


STEEL UPDATE


Second Meeting Held In WTO Challenge Against US Section 201 Safeguard Measures

The World Trade Organization (WTO) dispute settlement panel examining the challenge of eight Members against the US Section 201 safeguard measures on steel held its second meeting during the week of December 9. This marks the final opportunity for parties to present their arguments to the panel. The panel is scheduled to issue its interim ruling to the parties on February 14 and its final report to the parties on March 28, but may postpone its ruling if it determines that it can not properly consider all the facts and arguments in the time provided.


Separately, Taiwan recently requested consultations with China over China's November 20 safeguard measures on steel under Article 12.3 of the Safeguards Agreement. Article 12.3 consultations usually are aimed at seeking compensation to offset the impact of safeguard measures. If a mutually acceptable agreement can not be reached, Taiwan would have the right to request dispute settlement consultations. China on November 20 accepted Taiwan's request for consultations. This action marks the first time that China has agreed to bilateral trade negotiations with Taiwan through the WTO. Because China claims sovereignty over Taiwan, it generally considers matters concerning Taiwan to be internal matters. Also requesting Article 12.3 consultations with China are the EU, Japan and Korea. 

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US Steel Exclusion Process Begins

The US Department of Commerce (DOC) and the US Trade Representative (USTR) on November 19 published a notice in the Federal Register setting forth a new round of procedures under which parties may request the exclusion of a particular product from the March 2002 safeguard measures on steel. The deadline for submitting responses to exclusion request questionnaires was December 10. DOC and USTR will review the questionnaires and begin releasing batches of questionnaires for comment. Reportedly, DOC received approximately 600 exclusion request questionnaire responses. Although no official schedule exists, DOC and USTR likely will begin releasing the first batch of questionnaires within 10 days after December 10 and request that parties wishing to object do so within two weeks. Parties wishing to object must submit a completed objector's questionnaire response. The questionnaires are based on those used by DOC and USTR during the first round, but have been modified to require parties seeking exclusions to provide detailed information from US customers and/or end-users. The exclusion request questionnaire also allows parties to request the exclusion of a product for which a previous request was submitted but not granted. Parties doing so must be able to conclusively demonstrate that the circumstances involving the first request have changed to such an extent that the exclusion now is warranted. Parties objecting must provide comprehensive specifics on their capabilities to produce and supply the product at issue within a reasonable period of time. 


WTO Appellate Body Rules On US CVD Laws

The World Trade Organization Appellate Body (AB) on December 9 revised a panel ruling regarding an EU complaint involving 12 US countervailing duty determinations. The AB ruling follows an appeal by the United States in September of the panel's ruling that the United States violated its obligations under the WTO agreements, including the Agreement on Subsidies and Countervailing Measures when it imposed countervailing duties on European steel companies in 12 cases. At issue was whether companies that had been privatized still benefited from state subsidies that they received prior to being privatized. Affected by the ruling are several cases involving carbon and stainless steel products from France, Italy, Sweden, the United Kingdom, Germany and Spain. Although the AB ruled in favor of the United States, it upheld the panel's ruling that the United States must first determine that a countervailable "benefit" continues to exist following privatization before imposing countervailing measures. Specifically, the AB overturned the panel's finding that "[o]nce an importing member has determined that a privatization has taken place at arm's-length and for fair market value, it must reach the conclusion that no 'benefit' resulting from financial contribution (or subsidization) continues to accrue to the privatized producer." 


MULTILATERAL TRADE

US Proposes Broad Tariff Reduction Plan At WTO

The United States on December 2 proposed to WTO Member countries a plan to eliminate import tariffs on nearly all industrial and consumer goods by 2015. Specifically, the United States proposed that Members eliminate tariffs on all non-agricultural goods, including textiles


and apparel, in two phases: (i) to less than 8 percent by 2010; and (ii) to zero by 2015. In addition, the US proposed that tariffs currently at or below 5 percent be entirely eliminated by 2010. Also included are tariffs on agricultural equipment, chemicals, civil aircraft, fish, toys, pharmaceuticals, steel and paper. According to USTR Robert Zoellick, in January 2003 the United States will release an initial list of non-tariff barriers that it wants eliminated as part of WTO negotiations in areas such as licensing, standards and customs procedures. US exporting industries welcomed the proposal, while US textile industries sharply criticized the proposal as an invitation to flood the US market. Also, developing country WTO Members labeled the proposal as overly optimistic and cautioned that it could undermine the special and deferential treatment traditionally accorded less developed countries. 

ITC Still Short One Commissioner

Effective at the end of the first session of the 107th Congress late last year, Commissioner Dennis Devaney resigned from the ITC. Although Charlotte Lane, who was nominated by President Bush to replace him, was approved by the Senate Finance Committee last August, certain agricultural state senators blocked her nomination. These senators wanted to secure a commitment that the next nominee to the ITC will be a candidate with an agricultural background and be approved together with Lane. President Bush, just prior to the adjournment of Congress this year, nominated Daniel Pearson, a policy analyst with Cargill, Inc., who was to fill the slot of ITC Commissioner Lynn Bragg, whose term expired in June 2002. However, the Senate did not automatically approve the Pearson and Lane nominations before adjourning. Reportedly, some senators are concerned that Pearson does not have enough agricultural experience. Thus, the ITC continues to operate with five commissioners (Commissioner Bragg may stay until she chooses to leave or the nominee for her seat is confirmed by the Senate). Pearson's nomination likely will be considered sometime after Congress reconvenes in January. 

US-Chile FTA Negotiated

Chilean trade officials announced December 11 that Chile and the United States had concluded negotiations and reached agreement on a US-Chile FTA. Initially scheduled to end December 6, the 14th round of negotiations was extended into the week of December 9. The newly concluded FTA eliminates almost immediately tariffs on over 85 percent of consumer and industrial goods traded between the two countries. Most remaining tariffs will be eliminated within four years. US trade negotiators earlier this month suggested that, although an FTA with Chile could be completed shortly, some issues remained. Among those issues were intellectual property protection, agricultural tariff reductions and the enforcement of labor and environmental obligations. In the agriculture sector, Chile will phase out by 12 years its so-called price-band system under which variable duties are imposed on wheat, sugar and vegetable oils. The WTO recently ruled against Chile's price-band system in a challenge brought by Argentina and the United States reportedly had been waiting to see how Chile would implement the ruling. The deadline by which Chile must implement the ruling remains unclear and Chilean officials declined to comment on whether Chile will, in the meantime, repeal or modify its system. On another front, negotiators also were trying to compromise regarding rules of origin for processed food products containing sugar and dairy products. Here, the US sugar industry has lobbied for

rules that would provide duty-free treatment to sugar-containing products only if the sugar is of US or Chilean origin. The US negotiating team during this final round of negotiations was led by USTR Robert Zoellick. A summary of the nearly 800 page US-Chile FTA is available on the website of the USTR. 

BRIEFLY NOTED

- The **ITC is seeking comments** from interested parties on how to improve its conduct of anti-dumping and countervailing duty investigations. In a notice issued in the Federal Register on December 4, the ITC is asking for written comments by March 4, 2003, “concerning all aspects of its investigations and reviews; in particular, questionnaires, hearings, staff reports, schedules and opinions.” Comments may address any procedural aspect of these matters. The ITC is not requesting comments on substantive aspects of US anti-dumping and countervailing duty law.
- According to US import statistics, **Vietnamese imports have more than doubled** in the first nine months of 2002 compared with the same period last year. The rise in imports is due primarily to the US-Vietnam trade agreement which took effect on December 10, 2001. Imports rose from US\$736 million to \$1.571 billion and are expected to reach \$2 billion by the end of this year. Although US and Vietnamese officials consider this increase a positive sign of increased trade relations, some US industries, such as the catfish industry, are claiming injury and requesting US authorities to impose anti-dumping duties (in the case of catfish, duties over 200 percent) to offset the impact of increased imports.
- **FTA Update:** USTR Zoellick notified Congress on November 13 that the United States plans to start FTA negotiations with **Australia** within 90 days. USTR also will begin discussions with certain African countries on developing a foundation for a **US-Southern African Customs Union FTA**. Separately, Zoellick discussed with Philippine trade officials late last month the possibility of a **US-Philippine FTA** and **Bolivia** reportedly is seeking a free trade agreement with the United States either bilaterally or via the Free Trade Area of the Americas. While there will be many areas of concern among negotiators and industry groups as these FTA negotiations begin and progress, one common area of contention among all of these potential FTAs likely will be discussions surrounding agriculture. Separately, **Turkey** reportedly has suggested to the United States the possibility of joining NAFTA.
- The European Union on November 20 released its **annual report on US barriers to trade and investment**. Similar to the US National Trade Estimate Report released every March, the EU report focuses on US tariff and non-tariff barriers, such as legal or licensing regimes, that adversely affect European exporting interests. The EU report functions as a starting point for bilateral trade negotiations aimed at resolving certain of the alleged barriers.
- A **Section 421 market disruption petition** was filed on November 27 against imports of certain steel wire garment hangers from China. This marks the second 421 petition that has

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been filed since China joined the WTO in 2001. The first investigation was filed in August against imports of pedestal actuators. In that case, the ITC made an affirmative injury determination and recommended a quota to remedy the market disruption. The final decision on whether or not to implement the ITC's recommendation now rests with the president and his trade advisors who must make a determination by January 16, 2003. In the wire garment hangers investigation, the ITC already has established the schedule: Pre-hearing briefs are due January 3, hearings will be held on January 9, post-hearing briefs are due January 13 and the ITC's injury determination is due on or about January 28.

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