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

Request for Consultations by the European Communities

The following communication, dated 10 November 2000, 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 request consultations with the Government of the United States of America under Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes, Article XXII of the General Agreement on Tariffs and Trade 1994 and Article 30 of the Agreement on Subsidies and Countervailing Measures (the SCM Agreement).

This request relates to the continued application by the United States of countervailing duties based on an irrebuttable presumption that non-recurring subsidies granted to a former producer of goods, prior to a change of ownership, "pass through" to the current producer of the goods following the change of ownership. This is what the US Department of Commerce (DOC) calls its "*change in ownership"* methodology[1].

This approach was found by the WTO Appellate Body in "United States – Imposition of Countervailing duties on Certain Hot-Rolled Lead and Bismuth Carbon Steel Products Originating in the United Kingdom" (AB-2000-1), to be inconsistent with the SCM Agreement, since the US had not properly examined whether the financial contributions made prior to the change of ownership conferred a benefit to the current producer of the subject goods. The Appellate Body also confirmed that a change of ownership at fair market value eliminated the benefit of any prior subsidies to the privatized company.[2]

In the light of these findings, the European Communities consider that the continued application of the "*change in ownership"* methodology, and the continued imposition of duties based on it, are in breach of Articles 10, 19 and 21 of the SCM Agreement, because there is no proper determination of a benefit to the producer of the goods under investigation, as required by Article 1.1(b) of the SCM Agreement.

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[1] The currently applicable version of this methodology was developed by the US in 1993 and is contained in the General Issues Appendix (GIA) attached to the DOC notice of *Final Countervailing Duty Determination; Certain Steel Products from Austria, et.al.*, 58 FR 37217 (July 9, 1993).

[2] The WTO panel, in paragraph 8.2 of its report WT/DS138/R of 23 December 1999, concluded that: *"….we note that the United States has continued to apply its change-in-ownership methodology during the course of the present dispute. We would suggest that the United States takes all appropriate steps, including a revision of its administrative practices, to prevent the aforementioned violation of Article 10 of the SCM Agreement from arising in the future".*

The European Communities refer to, and include in this request for consultations, 14 US countervailing duty measures where this illegal "*change in ownership"* methodology was applied; the specific allegations relating to each measure on which consultations are requested are set out in the attached text. All these cases involve alleged non-recurring subsidies granted to firms prior to a change of ownership. The measures in question are listed in the table below.

Furthermore, the European Communities consider that if the US had properly examined the nature of the change of ownership in each of the cases below, it would have found that it took place for fair market value, and that in such a case no benefit, as defined by Article 1.1(b) of the SCM Agreement read in conjunction with Article 14, was conferred on the producers of the goods subject to the duties by previous financial contributions from the Government to other producers. In these circumstances, the amount of countervailing duty would have been greatly reduced, or in some cases, zero.

This request is without prejudice to the issue of the countervailability of certain government measures which have been subjected to countervailing duties by the US in the cases below.

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

WTO request for consultations – List of specific measures in question

US Change-in-Ownership methodology

Original imposition of countervailing duties (post-WTO measures)

1	Stainless Sheet and Strip in Coils from France	C-427-815
2	Certain Cut-to-Length Carbon Quality Steel from France	C-427-817
3	Certain Pasta from Italy	C-475-819
4	Stainless Steel Sheet and Strip in coils from Italy	C-475-821
5	Certain Stainless Steel Wire Rod from Italy	C-475-823
6	Stainless Steel Plate in coils from Italy	C-475-825
7	Certain Cut-to-length Carbon-quality steel plate from Italy	C-475-827

Administrative reviews

8	Cold-Rolled Carbon Steel Flat Products from Sweden	C-401-401
9	Cut-to Length Carbon Steel Plate from Sweden	C-401-804
10	Grain-oriented electrical steel from Italy *	C-475-812

Sunset reviews

11	Cut-to-Length Carbon Steel Plate from United Kingdom	C-412-815
12	Certain Corrosion-Resistant Carbon Steel Flat Products from France	C-427-810
13	Cut-to-Length Carbon Steel Plate from Germany	C-428-817
14	Cut-to-Length Carbon Steel Plate from Spain	C-469-804

* Preliminary determination, plus final sunset results

United States – Countervailing Duties on Imports of Stainless Steel Sheet and Strip in Coils from France

Specific Case No. 1

This case concerns the imposition of countervailing duties on Stainless Steel Sheet and Strip in Coils from France, produced and exported by Usinor -Sollac S.A. (Usinor), on 8 June 1999. The US case number is C-427-815; (64 FR 30774 of 29 June 1999). The rate of countervailing duty for Usinor was 5.38 % *ad valorem*.

The European Communities consider the imposition of countervailing duties in this case to be inconsistent with the obligations of the United States under the SCM Agreement, and in particular, in breach of Articles 1.1, 10, 14 and 19 of the SCM Agreement [1].

The above countervailing duty was imposed on the basis of alleged subsidies which derived from financial contributions made by the French Government to the state-owned French steel industry prior to the privatization of Usinor (1995-1997) [2]. The US Department of Commerce ("DOC"), in conducting this investigation, never properly examined whether these financial contributions conferred a benefit to Usinor, the producer and exporter of the subject goods during the investigation period (1997), but presumed (irrebuttably) that certain subsidies had passed through to Usinor on the basis of the DOC's so-called "change of ownership" methodology. The European Communities consider that this failure to demonstrate the existence of a benefit to the company under investigation is a clear breach of the above-mentioned provisions of the SCM Agreement. This violation was confirmed by the conclusions of the WTO Appellate Body in "*United States – Imposition of Countervailing duties on Certain Hot-Rolled Lead and Bismuth Carbon Steel Products Originating in the United Kingdom" (AB-2000-1) ("UK lead and bismuth").*

Furthermore, the European Communities consider that the information on the DOC record demonstrates that Usinor was privatized for fair market value. The DOC did not take account of this fact when deciding whether Usinor had received countervailable subsidies. In these circumstances, the European Communities consider that no benefit was conferred to Usinor from the previous financial contributions made by the French Government to its state-owned steel industry. This is also confirmed by the conclusions of the *UK lead and bismuth* findings referred to above.

Without prejudice to the above, even if the privatization were not to have occurred for fair market value, the European Communities submits that the US has erroneously calculated the amount of any outstanding subsidy. The US should have made its calculation on the basis of Article 14(d) of the SCM Agreement i.e. on the basis of the amount by which the price paid for the producer and exporter of the subject merchandise constituted "less than adequate remuneration". The method used by investigating authorities for calculating the amount of subsidy in countervailing duty investigations is required by Article 14 to be consistent with the guidelines set out in, *inter alia*, Article 14(d). The US calculation in this case and the US "change of ownership" methodology are not consistent with them.

[1] These consultations relate only to the countervailing by the US of financial contributions made prior to Usinor's privatization, such as 1) Loans with Special Characteristics 2) Shareholders Advances 3) Steel Intervention Fund. These amount to all but no more than 0.10% of the countervailing duty imposed by the DOC.

[2] Prior to the public offering of shares in July 1995, the French Government owned 80% of Usinor shares, and Crédit Lyonnais (of which the French Government held a majority interest: 69% direct, 13% indirect) owned 20% of the shares. After the July 1995 public offering, the French Government held 9.8% of the shares. By October 22, 1997, the French government had sold all but 1% of its interest in the company.

United States – Countervailing Duties on Imports of Certain Cut-to-Length Carbon Quality Steel Plate from France

Specific Case No. 2

This case concerns the imposition of countervailing duties on Certain Cut-to-Length Carbon Quality Steel Plate from France, produced and exported by Usinor -Sollac S.A. (Usinor) and GTS Industries S.A. (GTS), on 29 December 1999. The US case number is C-427-817; (64 FR 73277 of 29 December 1999). The rate of countervailing duty for Usinor and GTS was respectively 5.56 % and 6.86 % *ad valorem*.

The European Communities consider the imposition of countervailing duties in this case to be inconsistent with the obligations of the United States under the SCM Agreement, and in particular, in breach of Articles 1.1, 10, 14 and 19 of the SCM Agreement [3].

The above countervailing duty was imposed on the basis of alleged subsidies which derived from financial contributions made by the French Government to the state-owned French steel industry prior to the privatization of Usinor (1995-1997) and the changes of ownership of GTS [4] (1992 and 1996). The US Department of Commerce ("DOC"), in conducting this investigation, never properly examined whether these financial contributions conferred a benefit to Usinor and GTS, the producers and exporters of the subject goods during the investigation period (1998), but presumed (irrebuttably) that certain subsidies had passed through to Usinor and GTS on the basis of the DOC's so-called "change of ownership" methodology. The European Communities consider that this failure to demonstrate the existence of a benefit to the company under investigation is a clear breach of the above-mentioned provisions of the SCM Agreement. This violation was confirmed by the conclusions of the WTO Appellate Body in "*United States – Imposition of Countervailing duties on Certain Hot-Rolled Lead and Bismuth Carbon Steel Products Originating in the United Kingdom" (AB-2000-1) ("UK lead and bismuth").*

Furthermore, the European Communities consider that the information on the DOC record demonstrates that Usinor and GTS were privatized for fair market value (See above). The DOC did not take account of this fact when deciding whether Usinor and GTS had received countervailable subsidies. In these circumstances, the European Communities consider that no benefit was conferred to Usinor and GTS from the previous financial contributions made by the French Government to its state-owned steel industry. This is also confirmed by the conclusions of the *UK lead and bismuth* findings referred to above.

Without prejudice to the above, even if the privatization were not to have occurred for fair market value, the European Communities submits that the US has erroneously calculated the amount of any

[3] These consultations relate only to the countervailing by the US of financial contributions made prior to Usinor's privatization and the changes in ownership of GTS, such as 1) Loans with Special Characteristics 2) Shareholders Advances 3) Steel Intervention Fund. These account for the bulk of the countervailing duties imposed.

[4] Prior to 1992, AG der Dillinger Hütte ("Dillinger") owned 10.27% of GTS shares. On December 28, 1992, the remaining shares were transferred to Dillinger, so that Dillinger owned 100% of GTS at this time. Dillinger's parent company, DHS - Dillinger Hütte Saarstahl AG, was held by Usinor (70% since 1989), the Government of the Saarland (27.5%) and Arbed SA (2.5%). DHS held at that time 95.3% of Dillinger. The U.S. Department of Commerce thus calculated that Usinor retained a 66.71% interest in GTS after the 1992 transaction. In April 1996, Usinor reduced its interest in DHS to 48.75%. The U.S. Department of Commerce treated both the 1992 and the 1996 transactions as changes in ownership of GTS. All the alleged subsidies in question were granted to Usinor and allocated pro-rata to GTS.

outstanding subsidy. The US should have made its calculation on the basis of Article 14(d) of the SCM Agreement i.e. on the basis of the amount by which the price paid for the producer and exporter of the subject merchandise constituted "less than adequate remuneration". The method used by investigating authorities for calculating the amount of subsidy in countervailing duty investigations is required by Article 14 to be consistent with the guidelines set out in, *inter alia*, Article 14(d). The US calculation in this case and the US "change of ownership" methodology are not consistent with them.

United States – Countervailing Duties on Imports of Certain Pasta from Italy

Specific Case No. 3

This case concerns the imposition of countervailing duties on Certain Pasta from Italy, produced and exported by Delverde S.r.l. (Delverde), on 14 June 1996. The US case number is C-475-819; (61 FR 30287 of 14 June 1996). The rate of countervailing duty for Delverde was 5.9 % *ad valorem*.

The European Communities consider the imposition of countervailing duties in this case to be inconsistent with the obligations of the United States under the SCM Agreement, and in particular, in breach of Articles 1.1, 10, 14 and 19 of the SCM Agreement [5].

The above countervailing duty was imposed on the basis of alleged subsidies which derived from financial contributions made by the Italian Government to an unrelated private company, from which Delverde purchased a pasta factory and related production assets, name and trademark, in 1991. The US Department of Commerce ("DOC"), in conducting this investigation, never properly examined whether Delverde, the producer and exporter of the subject goods during the investigation period (1994), itself received a financial contribution from the Italian Government, or whether a benefit was conferred to Delverde. DOC presumed (irrebuttably) that certain subsidies had passed through to Delverde on the basis of the DOC's so-called *"change of ownership"* methodology. The European Communities consider that this failure to demonstrate the existence of a benefit to the company under investigation is a clear breach of the above-mentioned provisions of the SCM Agreement. This violation was confirmed by the conclusions of the WTO Appellate Body in "*United States – Imposition of Countervailing duties on Certain Hot-Rolled Lead and Bismuth Carbon Steel Products Originating in the United Kingdom" (AB-2000-1) ("UK lead and bismuth").* [6]

Furthermore, the European Communities consider that the information on the DOC record demonstrates that Delverde purchased the assets of the unrelated company for fair market value. The DOC did not take account of this fact when deciding whether Delverde had received countervailable subsidies. In these circumstances, the European Communities consider that no benefit was conferred to Delverde from the previous financial contributions made by the Italian Government to the company's prior owner. This is also confirmed by the conclusions of the *UK lead and bismuth* findings referred to above.

[5] These consultations relate to the countervailing by the US of financial contributions granted to the company which owned the pasta factory later purchased by Delverde.

[6] The *Delverde* case was also referred by the exporter to the US domestic courts. The US Court of Appeals for the Federal Circuit, by a decision dated 2 February 2000, found against DOC and remanded the case to DOC, concluding *that "Commerce's methodology for determining whether Delverde received a countervailable subsidy is inconsistent with 19 USC § 1677(5)"*. To the Commission's knowledge, the DOC has not yet issued a decision consistent with the United States WTO obligations in this remand.

United States – Countervailing Duties on Imports of Certain Stainless Steel Wire Rod from Italy

Specific Case No. 4

This case concerns the imposition of countervailing duties on Certain Stainless Steel Wire Rod from Italy, produced and exported by Cogne Acciai Speciali S.r.l., on 29 July 1998. The US case number is C-475-821; (63 FR 40474 of 29 July 1998). The rate of countervailing duty for Cogne Acciai Speciali S.r.l. was 22.22 % *ad valorem*.

The European Communities consider the imposition of countervailing duties in this case to be inconsistent with the obligations of the United States under the SCM Agreement, and in particular, in breach of Articles 1.1, 10, 14 and 19 of the SCM Agreement [7].

The above countervailing duty was imposed on the basis of alleged subsidies which derived from financial contributions made by the Italian Government to the state-owned Italian steel industry prior to the privatization of Cogne Acciai Speciali S.r.l., on 31 December 1993. The US Department of Commerce ("DOC"), in conducting this investigation, never properly examined whether these financial contributions conferred a benefit to Cogne Acciai Speciali S.r.l., the producer and exporter of the subject goods during the investigation period, but presumed (irrebuttably) that certain subsidies had passed through to Cogne Acciai Speciali S.r.l., on the basis of the DOC's so-called *"change of ownership"* methodology. The European Communities consider that this failure to demonstrate the existence of a benefit to the company under investigation is a clear breach of the above-mentioned provisions of the SCM Agreement. This violation was confirmed by the conclusions of the WTO Appellate Body in "*United States – Imposition of Countervailing duties on Certain Hot-Rolled Lead and Bismuth Carbon Steel Products Originating in the United Kingdom" (AB-2000-1) ("UK lead and bismuth").*

Furthermore, the European Communities consider that the information on the DOC record demonstrates that Cogne Acciai Speciali S.r.l. was privatized for fair market value. The DOC did not take account of this fact when deciding whether Cogne Acciai Speciali S.r.l. had received countervailable subsidies. In these circumstances, the European Communities consider that no benefit was conferred to Cogne Acciai Speciali S.r.l. from the previous financial contributions made by the Italian Government to its state-owned steel industry. This is also confirmed by the conclusions of the *UK lead and bismuth* findings referred to above.

Without prejudice to the above, even if the privatization were not to have occurred for fair market value, the European Communities submits that the US has erroneously calculated the amount of any outstanding subsidy. The US should have made its calculation on the basis of Article 14(d) of the SCM Agreement i.e. on the basis of the amount by which the price paid for the producer and exporter of the subject merchandise constituted "less than adequate remuneration". The method used by investigating authorities for calculating the amount of subsidy in countervailing duty investigations is required by Article 14 to be consistent with the guidelines set out in, *inter alia*, Article 14(d). The US calculation in this case and the US "change of ownership" methodology are not consistent with them.

[7] These consultations relate only to the countervailing by the US of financial contributions made prior to Cogne's privatization, such as (1) Equity infusions to Finsider and IlVA and (2) Pre-privatization Assistance and Debt forgiveness. These amount to at least 21.74 % of the 22.22% countervailing duty. A corporate history can be found in the Annex.

United States – Countervailing Duties on Imports of Stainless Steel Plate in Coils from Italy

Specific Case No. 5

This case concerns the imposition of countervailing duties on Stainless Steel Plate in Coils from Italy, produced and exported by Acciai Speciali Terni S.p.A. (AST) [8], on 31 March 1999. The US case number is C-475-823; (64 FR 15508 of 31 March 1999). The rate of countervailing duty for AST assigned by the US Department of Commerce ("DOC") was 15.16 % *ad valorem*.

The European Communities consider the imposition of countervailing duties in this case to be inconsistent with the obligations of the United States under the SCM Agreement, and in particular, in breach of Articles 1.1, 10, 14 and 19 of the SCM Agreement [9].

The above countervailing duty was imposed on the basis of alleged subsidies which derived from financial contributions made by the Italian Government to the state-owned Italian steel industry prior to the privatization of Acciai Speciali Terni S.p.A. in December 1994. The DOC, in conducting this investigation, never properly examined whether these financial contributions conferred a benefit to Acciai Speciali Terni S.p.A., the producer and exporter of the subject goods during the investigation period (1997), but presumed (irrebuttably) that certain subsidies had passed through to Acciai Speciali Terni S.p.A. on the basis of the DOC's so-called *"change of ownership"* methodology. The European Communities consider that this failure to demonstrate the existence of a benefit to the company under investigation is a clear breach of the above-mentioned provisions of the SCM Agreement. This violation was confirmed by the conclusions of the WTO Appellate Body in "*United States – Imposition of Countervailing duties on Certain Hot-Rolled Lead and Bismuth Carbon Steel Products Originating in the United Kingdom" (AB-2000-1) ("UK lead and bismuth").*

Furthermore, the European Communities consider that the information on the DOC record demonstrates that Acciai Speciali Terni S.p.A. was privatized for fair market value. The DOC did not take account of this fact in its investigation when deciding whether Acciai Speciali Terni S.p.A. had received countervailable subsidies. In these circumstances, the European Communities consider that no benefit, and therefore no subsidy, was conferred to the privatized Acciai Speciali Terni S.p.A. from the previous financial contributions made by the Italian Government to its state-owned steel industry. This is also confirmed by the conclusions of the *UK lead and bismuth* findings referred to above.

Without prejudice to the above, even if the privatization were not to have occurred for fair market value, the European Communities submits that the US has erroneously calculated the amount of any outstanding subsidy. The US should have made its calculation on the basis of Article 14(d) of the SCM Agreement i.e. on the basis of the amount by which the price paid for the producer and exporter of the subject merchandise constituted "less than adequate remuneration". The method used by investigating authorities for calculating the amount of subsidy in countervailing duty investigations is required by Article 14 to be consistent with the guidelines set out in, *inter alia,* Article 14(d). The US calculation in this case and the US "change of ownership" methodology are not consistent with them.

[8] ILVA S.p.A. (old, state-owned) was demerged on 31 October 1993. Two new companies were created: ILVA Laminati Piani S.r.l. (ILP) and Acciai Speciali Terni S.r.l. (AST). In December 1994, AST was sold to KAI Italia S.r.l. A more detailed corporate history can be found in the Annex.

[9] These consultations relate to the countervailing by the US of alleged financial contributions made prior to AST's privatization, such as (1) Equity infusions to Terni, TAS and ILVA; (2) Benefits from the 1988-90 Restructuring of Finsider; (3) Debt forgiveness: ILVA to AST. These amount to at least 13.42% of the 15.16% countervailing duty.

United States – Countervailing Duties on Imports of Stainless Steel Sheet and Strip in Coils from Italy

Specific Case No. 6

This case concerns the imposition of countervailing duties on Stainless Steel Sheet and Strip in Coils from Italy, produced and exported by Acciai Speciali Terni S.p.A. (AST) [10], on 8 June 1999. The US case number is C-475-825; (64 FR 30624 of 8 June 1999). The rate of countervailing duty assigned by the US Department of Commerce ("DOC") for AST was 12.22 % *ad valorem*.

The European Communities consider the imposition of countervailing duties in this case to be inconsistent with the obligations of the United States under the SCM Agreement, and in particular, in breach of Articles 1.1, 10, 14 and 19 of the SCM Agreement [11].

The above countervailing duty was imposed on the basis of alleged subsidies which derived from financial contributions made by the Italian Government to the state-owned Italian steel industry prior to the privatization of Acciai Speciali Terni S.p.A. in December 1994. The DOC, in conducting this investigation, never properly examined whether these financial contributions conferred a benefit to Acciai Speciali Terni S.p.A., the producer and exporter of the subject goods during the investigation period (1997), but presumed (irrebuttably) that certain subsidies had passed through to Acciai Speciali Terni S.p.A. on the basis of the DOC's so-called *"change of ownership"* methodology. The European Communities consider that this failure to demonstrate the existence of a benefit to the company under investigation is a clear breach of the above-mentioned provisions of the SCM Agreement. This violation was confirmed by the conclusions of the WTO Appellate Body in "*United States – Imposition of Countervailing duties on Certain Hot-Rolled Lead and Bismuth Carbon Steel Products Originating in the United Kingdom" (AB-2000-1) ("UK lead and bismuth").*

Furthermore, the European Communities consider that the information on the DOC record demonstrates that Acciai Speciali Terni S.p.A. was privatized for fair market value. The DOC did not take account of this fact in its investigation when deciding whether Acciai Speciali Terni S.p.A. had received countervailable subsidies. In these circumstances, the European Communities consider that no benefit, and therefore no subsidy, was conferred to the privatized Acciai Speciali Terni S.p.A. from the previous financial contributions made by the Italian Government to its state-owned steel industry. This is also confirmed by the conclusions of the *UK lead and bismuth* findings referred to above.

Without prejudice to the above, even if the privatization were not to have occurred for fair market value, the European Communities submits that the US has erroneously calculated the amount of any outstanding subsidy. The US should have made its calculation on the basis of Article 14(d) of the SCM Agreement i.e. on the basis of the amount by which the price paid for the producer and exporter of the subject merchandise constituted "less than adequate remuneration". The method used by investigating authorities for calculating the amount of subsidy in countervailing duty investigations is required by Article 14 to be consistent with the guidelines set out in, *inter alia,* Article 14(d). The US calculation in this case and the US "change of ownership" methodology are not consistent with them.

[10] See Footnote 8.

[11] These consultations relate to the countervailing by the US of alleged financial contributions made prior to AST's privatisation, such as (1) Equity infusions to Terni, TAS and ILVA; (2) Benefits from the 1988-90 Restructuring of Finsider; (3) Debt forgiveness: ILVA to AST. These amount to at least 10.49% of the 12.22% countervailing duty.

United States – Countervailing Duties on Imports of Certain Cut-to-Length Carbon-Quality Steel Plate from Italy

Specific Case No. 7

This case concerns the imposition of countervailing duties on Certain Cut-to-Length Carbon-Quality Steel Plate from Italy, produced and exported by ILVA S.p.A. [12], on 29 December 1999. The US case number is C-475-827; (64 FR 73244 of 29 December 1999). The rate of countervailing duty for ILVA was 26.12 % *ad valorem*.

The European Communities consider the imposition of countervailing duties in this case to be inconsistent with the obligations of the United States under the SCM Agreement, and in particular, in breach of Articles 1.1, 10, 14 and 19 of the SCM Agreement [13].

The above countervailing duty was imposed on the basis of alleged subsidies which derived from financial contributions made by the Italian Government to the state-owned Italian steel industry prior to the privatization of ILVA S.p.A. on 16 March 1995 [14]. The US Department of Commerce ("DOC"), in conducting this investigation, never properly examined whether these financial contributions conferred a benefit to ILVA S.p.A., the producer and exporter of the subject goods during the investigation period (1998) [15], but presumed (irrebuttably) that certain subsidies had passed through to ILVA S.p.A. on the basis of the DOC's so-called *"change of ownership"* methodology. The European Communities consider that this failure to demonstrate the existence of a benefit to the company under investigation is a clear breach of the above-mentioned provisions of the SCM Agreement. This violation was confirmed by the conclusions of the WTO Appellate Body in "*United States – Imposition of Countervailing duties on Certain Hot-Rolled Lead and Bismuth Carbon Steel Products Originating in the United Kingdom" (AB-2000-1) ("UK lead and bismuth").*

Furthermore, the European Communities consider that the information on the DOC record demonstrates that ILVA S.p.A. was privatized for fair market value. The DOC did not take account of this fact when deciding whether ILVA S.p.A. had received countervailable subsidies. In these circumstances, the European Communities consider that no benefit was conferred to ILVA S.p.A. from the previous financial contributions made by the Italian Government to its state-owned steel industry. This is also confirmed by the conclusions of the *UK lead and bismuth* findings referred to above.

[12] ILVA S.p.A. (old, state-owned) was demerged on 31 October 1993. Two new companies were created: ILVA Laminati Piani S.r.l. (ILP) and Acciai Speciali Terni S.r.l. (AST). On 16 March 1995, ILP was sold to a consortium of investors led by Riva Acciaio S.p.A. On 1 January 1997, ILP was renamed ILVA S.p.A. (new). For practical reasons, the only name mentioned in this request for consultations is ILVA S.p.A., even when we make reference to the (old) ILVA or to ILP. A more detailed corporate history can be found in the Annex.

[13] These consultations relate only to the countervailing by the US of financial contributions made prior to ILVA's privatization, such as (1) Equity infusions to Nuova Italsider and (old) ILVA and (2) Debt forgiveness: 1981, 1988, 1993-1994 Restructuring Plan, (3) Capital Grants to Nuova Italsider under law 675/77. These amount to at least 22.68 % of the 26.12% countervailing duty.

[14] At the time of the privatization, ILVA S.p.A. was known as ILP. Its name was changed to ILVA S.p.A on 1 January 1997. During the POI, the subject merchandise was produced and exported to the US by ILT, a wholly-owned subsidiary of ILVA S.p.A, which had been transferred to ILP prior to the privatization, and therefore formed part of the company offered for sale.

[15] See Footnote above.

Without prejudice to the above, even if the privatization were not to have occurred for fair market value, the European Communities submits that the US has erroneously calculated the amount of any outstanding subsidy. The US should have made its calculation on the basis of Article 14(d) of the SCM Agreement i.e. on the basis of the amount by which the price paid for the producer and exporter of the subject merchandise constituted "less than adequate remuneration". The method used by investigating authorities for calculating the amount of subsidy in countervailing duty investigations is required by Article 14 to be consistent with the guidelines set out in, *inter alia*, Article 14(d). The calculation in this case and the US "change of ownership" methodology are not consistent with them.

United States – Countervailing Duties on Imports of Certain Carbon Steel Products from Sweden

Specific Case No. 8

This case concerns the definitive results of an administrative review which led to the imposition of countervailing duties on Certain Carbon Steel Products from Sweden, produced and exported by SSAB Svenskt Stal AB ("SSAB"), on 22 October 1999. The US case number is C-401-401; (64 FR 57038 of 22 October 1999). The rate of countervailing duty for SSAB was 0.72 % *ad valorem*.

The European Communities consider the imposition of countervailing duties in this case to be inconsistent with the obligations of the United States under the SCM Agreement, and in particular, in breach of Articles 1.1, 10, 14, 19 and 21 of the SCM Agreement [16].

The above countervailing duty was imposed on the basis of alleged subsidies which derived from financial contributions made by the Swedish Government to the state-owned Swedish steel industry prior to the privatization of SSAB, which began in 1987 and was completed on 15 February 1994. The US Department of Commerce ("DOC"), in conducting this investigation, never properly examined whether these financial contributions conferred a benefit to SSAB, the producer and exporter of the subject goods during the investigation period, but presumed (irrebuttably) that certain subsidies had passed through to SSAB on the basis of the DOC's so-called *"change of ownership"* methodology. The European Communities consider that this failure to demonstrate the existence of a benefit to the company under investigation is a clear breach of the above-mentioned provisions of the SCM Agreement. This violation was confirmed by the conclusions of the WTO Appellate Body in "*United States – Imposition of Countervailing duties on Certain Hot-Rolled Lead and Bismuth Carbon Steel Products Originating in the United Kingdom" (AB-2000-1) ("UK lead and bismuth").*

Furthermore, the European Communities consider that the information on the DOC record demonstrates that SSAB was privatized for fair market value. The DOC did not take account of this fact when deciding whether SSAB had received countervailable subsidies. In these circumstances, the European Communities consider that no benefit was conferred to SSAB, subsequent to the privatization, from the previous financial contributions made by the Swedish Government to its state-owned steel industry. This is also confirmed by the conclusions of the *UK lead and bismuth* findings referred to above.

[16] These consultations relate to the countervailing by the US of financial contributions made prior to SSAB's privatization i.e. (1) benefits obtained from Swedish Structural Loans and (2) Forgiven Reconstruction Loans. These represent the totality of the countervailing duty imposed by the US.

Without prejudice to the above, even if the privatization were not to have occurred for fair market value, the European Communities submits that the US has erroneously calculated the amount of any outstanding subsidy. The US should have made its calculation on the basis of Article 14(d) of the SCM Agreement i.e. on the basis of the amount by which the price paid for the producer and exporter of the subject merchandise constituted "less than adequate remuneration". The method used by investigating authorities for calculating the amount of subsidy in countervailing duty investigations is required by Article 14 to be consistent with the guidelines set out in, *inter alia*, Article 14(d). The US calculation in this case and the US "change of ownership" methodology is not consistent with them.

United States – Countervailing Duties on Imports of Cut-to Length Carbon Steel Plate from Sweden

Specific Case No. 9

This case concerns the definitive results of an administrative review which led to the imposition of countervailing duties on Cut-to Length Carbon Steel Plate from Sweden, produced and exported by SSAB Svenskt Stal AB ("SSAB"), on 7 April 1997. The US case number is C-401-804; (62 FR 16551 of 7 April 1997). The rate of countervailing duty for SSAB was 1.91 % *ad valorem.*

The European Communities consider the imposition of countervailing duties in this case to be inconsistent with the obligations of the United States under the SCM Agreement, and in particular, in breach of Articles 1.1, 10, 14, 19 and 21 of the SCM Agreement [17].

The above countervailing duty was imposed on the basis of alleged subsidies which derived from financial contributions made by the Swedish Government to the state-owned Swedish steel industry prior to the privatization of SSAB, which began in 1987 and was completed on 15 February 1994. The US Department of Commerce ("DOC"), in conducting this investigation, never properly examined whether these financial contributions conferred a benefit to SSAB., the producer and exporter of the subject goods during the investigation period (1994), but presumed (irrebuttably) that certain subsidies had passed through to SSAB on the basis of the DOC's so-called *"change of ownership"* methodology. The European Communities consider that this failure to demonstrate the existence of a benefit to the company under investigation is a clear breach of the above-mentioned provisions of the SCM Agreement. This violation was confirmed by the conclusions of the WTO Appellate Body in "*United States – Imposition of Countervailing duties on Certain Hot-Rolled Lead and Bismuth Carbon Steel Products Originating in the United Kingdom" (AB-2000-1) ("UK lead and bismuth").*

Furthermore, the European Communities consider that the information on the DOC record demonstrates that SSAB was privatized for fair market value. The DOC did not take account of this fact when deciding whether SSAB had received countervailable subsidies. In these circumstances, the European Communities consider that no benefit was conferred to SSAB, subsequent to the privatization, from the previous financial contributions made by the Swedish Government to its state-owned steel industry. This is also confirmed by the conclusions of the *UK lead and bismuth* findings referred to above.

[17] These consultations relate to the countervailing by the US of financial contributions made prior to SSAB's privatization i.e. (1) Equity infusion (2) benefits obtained from Swedish Structural Loans (3) Forgiven Reconstruction Loans. These represent the totality of the countervailing duty imposed by the US.

Without prejudice to the above, even if the privatization were not to have occurred for fair market value, the European Communities submits that the US has erroneously calculated the amount of any outstanding subsidy. The US should have made its calculation on the basis of Article 14(d) of the SCM Agreement i.e. on the basis of the amount by which the price paid for the producer and exporter of the subject merchandise constituted "less than adequate remuneration". The method used by investigating authorities for calculating the amount of subsidy in countervailing duty investigations is required by Article 14 to be consistent with the guidelines set out in, *inter alia*, Article 14(d). The US calculation in this case and the US "change of ownership" methodology are not consistent with them.

United States – countervailing duties on imports of Grain-Oriented Electrical Steel from Italy

Specific Case No. 10

This case concerns the preliminary results of an administrative review which led to the continued imposition of countervailing duties on Grain-Oriented Electrical Steel from Italy, produced and exported by Acciai Speciali Terni S.p.A. (AST) [18], on 7 July 2000. The US case number is C-475-812; (65 FR 41950 of 7 July 2000). The rate of countervailing duty preliminarily assigned by the US Department of Commerce ("DOC") for AST was 12.44 % *ad valorem*.

The European Communities consider the imposition of countervailing duties in this case to be inconsistent with the obligations of the United States under the SCM Agreement, and in particular, in breach of Articles 1.1, 10, 14, 19 and 21 of the SCM Agreement [19].

The above countervailing duty was determined on the basis of alleged subsidies which derived from financial contributions made by the Italian Government to the state-owned Italian steel industry prior to the privatization of Acciai Speciali Terni S.p.A. in December 1994. The DOC, in conducting this investigation, has never properly examined whether these financial contributions conferred a benefit to Acciai Speciali Terni S.p.A., the producer and exporter of the subject goods during the investigation period (1998), but presumed (irrebuttably) that certain subsidies had passed through to Acciai Speciali Terni S.p.A. on the basis of the DOC's so-called *"change of ownership"* methodology. The European Communities consider that this failure to demonstrate the existence of a benefit to the company under investigation is a clear breach of the above-mentioned provisions of the SCM Agreement. This violation was confirmed by the conclusions of the WTO Appellate Body in "*United States – Imposition of Countervailing duties on Certain Hot-Rolled Lead and Bismuth Carbon Steel Products Originating in the United Kingdom" (AB-2000-1) ("UK lead and bismuth").*

Furthermore, the European Communities consider that the information on the DOC record demonstrates that Acciai Speciali Terni S.p.A. was privatized for fair market value. The DOC did not take account of this fact in its investigation when deciding whether Acciai Speciali Terni S.p.A. had received countervailable subsidies. In these circumstances, the European Communities consider that no benefit, and therefore no subsidy, was conferred to the privatized Acciai Speciali Terni S.p.A. from

[18] See Footnote 8.

[19] These consultations relate to the countervailing by the US of alleged financial contributions made prior to AST's privatization such as (1) Equity infusions to TAS and ILVA; (2) Debt forgiveness: 1988-90 Restructuring Plan; (3) Debt forgiveness: 1993-94 Restructuring Plan; (4) Pre-Privatization Retirement Benefits Under Law 451/94 for ILVA Residua. These amount to at least 11.50 % of the 12.44% countervailing duty.

the previous financial contributions made by the Italian Government to its state-owned steel industry. This is also confirmed by the conclusions of the *UK lead and bismuth* findings referred to above.

Without prejudice to the above, even if the privatization were not to have occurred for fair market value, the European Communities submits that the US has erroneously calculated the amount of any outstanding subsidy. The US should have made its calculation on the basis of Article 14(d) of the SCM Agreement i.e. on the basis of the amount by which the price paid for the producer and exporter of the subject merchandise constituted "less than adequate remuneration". The method used by investigating authorities for calculating the amount of subsidy in countervailing duty investigations is required by Article 14 to be consistent with the guidelines set out in, *inter alia*, Article 14(d). The US calculation in this case and the US "change of ownership" methodology are not consistent with them.

This case concerns the final results, on 26 October 2000, by the US Department of Commerce ("DOC"), in a sunset review which, as of the date of this request, have led to the continuation of the countervailing measures imposed on Grain-Oriented Electrical Steel from Italy, produced and exported by Acciai Speciali Terni S.p.A. (AST) [20]. The US case number is C-475-812; (65 FR 65295 of 1 November 2000). The rate of countervailing duty assigned by the DOC for AST was 24.2% *ad valorem.*

The European Communities consider the imposition of countervailing duties in this case to be inconsistent with the obligations of the United States under the SCM Agreement, and in particular, in breach of Articles 1.1, 10, 14, 19 and 21 of the SCM Agreement [21].

The above countervailing duty was originally imposed in 1994 on the basis of alleged subsidies which derived from financial contributions made by the Italian Government to the state-owned Italian steel industry. This was prior to the privatization of Acciai Speciali Terni S.p.A. in December 1994. The DOC, in conducting the sunset review, was required by Article 21.3 of the SCM Agreement to determine whether the expiry of the duty would be likely to lead to (i.e. cause) a continuation or recurrence of subsidization. This was not done. In making this determination, DOC did not examine whether the above financial contributions conferred a benefit to Acciai Speciali Terni S.p.A., the producer of the subject goods during the sunset review investigation, but presumed (irrebuttably) that these subsidies had passed through to Acciai Speciali Terni S.p.A. on the basis of the DOC's so-called *"change of ownership"* methodology. The European Communities consider that this failure to demonstrate the existence of a benefit to the company under investigation is a clear breach of the above-mentioned provisions of the SCM Agreement. This violation was confirmed by the conclusions of the WTO Appellate Body in "*United States – Imposition of Countervailing duties on Certain Hot-Rolled Lead and Bismuth Carbon Steel Products Originating in the United Kingdom" (AB-2000-1) ("UK lead and bismuth").*

Furthermore, the European Communities consider that the information on the DOC record in the context of the above mentioned sunset review, demonstrates that Acciai Speciali Terni S.p.A. was privatized for fair market value. The DOC did not take account of this fact when deciding that subsidization was likely to continue. In these circumstances, the European Communities consider that no benefit was conferred to Acciai Speciali Terni S.p.A. from the previous financial contributions

[20] See Footnote 8.

[21] These consultations relate to the countervailing by the US of financial contributions made prior to AST's privatization, such as (1) Benefits Associated With the 1988-90 Restructuring; (2) Equity Infusions. These amount to bulk of the countervailing duty imposed.

made by the Italian Government to its state-owned steel industry. This is also confirmed by the conclusions of the *UK lead and bismuth* findings referred to above.

Without prejudice to the above, even if the privatization were not to have occurred for fair market value, the European Communities submits that the US has erroneously calculated the amount of any outstanding subsidy. The US should have made its calculation on the basis of Article 14(d) of the SCM Agreement i.e. on the basis of the amount by which the price paid for the producer and exporter of the subject merchandise constituted "less than adequate remuneration". The method used by investigating authorities for calculating the amount of subsidy in countervailing duty investigations is required by Article 14 to be consistent with the guidelines set out in, *inter alia*, Article 14(d). The US calculation in this case and the US "change of ownership" methodology are not consistent with them.

United States – countervailing duties on imports of Cut-to-length Carbon Steel Plate from the United Kingdom

Specific Case No. 11

This case concerns the definitive results of a sunset review which led to the continuation of the countervailing measures imposed on Cut-to-length Carbon Steel Plate from the United Kingdom, produced and exported by Corus Plc (a merger of British Steel plc and Hoogovens NV), on 7 April 2000. The US case number is C-412-815; (65 FR 18309 of 7 April 2000). The rate of countervailing duty for Corus was 12.00 % *ad valorem*.

The European Communities consider the imposition of countervailing duties in this case to be inconsistent with the obligations of the United States under the SCM Agreement, and in particular, in breach of Articles 1.1, 10, 14, 19 and 21 of the SCM Agreement [22].

The above countervailing duty was originally imposed in 1993 on the basis of alleged subsidies which derived from financial contributions made by the British Government to its state-owned steel industry. This was prior to the privatization of British Steel in 1988. The US Department of Commerce ("DOC"), in conducting the sunset review, was required by Article 21.3 of the SCM Agreement to determine whether the expiry of the duty would be likely to lead to (i.e. cause) a continuation or recurrence of subsidization. In making this determination, DOC did not examine whether the above financial contributions conferred a benefit to Corus Plc, the producer of the subject goods during the sunset review investigation, but presumed (irrebuttably) that these subsidies had passed through to Corus Plc on the basis of the DOC's so-called *"change of ownership"* methodology. The European Communities consider that this failure to demonstrate the existence of a benefit to the company under investigation is a clear breach of the above-mentioned provisions of the SCM Agreement. This violation was confirmed by the conclusions of the WTO Appellate Body in "*United States – Imposition of Countervailing duties on Certain Hot-Rolled Lead and Bismuth Carbon Steel Products Originating in the United Kingdom" (AB-2000-1) ("UK lead and bismuth").*

Furthermore, the company involved here is the same as that subject to measures in the *UK lead and bismuth* case. In this case, the WTO panel and Appellate Body ruled that the privatization at fair market value necessarily precluded the pass-through of any benefit (and therefore any subsidy) to the

[22] These consultations relate to the countervailing by the US of financial contributions made prior to British Steel's privatization, such as (1) Government equity infusions into BSC and (2) Cancelled NLF debt. These accounted for the bulk of the countervailing duty imposed.

privatised company from pre-privatization financial contributions to the state-owned British Steel. In the present case, the alleged subsidies are the same, and, of course, the circumstances of the privatization are the same. In these circumstances, it cannot be disputed that no benefit was conferred to Corus from the previous financial contributions made by the British Government to its state-owned steel industry. The WTO panel findings were available to the DOC at the time of this definitive determination, and the European Communities submit that it is absurd, in view of Article 21.1 of the SCM Agreement, that the present measure continues to remain in force.

United States – countervailing duties on imports of Certain Corrosion-Resistant Carbon Steel Flat Products from France

Specific Case No. 12

This case concerns the definitive results of a sunset review which led to the continuation of the countervailing measures imposed on Certain Corrosion-Resistant Carbon Steel Flat Products from France, produced and exported by Usinor SA (Usinor), on 6 April 2000. The US case number is C-427-810; (65 FR 18307 of 6 April 2000). The rate of countervailing duty for Usinor was 15.13 % *ad valorem.*

The European Communities consider the imposition of countervailing duties in this case to be inconsistent with the obligations of the United States under the SCM Agreement, and in particular, in breach of Articles 1.1, 10, 14, 19 and 21 of the SCM Agreement [23].

The above countervailing duty was originally imposed in 1993 on the basis of alleged subsidies which derived from financial contributions made by the French Government to the state-owned French steel industry. This was prior to the privatization of Usinor in 1997. The US Department of Commerce ("DOC"), in conducting the sunset review, was required by Article 21.3 of the SCM Agreement to determine whether the expiry of the duty would be likely to lead to (i.e. cause) a continuation or recurrence of subsidization. In making this determination, DOC did not examine whether the above financial contributions conferred a benefit to Usinor, the producer of the subject goods during the sunset review investigation, but presumed (irrebuttably) that these subsidies had passed through to Usinor on the basis of the DOC's so-called *"change of ownership"* methodology. The European Communities consider that this failure to demonstrate the existence of a benefit to the company under investigation is a clear breach of the above-mentioned provisions of the SCM Agreement. This violation was confirmed by the conclusions of the WTO Appellate Body in "*United States – Imposition of Countervailing duties on Certain Hot-Rolled Lead and Bismuth Carbon Steel Products Originating in the United Kingdom" (AB-2000-1) ("UK lead and bismuth").*

Furthermore, the European Communities consider that the information provided by the French Government and by the Commission itself in the context of the above mentioned sunset review, demonstrates that Usinor was privatized for fair market value. The DOC did not take account of this fact when deciding that subsidization was likely to continue. In these circumstances, the European Communities consider that no benefit was conferred to Usinor from the previous financial contributions made by the French Government to its state-owned steel industry. This is also confirmed by the conclusions of the *UK lead and bismuth* findings referred to above.

[23] These consultations relate only to the countervailing by the US of financial contributions made prior to Usinor's privatization, such as (1) Equity infusions under Loans with Special Characteristics (2) Shareholders Advances (3) Steel Intervention Fund. These accounted for the bulk of the countervailing duty imposed.

Without prejudice to the above, even if the privatization were not to have occurred for fair market value, the European Communities submits that the US has erroneously calculated the amount of any outstanding subsidy. The US should have made its calculation on the basis of Article 14(d) of the SCM Agreement i.e. on the basis of the amount by which the price paid for the producer and exporter of the subject merchandise constituted "less than adequate remuneration". The method used by investigating authorities for calculating the amount of subsidy in countervailing duty investigations is required by Article 14 to be consistent with the guidelines set out in, *inter alia*, Article 14(d). The US calculation in this case and the US "change of ownership" methodology are not consistent with them.

United States – countervailing duties on imports of Cut-to-Length Carbon Steel Plate from Germany

Specific Case No. 13

This case concerns the final results of a sunset review which led to the continuation of the countervailing measures imposed on Cut-to-Length Carbon Steel Plate from Germany, produced and exported by AG Dillinger Hüttenwerke Saarstahl (Dillinger), on 2 August 2000. The US case number is C-428-817; (65 FR 47407 of 2 August 2000). The rate of countervailing duty for Dillinger was 14.84 % *ad valorem.*

The European Communities consider the imposition of countervailing duties in this case to be inconsistent with the obligations of the United States under the SCM Agreement, and in particular, in breach of Articles 1.1, 10, 14, 19 and 21 of the SCM Agreement [24].

The above countervailing duty was originally imposed in 1993 on the basis of alleged subsidies which derived from financial contributions made by the German Government to the state-owned German steel industry. This was prior to the privatization of DHS-Dillinger Hütte Saarstahl AG (DHS) [25]. The US Department of Commerce ("DOC"), in conducting the sunset review, was required by Article 21.3 of the SCM Agreement to determine whether the expiry of the duty would be likely to lead to (i.e. cause) a continuation or recurrence of subsidization. In making this determination, DOC did not examine whether the above financial contributions conferred a benefit to Dillinger, the producer of the subject goods during the sunset review investigation, but presumed (irrebuttably) that these subsidies had passed through to Dillinger on the basis of the DOC's so-called *"change of ownership"* methodology. The European Communities consider that this failure to demonstrate the existence of a benefit to the company under investigation is a clear breach of the above-mentioned provisions of the SCM Agreement. This violation was confirmed by the conclusions of the WTO Appellate Body in

[24] These consultations relate to the countervailing by the US of financial contributions made prior to Dillinger's privatization (1) Structural Improvement Aids and (2) Subsidies related to the creation of Dillinger. These amount to full amount of the countervailing duty.

[25] In 1986, the Government of Saarland (GOS) acquired 76% of the shares of Saarstahl Völklingen GmbH (SVK). In 1989, the GOS and Usinor (the then majority owner of Dillinger) reached an agreement under which (1) SVK would be privatized and become DHS-Dillinger Hütte Saarstahl AG (DHS), (2) DHS would own essential all the shares of Saarstahl AG and Dillinger and (3) Usinor would acquire 70% of the shares of DHS. The DOC held in its redetermination that this transaction was at arm's length (Final Results of Redetermination pursuant to Court Remand on Issue of Privatisation, Consol. Ct. N° 93-09-00550-CVD, Slip Op. 95-17, p. 23). Following the bankruptcy of Saarstahl AG in 1993, DHS sold its 100% interest in Saarstahl AG to the GOS. Finally, in 1997, the GOS transferred the majority of its shareholdings in Saarstahl AG to third parties pursuant to the plan of reorganization approved in the Saarstahl bankruptcy.

"*United States – Imposition of Countervailing duties on Certain Hot-Rolled Lead and Bismuth Carbon Steel Products Originating in the United Kingdom" (AB-2000-1) ("UK lead and bismuth").*

Furthermore, the European Communities consider that the information on the DOC record in the context of the above mentioned sunset review, demonstrates that Dillinger was privatized for fair market value. The DOC did not take account of this fact when deciding that subsidization was likely to continue. In these circumstances, the European Communities consider that no benefit was conferred to Dillinger from the previous financial contributions made by the German Government to its state-owned steel industry. This is also confirmed by the conclusions of the *UK lead and bismuth* findings referred to above.

Without prejudice to the above, even if the privatization were not to have occurred for fair market value, the European Communities submits that the US has erroneously calculated the amount of any outstanding subsidy. The US should have made its calculation on the basis of Article 14(d) of the SCM Agreement i.e. on the basis of the amount by which the price paid for the producer and exporter of the subject merchandise constituted "less than adequate remuneration". The method used by investigating authorities for calculating the amount of subsidy in countervailing duty investigations is required by Article 14 to be consistent with the guidelines set out in, *inter alia*, Article 14(d). The US calculation in this case and the US "change of ownership" methodology are not consistent with them.

United States – countervailing duties on imports of Cut-to-length Carbon Steel Plate from Spain

Specific Case No. 14

This case concerns the definitive results of a sunset review which led to the continuation of the countervailing measures imposed on Cut-to-length Carbon Steel Plate from Spain, produced and exported by Aceralia SA, on 7 April 2000. The US case number is C-469-804; (65 FR 18307 of 7 April 2000). The rate of countervailing duty for Aceralia was 36.86 % *ad valorem*.

The European Communities consider the imposition of countervailing duties in this case to be inconsistent with the obligations of the United States under the SCM Agreement, and in particular, in breach of Articles 1.1, 10, 14, 19 and 21 of the SCM Agreement [26].

The above countervailing duty was originally imposed in 1993 on the basis of alleged subsidies which derived from financial contributions made by the Spanish Government to the state-owned Spanish steel industry. This was prior to the privatization of Aceralia in 1997. The US Department of Commerce ("DOC"), in conducting the sunset review, was required by Article 21.3 of the SCM Agreement to determine whether the expiry of the duty would be likely to lead to (i.e. cause) a continuation or recurrence of subsidization. In making this determination, DOC did not examine whether the above financial contributions conferred a benefit to Aceralia, the producer of the subject goods during the sunset review investigation, but presumed (irrebuttably) that these subsidies had passed through to Aceralia on the basis of the DOC's so-called *"change of ownership"* methodology. The European Communities consider that this failure to demonstrate the existence of a benefit to the company under investigation is a clear breach of the above-mentioned provisions of the SCM

[26] These consultations relate only to the countervailing by the US of financial contributions made prior to Aceralia's privatization, such as (1) Law 60/78; (2) Royal Decree 878/81; (3) The 1984 Council of Ministers Meeting; (4) The 1987 Government delegated commission on Economic affairs. These represent the bulk of the countervailing duty imposed.

Agreement. This violation was confirmed by the conclusions of the WTO Appellate Body in "*United States – Imposition of Countervailing duties on Certain Hot-Rolled Lead and Bismuth Carbon Steel Products Originating in the United Kingdom" (AB-2000-1) ("UK lead and bismuth").*

Furthermore, the European Communities consider that the information provided by the Spanish Government and by the Commission itself in the context of the above mentioned sunset review, demonstrates that Aceralia was privatized for fair market value. The DOC did not take account of this fact when deciding that subsidization was likely to continue. In these circumstances, the European Communities consider that no benefit was conferred to Aceralia from the previous financial contributions made by the Spanish Government to its state-owned steel industry. This is also confirmed by the conclusions of the *UK lead and bismuth* findings referred to above.

Without prejudice to the above, even if the privatization were not to have occurred for fair market value, the European Communities submits that the US has erroneously calculated the amount of any outstanding subsidy. The US should have made its calculation on the basis of Article 14(d) of the SCM Agreement i.e. on the basis of the amount by which the price paid for the producer and exporter of the subject merchandise constituted "less than adequate remuneration". The method used by investigating authorities for calculating the amount of subsidy in countervailing duty investigations is required by Article 14 to be consistent with the guidelines set out in, *inter alia,* Article 14(d). The US calculation in this case and the US "change of ownership" methodology are not consistent with them.

Annex

The privatization of ILVA S.p.A.: AST, ILP and Cogne

ILVA S.p.A. consisted of four operating divisions: (1) the Carbon Steel Flat Products Division; (2) Specialty Steel Division (including the Terni and Turin flat-rolled facilities); (3) Pipe Division; and (4) Long Products Division. In addition to these operating divisions, the "ILVA Group" (consolidated ILVA S.p.A. and its subsidiaries) also included a number of other steel-related subsidiaries including service centers, trading companies, etc., totalling over 100 companies. ILVA was a state-owned through the Istituto per la Ricostruzione Industriale ("IRI").

In September 1993, IRI agreed to the reorganization and privatization of ILVA S.p.A. through the sale on the market of ILVA and IRI's holdings. The privatization of the ILVA Group was carried out by the splitting of its core businesses into two new companies: (1) ILVA Laminati Piani S.r.l. ("ILP") (carbon steel flat products); and (2) Acciai Speciali Terni S.r.l. ("AST") (specialty steel). The rest of the ILVA Group, to be known as ILVA Residua, was to be liquidated with all saleable assets also to be sold to private owners. These additional saleable assets within ILVA Residua included, among others, Cogne (specialty long products) and Dalmine (tubes). In October 1993, ILVA S.p.A. entered into liquidation.

In accordance with this privatization plan, the specialty steels and carbon steels divisions of ILVA were separately incorporated by a demerger of ILVA into AST S.r.l. and ILP S.r.l., respectively, on December 31, 1993. Public offerings for the sale of AST and ILP were prepared and published in Italian and foreign newspapers soliciting purchase offers. In December 1994, AST was transferred to the privately-held KAI Italia S.r.l. as the result of an arm's length sale for fair market value. In April 1995, ILP was transferred to a consortium of private investors led by Riva Acciaio S.p.A. as the result of an arm's length sale for fair market value. In addition, in December 1993, Cogne Acciai Speciali S.p.A. was transferred to the privately-held Ferriere di Stabio (through GE.VAL, a company set up by the controlling shareholder of this company) as the result of an arm's length sale for fair market value. In each purchase, the buyers paid fully for everything they received.
