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Washington, November 7, 2003

Mr. James J. Jochum
Assistant Secretary for Import Administration
U.S Department of Commerce
Attention: **Section 201 Duties**
Central Records Unit, Room 1870
Pennsylvania Avenue and 14th Street N.W
Washington, D.C. 20230

Dear Mr. Jochum,

Subject: US anti-dumping practice – Treatment of Section 201 Duties and Countervailing Duties

The European Communities has read with great interest the comments that were submitted by various interested parties to the US DOC in reply to the notice published in the Federal Register of 9 September 2003, regarding the proposal to deduct Section 201 and/or countervailing duties from gross unit price in order to determine the applicable export price or constructed export price used in anti-dumping calculations.

The European Communities does not consider that the views expressed by the proponents of a deduction of CVD/201 duties can justify a change in the current US practice. In particular, there is a failure to demonstrate that a deduction of CVD/201 duties would not result in unjustified and excessive protection for the domestic industry since it would double the impact of the remedial duty that is deducted.

In the European Communities' view, those calling for a deduction of CVD/201 duties from the export price lose sight of the true nature and effect of such duties: they are remedial duties providing temporary protection to a domestic production against the injurious effects of imports.

In consequence, the European Communities invites the US DOC to confirm its current practice.

The European Communities noted however that its own law and practice have been misrepresented in several comments submitted to the US DOC by those calling for a change in the US practice. Therefore, for the record, the European Communities would like to clarify any misunderstanding regarding the treatment of CVD and safeguard measures in anti-dumping investigations.

The European Communities does not deduct countervailing duties or safeguard measures from the export price in dumping calculations

It has been alleged by some commentators that the European Communities would routinely deduct countervailing and/or safeguard duties from the export price in dumping calculations. These commentators argue that a change in the US practice as proposed in the above-mentioned notice would bring the US at a level playing field with the EC.

This allegation is based on a profound misunderstanding of the European Communities' anti-dumping law and practice. Indeed, as already indicated in the European Communities' initial reply of 8 October 2003, the EC Basic Anti-Dumping Regulation does not provide for the deduction of any remedial duties other than anti-dumping duties in the specific circumstances contemplated in Article 9.3.3 of the WTO Anti-Dumping Agreement (ADA). It is thus in full conformity with the ADA.

As a matter of fact, as explained further below, the European Communities law and practice go beyond the non-deduction of CVD/safeguard measures; indeed, the European Communities has recently adopted a mechanism with the aim to avoid the double-protection effect resulting from a combination of safeguard measures and CVD/AD measures on one and the same product.

The European Communities has taken measures to avoid the double-protection resulting from the combined application of safeguard measures and CVD/AD measures

On 6 March 2003, the Council of the European Union adopted Regulation (EC) No 452/2003 on measures that the Community may take in relation to the combined effect of anti-dumping or anti subsidy measures with safeguard measures (Official Journal L 69 of 13 March 2003, page 8).

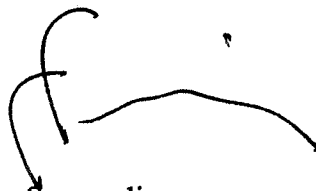
The adoption of this regulation was required since it was noted that the importation of certain goods could be subject to both anti-dumping or anti-subsidy measures on the one hand and safeguard tariff measures on the other.

The combination of anti-dumping or anti-subsidy measures with safeguard tariff measures on one and the same product could have an effect greater than that intended or desirable in terms of the Community's trade defence policy and objectives. In particular, such a combination of measures could provide excessive protection to the Community industry concerned and place an undesirably onerous burden on certain exporting producers seeking to export to the Community.

Therefore, in order to avoid double-protection, it was considered that it could be appropriate to amend, suspend or repeal anti-dumping and/or anti-subsidy measures or to provide for exemptions in whole or in part from any anti-dumping or countervailing duties which would otherwise be payable, or to adopt any other special measures.

To date, this regulation has been applied to the anti-dumping measures applicable to certain hot-rolled coils and to certain tube and pipe fittings, of iron or steel (Council Regulation (EC) No 778/2003 of 6 May 2003 L 114/1).

To conclude, the European Communities invites the US DOC to carefully consider the serious implications that a change in its current practice would entail on trade. If the US DOC were to deduct CVD and/or Section 201 duties from the export price, not only would there be a cumulative application of potentially three remedial duties on the same products, but the imposition of one type of remedial duty would artificially create or inflate a margin of dumping and, therefore, an anti-dumping duty. This would clearly be unreasonable and at odds with the European Communities' practice.

A handwritten signature in black ink, appearing to read 'Petros Sourmelis', with a long horizontal stroke extending to the right.

Petros Sourmelis

Counselor, Head of Trade Section