

UNITED STATES - ANTI-DUMPING MEASURES ON IMPORTS OF SOLID UREA
FROM THE FORMER GERMAN DEMOCRATIC REPUBLIC

Request for Consultations by the European Community

The following communication received on 28 November 1996, from the Permanent Delegation of the European Commission to the Permanent Mission of the United States, is circulated in accordance with Article 4.4 of the DSU.

In accordance with Article 17.3 of the Agreement on Implementation of Article VI of the GATT 1994 and with Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes, the European Community requests consultations with the United States of America concerning the following matter:

Anti-dumping duties imposed on exports of solid urea from the former German Democratic Republic; termination of changed circumstance review and continuation as anti-dumping duty administrative review.

1. On 1 May 1995, the US Department of Commerce (DoC) published the provisional results of a changed circumstance review, initiated in February 1992 and carried out to assess the impact of the reunification of Germany on the anti-dumping duty order covering solid urea from the former GDR which had been imposed in 1987. Although the DoC decided not to confirm the extension of the duties to shipments from the whole reunified Germany it maintained the order on the five "Länder" which formerly constituted the territory of the GDR (the "five States"). The DoC simultaneously opened a changed circumstances administrative review on shipments from these five States solely for the purpose of assessing a new cash deposit rate using a market economy analysis for the determination of normal value. This review was terminated in March 1996 because there were no shipments of solid urea from the territory of the former GDR.

2. On 30 May 1996, the DoC initiated another changed circumstances review in order to investigate shipments made after 1 May 1995 and before 31 May 1996. During this period one shipment from the sole producer of solid urea in the "five States" took place. Subsequently questionnaires were issued and the exporter, SKW, fully cooperated in the proceedings.

However, on 20 September 1996, the DoC terminated this changed circumstances review without a final decision. At the same time the DoC proceeded with an administrative review which had been initiated on request of petitioners on 15 August 1996. DoC justifies these decisions on the basis that both reviews substantially overlap and that in both reviews essentially the same analysis would have

to be conducted. It is important to note, however, that under US law the DoC does not appear to have the authority to revoke an anti-dumping order on the basis of one administrative review only: three successive such reviews, confirming the absence of dumping, appear to be necessary instead for such a revocation to take place.

3. The European Community is very concerned about this course of action. The above-mentioned decisions prove that the United States is not prepared to take into account the radical changes which came about with the reunification of Germany.

By maintaining the order against the five States of the former GDR the DoC has ignored *de jure* and *de facto* the full integration of the new States into the reunified Federal Republic of Germany, and thus the economic integration of the companies in the new States into the German market economy.

The decision not to take into account the complete conversion of a territory from a non-market economy into a market economy and the full privatization of the exporting enterprises is a violation of the United States' obligation under Article 11 of the Agreement. The administrative review can only result in the recalculation of the deposit rate and not, as would be warranted, the kind of review which should lead to a complete revocation of the order, if no dumping is found. It follows that the DoC is denying the exporter concerned the right to demonstrate that, because of a change in its economic structure and environment, its export sales are not (or no longer) made at dumping prices and that this demonstration should therefore lead to a revocation of the anti-dumping order.

Instead the DoC is only prepared to calculate a new dumping rate, which, even if it were zero, would not lead to a revocation of the anti-dumping order, which would be maintained as if the circumstances had not changed significantly. This in spite of the fact that the footnote to Article 11.2 indicates in a clear manner that the mere recalculation of a margin within an administrative review does not by itself constitute a review within the meaning of Article 11.

4. In any event, the division of the territory of a signatory of the Agreement is in contradiction with its Article 9.2 which provides that, when anti-dumping measures are imposed, the investigating authorities must name the supplier concerned and/or the country concerned. It must be concluded from this requirement, that duties are applicable to imports from countries and not regions or other parts of a country.

5. Moreover, it appears that US customs, since the provisional decision of 1 May 1995 continues to suspend liquidation on entries of the product concerned from all exporters situated in the territory of the former Federal Republic of Germany. The suspension of liquidation has to be regarded as a provisional measure and the Community would like to request explanation from the United States on what legal basis such measures are imposed.

6. Since the unification of Germany and the privatization of the exporter concerned, more than five years have lapsed during which the United States has consistently denied the right to have changed circumstances taken into account in a proper changed circumstances review. This is why the European Community is requesting consultations on this matter.

The European Community reserves its rights to raise to raise any other issue concerning this case during the coming consultations.

The Community considers this to be a matter of urgency and would, therefore, request consultations to take place at the earliest opportunity.