

***Dominican Republic – Safeguard Measures on Imports
of Polypropylene Bags and Tubular Fabric***
(DS415, DS416, DS417, DS418)

**ORAL STATEMENT OF THE UNITED STATES
AT THE THIRD PARTY SESSION WITH THE PANEL**

June 16, 2011

1. Mr. Chairman and members of the Panel, it is a pleasure to appear before you today to present the views of the United States as a third party in these proceedings. The written submission of the United States addressed the submissions of the complaining parties, and we will not repeat those points here. Today, the United States will address the Dominican Republic's written submissions, including its request for a preliminary ruling as to whether the *Agreement on Safeguards* ("Safeguards Agreement") and Article XIX of the *General Agreement on Tariffs and Trade 1994* ("GATT 1994") apply to the measures at issue in this proceeding.

Whether the Safeguards Agreement Is Applicable

2. The first issue we would like to discuss today is the applicability of the Safeguards Agreement to the measures at issue.

3. Specifically, the Dominican Republic argues that the Safeguards Agreement does not apply because the increased tariff rates associated with the measures do not exceed the relevant tariff bindings of the Dominican Republic for the product or products in question – *i.e.*, polypropylene bags and tubular fabric.¹

4. Although the United States takes no position on the consistency of the measures at issue with the WTO, it may be relevant to the question of the applicability of the Safeguards

¹ Dominican Republic's request for a preliminary ruling (18 April 2011).

Agreement that the Dominican Republic apparently considered that the measures were safeguards when it imposed them, including notifying them as safeguard measures to the Committee on Safeguards.² It would also appear as a general matter that it would be relevant as to exactly what the measures at issue entail. For example, the Dominican Republic represented that it relied on at least one of the provisions of the Safeguards Agreement in structuring its measures – it relied on Article 9.1 of the Safeguards Agreement as a basis for not applying the increased duties to certain Members.

5. As a result, the Dominican Republic apparently relied on the measures as safeguards to justify not applying its duties on the products at issue in a most-favored-nation manner pursuant to Article I:1 of the GATT 1994 when it exempted imports from certain developing countries (*i.e.*, Mexico, Panama, Colombia, and Indonesia) from the application of the measures. As a result, imports of polypropylene bags and tubular fabric from these countries are treated more favorably than imports from other Members.

6. Accordingly, the question of whether the Dominican Republic needed to suspend its tariff concessions on the products at issue in order to impose the measures at issue is only part of the relevant legal analysis.

Definition of “Producers” Under Article 4.1(c) of the Safeguards Agreement

7. In addition, the United States would like to address the Dominican Republic’s “reservation” of the “right” to apply a minimum transformation or value added test (at para. 251) to define producers for purposes of Article 4.1(c) of the Safeguards Agreement. According to the

² G/SG/N/8/DOM/1/Suppl.2, G/SG/N/10/DOM/1, G/SG/N/11/DOM/1/Suppl.1 (18 October 2010).

Dominican Republic, it reserves the right to exclude entities, such as downstream companies that provide low value-added finishing services, from the universe of producers of like or directly competitive products and, therefore, from the domestic industry.

8. It does not appear that the Dominican Republic applied a minimum transformation or value added test in determining producers for purposes of the measures at issue in this proceeding. As a legal matter, the Panel should not reach hypothetical issues that do not arise from the actual determination of the competent authority that is at issue in a dispute. Such issues would not form part of the “matter” the Dispute Settlement Body has charged the Panel with examining and would therefore be outside the Panel’s terms of reference under Article 7 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes*.

9. In any event, the United States notes that there is nothing in the Safeguards Agreement that prohibits the application of a minimum transformation or value added test for purposes of defining producers under Article 4.1(c) of the Safeguards Agreement.

Conclusion

10. This concludes our statement. Thank you again for this opportunity to express our views.