General overview of active WTO Dispute Settlement cases involving the EC as complainant or defendant
On 22 June 2001, the USTR requested the ITC to initiate a safeguard investigation on imports of 4 broad groups of steel products (carbon and alloy flat, long and tubular products and stainless steel products). On 22 October 2001, after having defined 33 categories of products, the ITC reached a positive injury determination for 12 of them, a negative injury determination for 17 of them and issued a divided determination for 4 of them. On 19 December 2001, the ITC forwarded its remedy recommendations to the US President. On 3 January 2002, the USTR requested supplementary information from the ITC. Replies were provided on 9 January and 4 February 2002.

On 7 February 2002, the EC requested a first round of consultations under Article 12.3 SA, reserving its rights for further consultations once the actual US measures would have been decided. This first round of consultations took place in Washington on 13 February 2002.

On 5 March 2002, the US President proclaimed definitive safeguard measures in the form of an increase in duties ranging from 8 to 30% on imports of certain flat steel, hot-rolled bar, cold-finished bar, rebar, certain welded tubular products, carbon and alloy fittings, stainless steel bar, stainless steel rod, tin mill products and stainless steel wire and in the form of a tariff rate quota on imports of slabs effective as of 20 March 2002.

On 7 March 2002, the EC requested consultations with the US under both Article 12.3 SA and Article 4 of the DSU. A second round of bilateral consultations under Article 12.3 SA took place in Geneva on 20 March 2002. Joint consultations under Article 4 DSU were held in Geneva on 11-12 April 2002 with Korea, Japan, China, Switzerland and Norway. These consultations did not allow to solve the dispute.

On 7 May 2002, the EC requested the establishment of a Panel but this request was rejected at the ordinary meeting of the DSB of 22 May 2002. The Panel was established at the special meeting of the DSB of 3 June 2002.

A single Panel was established against the US steel safeguards under Article 9.1 of the DSU following requests presented by Japan and Korea on 14 June 2002 and by China, Switzerland and Norway on 24 June 2002, by New Zealand on 8 July 2002 and by Brazil on 29 July 2002.

On 25 July 2002 the Director-General appointed Ambassador Stefán JÖHANNESSON, Mr. Moha KUMAR and Ms Margaret LIANG as panellists. The Panel is expected to issue its final report in April 2003.

Similar claims are put forward by the complainants and include a violation of the precondition of “unforeseen developments” laid down in Article XIX GATT; a lack of increased imports, as required by Article 2.1 SA; an incorrect definition of the domestic industries that produce like products, as required by Articles 2.1 and 4.2(a) in conjunction with Article 4.1(c) SA; a lack of serious injury or threat thereof serious injury, as required by Articles 2.1 and 4.2(a) SA; an absence of causal link between imports and serious injury or threat thereof, as required by Articles 2.1 and 4.2(b) SA; a breach of the proportionality principle set forth in Article 5.1 SA; a lack of parallelism between the scope of the safeguard investigation and the scope of the safeguard measures; inadequate setting forth of the findings of facts and law in the various documents underlying the US decision, as required by Article 3.1 SA.
US LOSES ANOTHER TWO WTO STEEL PANELS

The World Trade Organization (WTO) issued two panel reports yesterday that concluded that the US law on imposition of countervailing duties (CVD) on privatized foreign steel companies, and the threshold for imposing such duties, are incompatible with WTO rules.

“I welcome the decision by the WTO confirming the inconsistency of the US law with WTO obligations. I call again upon the US to promptly implement the panel findings and lift all WTO incompatible duties, so that European exports will be purchased at fair and competitive prices,” commented EU Trade Commissioner Pascal Lamy.

These findings are a further case of US adoption of WTO incompatible interpretations of the rules on trade defense measures (anti-dumping, anti-subsidy and safeguards), especially on steel. Other aspects of US practice in this area are also contentious, and the EU has recently requested new WTO consultations concerning anti-dumping and countervailing measures on steel products from France and Germany. The EU expects the US to implement the panel findings promptly by lifting the countervailing duties and terminating other actions founded on the same WTO inconsistent interpretation.

Privatizations

The first panel report (DS 212) concerns countervailing measures taken by the US against privatized steel companies in the EU. The 12 US measures in question were imposed against alleged subsidies to European state-owned entities, which were granted prior to the privatization of the firms concerned. The measures have been maintained, in some cases since the early 1990's. The panel's findings held the US methodologies to be inconsistent with US WTO obligations.

The original US methodology had already been found to be WTO incompatible in May 2000 in the "British Steel" case. Pursuant to domestic court judgments, the US Department of Commerce elaborated a new "same person" methodology, which has also been judged WTO incompatible by the present panel. The panel indicated that the incompatibility of both methodologies was due to the fact that the US failed to determine whether the new privatized producer received any benefit from prior financial contributions to state-owned producers. The US Department of Commerce had not examined whether the privatizations were at arm's length and for fair market value. The panel also noted that a privatization of a state-owned firm at fair market value eliminates prior subsidies.

The panel also accepted the EC claims against Section 771(5)(F) of the US Tariff Act of 1930, as amended, (19 U.S.C. Section 1677(5)(F)), the legal provision governing changes of ownership, including privatizations. It found the US provision to be inconsistent with the WTO Agreement on Subsidies and Countervailing Measures and the US will have to modify not only its "same person" methodology, but also its legislation.

De-minimis and US sunset review practice

The second panel concerns US countervailing duties on imports of corrosion resistant steel from Germany (DS213). The relevant WTO rules provide that any definitive CVD shall be terminated not later than 5 years from its imposition, unless the authorities determine in an investigation
("sunset review") that the expiry of the duty would be likely to lead to continuation or recurrence of subsidization and injury. Negligible subsidies of less than 1% (de minimis rule) are presumed not to cause injury.

In the case concerning corrosion resistant steel from Germany, despite finding of de minimis subsidies (0.53%) in the sunset review, the US authorities did not revoke the CVD imposed on imports of these products. Supporting the EC’s argument, the panel has found that this case should be terminated and it has requested the US to apply the 1% de minimis rule in future sunset reviews.

New dispute on US trade defensive measures on steel

This new dispute concerns the continuation by the US authorities, following a sunset review in December 2000, of anti-dumping and countervailing duties imposed in 1993 on cut-to-length steel plate from Germany and corrosion-resistant steel from France and Germany.

The US decision in these cases, as well as the US legislation and regulations, appear to be inconsistent with several provisions of the WTO agreements. Japan, whose exports of corrosion-resistant steel were also subject to the US measures, has already requested the establishment of a WTO panel, raising partly similar legal issues to those contested by the EC.

Background information:

http://www.wto.org/english/news_e/news_e.htm#ds212

http://europa.eu.int/comm/trade/bilateral/usa/usa.htm

http://mkaccdb.eu.int/miti/dsu

1 Countervailing duties are measures taken to offset the injurious effect of subsidies.

2 The firms involved are Usinor (France), Corus (UK), AST, Cogne, Ilva (Italy), SSAB (Sweden), Dillinger (Germany) and Aceralia (Spain).

3 The case was "United States - Imposition of Countervailing duties on Certain Hot-Rolled Lead and Bismuth Carbon Steel Products Originating in United Kingdom" (DS 138).

4 Companies involved: Thyssen Krupp Stahl AG, Stahlwerke Bremen GmbH, EKO Stahl GmbH and Salzgitter AG.
WTO Upholds U.S. Provisions Against Unfair Steel Subsidies

Appellate Body rejects EU challenge involving German products
The Office of the United States Trade Representative (USTR) announced November 28 that the Appellate Body of the World Trade Organization (WTO) has rejected a challenge by the European Union and upheld key provisions of a U.S. trade law that provides a remedy against unfairly subsidized imports. The case involved subsidized steel from Germany.
U.S. Trade Representative Robert B. Zoellick said the WTO decision was a victory not only for the United States, but also for the multilateral trading system.

Following is a USTR press release with background information on the case:
Office of the U.S. Trade Representative
Executive Office of the President
Washington, D.C. 20508
November 28, 2002

WTO Appellate Body Upholds Key Provisions of U.S. Anti-Subsidy Law Involving Steel Case
Washington -- The Office of the United States Trade Representative announced today that the Appellate Body of the World Trade Organization (WTO) upheld key provisions of a U.S. trade law that provides a remedy against unfairly subsidized imports. In a case involving subsidized German steel, the Appellate Body found that the U.S. trade laws were consistent with U.S. WTO obligations, rejecting a challenge by the European Union (EU).

U.S. trade laws are the most comprehensive in the world, and play a key role in making sure American workers, businesses, and farmers can compete on a level playing field, said U.S. Trade Representative Robert B. Zoellick. This is a victory not only for the United States, but for the multilateral trading system. With today's report, the Appellate Body has done what it should -- interpret the WTO agreements as written.

The provisions at issue involve so-called sunset reviews. In a sunset review, which is a procedure required by the WTO Subsidies Agreement, authorities review an outstanding countervailing duty order every five years to determine whether the imposition of special countervailing duties remains necessary to counteract subsidized imports that cause harm to a competing U.S. industry. In challenging the U.S. countervailing duty remedy, the EU alleged that certain aspects of the U.S. sunset review regime were inconsistent with the requirements of the Subsidies Agreement.

The Appellate Body report involved a review of an earlier WTO panel report in a dispute arising out of a U.S. sunset review of a countervailing duty order on imported corrosion-resistant carbon steel products from Germany. Although today's report primarily addressed the EU challenges to the U.S. countervailing duty law itself, the earlier panel report had found that one aspect of the sunset review on German steel was inconsistent with the Subsidies Agreement. The United States did not appeal this particular finding to the Appellate Body.

Background:
The WTO Appellate Body report released today arose out of a sunset review conducted by the U.S. Department of Commerce (Commerce) of the 1993 countervailing duty order on corrosion-resistant carbon steel products from Germany. In August, 2000, Commerce issued a final sunset review determination to the effect that revocation of the order would likely lead to a continuation or recurrence of subsidization. In December, 2000, the U.S. International Trade Commission (ITC) determined that revocation of the order would likely lead to a continuation or recurrence of material injury to the U.S. industry concerned. In light of these two findings, Commerce determined to leave the order in place.

On November 10, 2000, the EU requested dispute settlement consultations, and on August 8,
2001, the EU requested the establishment of a WTO dispute settlement panel. The EU challenged
the specific Commerce determination, as well as certain aspects of the sunset review provisions of
the U.S. countervailing duty law. The WTO panel circulated its final report on July 3, 2002. Although
the report largely favored the United States, the panel did find against the United States on a few
issues. Accordingly, the United States appealed, and the EU subsequently filed a cross-appeal with
respect to the issues on which it lost.
Taking the Appellate Body and panel reports together, the following findings were made:
The Appellate Body affirmed the panel's finding that the U.S. system of automatically self-initiating
sunset reviews is WTO-consistent. The EU claim to the contrary, if accepted, would have imposed
an additional burden on U.S. industries seeking relief from subsidized imports.
The Appellate Body reversed the panel and found that the standard used in sunset reviews by
Commerce for purposes of determining when subsidies are de minimis -- and, thus, non-actionable
-- was not WTO-inconsistent. Here, too, the EU claim, if accepted, would have weakened the
remedy against subsidized imports.
The Appellate Body affirmed the panel's finding that the U.S. countervailing duty law is not
inconsistent with an authority's obligation under the Subsidies Agreement to determine the
likelihood of continuation or recurrence of subsidization in a sunset review.
The Appellate Body affirmed the panel's finding that certain EU claims were not properly before the
panel. These claims involved the EU's allegations that with respect to the U.S. countervailing duty
law in general, and the sunset review on German steel in particular, interested parties are not given
ample opportunity to submit evidence, as required by the Subsidies Agreement.
The EU did not appeal the panel's finding that the EU claim concerning the U.S. expedited sunset
review procedure was not properly before the panel.
The United States did not appeal the panel's finding that in the particular sunset review on
corrosion-resistant carbon steel products from Germany, Commerce failed to properly determine
whether a continuation or resumption of subsidization was likely.
end text