

BEFORE THE
WORLD TRADE ORGANIZATION

EUROPEAN COMMUNITIES - SELECTED CUSTOMS MATTERS

(WT/DS315)

**ANSWERS OF THE UNITED STATES OF AMERICA
TO THE EUROPEAN COMMUNITIES' QUESTIONS
IN CONNECTION WITH THE FIRST SUBSTANTIVE MEETING**

September 23, 2005

QUESTION 1: *In the United States, matters pertaining to taxes or other charges, or affecting the sale, distribution, transportation, insurance, warehousing inspection, exhibition, processing, mixing or other use of products, are frequently governed by laws or regulations of the 50 states. The content of such laws and regulations may vary considerably. Does the United States consider that the administration of such state laws and regulations is uniform, as required by Article X:3 (a) GATT? Please explain.*

1. The United States notes that the administration of measures of the United States is not at issue in the present dispute. In addition, we note that the question by the European Communities (EC) does not concern customs law, which is the type of measure whose administration is in dispute in these proceedings.¹ Finally, we do not understand the EC to be contending that its substantive customs law varies from place to place within the territory of the European Communities.

QUESTION 2: *Does the United States consider that the US Court of International Trade has provided prompt review in the cases referred to as Exhibits EC-99 to EC-101? Please explain.*

2. Please see the U.S. answer to Panel Question 39.

QUESTION 3: *According to US law (19 US 1515 [a], Exhibit EC-66), US Customs shall normally decide on a protest within two years from the date the protest was filed. Does the United States consider this provision to be in accordance with Article X:3 (b) GATT? Please explain.*

3. As was the case with Question 2, this question appears to be based on the mistaken

¹Moreover, the premise to this question is incorrect, inasmuch as the scope of the laws and regulations to which it refers does not reflect the text of Article X of the *General Agreement on Tariffs and Trade 1994* ("GATT 1994"). The obligation of uniform administration in Article X:3(a) concerns the administration of laws, regulations, decisions and rulings of the kind described in Article X:1. The laws, regulations, decisions and rulings of the kind described in Article X:1, in turn, are not laws, regulations, decisions and rulings pertaining to any "taxes or other charges" – as this question suggests. Nor are they laws, regulations, decisions and rulings affecting the sale, distribution, transportation, insurance, warehousing inspection, exhibition, processing, mixing or other use "of products" generally – as the EC question also suggests. In both cases, rather, Article X:1 establishes a link to "imports or exports," which this question ignores.

premise that the United States is challenging the promptness (or lack of promptness) of review and correction provided by EC member State tribunals. Further, the practices of U.S. Customs are not at issue in the present dispute. Nevertheless, in the interest of illuminating the issues that are in dispute, the United States answers as follows.

4. The United States considers that its system for the review and correction of customs administrative decisions is entirely consistent with its obligations under GATT 1994 Article X:3(b). Under the provision cited in this question, a protest filed by an importer serves to maintain the status quo pending decision. If the importer prevails, he is entitled to accrued interest on any amounts to be refunded. He is thus fully indemnified.

5. Moreover, an importer is not compelled to follow the protest procedure referred to in this question. A trader is entitled to ask for accelerated disposition of a protest by the port. If the port does not allow such a protest within 30 days it is deemed denied; the deemed denial is then ripe for appeal directly to the U.S. Court of International Trade (USCIT) without further administrative action.

QUESTION 4: *Under Article X:3 (b) GATT, tribunals or procedures for the review of customs decisions shall be independent of the agencies entrusted with administrative enforcement. Does the United States consider that the review provided by US Customs is in accordance with this requirement? Please explain.*

6. The United States notes that the review of customs administrative decisions in the United States is not at issue in the present dispute. Nevertheless, in the interest of illuminating the issues that are in dispute, the United States answers as follows.

7. The review provided by U.S. Customs is in accordance with the requirement of Article X:3(b) that a tribunal or procedure for review and correction be independent of the agencies

entrusted with administrative enforcement. The office in Customs that is responsible for reviewing customs administrative actions is the Office of Regulations and Rulings, which is part of Customs and Border Protection headquarters. That office is functionally independent of the ports whose decisions it reviews. It comes under the jurisdiction of the Assistant Commissioner of Customs for the Office of Regulations and Rulings whereas the ports come under the jurisdiction of the Assistant Commissioner for Field Operations. And, as an office that is separate and independent from the ports, the Office of Regulations and Rulings in fact provides for an objective and impartial review of administrative action.

QUESTION 5: *Does the United States consider that Article X:3 (b) GATT requires WTO Members to establish or maintain a tribunal for the review of customs decisions with competence for the entire territory of the WTO Member in question? Does the United States consider that such a tribunal must be a tribunal of first instance, or could it also be a tribunal of higher instance? Please explain.*

8. Please see the U.S. answers to Panel questions 35 and 121.