

Original: English

UNITED STATES – ANTI-DUMPING DUTIES ON SEAMLESS PIPE FROM ITALY

Request for Consultations by the European Communities

The following communication, dated 5 February 2001, 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.

The European Communities wish to convey to the United States of America a request for consultations under Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (the DSU), Article XXII:1 of GATT 1994 and Article 17 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the Anti-Dumping Agreement).

This request is with respect to anti-dumping duties imposed by the United States on imports of seamless line and pressure pipe ("*seamless pipe*") from Italy, dealt with under US case number C-475-814. It relates in particular to the final results of a sunset review of the above measure, carried out by the US Department of Commerce (DOC) and published in the US Federal Register No. 65 FR 66708 of 7 November 2000. It also covers certain aspects of the procedures followed by the DOC for initiating sunset reviews which are contained in Section 751 c) of the Tariff Act of 1930 and in the implementing regulations issued by the DOC¹.

Continuation or recurrence of dumping

In the above decision, the DOC found that the revocation of the anti-dumping order is likely to lead to the continuation of dumping. The European Communities consider that this finding is inconsistent with the obligations of the United States under the Anti-Dumping Agreement and, in particular, in breach of Articles 5.8, 11.1 and 11.3 thereof.

This anti-dumping measure was first imposed by DOC in 1995, as result of an investigation initiated prior to the entry into force of the WTO Agreement. The original rate of anti-dumping duty was 1.84% *ad valorem*, later reduced to 1.27% by effect of a remand issued by the Court of International Trade on 10 June 1998. In view of the provisions of Article 5.8 of the Anti-Dumping Agreement, it would not have been possible to impose this measure of less than 2% if the investigation had been governed by the Anti-Dumping Agreement. In the sunset review, the DOC has found that dumping will continue at a rate of 1.27%.

¹ 19 CFR Section 351

As with the rate from the original investigation, this dumping rate is below the *de minimis* threshold applicable in a new investigation and immediate termination would be required under Article 5.8 of the Anti-Dumping Agreement, since the amount of dumping is below 2%. The European Communities consider that the *de minimis* threshold in Article 5.8 applies also in sunset reviews of anti-dumping measures. These reviews have the same effect as a new investigation; they enable anti-dumping duties to be re-imposed and maintained for a further period of five years. In this respect they are fundamentally different from the retrospective duty assessment mentioned in footnote 22 of the Anti-Dumping Agreement (the so-called "administrative reviews" in US practice), in which the DOC maintains the 0.5% *de minimis* threshold which appears to have been erroneously used by DOC in this case.

Under Article 11.3 of the Anti-Dumping Agreement, anti-dumping duties have to be terminated after five years, unless the investigating authorities determine that their expiry would be likely to lead to (i.e. cause), *inter alia*, the continuation or recurrence of dumping. It is therefore for the DOC to make a positive demonstration to this effect. In fact, the DOC has not made such a demonstration; it has merely found that dumping of less than the *de minimis* level provided for in Article 5.8 will continue. The European Communities do not consider that the presence of a level of dumping which would automatically lead to the termination of a new investigation can be sufficient to warrant a further five years of anti-dumping measures in a sunset review, unless it can be demonstrated, on the basis of positive evidence, that there is a likelihood of the amount of dumping increasing. In the present case, the DOC has demonstrated no evidence of any such increase.

Initiation of sunset review

The European Communities also consider that the procedure used by DOC for initiating sunset reviews is inconsistent with Articles 11.1, 11.3 and 18.4 of the Anti-Dumping Agreement and with Article XVI:4 of the Agreement establishing the World Trade Organization.

Article 11.3 of the Anti-Dumping Agreement states that sunset reviews may be initiated either on the initiative of the investigating authority or upon a "duly substantiated request" made by or on behalf of the domestic industry. In accordance with its regulations², the DOC (which is responsible for the investigation of dumping in such cases) initiates sunset reviews on its own initiative, without requiring a duly substantiated request from the domestic industry. The regulations³ provide only that a "domestic interested party" must file a notice of intent to participate within 15 days of the initiation. Such a notice is required to contain only administrative information⁴. All interested parties must file a "substantive response" within 30 days of initiation.

The European Communities consider that the DOC is effectively by-passing its obligation to initiate a sunset review on the basis of positive evidence. Article 11.3 provides for the expiry of

² Section 351.218 (c)

³ Section 351.218 (d)

⁴ Section 351.218 (d) (1) (ii). "Content of Notice of Intent to Participate. Every notice of intent to participate in a sunset review must include a statement expressing the domestic interested party's intent to participate in the sunset review and the following information: (A) The name, address, and phone number of the domestic interested party (and its members, if applicable) that intends to participate in the sunset review and the statutory basis (under section 771(9) of the Act) for interested party status; (B) A statement indicating whether the domestic producer: (1) Is related to a foreign producer or to a foreign exporter under section 771(4)(B) of the Act; or (2) Is an importer of the subject merchandise or is related to such an importer under section 771(4)(B) of the Act; (C) The name, address, and phone number of legal counsel or other representative, if any; (D) The subject merchandise and country subject to the sunset review; and (E) The citation and date of publication in the Federal Register of the notice of initiation."

anti-dumping measures after five years, *unless* a review establishes that the expiry of the duty would be likely to lead to continuation or recurrence of dumping. This creates a presumption against the continuation of such measures. It follows that, in order to justify the *initiation* of such a review, the domestic industry (defined according to Article 4 of the Anti-Dumping Agreement) must, in its "duly substantiated request" provide positive evidence as to why dumping is likely to continue or recur.

Therefore, if an investigating authority chooses to initiate a review under Article 11.3 on its own initiative, this can only be done on the basis of a similar level of positive evidence as is required from the domestic industry. Any other interpretation of this provision would effectively make the initiation of sunset reviews automatic, and change the burden of proof imposed by the provisions of Article 11.3.

This is exactly what the DOC has done. The European Communities consider that by self-initiating sunset reviews without positive evidence, and by not requiring any such positive evidence from its domestic industry for initiation, the DOC is unreasonably shifting the burden of proof in sunset reviews to exporters. Although "domestic interested parties" are required to file "substantive responses" within 30 days of initiation, this obligation is *in parallel* with "substantive responses" required from exporters, who are in fact required to provide more information than domestic parties⁵. In this way, DOC has put *all* respondents on the same footing and has removed the appropriate threshold for initiation foreseen by Article 11.3.

In *Seamless pipes from Italy*, the sunset review was initiated by DOC, on its own initiative, on 3 July 2000.

We look forward to receiving your reply to this request and to fixing a mutually acceptable date for consultations.

⁵ Section 351.218(d) (3).