

KAYE SCHOLER LLP
INTERNATIONAL TRADE UPDATE

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STEEL UPDATE

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

The World Trade Organization (WTO) dispute settlement panel charged with examining the challenge of eight Members against the US Section 201 safeguard measures on steel held its first meetings on October 29-31. During the meetings, complainants and the United States presented their arguments orally before the panel and responded to questions from the panel. Members must provide written answers to questions asked by the panel and by co-complainants currently are due by November 12.

The meetings began with a detailed summary of the complaints raised against the United States with respect to the 8 percent to 30 percent tariffs on 10 product categories of steel. The next two days focused on the legal arguments in support and opposition to the claims raised. Complainants presented their arguments that the US safeguard measures were imposed without meeting the WTO requirement and standard of “serious injury” and that the United States did not properly establish a causal relationship between increased imports and injury to the domestic industry.

Separately, Taiwan on November 5 requested dispute settlement consultations with the United States over the March 2002 US safeguard measures on steel. The request for dispute settlement consultations is Taiwan’s first since joining the WTO last January. Although Taiwan already is a third party in the ongoing dispute, it reportedly decided to request its own consultations after failing to secure certain exclusions.

Finally, China notified the WTO on November 5 that it will impose definitive safeguard measures in the form of tariff rate quotas on five steel product categories beginning November 20. China previously imposed provisional safeguard measures on these steel categories in response to what it claimed were sharp and sudden increases between 1999 and 2001 and “unforeseen” developments, including the US and EU safeguard measures. ☞

US STEEL EXCLUSION PROCESS TO BEGIN SOON	2
ITC AGAIN FINDS NO INJURY IN COLD-ROLLED STEEL CASES.....	2
US CUSTOMS ISSUES FINAL CARGO MANIFEST RULE.....	2
US CUSTOMS TO DISPERSE BYRD AMENDMENT FUNDS AGAIN.....	3
USTR REQUESTS COMMENTS FROM US INDUSTRY ON MARKET ACCESS.....	3
US CONGRESS PLANS TO FOCUS ON TRADE	3
BRIEFLY NOTED	4

US Steel Exclusion Process To Begin Soon

The US Department of Commerce (DOC) and the US Trade Representative (USTR) are preparing for the product exclusion process for the 2003/2004 period. USTR issued a notice on September 3 requesting comments on proposed exclusion questionnaires. The questionnaires are based on those used in the previous exclusion process and have been revised to respond to concerns that arose during that process. Reportedly, USTR and DOC had hoped to begin the process by November 15, but still are waiting to receive approval for the questionnaires from the US agency responsible for coordinating US government activities and minimizing the burden on responding parties. Likely the process will begin on or before the first week of December. Once USTR and DOC receive approval, they will publish a notice in the Federal Register announcing the beginning of the exclusion process. The deadlines for responding likely will be short. Thus, parties wishing to pursue additional or previously not granted exclusions should already begin to gather the relevant information needed to submit the questionnaires. Foremost, any party considering requesting an exclusion should already have requested and received an exclusion number. These numbers are required prior to submitting a request. ☐

ITC Again Finds No Injury In Cold-Rolled Steel Cases


The US International Trade Commission (ITC) on October 16 voted 4-1 that the US cold-rolled steel industry is not injured or threatened with injury by reason of imports from Argentina, Belgium, Brazil, China, France, Germany, Korea, the Netherlands, New Zealand, Russia, South Africa, Spain, Taiwan, Turkey and Venezuela. This vote follows an August 27 negative vote of 4-1 that the US cold-rolled steel industry is not injured or threatened with injury by reason of imports from Australia, India, Japan, Sweden and Thailand. The ITC in its most recent vote reiterated that imports of cold-rolled steel have significantly decreased since the beginning of this year because of the recent Section 201 safeguard measures on steel. The ITC also maintained that any injury that may have been experienced by the US industry already is addressed via the 30 percent safeguard measure. The negative injury vote means that these countries will not be subject to the 24 percent to 153 percent anti-dumping duties found by the DOC in July of this year. Separately, some US steel producers already have challenged the ITC's August 27 determination before the US Court of International Trade and are expected to do the same with respect to the more recent ruling. ☐

MULTILATERAL TRADE


US Customs Issues Final Cargo Manifest Rule

The US Customs Service on October 30 published final regulations in the Federal Register regarding cargo manifests of vessels bound for the United States. The rule requires sea vessels bound for the United States to provide advance manifest information to Customs 24 hours before the lading of cargo at a foreign port. The rule is intended to assist US Customs in evaluating any terrorist threat that a vessel bound for the United States may pose. US Customs issued a proposed rule and request for comments on August 8 and received 78 comments. After reviewing the comments, Customs amended its proposed rule to delay enforcement by 60 days after the rule becomes effective and to exempt from the rule vessels carrying bulk cargo. The rule becomes effective November 29, 30 days after the date of its publication. ☐


US Customs To Disperse Byrd Amendment Funds Again

Although the WTO on September 16 officially released its report striking down the US Continued Dumping and Subsidy Offset Act of 2000 (Byrd Amendment), the US Customs Service recently announced that it expects to distribute to qualifying US entities approximately \$330 million in duties collected from antidumping and countervailing duty orders. This will mark the second time that Customs has distributed funds under the Byrd Amendment. Last year Customs distributed approximately \$217 million. This year, of the \$330 million total, the largest payout, about \$70 million, reportedly will go to US petitioners in an antidumping case against imports of petroleum wax candles. Last year, Timken Co., a US roller bearing producer, was the recipient of the largest payout, \$30 million. US Customs will notify qualifying parties by November 29 and expects to send checks within a few weeks later. The United States appealed the WTO panel ruling against it on October 18. 

USTR Requests Comments From US Industry On Market Access

USTR on November 1 published a notice in the Federal Register requesting comments from interested parties on “significant barriers to US exports of goods, services and overseas direct investment.” This request is part of USTR’s annual process of identifying impediments to US exports and listing them in its National Trade Estimate Report on Foreign Trade Barriers (NTE). USTR particularly requests parties to submit comments on any impediments that materially affect “the actual and potential financial performance of an industry sector.” Comments are due to USTR by December 13. After receiving the comments, USTR will review and evaluate concerns and complaints on a country-by-country basis and try to determine actual financial losses or potential losses. The results of USTR’s review then are published in the NTE on or before March 31 of each year. In some instances, where barriers may be significantly egregious, USTR may pursue bilateral consultations and/or WTO dispute settlement. 

US Congress Plans To Focus On Trade

Following the November 5 US interim elections, the US House of Representatives and the US Senate now are majority controlled by the Republican Party. The Republicans have stated that they will make trade a priority. This likely will provide additional momentum for President Bush’s ambitious agenda to pursue bilateral and regional trade agreements with several countries. The fact that Republicans control both congressional houses likely will provide the president with more flexibility in negotiations. Prior to the elections, Senate Finance Committee Chairman Max Baucus (D-Montana) had been exceedingly critical of recent WTO dispute settlement findings against the US. In addition, Baucus had called for greater access and participation in ongoing trade negotiations. Specifically, Baucus proposed that designated Members should be permitted to attend trade negotiations and to have access to negotiating documents. Sen. Larry Craig (R-Indiana) and Sen. Arlen Specter (R-Pennsylvania) supported Baucus’ proposal and, with Republicans in control of the Senate, this proposal may continue to receive consideration. 

BRIEFLY NOTED

- The WTO reported on October 22 that there has been a sharp decrease in the number of new antidumping investigations reported by Members during the first half of 2002. However, during the same period, the number of antidumping duty orders imposed increased. Overall, 104 new investigations were initiated by 17 Members. India remained the number one country with 25 new investigations and the United States was second with 22. During the prior period, India had reported 51 new investigations and the United States had reported 35.
- President Bush recently announced that he will begin to pursue free trade agreements (FTA) with Association of Southeast Asian Nations (ASEAN) member countries. According to President Bush, ASEAN members will be eligible to pursue FTAs with the United States after completing trade and investment framework agreements (TIF). The United States already has TIFs with the Philippines, Thailand and Indonesia.
- In its first ever Section 421 market disruption investigation, the ITC on October 18 voted 3-2 in the affirmative that a US industry is injured by reason of increased imports of pedestal actuators. Further, to remedy the market disruption, on October 29, Vice Chairman Jennifer A. Hillman and Commissioner Marcia E. Miller proposed a quantitative restriction of 5,626 units over three-year period on imports of the subject pedestal actuators with a 15 percent increase in units in each remaining year that the remedy is in effect. Commissioner Stephen Koplan proposed a quantitative restriction in the amount of 4,425 units in 2003; 4,514 units in 2004; and 4,604 units in 2005. The ITC's recommendations and determinations now have been sent to the President for final consideration. The president must make his decision on whether and what type of remedy to impose by January 16, 2003.

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