

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

Status Report by the United States

The following communication, dated 27 October 2003, from the Permanent Mission of the United States to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 21.6 of the DSU.

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Status Report Regarding Implementation of the  
Recommendations and Rulings of the DSB in  
*United States – Countervailing Measures Concerning Certain Products  
from the European Communities (WT/DS212)*

1. The United States submits this report in accordance with Article 21.6 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU").
2. *United States - Countervailing Measures Concerning Certain Products from the European Communities* ("Certain Products") involved a challenge by the European Communities ("EC") to twelve different countervailing duty determinations by the US Department of Commerce ("Commerce") involving different products from the EC. Each of these determinations involved the question of whether a subsidized, government-owned company remains subsidized after it is "privatized". The EC claimed that the method used in these determinations – known as the "same-person" method – was inconsistent with various provisions of the *Agreement on Subsidies and Countervailing Measures* ("SCM Agreement"). (The twelve determinations are listed in Annex A to the Panel's report.)
3. The Dispute Settlement Body ("DSB") adopted its recommendations and rulings on 8 January 2003. On 10 April 2003, the United States and the EC reached an agreement that the reasonable period of time for implementing the DSB's recommendations and rulings would be ten months, a period ending on 8 November 2003.
4. The United States is implementing the DSB's recommendations and rulings in two stages. First, Commerce modified its method for dealing with the privatization of subsidized companies. In accordance with the transparency requirements of US law, on 21 March 2003, Commerce published a *Notice of Proposed Modification of Agency Practice Under Section 123 of the Uruguay Round Agreements Act and Request for Public Comment*, 68 Fed. Reg. 13,897. After analyzing the comments it received – which included comments from representatives of both domestic and foreign firms – Commerce published a *Notice of Final Modification of Agency Practice Under Section 123 of the Uruguay Round Agreements Act*, 68 Fed. Reg. 37,125 (23 June 2003) ("Final Modification").

5. In the *Final Modification*, Commerce announced a new methodology based on certain rebuttable presumptions that reflected the DSB findings in *Certain Products*. Commerce's "baseline presumption" is that allocable, non-recurring subsidies can benefit the recipient over a period of time ("allocation period") normally corresponding to the average useful life of the recipient's assets. This presumption can be rebutted by a demonstration that during the allocation period, a privatization occurred in which the government sold its ownership of all, or substantially all, of a company or its assets, retaining no control of the company or its assets, and that the sale was an arm's-length transaction for fair market value. The *Final Modification* describes the criteria Commerce will consider in determining whether a privatization transaction is at "arm's length" and for "fair market value."

6. The *Final Modification* goes on to provide that, consistent with the DSB's findings, the presumption of subsidy extinguishment arising from a privatization at arm's length and for fair market value can be rebutted. Accordingly, the *Final Modification* sets forth a non-exhaustive list of factors that Commerce will examine for purposes of determining whether a company continues to benefit from prior subsidies, notwithstanding its privatization in an arm's-length, fair market value transaction.

7. Once Commerce had modified its privatization methodology, it then began the second step of the implementation process, which was to issue revised, and WTO-consistent, redeterminations with respect to the twelve determinations at issue in *Certain Products*.

8. On 10 August 2003, the US Trade Representative made a written request to the Secretary of Commerce to issue determinations under section 129(b) of the Uruguay Round Agreements Act that would render Commerce's twelve determinations not inconsistent with the findings in the *Certain Products* dispute. Commerce issued questionnaires and supplemental questionnaires to the respondent parties involved in each of the twelve determinations. Between 15 September and 1 October, Commerce released to the participating parties a draft redetermination with respect to each of the twelve determinations.

9. In all but three of these draft redeterminations, Commerce performed a new analysis of the privatization issue based on the application of its new methodology to the evidence in the record of the particular section 129 case. In the other three redeterminations, all of which were five-year (or "sunset") reviews, Commerce assumed *arguendo* that the allocable pre-privatization subsidies were extinguished by the privatization transaction, and found that its determination of likelihood of continuation or recurrence of a countervailable subsidy would be the same regardless of whether the allocable, pre-privatization subsidies had been extinguished. With respect to the sunset reviews involving merchandise from the United Kingdom and Germany, there were other subsidized companies subject to the countervailing duty orders that were not affected by the privatization transactions. With respect to the sunset review involving merchandise from Spain, the privatized company continued to receive recurring subsidies after the privatization.

10. With respect to each of the draft redeterminations, Commerce received comments from the parties involved. After considering and analyzing the comments from the parties, on 24 October 2003, Commerce issued final redeterminations in each of the twelve cases. In all twelve, Commerce considered whether and how the application of its new, WTO-consistent privatization methodology would change Commerce's original determination. In all but three of the cases, Commerce found – or assumed *arguendo* – that the privatization transaction was at arm's length and for fair market value. In no case did Commerce find that the resulting presumption of subsidy extinguishment had been overcome.

11. In the three cases involving steel products from France, Commerce determined that a portion of the privatization was not at arm's length and for fair market value, because, among other reasons, the buyers and sellers were related and the shares were sold at a discount. This portion of the privatization involved the sale of certain shares of the subsidized company to the company's employees.

12. These determinations will be available to WTO Members and the general public on Commerce's Internet website at <http://ia.ita.doc.gov>.

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