

**UNITED STATES – ANTI-DUMPING MEASURES ON IMPORTS OF
STAINLESS STEEL SHEET AND STRIP IN COILS FROM ITALY**

Request for Consultations by the European Union

The following communication, dated 1 April 2011, from the delegation of the European Union to the delegation of the United States and to the Chairperson of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

Pursuant to Article 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"), Article XXII:1 of the *General Agreement on Tariffs and Trade 1994* ("GATT 1994"), and Article 17.3 of the Agreement on Implementation of Article VI of the GATT 1994 ("*AD Agreement*"), the European Union hereby requests consultations with the United States of America ("United States") concerning anti-dumping measures imposed on imports of stainless steel sheet and strip in coils ("stainless sheet and strip") from Italy (dealt with under U.S. case number A-475-824), concerning the sole exporter of the product concerned from Italy, Thyssen Krupp Acciai Speciali Terni S.p.A. ("TKAST").

1. Subject of consultations

This request for consultations is with respect to the following measures:

- the final determination of the United States Department of Commerce ("USDOC") in the original investigation of imports of stainless sheet and strip from Italy (adopted by USDOC notice published in Federal Register No. 64 FR 30750 of 8 June 1999), as amended in the amended final determination (adopted by USDOC notice published in Federal Register No. 64 FR 40567 of 27 July 1999); ("The original investigation determination"),
- the final determination of the USDOC in the Section 129 proceeding regarding the anti-dumping duty Order on imports of stainless sheet and strip from Italy (adopted by USDOC notice published in Federal Register No. 72 FR 54640 of 26 September 2007); ("The Section 129 determination"),
- A475, Section 129 Determination ; Memorandum of 15 October 2007 from Stephen Bailey to Richard O. Weible, Director, Office 7, Import Administration, USDOC ("The Ministerial Error Determination"),
- the preliminary results of the USDOC in the second five-year (sunset) review of the anti-dumping duty order regarding imports of stainless sheet and strip from Italy

(adopted by USDOC notice published in Federal Register No. 75 FR 81214 of 27 December 2010); ("The Preliminary Sunset Review Results").

2. The facts

- (a) On 8 June 1999, the USDOC published a final determination in its investigation of stainless sheet and strip from Italy in which it calculated a dumping margin of 11.17% for the sole exporter of the product concerned, Thyssen Krupp Acciai Speciali Terni S.P.A. ("TKAST").¹ On 27 July 1999, USDOC amended its final determination to reflect a revised dumping margin of 11.23%. For the purposes of its margin calculation, USDOC applied its "zeroing" methodology, which inflated the margin of dumping substantially. In addition, USDOC applied a "facts available" percentage rate to the purported average unit value of 84 U.S. sales (the "84 sales") of the exporter in question.
- (b) In calculating the average unit value of the "facts available" sales, the United States authorities erroneously inverted the numerator and denominator of the ratio: instead of dividing total value by total volume, the United States divided total volume by total value, a clear mathematical error. This error artificially inflated the unit value and therefore the amount of dumping. On the basis of the zeroing methodology and the arithmetic error, an anti-dumping order was established pursuant to which anti-dumping duties were collected. Correction of the zeroing methodology and the mathematical error would have resulted in a margin of dumping below *de minimis*.
- (c) To simplify, the above calculation error has resulted in the imposition of an anti-dumping duty as of 1999 until the present day, while the correct calculation would have meant that no anti-dumping duty would have even been imposed once zeroing was removed from the calculation of the dumping margin.
- (d) The European Union challenged the use of zeroing in this investigation in the WTO Dispute Settlement case *United States – Laws, Regulations and Methodology for Calculating Dumping Margins* ("Zeroing") ("DS294"). The United States initiated proceedings under section 129 of the Uruguay Round Agreements Act ("Section 129") in response to the Report of the Panel as modified by the Appellate Body in DS294. In the Section 129 Preliminary Determination regarding stainless sheet and strip from Italy, USDOC calculated a revised weighted-average margin for the exporter of 2.11 per cent.² A margin of less than 2 per cent would have resulted in the revocation of the Order. The European Union and the exporter pointed out the mathematical error which, in this case, spelled the difference between a negative and affirmative determination. The United States authorities refused to correct the error in the Section 129 determination. TKAST made a claim of a ministerial error in the calculation of the margin of dumping and on 15 October 2007, the United States refused again, in the Ministerial Error Determination, to correct the error.

¹ At the time of the original determination, the exporter was known as Acciai Speciali Terni S.P.A.

² A-421-807, A-427-820, A-428-830, A-475-829, A-412-822, A-401-806, A-469-807, A-475-820, A-423-808, A-475-824, A-475-818, A-475-826, A-412-818, A-427-816, A-427-814

Section 129 Determinations 26 February 2007 Memorandum from Stephen Claeys, Deputy Assistant Secretary for Import Administration to David Spooner, Assistant Secretary for Import Administration.

- (e) The second five-year ("sunset") review in this case was initiated on June 1, 2010. In sunset reviews, the USDOC determines, whether dumping is likely to resume or continue if the Order is revoked. In carrying out such a review, the USDOC considers margins of dumping in the original investigation (as modified in a later Section 129 determination) and in periodic administrative reviews. In the preliminary results of the second sunset review regarding stainless sheet and strip from Italy, dated 21 December 2010, the United States determined that dumping was likely to continue or recur if the anti-dumping order were revoked, notably because of the dumping margin calculated in the original investigation, as amended by the Section 129 determination, and subsequent administrative reviews. USDOC relied on the original investigation dumping margin, as recalculated in the Section 129 Determination, which was only above *de minimis* because the above-referenced mathematical error was not corrected.

3. Matters at issue

The matters, which the European Union would like to raise in the course of the consultations include, but are not limited to, the following:

- (a) the impact of the arithmetic error identified above in the original investigation determination regarding stainless sheet and strip from Italy,
- (b) the impact of the arithmetic error identified above in the Section 129 determination regarding stainless sheet and strip from Italy,
- (c) in the second sunset review of the anti-dumping order regarding stainless sheet and strip from Italy, the use of the dumping margin from the original investigation, calculated without the correction of the known arithmetic error, resulting in the determination that revocation of the anti-dumping order would be likely to lead to continuation or recurrence of dumping.

The European Union is concerned that the measures listed above appear to be, in several respects, not in conformity with the obligations of the United States under the GATT 1994, and the *AD Agreement*, in particular under:

- Articles 2, 5.8, 6.8, 9.3, 11.1, 11.2, and 11.3 of the *AD Agreement*,
- Article VI:2 of the GATT 1994.

The European Union reserves the right to address additional measures and claims under the WTO Agreement during the course of the consultations.

The European Union looks forward to receiving in due course a reply from the United States to this request. The European Union is ready to consider with the United States mutually convenient dates to hold consultations in Geneva.
