

**UNITED STATES – CONTINUED DUMPING AND
SUBSIDY OFFSET ACT OF 2000**

Recourse by the European Communities to Article 22.2 of the DSU

The following communication, dated 15 January 2004, from the delegation of the European Commission to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 22.2 of the DSU.

The European Communities requests that a special meeting of the Dispute Settlement Body be held on 26 January 2004 in order to consider the following agenda item:

United States – Continued Dumping and Subsidy Offset Act of 2000 : Recourse by the EC to Article 22.2 of the Understanding on Rules and Procedures Governing the Settlement of Disputes

The Panel and the Appellate Body found that the Continued Dumping and Subsidy Offset Act of 2000 (CDSOA) was inconsistent with the United States' obligations under the General Agreement on Tariffs and Trade 1994 (GATT 1994), the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Anti-Dumping Agreement), the Agreement on Subsidies and Countervailing Measures (SCM Agreement) and the Marrakesh Agreement establishing the World Trade Organisation (WTO Agreement), namely that:

- the CDSOA is a non permissible specific action against dumping or a subsidy contrary to Article 18.1 of the Anti-Dumping Agreement, Article 32.1 of the SCM Agreement and Articles VI:2 and VI:3 of GATT 1994;
- consequently, that the United States has failed to comply with Article 18.4 of the Anti-Dumping Agreement, 32.5 of the SCM Agreement and Article XVI:4 of the WTO Agreement; and
- to the extent that the CDSOA is inconsistent with provisions of the Anti-Dumping and SCM Agreements, the CDSOA nullifies or impairs benefits accruing to Complaining Parties under those Agreements.

On 27 January 2003, the Dispute Settlement Body (DSB) adopted the Appellate Body report and the Panel report as modified by the Appellate Body report. The United States stated that it intended to implement the recommendations and rulings of the DSB.

An arbitration under Article 21.3(c) of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) subsequently determined that the reasonable period of time for the United States to implement the DSB recommendations and rulings would expire on 27 December 2003.

The United States has failed to implement the recommendations and rulings of the DSB with respect to the CDSOA by that date, and no mutually acceptable arrangement has yet been made. Therefore, under Article 22.2 of the DSU, the European Communities is entitled to request authorization from the DSB to suspend the application to the United States of concessions or other obligations under the covered agreements.

Pursuant to Article 22.2 of the DSU, the European Communities requests the authorization of the DSB to suspend the application to the United States of tariff concessions and related obligations under GATT 1994 in an amount that will be determined every year by the amount of offset payments made to affected domestic producers in the latest annual distribution of anti-dumping and countervailing duties under the CDSOA, as explained below.

The European Communities intends to impose an additional import duty above bound custom duties on a final list of products originating in the United States. In accordance with Article 22.4 of the DSU, every year, the rate of the additional duty will be set so as to collect over one year additional duties equivalent to an amount established by adding (i) the amount of offset payments attributed to duties collected on products from the European Communities and (ii) a proportionate amount of the balance of total offset payments less the offset payments attributed to duties collected on products from other members that are authorized by the DSB to suspend concessions or other obligations in this dispute. Every year, prior to the adjustment of the duty, the European Communities will notify to the DSB a detailed list indicating the level of the additional duty on the selected products in the light of the changes in the level of the disbursements made under the CDSOA. The list of products subject to increased import duties will not be changed.
