


STEEL UPDATE


US Attempts To Delay Steel 201 WTO Dispute

Prompted by a procedural ruling of the WTO Appellate Body in the so-called US Byrd Amendment dispute, the United States on January 28 requested that the WTO panel examining the US Section 201 safeguard measures against steel issue individual reports for each of the eight co-complainants in the case. According to the US legal advisor, Steven Fabry, the arguments of the eight co-complainants are not identical and require separate rulings by the WTO panel. In the Byrd Amendment dispute, the Appellate Body affirmed the panel’s decision not to issue separate reports for each of the co-complainants despite a US request to do so. According to the Appellate Body, the US request was not submitted in a timely fashion and would have unduly delayed the ruling of the panel. According to Fabry, the Steel 201 dispute is distinctive and, in order for the United States to ensure that its “rights with respect to each of the eight individual complaints at issue in this proceeding, and indeed the rights of the other parties to this dispute, are in no way impaired ... it must seek separate panel reports in this matter.”

Co-complainants disagree and argue that separate reports by the panel could unnecessarily delay the panel’s rulings. The United States maintains that any delay could be minimized if the panel adopted the methodology used in the dispute involving the EC’s banana import regime. There, the panel issued one report for all the parties and then modified that report, deleting or adding sections, to create individual rulings for each complainant. In addition to causing delay, co-complainants in this dispute argue that individual rulings would allow the United States to negotiate separately with each of the complainants on the period for implementation if the panel rules against the United States. This would provide the United States with additional leverage to seek more favorable compliance terms from the individual complainants. While the panel has not made a definitive decision with respect to the US request, it issued a single descriptive report to the parties. (The descriptive report establishes the factual background and arguments of the case. This report will form the basis for the panel’s ruling.) 


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ITC Begins Interim Review Of Section 201 Measures On Steel

On March 14, the International Trade Commission (ITC) published a notice in the Federal Register instituting an interim investigation of the developments with respect to the US steel industry since the imposition of the safeguard measures on steel on March 20, 2002. US safeguards law requires the ITC to conduct an interim review of the effectiveness of the safeguard measures and the efforts made by the US industry to adjustments to import competition. The ITC must report its results to the president and the US Congress by no later than the mid point of the initial period of relief, in this case by September 19. The report will form the basis for any decision by the president to either continue, extend or terminate the safeguard measures. It appears highly unlikely that the president will decide to terminate the measures. Parties seeking to participate in this investigation must file notices of appearances by April 4. The ITC has scheduled public hearings by product category from July 10 through July 22. Prehearing briefs are due July 2; posthearing briefs are due July 18 through August 1, depending upon the date of the hearing for the specific product category. Written submissions from interested parties not participating in the hearing also are due August 1. 


Members Of US Congress Stress Consumer Impact In 201 Review

On January 29, US Rep. Joe Knollenberg (R-Michigan), introduced a resolution in the House of Representatives urging President Bush to direct the ITC to include in its midterm review of the steel safeguard measures (*see* article, above) an assessment of the program's impact on steel consumers. Currently, the ITC is under no obligation to report on these effects. The resolution is an effort to ensure a more balanced evaluation by the ITC. The ITC's findings will be forwarded to the president for a final decision whether to modify or possibly terminate the measures.

The resolution is noteworthy in that more than 50 Members of Congress sponsored it and are actively seeking additional co-sponsors. However, because it is only a resolution and not a bill, if passed, it would not be binding. Nonetheless, the resolution has caused such concern in the domestic steel industry that the chairman and vice chairman of the Congressional Steel Caucus have sent a letter to their colleagues in the House urging them not to co-sponsor the Knollenberg resolution, along with a "fact sheet" regarding the difficulties US steel producers continue to face. According to US Rep. Phil English (R-Pennsylvania), caucus chairman, and US Rep. Peter Viscloskey (D-Indiana), vice-chairman, the resolution would "upset the statutory balance of the factors to be considered during the mid-term review," and "it is *unnecessary* to shift the balance by seeking additional consideration of consumer interests in the mid-term review context." Meanwhile, steel consumers heavily favor the resolution and are urging the initiation of a review of the impact of the 201 measures. 


US Steel 201 Exclusion Process Winds Down

Officials from the US Department of Commerce (DOC) and the Office of the US Trade Representative (USTR) are moving to decide which steel exclusion requests to grant by the end of this month. For most of February and into early March, officials met with exclusion requestor parties and, where necessary, asked parties to submit supplemental information to support their request. Objectors were given up to four days to respond to any supplemental information.

While DOC and USTR officials have scrutinized each of the 650 initiated exclusion requests very carefully, they also have emphasized that only those requests that do not undermine the effectiveness of the safeguard measures will be granted. Meanwhile, the US steel industry has lobbied Congress and the administration opposing all exclusion requests. Steel consumers in the United States complain that they have been adversely affected by the safeguard measures due to excessively high prices they must now pay for steel. In addition, the US Consuming Industries Trade Action Coalition recently issued a report concluding that the 201 tariffs on steel to date have cost more US jobs than they have saved. 


MULTILATERAL TRADE

USTR Zoellick Testifies Before Congress

In late February, USTR Robert Zoellick testified before the House Ways and Means Committee discussing USTR's annual Trade Policy Agenda for 2003. The annual report provides an overview of the Bush administration's trade policy objectives for 2003, including: (1) passing the Chile and Singapore free trade agreements (FTA); (2) negotiating the Doha Development Round; (3) advancing the regional trade negotiations in the framework of the Free Trade Area of the Americas (FTAA); (4) negotiating new FTAs with Central America, the Southern Africa Customs Union, Australia and Morocco; (5) negotiating trade agreements that secure greater market access with the ASEAN countries and Hungary; (6) enforcing US trade laws; and (7) monitoring China's and Taiwan's compliance with their WTO obligations. Zoellick emphasized the Bush administration's intent to work with Congress on these objectives. In an effort seemingly to seek broader consensus in Congress for support of new trade agreements, he also indicated that the US will seek labor and environmental clauses in the FTAs it negotiates this year. The report also notes that the United States is prepared to enter into FTAs with any ASEAN country that meets the standards for a US FTA. This differs from last year's report, in which USTR stated that it would negotiate FTAs only with ASEAN countries with which it already had signed a Trade and Investment Framework Agreement. Copies of the 2003 Trade Policy Agenda are available on the USTR website (<http://www.ustr.gov>). 

President Bush Proposes To Eliminate Byrd Amendment


In his executive branch budget, President Bush proposes to repeal the Continued Dumping and Subsidy Offset Act of 2000 (also known as the Byrd Amendment), effective after fiscal year 2004. The Byrd Amendment requires the US government to pay to the "affected" US industry anti-dumping and countervailing duties collected by the US Treasury. The WTO Appellate Body confirmed in February that the Byrd Amendment violates WTO rules because it constitutes an additional measure in response to dumping and subsidies not permitted under the WTO agreements. President Bush's proposal to repeal the Byrd Amendment will face strong opposition from Congress. Already, 70 senators have sent a letter to the president calling for the continuance of the Byrd Amendment, despite the WTO's ruling. However, Senate Finance Committee Chairman Charles Grassley (R-Iowa) suggested that he would support repealing the law. A possible compromise may involve using the duties collected to assist displaced workers.

In related news, Zoellick, in testimony before the House Ways and Means Committee, emphasized that, although sensitive, repealing the Byrd Amendment is necessary because “America should keep its word, just as we insist others must do.” 

President Dismisses First China-Specific Safeguard Case

In a landmark case closely followed by Washington and Beijing officials and lawyers, President Bush announced on January 17 that he will not impose trade restrictions on imports from China of electromechanical devices known as pedestal actuators. The decision, issued by the White House on January 17, 2003, ended the first proceeding under Section 421, the US law implementing the product-specific market disruption provision of China’s Protocol of Accession to the World Trade Organization. Rejecting the earlier recommendation of the ITC that a restrictive quota be imposed, Bush concluded that “providing import relief for the US pedestal actuator industry is not in the national economic interests of the United States.” This case marks the first attempt by a US industry to seek relief under the Section 421 market disruption measure, which was added to US law by the China permanent normal trade relations (PNTR) legislation of 2000. The president’s decision and the earlier ITC investigation now establish the legal foundation upon which future Section 421 cases will be conducted by the ITC and USTR.

Already, a second Section 421 case was brought by the US steel wire garment hangers industry. In this case, the ITC voted 5-0 that the US industry was injured by reason of increased imports from China. To offset the injury, the ITC recommended tariffs ranging from 30 percent to 15 percent over periods ranging from two to three years. The case now rests with the president who must make a decision by next month on whether to impose any import restrictions.

The ITC conducts market disruption investigations under Section 421 following a complaint brought by a US industry alleging injury caused by increased imports from China. If the ITC makes an affirmative injury determination, it recommends a remedy to offset that injury. The ITC’s injury determination and remedy recommendation are forwarded to the president, who then must determine whether and for how long to impose import relief. The president’s investigation focuses on whether imposing import relief is in the economic interest of the United States. The president is not bound by the remedy recommendations of the ITC and may, after an investigation conducted by the USTR, craft his own remedy. Alternatively, as in the pedestal actuators case, the president may determine that imposing a remedy is not in the economic interest of the United States because the harm to the US economy due to a remedy would be “clearly greater” than the benefits. Kaye Scholer’s international trade team represented the Chinese government and producer in this investigation. 

BRIEFLY NOTED

- The US Department of State banned imports of wild shrimp from Honduras and Venezuela pursuant to Section 609 of P.L. 101-162, which provides standards to protect endangered sea turtles during shrimp harvesting. Shrimp harvested under aquaculture and via artisanal methods are not banned. State Department officials are working with representatives from the affected countries to address the reasons that led to the ban. According to State Department officials, they hope to resolve this matter and lift the ban.

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- The ITC on March 4 requested public comments on possible changes to the US Generalized System of Preferences program (GSP). GSP provides duty-free tariff treatment to selected products from beneficiary countries. The ITC is investigating whether the addition of certain items to the GSP program will have an adverse impact on any US industry or producer. These items include certain cheeses, figs, peanut oil, mixed vegetables and fruits, filberts, canned sardines, frozen lemon juice, adipic acid, toluidines and its salts, MSG, certain dichlorobenzotrifluorides, ferroniobium, titanium sponge, non-high-definition color TVs and flat-panel color video monitors. The ITC has scheduled a public hearing for April 8. Prehearing briefs are due March 20; posthearing briefs are due April 14. Written submissions from interested parties not participating in the hearing also are due April 14.
- The United States reportedly will provide an initial negotiating draft text for the proposed free trade agreement with Morocco during the second-round talks scheduled for the week of March 24. The two sides remain committed to concluding negotiations by the end of this year, possibly as early as September. The first round of negotiations establishing the basis for future talks already were held the week of January 20.
- On March 7, USTR finally released the over 800-page text of the US-Singapore FTA as well as a summary of the US-Chile FTA. The release comes approximately five weeks after the Bush administration notified Congress of its intent to sign the FTAs. With respect to the US-Chile FTA, USTR has provided only a summary of the 24 chapters of the agreement, noting that the final text still is being scrutinized for legal consistency. However, some controversy has arisen over USTR efforts to change provisions dealing with the protection of intellectual property (IP). Reportedly, the Industry Functional Advisory Committee responsible for advising USTR on IP issues claims that Chile's obligations *vis-a-vis* copyright protection of so-called temporary copies fall short of the commitments negotiated in the US-Singapore FTA. USTR reportedly will raise the matter with Chilean negotiators. Meanwhile, the ITC initiated an investigation into the impact that the US-Chile FTA will have on the US economy, industry sectors and consumers.

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