c) of the Agreement on Safeguards, since, for certain products, there was an incorrect definition of "the imported product concerned" and of the relevant domestic industries that produce like or directly competitive products to those allegedly being imported in increased quantities;

(iii) Article 2.1 of the Agreement on Safeguards, since there were no increased imports for many of the imported products under investigation;

(iv) Articles 2.1 and 4.2(a) of the Agreement on Safeguards, since for certain products the USITC failed to provide an adequate and reasoned explanation supporting its findings on injury;

(v) Articles 2.1 and 4.2(b) of the Agreement on Safeguards, since any increase in imports that may have occurred did not cause any serious injury or threat of serious injury that may have been suffered by the relevant domestic industries, in particular because injury was not being suffered by the relevant domestic industries and because injury or threat thereof caused by other factors was attributed to imports;

(vi) Article 5.1 of the Agreement on Safeguards, since the United States safeguard measures are not applied only to the extent necessary to prevent or remedy serious injury;

(vii) Articles 2.1, 4.2 and 5.1 of the Agreement on Safeguards, since there is a lack of parallelism between the products for which an increase in imports was found or claimed and the products in respect of which the protective measures were imposed;

(viii) Article 5.2 of the Agreement on Safeguards and Article XIII of the GATT 1994, since the determination and the allocation of the tariff rate quota for slabs were incorrect and/or discriminatory;

(ix) Article 9.1 of the Agreement on Safeguards, since imports of some steel products from China as a developing country were not excluded from the application of the safeguard measures;

(x) Article I:1 of the GATT 1994, since the United States measures discriminate between products originating in China and products originating in other countries.

(b) Find, pursuant to Article 3.8 of the DSU, that as a consequence of the infringement of the above cited provisions, the United States has nullified and impaired the benefits accruing to China under the Agreement on Safeguards and GATT 1994;

(c) Recommend that the DSB request that the United States bring its safeguard measures on certain steel products into conformity with the WTO Agreement; and

(d) Suggest to the DSB that in order to conform, the United States must terminate the measure.

E. SWITZERLAND

4.7 Switzerland requests the Panel to:

(a) Find that the safeguard measures imposed by the United States on certain steel products are inconsistent with the Agreement on Safeguards and GATT 1994, including:

(i) the precondition of "unforeseen development" laid down in Article XIX:1 of GATT 1994 was not satisfied;

(ii) the requirement to define the domestic industry as those producers producing a product like or directly competitive with the imported product, particularly with regard to welded tubular products (other than OCTG), as set forth in Articles 2.1 and 4.1(c) of the Agreement on Safeguards and Article XIX:1 of GATT 1994;

(iii) the requirement to find that increased imports of welded tubular products (other than OCTG) had caused serious injury to the industries producing

those specific products, as required by Articles 2.1 and 4.2(c) of the Agreement on Safeguards;

(iv) the requirement that increased imports cause serious injury to a domestic industry producing a like or directly competitive product, and that such injury is not falsely attributed to imports, as set forth in Articles 2.1 and 4.2(b) of the Agreement on Safeguards and Article XIX:1 of GATT 1994;

(v) the requirement that the sources of imports covered by an affirmative injury finding parallel the sources against which the measures are imposed, as set forth in Articles 2.1 and 2.2 of the Agreement on Safeguards and Article XIX:1 of GATT 1994;

(vi) the requirement that the measure be applied only to the extent necessary, as required by Article 5.1 of the Agreement on Safeguards and Article XIX:1 of GATT 1994; and

(b) Find, pursuant to Article 3.8 of the DSU, that as a consequence of the infringement of the above cited provisions, the United States has nullified and impaired the benefits accruing to Switzerland under the Agreement on Safeguards and GATT 1994;

(c) Recommend that the DSB request that the United States Government bring its safeguard measures on certain steel products into conformity with the WTO Agreement; and

(d) Suggest to the DSB that in order to conform, the United States must terminate rapidly the measure.

F. NORWAY

4.8 Norway requests the Panel to find that:

(a) By failing to demonstrate the existence of "unforeseen developments", the United States violated Article XIX:1 of the GATT 1994;

(b) Furthermore, the lack of justification and demonstration, in the report of the competent authorities, of "unforeseen developments" also results in a violation of Article 3.1 of the Agreement on Safeguards;

(c) As a consequence of the fact that the USITC only considered the issue of unforeseen developments belatedly in February 2002, third parties were not provided with an opportunity to "present evidence and their views" on the issue of unforeseen developments. The United States has thereby committed a separate violation of Article 3.1 of the Agreement on Safeguards*;*

(d) By failing to identify each specific product that is being imported, by failing to identify properly the "like product", and by failing to appropriately define the domestic industry of that like product, the United States acted inconsistently with its obligations under Articles 2.1 and 4 of the Agreement on Safeguards and Article XIX:1(a) of the GATT 1994;

(e) By excluding all informative tables regarding the domestic industry producing the like product, including their names, there is no way of ascertaining how the determinations are made in respect of the domestic industry, thus making it impossible to investigate a possible wrongdoing by the United States. As such, this is also a breach of Article 3.1 of the Agreement on Safeguards*;*

(f) The United States has violated its obligations under Article 2.1 of the Agreement on Safeguards by taking safeguard measures concerning the tin mill products without properly determining the existence of a sharp, sudden, recent and significant increase;

(g) The United States has also violated its obligations under Article 3.1 of the Agreement on Safeguards because the USITC failed to provide adequate and reasoned explanations of how the facts available to the USITC support the determination of a recent, sudden, sharp and significant increase in imports;

(h) The United States has failed to demonstrate in a reasoned and adequate manner the existence of a causal link between the alleged serious injury and increased imports. The United States has consequently acted inconsistently with Articles 2.1 and 4.2(b) of the Agreement on Safeguards and, in addition, Articles 3.1 and 4.2(c) since there are no published reports that adequately sets forth findings and reasoned conclusions on all pertinent issues of fact nor a demonstration of the relevance of the factors examined;

(i) The findings and conclusions made by the President in respect of tin mill products, specifically as regards the treatment of the alleged "tie vote", being not supported by the USITC report or any other published report, also violates Articles 3.1 and 4.2(c) of the Agreement on Safeguards;

(j) The United States breached the principle of parallelism inherent in Articles 2.1 and 4.2(b) of the Agreement on Safeguards by failing to establish explicitly that imports from countries other than Israel, Jordan, Canada and Mexico alone satisfied the conditions set out in Articles 2.1 and 4 for the imposition of a safeguards measure;

(k) The US measures go beyond the "extent necessary" to prevent or remedy serious injury as required by Article 5.1 of the Agreement on Safeguards, and the measures also violate Articles 3.1 and 7.1 of the Agreement on Safeguards;

(l) The United States, by not making use of the latest import data available at the time the safeguard measure took effect when determining which developing countries should be excluded from the measures, violated Article 9.1 of the Agreement on Safeguards, and thus also Article I.1 of the GATT 1994.

4.9 Norway respectfully submits that the Panel should find that the United States violated its WTO commitments on all the above accounts, and consequently conclude that the safeguard measures imposed by the United States on certain steel products are inconsistent with the Agreement on Safeguards and GATT 1994.

4.10 Consequently, the Panel should suggest to the DSB that the United States be requested to bring its measure into conformity with its obligations under the Agreement on Safeguards and the GATT 1994.

4.11 Norway, furthermore, suggests that the Panel make use of the power vested in it under the Dispute Settlement Understanding, Article 19.1, and suggest the appropriate way in which the United States may fulfil its obligations. In the present case, given the gross violations committed in respect of all the steps in a safeguards investigation, Norway respectfully submits that the Panel should suggest that the measure be immediately withdrawn.

G. NEW ZEALAND

4.12 New Zealand requests the Panel to find that:

(a) The United States has failed to demonstrate the existence of "unforeseen developments" as required by GATT Article XIX:1(a);

(b) The United States has failed to define the "domestic industry that produces like or directly competitive products" in accordance with the provisions of Articles 2.1 and 4.1(c) of the Agreement on Safeguards;

(c) The United States has failed to comply with the requirement of Article 2.1 of the Agreement on Safeguards that there be an increase in imports before a safeguard measure is imposed;

(d) The United States has failed to demonstrate the existence of "serious injury" being suffered by the domestic industry, as required by Articles 2.1 and 4 of the Agreement on Safeguards;

(e) The United States has failed to demonstrate the existence of the causal link between the alleged increased imports and the alleged serious injury or threat thereof, as required by Articles 2.1 and 4.2(a) of the Agreement on Safeguards. Furthermore, the United States attributed to imports, injury caused by other factors, contrary to Article 4.2(b) of the Agreement on Safeguards;

(f) The United States has failed to ensure parallelism between the products for which an increase in imports within the meaning of Article 2.1 of the Agreement on Safeguards was found or claimed, and the products in respect of which the safeguard measures were imposed, contrary to the principles inherent in Articles 2.1, 2.2, 4.2 and 5.1 of the Agreement on Safeguards;

(g) The United States has failed to apply its safeguard measures only to the extent necessary to prevent or remedy serious injury as required by Article 5.1 of the Agreement on Safeguards;

(h) The United States has failed to provide findings and reasoned conclusions on all pertinent issues of fact and law as required by Article 3.1 of the Agreement on Safeguards.

4.13 Accordingly, New Zealand respectfully requests the Panel to recommend to the DSB that the United States bring its treatment of imports of steel products into conformity with its obligations under the Agreement on Safeguards and GATT 1994.

H. BRAZIL

4.14 Brazil requests the Panel to find:

(a) That the determination of a single flat-rolled carbon steel "like" product and a single domestic industry producing that "like" product is contrary to United States obligations under Articles 2.1 and 4.2(c) of the Agreement on Safeguards.

(b) That the United States imposition of safeguard measures on flat-rolled carbon steel was inconsistent with the requirement of an increase in imports as a pre-condition to the imposition of such measures under Articles 2.1 and 4.2(a) of the Agreement on Safeguards and Article XIX:1(a) of the GATT 1994.

(c) That the United States failed to establish the required causal link between imports and injury to the domestic industry in the importing country as required by Article 4.2(b) of the Agreement on Safeguards.

(d) That the United States again failed to distinguish between injury caused by imports and injury caused by other factors as required by Article 4.2(b) of the Agreement on Safeguards and ignored the specific findings on this issue in three previous panel and Appellate Body proceedings.

(e) That the United States again failed to meet the parallelism requirement of Articles 2.1 and 2.2 of the Agreement on Safeguards and ignored the specific prior findings of panels and Appellate Body on this issue.

(f) That the United States measures, even if justified, were more restrictive than necessary to address the injury from increased imports, contrary to the requirements of Articles 3.1 and 5.1 of the Agreement on Safeguards.

(g) That the United States imposed safeguard measures on tin mill products without a finding of injury and causation as required by Article 2 of the Agreement on Safeguards.

(h) That the imposition of safeguard measures on tin mill products was also inconsistent with the increased imports requirement of Articles 2.1 and 4.2(a) of the Agreement on Safeguards and Article XIX:1(a) of the GATT 1994 and the requirement to establish a causal link between imports and injury of Article 4.2(b) of the Agreement on Safeguards and to distinguish between injury from imports and injury from other factors.

4.15 Brazil further requests that the Panel make the following recommendations:

(a) That the United States bring its law and practice on increased imports and causation into conformity with the findings of this panel, prior panels, and the Appellate Body.

(b) That the United States immediately terminate safeguard measures on flat-rolled carbon steel products and tin mill products.

(c) That the United States immediately bring its law and practice on the treatment of NAFTA countries into conformity with the parallelism requirements found applicable by this panel, prior panels, and the Appellate Body.

(d) That the Panel make it clear to the DSB the extent to which the inconsistencies in United States actions with its WTO obligations are inconsistencies which have been addressed in one or more prior panel and Appellate Body reports; and that it make clear to the DSB the extent to which the United States actions were blatantly and obviously inconsistent with United States obligations based on the text of the relevant agreements and prior Appellate Body findings.

V. ORGANIZATIONAL MEETING – REQUEST FOR PRELIMINARY RULINGS

5.1 On 29 July 2002, pursuant to Article 12.3 of the DSU, the Panel met with the parties to establish the timetable for these proceedings and to address other organizational matters relating to the panel process.

5.2 During that meeting, the parties raised a series of objections to, and made comments on, the draft timetable that had been proposed and the rules of procedures that the Panel had sent to the parties in advance of the meeting.

5.3 On 31 July 2002, the Panel sent a letter to all parties containing a series of preliminary rulings on organizational matters which are set out below:

> "Following the organizational meeting of the Panel that was held with parties on 29 July 2002, and after careful consideration of the arguments presented by the parties in relation to various aspects of the proposed timetable and working procedures, we would like to inform the parties of the following:
>
> Timetable
>
> The Panel notes at the outset that this case is likely to impose a heavy burden on parties in terms of their obligations to make submissions as set out in the timetable for the proceedings, a copy of which is attached. As is noted at the end of the timetable, the Panel would like to emphasize that the calendar may be changed during the panel process. The Panel would also like to assure parties that it will do its utmost, within reason, to accommodate the parties' concerns and requests in relation to the deadlines set out in the timetable. Some of the requests that have been made by the parties in this respect are already reflected in the attached timetable.
>
> Working procedures
>
> With respect to the request by the United States to require production of non-confidential versions of written submissions within 14 days following the filing of the written submissions, the Panel notes that Article 18.2 of the DSU, upon which paragraph 3 of the Working Procedures is based, does not impose any deadlines with respect to the production of non-confidential summaries. The Panel recalls that, although the production of a non-confidential summary is mandatory upon request by any WTO Member, it is also WTO practice for panels to leave parties to agree on the date for production of such summaries, if any deadline is to apply. Accordingly, the Panel urges the parties to agree as early as possible on deadlines for production of

such non-confidential summaries so as to ensure that appropriate information relating to the present dispute is disclosed to the public.

In relation to the requirement contained in paragraph 5 of the Working Procedures to submit executive summaries, on the basis of discussions with the parties, the Panel has decided to allow the United States to submit executive summaries that should not exceed 30 pages. The first 15 pages should deal with the common claims raised by the complainants. The additional 15 pages would allow the United States to deal with specific claims made individually by one or more of the complainants but which are not common to all the complainants.

The United States has also requested the replacement of the reference to "rebuttal submissions" in paragraph 11 of the Working Procedures with the word "rebuttals". In support of this proposal, the United States makes the argument that the word "submission" is ordinarily taken to mean written submissions. Hence, the reference to "rebuttal submissions" in paragraph 11 would restrict the application of the qualification in that paragraph to rebuttals that have been made in writing and would not extend to rebuttals made orally. The complainants argue in response that the suggested amendment would allow, for example, new arguments and evidence to be adduced orally at the Panel's second substantive meeting.

We recall the comments made by the Appellate Body in the case *Argentina – Textiles and Apparel*[121] relating to what parties may argue and submit in preparation for and during the second substantive meeting:

> It is true that the Working Procedures "do not prohibit" submission of additional evidence after the first substantive meeting of a panel with the parties. It is also true, however, that the Working Procedures in Appendix 3 do contemplate two distinguishable stages in a proceeding before a panel. … Under the Working Procedures in Appendix 3, the complaining party should set out its case in chief, including a full presentation of the facts on the basis of submission of supporting evidence, during the first stage. The second stage is generally designed to permit "rebuttals" by each party of the arguments and evidence submitted by the other parties.

We have, therefore, drafted paragraph 11 to ensure due process and to ensure that new evidence is not adduced at a late stage in the panel process, while simultaneously ensuring that all parties and the Panel are fully informed of all relevant evidence.

With regard to the time by which submissions must be filed with the WTO Dispute Settlement Registrar as provided for in paragraph 17(b) of the Working Procedures, the Panel has decided to require parties to file their written submissions with the Registrar by 5:30 p.m. on the deadlines established by the Panel, except in relations to deadlines falling on a Friday in which case the submissions should be filed by 5:00 p.m. In exceptional circumstances when it is not possible to comply with these time deadlines, the parties may agree upon an alternative arrangement with the Secretary to the Panel (Ms Dariel De Sousa).

[121] WT/DS56/AB/R, para. 79.