

V.S.Seshadri,  
Minister (Commerce)  
Tel.No. (202) 939 9826  
Fax No. (202) 797 4693

---

Total Pages: 6  
Section 201 Duties  
GroupII/Office VI: Steel safeguards

**Public Document**

---

October 9, 2003

Via Hand Delivery

Mr. James J. Jochum,  
Assistant Secretary for Import Administration  
Central Records Unit, Room 1870  
Office of AD/CVD Enforcement VI  
US Department of Commerce  
14<sup>th</sup> and Constitution Avenue, NW  
Washington DC-20230

Re: Government of India's Comments on treatment of section 201 duties and  
Countervailing duties:

Dear Mr. Assistant Secretary,

I have the honor to attach hereto the Comments on treatment of section 201 duties and countervailing duties of the Government of India (GOI) to US Department of Commerce's (the "Department").

Pursuant to Department's Instructions the Government of India is filing six copies of its response along with electronic form on a DOS formatted 3.5" diskette at this time.

With Regards,

Yours sincerely,

(V.S.Seshadri)

**COMMENTS BY THE GOVERNMENT OF INDIA ON THE NOTICE BY THE US DEPARTMENT OF COMMERCE REGARDING ANTI-DUMPING PROCEEDINGS: TREATMENT OF SECTION 201 DUTIES AND COUNTERVAILING DUTIES**

1. In response to the notice (Vol68. No.174. Federal Register Pages 53104-53105) published in the Federal Register on September 9, 2003, the Government of India would like to thank the Department of Commerce for giving it an opportunity to submit its comments on the appropriateness of deducting Section 201 duties and countervailing duties from gross unit price in order to determine the applicable export price or constructed export price used in anti-dumping duty calculations.

2. India notes that under Section 772(a) of the Tariff Act of 1930, of the United States as amended, the term "export price" means "the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection (c)."

3. U.S. antidumping law does not specifically mention section 201 or safeguard duties and the only reference to Countervailing duties is in section 772(c) (1)(C ) that discusses export subsidies. For this reason, we will first discuss export subsidies and then consider countervailing duties that are the result of domestic subsidy programs and the treatment of section 201.

**Export Subsidies**

4. United States law and the WTO rules are clear as to the treatment of export subsidies in relation to antidumping duties. Section 772(c)(1)(C) clearly states that in calculating the export or constructed export price, the price is to be

increased by “the amount of any countervailing duty imposed on the subject merchandise . . . to offset an export subsidy.” Therefore, while the Department’s request for comment does not differentiate between export and domestic subsidies, the statute clearly does. It is clear that under U.S. law, Export subsidies are to be added and not deducted from U.S. price.

5. Similarly, under paragraph 5 of Article VI of the General Agreement on Tariffs and Trade (GATT) “No product of the territory of any contracting party imported into the territory of any other contracting party shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization.” The theory behind this provision is that the price effects of the export subsidies are included in the export price to the U.S. market. Therefore, reducing U.S. price by the amount of an export subsidy would not only “compensate for the same situation of dumping and export subsidization.” Indeed, it would double the amount. Therefore, consistent with U.S. law and Article VI of the GATT whenever the United States has antidumping and countervailing duty investigations or orders on the same product, U.S. price must be increased by the amount of the export subsidy found in the countervailing duty investigation or review.

### **Domestic Subsidies**

6. There is no provision under U.S. law for a reduction to U.S. price for Counter Vailing Duty on account of domestic subsidies. The request for comments suggest that they could be considered as selling expenses or import duties as referred to in Section 772 (c ) (2) (A). However, in numerous cases the Department of Commerce has rejected this argument and has maintained that antidumping duties and countervailing duties are not expenses within the meaning of Sec.772(d)(1) and that unlike normal duties, which are an assessment against value, antidumping and countervailing duties derive from the margin of dumping or the rate of subsidization found. Logically, antidumping and

countervailing duties cannot be part of the very calculation from which they are derived.

7. Moreover domestic subsidies on any merchandise, by definition, are conferred on both export sales and domestic sales. It would, therefore, be inappropriate to make an adjustment only on the export price, by deducting the countervailing duties imposed on the merchandise to offset any domestic subsidy, while no similar adjustment is made on the normal price in the exporting country.

### **201 Duties**

8. Similarly, duties imposed under section 201 are not selling expense or import duties as considered under the statute. Concurrent imposition of anti-dumping duties along with duty along with Section 201 (safeguard) duties also raises issues under the injury provisions of the WTO antidumping, and safeguard agreement and as discussed below, rather than deducting 201 duties from U.S. price, the dumping duty should be reduced by the amount of duties collected.

9. Both anti-dumping and safeguard provisions are intended to remedy injury to the industry providing domestic like product. The crucial issue in this regard is the distinction between the standard of injury or threat thereof to the domestic industry necessary for application of a safeguard measure and that relevant for an anti-dumping measure. While a definitive safeguard measure is designed to address the perceived serious injury or threat thereof to the domestic industry, an anti-dumping measure addresses a much lower standard of impairment of the domestic industry. In the dispute "US- Lamb Meat" (WT/DS177/AB/R) the Appellate Body was of the view that "the standard of "serious injury" in the *Agreement on Safeguards* is a very high one when we contrast this standard with the standard of "material injury" envisaged under the *Anti-Dumping Agreement*, the *Agreement on Subsidies and Countervailing Measures* (the

"SCM Agreement") and the GATT 1994." In the Appellate Body's view the word "serious" connotes a much higher standard of injury than the word "material". Moreover, such a view accords with the object and purpose of the Agreement on *Safeguards* that the injury standard for the application of a safeguard measure should be higher than the injury standard for anti-dumping or countervailing measures.

10. Any safeguard measure made applicable on a product for preventing or remedying serious injury may well also address, at least in part, the injury resulting from dumping. The extent to which the protection gets accorded to the domestic industry by a definitive safeguard measure becomes enhanced if the anti-dumping measure is applied over and above the safeguard measure also needs to be considered. It is therefore important that the anti-dumping measure be adjusted or suspended to take into consideration the protection to the domestic industry already accorded by the safeguard measure.

11. In those cases where both an anti-dumping duty and a safeguard duty would normally be payable and where the anti-dumping duty is less than or equal to the amount of safeguard duty, it is considered appropriate that no anti-dumping duty should be payable. Where the anti-dumping duty is greater than the amount of the safeguard duty, it is considered appropriate that only that part of the anti-dumping duty which is in excess of the amount of the safeguard duty should be payable. Such reviews in the anti-dumping order could be introduced through procedural mechanisms available such as 'Review based on changed circumstances' as the imposition of Section 201 measures does substantially change the situation.

12. In those cases in which a price undertaking has been accepted, the Department of Commerce may consider allowing the companies concerned an equivalent reduction in their price undertakings. That reduction could operate as follows: where the anti-dumping duty which the minimum price undertaking

replaces is less than the safeguard duty, there would be no obligation to observe the minimum price; where the anti-dumping duty which the minimum price undertaking replaces is greater than the safeguard duty, the minimum price which would be required to be observed would be reduced to a level which reflects the difference between the safeguard duty and the anti-dumping duty. India is further of the view that it may also be desirable as part of constructive remedies under Article 15 of the Anti-Dumping Agreement for the Department of Commerce to adjust or suspend the anti-dumping duties in case of its concurrent application with Section 201 duties at least in the case of developing country imports.

13. In conclusion the Government of India would like to thank the US Department of Commerce for the opportunity to comment on this matter.

Yours Sincerely,

V.S.Seshadri,  
Minister (Commerce)  
Embassy of India  
Washington DC.