

GENERAL AGREEMENT ON

TARIFFS AND TRADE

RESTRICTED

ADP/90

22 March 1993

Special Distribution

Committee on Anti-Dumping Practices

Original: English

CERTAIN STEEL PRODUCTS: DEFINITIVE AND PROVISIONAL
ANTI-DUMPING MEASURES

Request for Consultations with the United States
under Article 15 of the Agreement

Communication from the European Community

The following communication, dated 2 March 1993, has been received from the Permanent Mission of the European Community.

In accordance with Article 15 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (the GATT Anti-Dumping Code), the European Community requests consultations with the United States concerning the following anti-dumping cases:

- definitive anti-dumping measures against France, Germany and the United Kingdom concerning certain hot-rolled lead and bismuth carbon steel products (published 19 January 1993):
- provisional anti-dumping measures against Belgium, France, Germany, Netherlands, Italy, Spain and the United Kingdom concerning certain cut-to-length carbon steel plate products, certain hot-rolled carbon steel flat products, certain cold-rolled carbon steel flat products and certain corrosion-resistant carbon steel flat products (published 26 January 1992).

The information available to the Community gives rise to serious doubts about the compatibility of the treatment of these cases with the provisions of the Anti-Dumping Code, in particular with regard to the issues mentioned below.

A. Dumping

(i) Use of "best information available"

"Best information available" (BIA) has been extensively used to establish the above findings. In fact, it appears that very few of the EC exporters concerned were able to satisfy the requirements for information, either in terms of the volume requested or the deadlines set for submission of that information.

It also appears as if, at least in some cases, the exporters involved were not informed, in a timely manner, of the fact that their replies were incomplete or of the intention to disregard some or all of their submissions, and the consequent use of BIA. In certain cases, it seems as if such confusion led, directly, to the use of BIA.

In most of the cases where BIA was used, the "best" information was deemed to be that set out in the petition, and no consideration seems to have been given to whether more reliable information was available from other sources, including the exporters concerned.

In this respect, the Community would like further information as to how, in the instances BIA has been employed, the US authorities have:

- taken into account the ability of each party to supply the vast amount of information requested within the time limits set;
- determined that the parties did not respond to the best of their ability;
- limited their requests for information to those products actually exported to the United States and gave due consideration to whether the absence of information on "other products" significantly impeded the investigation and justified the use of BIA;
- used "special circumspection" in ensuring that the information used was reasonable, especially in relation to information from other independent sources, including other parties involved in the investigation.

(ii) Treatment of value added tax

The Community requests further information on the reasoning behind the comparison of prices inclusive of value added tax, bearing in mind that value added tax is not payable on exports and is refunded on domestic transactions.

(iii) Retroactive application of duties

The Community would further request information with regard to the reasoning underlying the application of retroactive application of duties in some of these cases. In particular, how it was determined that:

- there was a history of dumping, or that the importers should have known there was dumping, and

- the injury was caused by sporadic dumping (massive dumped imports over a relatively short period).

B. Injury

For the imposition of provisional measures, the Anti-Dumping Code requires that a preliminary affirmative finding be made that there is sufficient "positive" evidence of "material" injury caused by the dumped imports. The Community would like an explanation as to how the US authorities have taken these standards into account during the ITC's preliminary examination of the volume of imports, the price effects of the allegedly dumped imports, the consequent impact on US producers and the link between the dumped imports and alleged injury.

In particular when considering:

- whether there has been a significant rise either in absolute or relative terms in the volume of the allegedly dumped imports;
- whether the evidence available is sufficient to show, in a positive manner, that the allegedly dumped imports have had significant injurious effects on US prices;
- whether the evidence available is adequate to show that the state of the industry, as described in the ITC Report, illustrates injury;
- whether the evidence available shows that the imports, either through volume or price effects, or both, are impacting the US industry;
- whether there is sufficient evidence available on that "impact" to demonstrate that the dumped imports are, through the effects of dumping, causing material injury; and
- whether the positive evidence available on the level and impact of imports from each country cited, is sufficient to cumulate imports when they are from two or more countries.

C. The voluntary restraint agreements (VRAs)

The International Trade Commission's preliminary determinations on injury acknowledged that the imports under investigation from the Community were subject to VRAs from 1 October 1992 until 31 March 1992. The Community would like to know whether any account will be taken of these VRAs during the course of these proceedings, particularly the fact that the information used in these anti-dumping findings were applicable to the period when these VRAs were in force.

The Community reserves its rights to raise any other issues concerning these cases at a later stage.

The Community considers this to be a matter of great urgency and would therefore request consultations to take place as soon as possible.