

**UNITED STATES – COUNTERVAILING MEASURES CONCERNING
CERTAIN PRODUCTS FROM THE EUROPEAN COMMUNITIES**

Recourse to Article 21.5 of the DSU by the European Communities

Request for the Establishment of a Panel

The following communication, dated 16 September 2004, from the delegation of the European Communities to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 21.5 of the DSU.

On 8 January 2003, the Dispute Settlement Body (the "DSB") adopted the Appellate Body Report and the Panel Report, as modified by the Appellate Body, in the case WT/DS212 *"United States – Countervailing Measures concerning Certain Products from the European Communities"*. The resulting DSB rulings included the recommendation that the United States brings its administrative practice (the "same person" methodology) and the twelve individual determinations found to be inconsistent with the Agreement on Subsidies and Countervailing Measures (the "SCM Agreement") into conformity with its WTO obligations.

On 27 January 2003, the United States informed the DSB that it intended to implement the recommendations and rulings of the DSB in a manner consistent with its WTO obligations. The parties agreed under Article 21.3(b) of the DSU that the United States had until 8 November 2003 to implement the Appellate Body decision.

In June 2003 the United States finalized a new "change-in-ownership" methodology, published in the US Federal Register (*"Notice of final modification of Agency practice under Section 123 of the Uruguay Round Agreement"* published on the US Federal Register on 23 June 2003 at 68 FR 120 p. 37125).

The new methodology was then applied to the twelve individual determinations brought by the European Communities before the WTO. The United States issued its final determinations on these determinations on 7 November 2003 (published on the US Federal Register on 17 November 2003 at 68 FR 221 p. 64858). In the DSB meeting of 7 November 2003, the United States stated that it had fully complied with the DSB recommendations and rulings on this issue. The EC did not agree.

On 17 March 2004, the EC initiated the procedures under Article 21.5 of the Understanding on Rules and procedures Governing the Settlement of Disputes (DSU) by requesting the United States to enter into consultations. The request was circulated in document WT/DS212/14 of 19 March 2004. Consultations were held in videoconference on 24 May 2004. Consultations have allowed a better understanding of respective positions but have failed to settle the dispute.

Accordingly, "there is a disagreement as to the existence or consistency with a covered agreement of measures taken to comply with the recommendations and rulings" of the DSB. Pursuant to Article 6 and Article 21.5 of the DSU, Article 30 of the Agreement on Subsidies and Countervailing Measures (*SCM Agreement*), and Article XXIII of the General Agreement on Tariffs and Trade 1994 (GATT 1994), the EC hereby requests the establishment of a panel.

In particular, the EC claims and requests the Panel to find the following:

1. That in the sunset review *Certain Corrosion-Resistant Carbon Steel Flat Products from France* (C-427-810) (Case No. 9), the United States failed to properly examine the existence, continuation or likelihood of recurrence of subsidization. In particular, with regard to the privatization concerned, it improperly analysed whether the price for employees and retirees' shares constituted a subsidy or that it led to any continuation of a countervailable subsidy¹. This is inconsistent with Articles 10, 14, 19.4, 21.1 and 21.3 of the *SCM Agreement* and Article VI: 3 of GATT 1994.
2. That in the following sunset reviews:
 - *Cut-to-Length Carbon Steel Plate from United Kingdom* (C-412-815) (Case No. 8)²;
 - *Cut-to-Length Carbon Steel Plate from Spain* (C-469-804) (Case No. 11)³,

The United States failed to properly determine whether, in these cases, there was continuation or recurrence of subsidization and injury, because it did not examine the nature of the privatizations in question and their impact on the continuation of the alleged subsidization. This is inconsistent with Articles 10, 14, 19.4, 21.1, and 21.3 of the *SCM Agreement* and Article VI:3 of GATT 1994.

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The European Communities continues to reserve its rights in respect of all other aspects of the United States' purported compliance with its obligations in this case. In particular, the European Communities reserves its right to challenge the revised methodology in the light of the eventual outcome of a number of court challenges seeking to overturn it.

The EC requests that the Panel be established with the standard terms of reference set out in Article 7 of the DSU.

¹ See unpublished memorandum of 23 October 2003.

Note: this memorandum and the other listed below are available at the US Department of Commerce site at <http://ia.ita.doc.gov/download/section129/section129-index.html>.

² See unpublished memorandum of 24 October 2003.

³ See unpublished memorandum of 24 October 2003.