

**OFFICE OF THE UNITED STATES  
TRADE REPRESENTATIVE**

[Docket No. WTO/DS108]

**WTO Dispute Settlement Proceeding  
Regarding the American JOBS  
Creation Act of 2004**

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice; request for comments.

**SUMMARY:** The Office of the United States Trade Representative ("USTR") is providing notice that the European Communities has requested dispute settlement consultations under the Marrakesh Agreement Establishing the World Trade Organization ("WTO Agreement"). That request may be found at <http://www.wto.org> contained in a document designated as WT/DS108/27. USTR invites written comments from the public concerning the issues raised in this dispute.

**DATES:** Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before January 10, 2005, to be assured of timely consideration by USTR.

**ADDRESSES:** Comments should be submitted (i) electronically, to [FR0503@ustr.eop.gov](mailto:FR0503@ustr.eop.gov), Attn: "JOBS Act (DS108)" in the subject line, or (ii) by fax, to Sandy McKinzy, at 202-395-3640. For documents sent by fax, USTR requests that the submitter provide a confirmation copy to the electronic mail address listed above.

**FOR FURTHER INFORMATION CONTACT:** William D. Hunter, Associate General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508, (202) 395-3582.

**SUPPLEMENTARY INFORMATION:** Section 127(b) of the Uruguay Round Agreements Act ("URAA") (19 U.S.C. 3537(b)(1)) requires that notice and opportunity for comment be provided after the United States submits or receives a request for the establishment of a WTO dispute settlement panel. Consistent with this obligation, but in an effort to provide additional opportunity for comment, USTR is providing notice that consultations have been requested pursuant to the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU"). If such consultations should fail to resolve the matter and a dispute settlement panel is established pursuant to the DSU, such panel, which would hold its meetings in Geneva, Switzerland, would be expected to issue a report on its findings and

recommendations within 90 days after referral of the matter to it.

**Major Issues Raised by the EC**

On November 5, 2004, the EC requested consultations with the United States pursuant to Articles 4 and 21.5 of the DSU, Article 4 of the Agreement on Subsidies and Countervailing Measures ("SCM Agreement"), Article 19 of the Agreement on Agriculture, and Article XXII:1 of the General Agreement on Tariffs and Trade 1994 ("GATT 1994") with respect to the American JOBS Creation Act of 2004 ("the JOBS Act"). According to the EC, the JOBS Act, which was enacted on October 22, 2004, was intended to implement the recommendations and rulings of the WTO Dispute Settlement Body in case WT/DS108 (United States—Tax Treatment for "Foreign Sales Corporations" and United States—Tax Treatment for "Foreign Sales Corporations"—Recourse to Article 21.5 of the DSU by the European Communities), but fails to do so properly and is inconsistent with the same provisions of the WTO Agreement as was the predecessor legislation.

In particular, the EC considers that Section 101 of the JOBS Act contains transitional provisions that will allow U.S. exporters to continue to benefit from the FSC Replacement and Extraterritorial Income Exclusion Act as follows: (a) In the years 2005 and 2006 with respect to all export transactions; and (b) for an indefinite period with respect to certain binding contracts. According to the EC, this results in a failure to withdraw the subsidy and implement the DSB's recommendations and rulings. The EC considers that the United States has failed to withdraw the subsidies as required by Article 4.7 of the SCM Agreement and has failed to implement the DSB's recommendations and rulings as required by Articles 19.1 and 21.1 of the DSU. The EC also considers that the United States continues to violate Articles 3.1(a) and 3.2 of the SCM Agreement, Articles 10.1 and 8 of the Agreement on Agriculture and Article III:4 of the GATT 1994.

**Public Comment: Requirements for Submissions**

Interested persons are invited to submit written comments concerning the issues raised in this dispute. Persons may submit their comments either (i) electronically, to [FR0503@ustr.eop.gov](mailto:FR0503@ustr.eop.gov), Attn: "JOBS Act (DS108)" in the subject line, or (ii) by fax to Sandy McKinzy, at 202-395-3640. For documents sent by fax, USTR requests that the submitter provide a confirmation copy to the electronic mail address listed above.

USTR encourages the submission of documents in Adobe PDF format, as attachments to an electronic mail. Interested persons who make submissions by electronic mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Comments must be in English. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly designated as such and the submission must be marked "BUSINESS CONFIDENTIAL" at the top and bottom of the cover page and each succeeding page.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must clearly so designate the information or advice;

(2) Must clearly mark the material as "SUBMITTED IN CONFIDENCE" at the top and bottom of the cover page and each succeeding page; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room, which is located at 1724 F Street, NW., Washington, DC 20508. The public file will include non-confidential comments received by USTR from the public with respect to the dispute; if a dispute settlement panel is convened, the U.S. submissions to that panel, the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the panel; and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket WTO/DS108, JOBS Act dispute) may be made by calling the USTR Reading Room at (202) 395-6186. The USTR Reading Room is open to the public from 9:30

a.m. to noon and 1 p.m. to 4 p.m.,  
Monday through Friday.

**Bruce R. Hirsh,**

*Acting Assistant United States Trade  
Representative for Monitoring and  
Enforcement.*

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**OFFICE OF THE UNITED STATES  
TRADE REPRESENTATIVE**

[Docket No. WTO/DS319]

**WTO Dispute Settlement Proceeding  
Regarding Section 776 of the Tariff Act  
of 1930 and Antidumping Duty  
Investigation on Stainless Steel Bar  
From the United Kingdom**

**AGENCY:** Office of the United States  
Trade Representative.

**ACTION:** Notice; request for comments.

**SUMMARY:** The Office of the United States Trade Representative ("USTR") is providing notice that the European Communities ("EC") has requested dispute settlement consultations under the Marrakesh Agreement Establishing the World Trade Organization ("WTO Agreement") regarding the U.S. antidumping duty ("AD") investigation on stainless steel bar from the United Kingdom. That request may be found at <http://www.wto.org> contained in a document designated as WT/DS319/1. USTR invites written comments from the public concerning the issues raised in this dispute.

**DATES:** Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before January 10, 2005, to be assured of timely consideration by USTR.

**ADDRESSES:** Comments should be submitted (i) electronically, to [FR0516@ustr.eop.gov](mailto:FR0516@ustr.eop.gov), with "Attn: UK Steel Bar (DS319)" in the subject line, or (ii) by fax, to Sandy McKinzy at (202) 395-3640. For documents sent by fax, USTR requests that the submitter provide a confirmation copy to the electronic mail address listed above.

**FOR FURTHER INFORMATION CONTACT:** Amy A. Karpel, Assistant General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508, (202) 395-3150.

**SUPPLEMENTARY INFORMATION:** Section 127(b) of the Uruguay Round Agreements Act ("URAA") (19 U.S.C. 3537(b)(1)) requires that notice and opportunity for comment be provided after the United States submits or receives a request for the establishment

of a WTO dispute settlement panel. Consistent with this obligation, but in an effort to provide additional opportunity for comment, USTR is providing notice that consultations have been requested pursuant to the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU"). If such consultations should fail to resolve the matter and a dispute settlement panel is established pursuant to the DSU, such panel, which would hold its meetings in Geneva, Switzerland, would be expected to issue a report on its findings and recommendations within six to nine months after it is established.

**Major Issues Raised by the EC**

On November 5, 2004, the EC requested consultations with the United States pursuant to Article 4 the DSU, Article XXII:1 of the General Agreement on Tariffs and Trade 1994 ("GATT 1994"), and Article 17 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the "ADA") with respect to Section 776 of the Tariff Act of 1930, as amended, determinations of dumping by the U.S. Department of Commerce ("DOC") with respect to Firth Rixson Special Steels Limited (FRSS), 67 FR 3146 (January 23, 2002), and the imposition of an antidumping duty order by the DOC with respect to FRSS with dumping margins of 125.77%, 67 FR 10381 (March 7, 2002). The EC asserts that the DOC refused to verify data submitted by FRSS and rejected such data for the determination of the margin of dumping for FRSS, decided to employ an "adverse inference" in the selection of facts available with respect to FRSS, and relied on information contained in the complaint for the establishment of the margin of dumping and antidumping duty for FRSS. According to the EC, the DOC determinations in this investigation and Section 776 of the Tariff Act of 1930 are inconsistent with Articles 1, 6, and 18.4 and Annex II of the Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("AD Agreement"), Article VI of the General Agreement on Tariffs and Trade 1994 ("GATT 1994") and Article XVI:4 of the WTO Agreement.

**Public Comment: Requirements for Submissions**

Interested persons are invited to submit written comments concerning the issues raised in this dispute. Persons may submit their comments either (i) electronically to [FR0516@ustr.eop.gov](mailto:FR0516@ustr.eop.gov), with "Attn: UK Steel Bar (DS319)" in the subject line, or (ii) by fax, to Sandy

McKinzy at (202) 395-3640. For documents sent by fax, USTR requests that the submitter provide a confirmation copy to the electronic mail address listed above. USTR encourages the submission of documents in Adobe PDF format, as attachments to an electronic mail. Interested persons who make submissions by electronic mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly designated as such and the submission must be marked "BUSINESS CONFIDENTIAL" at the top and bottom of the cover page and each succeeding page.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must clearly so designate the information or advice;

(2) Must clearly mark the material as "SUBMITTED IN CONFIDENCE" at the top and bottom of the cover page and each succeeding page of the submission; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room, which is located at 1724 F Street, NW., Washington, DC 20508. The public file will include non-confidential comments received by USTR from the public with respect to the dispute; if a dispute settlement panel is convened, the U.S. submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the panel; and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket No. WT/DS319, UK Steel Bar), may be made by