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REQUEST FOR CONCILIATION UNDER ARTICLE 15:3 OF THE AGREEMENT

Communication from Sweden

The following communication, dated 9 September 1988, has been received by the Chairman from the permanent delegation of Sweden.

ANTI-DUMPING DUTY IN THE UNITED STATES ON STAINLESS SEAMLESS PIPES AND TUBES FROM SWEDEN

Background

In October 1986 a group of six American specialty steel companies filed a complaint with the United States Department of Commerce (DoC) alleging that the industry in the United Sttates was injured or threatened with injury by dumped imports of stainless steel pipes and tubes from Sweden. The Swedish companies concerned were Sandvik AB and Avesta Sandvik Tube AB (AST). Sandvik exports seamless pipes and tubes while AST exports welded pipes and tubes.

In November 1986 the International Trade Commission (ITC) made a preliminary affirmative determination of injury. A preliminary affirmative determination of dumping was made by the DoC in May 1987 whereupon preliminary anti-dumpng duties of between 31.46 and 60.65 per cent were imposed.

In the DoC's final determination in October 1987 the margin of dumping was calculated to 26.46 per cent for Sandvik and 34.5 per cent for AST. In the final determination of injury in November 1987 the ITC found that only the manufacturers of seamless pipes and tubes were injured. An anti-dumping duty was therefore imposed on Sandvik's products alone. The Swedish side has found that the anti-dumping duty is not in conformity with the provisons of the Anti-Dumping Code. Sweden therefore requested consultations with the United States in accordance with article 15:2 of the code. The consultations, held on 14 July, 1988, failed to achieve a mutually agreed solution. Sweden has therefore decided to refer the matter to the GATT Anti-Dumping Committee for conciliation under article 15:3.

The main issue is that no causal link between dumping and injury has been demonstrated and that Sweden's benefits under the Code have been nullified. Furthermore, several additional points are raised.

Sweden would like the Committee to take the following into consideration.

1. Determination of injury

1.1 Volume of the dumped imports

According to article 3:1 determination of injury shall involve the examination of the volume of the dumped imports and their effect on prices in the domestic market. Article 3:2 states that the investigating authorities shall consider whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in the importing country. As is stated in article 3:4 it must be demonstrated tht the dumped imports are, through the effects of dumping, causing injury.

The imports from Sweden have shown a decreasing trend in absolute as well as in relative terms during the investigated period. The development of consumption, U.S. shipments, imports and market shares in the U.S. for stainless seamless pipes 1984 to June 1987 is demonstrated by the table below.

Table 1: Apparent Consumption, U.S. shipments, imports and market shares

		Total App. cons. sh.t	US shipments* sh.t	%	Imp from Sweden sh.t	%	Imp fr other countries sh.t	%
	1984	28 005	8 010	28,6	5 726	20,4	14 269	51,0
	1985	30 693	7 985	26,0	4 592	15,0	18 116	59,0
	1986	27 194	6 681	24,6	4 866	17,9	15 647	57,5
January-	1986	15 017	3 988	26,6	2 527	16,8	8 508	56,7
June	1987	11 175	3 680	32,9	1 827	16,3	5 668	50,7

*Excluding redrawers

The determination by the competent authority is in this regard based on "the significant volume" of imports from Sweden and "the high import penetration". Such criteria are not sufficient to corroborate the volume criterion for injury as set out by the Code.

In the absence of a significant increase in dumped imports, other factors relating to such imports must be demonstrated to have a harmful effect on the domestic industry in order for the investigating authorities to determine a causal link between the imports and injury. No such factors have been demonstrated to exist.

1.2 Price undercutting

Article 3:1 refers to the volume of the dumped imports and their effects on prices in the domestic market. In its final determination the ITC concludes that "the significant volume of seamless pipe and tube from Sweden and the high import penetration throughout the period, combined with the pattern of underselling of these imports and the revenue lost to the domestic industry demonstrate that these imports have caused material injury to the domestic industry".

The ITC has found only seven cases of price undercutting over three and a half years out of eleven cases accounted.

It must be surmised that the ITC has investigated more than eleven out of the very large total number of orders (approx. 13.000). The ITC does not indicate the full number of investigated cases. It is therefore wrong and in any case an unsubstantiated allegation when the ITC speaks of "consistent underselling".

Furthermore, the eleven cases refer only to hollow bars which account for about 10 per cent of the total tonnage concerned. No proof of underselling has thus been shown for the other products.

The ITC report states further that "there were eleven orders of seamless pipe and tube .... that were reported by purchasers .... that involved competition between the domestic product and the imports from Sweden". The total number of invoices for imports from Sweden of these products are approximately 13.000 per year. The logical conclusion must be that imports from Sweden do not compete with domestic products.

The ITC determination finally states that "the reasons cited by the purchasers for buying Swedish seamless pipe and tube included lower prices". This statement does not seem sufficient to fulfil the requirement of the Code to examine the effect of the dumped imports on prices in the domestic market.

1.3 Impact on the Industry

Article 3:1 further states that a determination of injury shall involve the examination of the consequent impact of the imports on domestic producers. The examination shall, according to article 3:3, include an evaluation of all relevant economic factors. The ITC has in its determination referred only to integrated producers, thus excluding one important sector of the domestic industry, the redrawers which account for 32 per cent of total U.S. production of seamless pipes and tubes.

By not including production of the redrawers in the analysis of the condition of the domestic industry the market share of the U.S. industry has been understated, and the decline of the U.S. industry market share between 1984-86 has been overstated.

The analysis is also biased because the ITC has not taken into consideration that one of the domestic producers, Babcock & Wilcox, left the industry mainly or entirely for reasons not related to competition from dumped imports.

1.4 Causal link

To sum up, the ITC in its investigation of injury, has not established the causal link between dumping and injury necessary for a positive finding of injury according to article 3:4 of the Anti-Dumping code. Furthermore, the ITC seems to have ignored several factors (art. 3:3) relevant for a determination of injury.

2. Quantity adjustments

Article 2 states that due allowance shall be made in each case, on its merits, for other differences affecting price comparability.

Due allowance has not been made for differences in conditions and terms of sales with regard to the level of trade. The DoC has not e.g. taken into consideration the importance of quantity discounts as a determinant of Sandvik's prices in the United States, West Germany and Sweden. The DoC has thus not based its decision on comparable quantities in sales to the U.S. and to a third country. The Department has furthermore compared the export price to an unrelated third country reseller with the export price to customers in the U.S. rather than the price from that reseller to customers in the U.S.

3. Standing of the petitioner

Article 5 states that an anti-dumping investigation shall be initiated upon a written request by or on behalf of the industry affected. The term "industry" shall be interpreted in accordance with the definition in article 4, i.e. "the domestic producers as a whole" or those of them that constitute "a major proportion".

The DoC applies a practice which means that it "relies on petitioners' representation that it has, in fact, filed on behalf of the domestic industry until it is affirmatively shown that this is not the case" (Federal Register 1 Vol.52 No.196 page 37812).

The DoC practice not to inquire (ex officio) about petitioners' standing is contrary to article 5 of the Anti-Dumping code as it deprives the defendant of the protection the Code offers against arbitrary investigations. The burden of proof to decide whether a major proportion supports a petition is thereby switched to the exporting company.

As a matter of fact only two out of 14 producers of seamless pipes and tubes are among the petitioners.

4. Exchange rates

The DoC has determined that Sandvik's domestic sales are not sufficient to form basis for price comparison for two of the three products concerned. The DoC therefore has compared with Sandvik's sales of these products in West Germany.

When comparison was made between Sandvik's export prices to West Germany and its export prices to the U.S. due regard was not taken to substantial changes in exchange rates (i.e. "other differences affecting price comparability, article 2:6 in the Anti-Dumping Code). Thus, the margin of dumping has been artificially inflated.

Substantial changes in exchange rates took place during the period 1984 through June 1987. It must be questioned whether any dumping at all could be established during some parts of that period.

5. Periods of investigation

In the Sandivk case the period of investigation to determine injury was 1984 - 30 June, 1987, while the corresponding period to determine the dumping margin was 1 May - 31 October, 1986. From a principal and logical point of view the two determinations should involve the same period of time. Article 3:2 states that a determination of injury shall involve an examination of the volume of the dumped imports, i.e. it must be established that there was a dumping margin and that this margin coincides with the period where injury has been established.

6. "Confidential information"

Article 6 admits that disclosure of information in some cases would have a significantly adverse effect, but also states that all parties shall have a full opportunity for the defence of their interests. In the Sandvik case a great deal of highly pertinent information has been classified as confidential material (e.g. information on the profitability of the U.S. industry).

The ITC practice is not entirely in accordance with the Code and prevents the defendant from the full opportunity to defend his interests.