

UNITED STATES – SUNSET REVIEWS OF ANTI-DUMPING AND COUNTERVAILING DUTIES ON CERTAIN STEEL PRODUCTS FROM FRANCE AND GERMANY

Request for Consultations by the European Communities

The following communication, dated 25 July 2002, from the Permanent Delegation of the European Commission to the Permanent Mission of the United States and to the Chairman of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

On behalf of the European Communities (the "EC"), I hereby request consultations with the United States of America pursuant to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes, Article XXII:1 of the General Agreement on Tariffs and Trade 1994 (the "GATT"), Article 17 of the Agreement on implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the "ADA") and Article 30 of the Agreement on Subsidies and Countervailing measures (the "SCM Agreement").

This request is with respect to anti-dumping and countervailing duties imposed by the United States on imports of corrosion-resistant carbon steel flat products ("corrosion resistant steel") from France (dealt with under US case numbers A-427-808 and C-427-810) and Germany (dealt with under US case numbers A-428-815 and C-428-817) and on imports of cut-to-length carbon steel plate ("cut-to-length steel") from Germany (dealt with under US case numbers A-428-816 and C-428-817). It relates in particular to :

- the final results of the sunset reviews by the United States Department of Commerce (the "DOC") of the anti-dumping duty order on corrosion-resistant steel from France (adopted by DOC notice published in Federal Register No. 65 FR 18050 of 6 April 2000), of the anti-dumping duty orders on corrosion-resistant steel and cut-to length steel from Germany (adopted by DOC notices published in Federal Register No. 65 FR 18051 of 6 April 2000 and Federal Register No. 65 FR 18055 of 6 April 2000, respectively) and of the countervailing duty order on corrosion-resistant steel from France (adopted by DOC notice published in Federal Register No. 65 FR 18063 of 6 April 2000)
- the determinations of the United States International Trade Commission (the "ITC") on the sunset reviews of the anti-dumping and countervailing duties on cut-to-length steel from Germany and on corrosion resistant steel from France and Germany (USITC Publication 3364, November 2000, Federal Register No. 65 FR 75301 of 1 December 2000)
- and the DOC notice of the continuation of the anti-dumping and countervailing duty orders on cut-to-length steel from Germany and on corrosion resistant steel from France and Germany (Federal Register No. 65 FR 78469 of 15 December 2000).

It also covers certain provisions and procedures contained in Sections 751 (c), 752 of the Tariff Act of 1930 (the "Act"), in the implementing regulations¹ and in the Policy Bulletin² issued by the DOC.

The EC considers that these determinations are erroneous and based on deficient rulings, procedures and provisions pertaining to the Act and related regulations. The matters, which the EC would like to raise in the course of the consultations include, but are not limited to, the following:

- (1) the presumption of continuation or recurrence of dumping or countervailable subsidy with respect to an interested party when this latter has waived its participation in a review conducted by the DOC (section 751 (c)(4)(B) of the Act);
- (2) the specific 0.5% *de minimis* dumping margin in a sunset review (section 752 (c) (4) (B) of the Act, DOC regulation 19 CFR 351.106(c), section II.A.5 of the DOC Sunset Policy Bulletin);
- (3) the specific conditions for assessing cumulatively the volume and effect of imports of the subject merchandise from all subject countries in a sunset review (section 752 (a) (7) of the Act);
- (4) the assessment of the likely volume of imports in a sunset review (section 752 (a) (2) of the Act) and the failure to determine that imports from France or Germany would be likely to rise above their historical and current negligible volume;
- (5) the failure of the ITC to use publicly available information to account for the missing information due to the limited cooperation from the domestic producers, in particular from the service centers;
- (6) the decision of the ITC to assess the likely impact of French and German imports cumulatively with the imports from "all subject countries".

The EC is concerned that the above determinations, procedures and provisions of the Act and related regulations appear to be, in several respects, not in conformity with the obligations of the United States under the GATT, the ADA and the SCM Agreement, in particular under:

- Articles 1, 2, 3, 5, 6 (including annex II), 11.1, 11.3, 11.4 and 18.3 of the ADA;
- Articles 10, 11, 12, 15, 21.1, 21.3, 21.4 and 32.3 of the SCM Agreement;
- Articles VI and X of the GATT;
- Article XVI:4 of the Marrakech Agreement establishing the WTO, Article 18.4 of the ADA and Article 32.5 of the SCM Agreement.

We reserve the rights to raise additional claims and legal matters regarding the legislation during the course of the consultations.

¹ 19 CFR Section 351

² Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, Federal Register No. 63 FR 18871 of 16 April 1998

We look forward to receiving your reply to this request to setting a mutually convenient date for these consultations.
