1. Basis for Common Trade Policy

The EU Treaty establishes a common commercial policy. It further sets out that the European Commission is responsible for the implementation of this policy:

“The common commercial policy shall be based on uniform principles, particularly in regard to charges and tariff rates, the conclusion of tariff and trade agreements, the achievement of uniformity in measures of liberalisation, export policy and measures to protect trade such as those to be taken in the event of dumping or subsidies.” (Art. 133 § 1 of EC Treaty)

It is therefore the European Commission’s responsibility to defend EU trade interests vis-à-vis third countries and within multilateral organisations notably the World Trade Organisation.

2. Effect on EU of US measures to severely restrict their market to foreign steel

The adoption, by the US President on 5 March, of section 201 (safeguard clause in US trade legislation) measures against imports of certain steel products, in the form of increased tariffs and the introduction of quotas, implies a substantial closure of the US market. As a result, the EU steel industry could face, not only a drastic reduction in its exports to the US market (around 4 million tonnes in 2000), but also substantial trade diversion to the EU market from third countries affected by the US measures.

The EU steel market is around 162 million tonnes per year, of which 136 million tonnes is met by domestic production and the remainder by imports. In addition, the EU industry exports some 23 million tonnes of steel. It employs around 270 000 people.

3. EU Strategy in Response

The European Commission has set out a 3-pronged strategy to respond to the US measures:

a) to contest the compatibility of the US measures with WTO rules
b) to seek compensation for loss of EU exports due to these measures, as provided for by the WTO

c) to safeguard the EU market in the case of import surges into the EU as a result of US protectionism

A) WTO Complaint

The EU’s case was set out in its request for WTO consultations to the US on 7 March. One of the main points is that US industry difficulties are not caused by rising imports - imports have been falling (33% since 1998) -, but by an unstructured, inefficient industry already protected behind a wall of no less than 200 anti-dumping,  

---

1 Art. 3 of EC-Treaty  
2 Art. 133 of EC-Treaty  
3 Article 4 of WTO Dispute Settlement Understanding (DSU)  
4 Article 8.1 of WTO Safeguard Agreement (SA)  
5 Article 4 of WTO Safeguard Agreement (SA)
anti-subsidy and safeguard measures of which 57 have already been applied over these past few years to EU exports. Prices in the US are already, because of past protectionist action, significantly higher than in the rest of the world.

The EU request for dispute settlement will, almost certainly, lead the Panel to conclude, like the Appellate Body on US safeguard measures against Korean steel on 15 February, that these new safeguard measures violate the WTO.\textsuperscript{6} Indeed, the US has already been condemned by WTO panels on 6 occasions for breach of the Safeguards agreement and of other safeguard provisions in the WTO.

On 7 March the EU took the first step in a complaint procedure by requesting formal consultations with the USA. The procedural steps established by the WTO dispute settlement understanding (DSU) are as follows:

<table>
<thead>
<tr>
<th>Step of procedure</th>
<th>Delay set by WTO rules</th>
<th>Indicative dates</th>
</tr>
</thead>
<tbody>
<tr>
<td>Consultations</td>
<td>60 days</td>
<td>May 2002</td>
</tr>
<tr>
<td>Panel set up and panellists appointment</td>
<td>45 days</td>
<td>July 2002</td>
</tr>
<tr>
<td>Final report to the parties</td>
<td>6 months</td>
<td>January 2003</td>
</tr>
<tr>
<td>Final report to WTO members</td>
<td>3 weeks</td>
<td>February 2003</td>
</tr>
<tr>
<td>Dispute settlement body adopts report (if no appeal)</td>
<td>60 days</td>
<td>April 2003</td>
</tr>
<tr>
<td>Appellate body report (in case of appeal)</td>
<td>60-90 days</td>
<td>May 2003</td>
</tr>
<tr>
<td>Dispute settlement body adopts Appellate body report</td>
<td>30 days</td>
<td>July 2003</td>
</tr>
</tbody>
</table>

Japan, Korea, China, Switzerland, Brazil, Australia, and New Zealand have all requested consultations with the USA under the WTO-Safeguard Agreement. The EU has established contacts with these and other countries (Norway and India) that may be interested in joining a WTO action against the USA. The EU also held a co-ordination meeting with EU-candidate countries on 12 March.

B) Safeguards to maintain current levels of access to EU market

The WTO agreement on safeguards provides for provisional safeguard measures to be introduced to prevent or remedy serious injury to a member’s industry under certain “critical” circumstances. A precondition for such safeguard measures is an increase of imports in a specific sector. The measures themselves must be non-discriminatory.

Given that world-wide there are 2 major steel markets (EU with 26.6m tonnes of imports in 2001 and US with 27.6m tonnes\textsuperscript{7}), that US imports have already been reduced by a third in the last three years and that access to the US market will be further severely limited by the US measures, the Commission is currently investigating possible safeguard action to prevent its market being flooded by steel diverted away from the US market.

Further and in contrast to the US approach, the EU can show evidence of a recent surge in imports. Imports in 2001 stand at 26.6 million tonnes, compared to 15.4 million tonnes in 1997, an overall increase of 73 % over the last 4 years.

The opening of the 201 investigation by US in June 2001 and the steps taken by the US administration leading finally to the announcements made by the US President

\textsuperscript{6} On 15 February 2002 the WTO Appellate Body confirmed the findings of a WTO Dispute Settlement Body panel from 29 October 2001 that US safeguard measures on line pipe originating from Korea are a breach of WTO rules.

\textsuperscript{7} 2001 figures; sources EUROSTAT and American Iron and Steel Institute
on 5 March, as well as some 200 US antidumping/antisubsidy measures currently in force, have already had a chilling effect on imports to the US many of which have instead found their way to the EU market.

The US decision on 5 March has put the EU industry in a critical situation, (a requirement under WTO rules for provisional measures). This is because the EU steel industry’s position would be exacerbated by the substantial trade diversion (estimated up to 15 million tons) expected to occur after US measures enter into force. A further increase in imports is likely to result in a sudden drop in sales by the EU industry and to temporary or permanent closure of certain production facilities. The cold closure of production facilities makes it prohibitively expensive to recommence production.

In order to implement safeguard measures the following procedure would have to be followed:

- Information to and consultation with Member States through the Safeguard Committee chaired by the Commission (meeting held on 12 March and follow-up meeting scheduled for 19 March) and the 133 Committee (meeting of 15 March)
- Commission decision to open official investigations in order to identify the damage caused by existing deviation from the US market.
- Commission regulation to establish provisional safeguard measures - clear evidence of an import surge and of threat of serious injury is sufficient justification. Provisional safeguard measures may be implemented for the duration of the investigation and up to a maximum of 200 days.
- Commission regulation following the investigation in order to implement definitive safeguard measures. The Council of Ministers must approve this Regulation by qualified majority (QMV).

**Definitive measures**
Definitive measures would be adopted only after the completion of a thorough investigation. Safeguard measures would only be taken in relation to any particular product if, following investigation, it is determined that unforeseen developments have led to increased imports into the EU resulting in serious injury or a threat of serious injury to domestic producers. As already mentioned, the objective of any EU safeguard action would simply be to preserve current import levels and the form and level of measures will be chosen to best achieve that objective.

**Form of the measure**
The measures could take one of three forms: a tariff increase; a tariff increase applicable to imports in excess of a pre-determined ceiling; or, a quantitative quota (above which no imports are permitted). Neither the WTO safeguard agreement nor the relevant EU legislation requires the measures to take a precise form but the decision must be justified.

**Level of the measure**
It should be noted that the measure must be no more restrictive than is necessary to prevent or remedy serious injury and to facilitate adjustment.

**Duration of the measure**
The maximum duration of a provisional safeguard measure is 200 days. The duration of a provisional measure is counted as part of the duration of the definitive measure, which follows. Definitive measures must be put in place for no longer than is necessary to prevent or remedy serious injury, and to facilitate restructuring by EU producers. If their duration exceeds one year, they must be progressively liberalised
at regular intervals during their period of application. They should last no longer than 4 years, but may be extended for a further period of up to 4 years.

**Surveillance system**

A number of the products for which provisional safeguard measures are envisaged are already subject to the surveillance system for imports of certain iron and steel products established by Commission Regulation (EC) No 76/2002, which came into force on 1 January 2002. That regulation establishes a system of automatic licences available for any quantities, the purpose of which is to obtain rapid information about import levels.

**C) Compensation from USA**

The WTO Agreement on Safeguards provides that, where a WTO member introduces safeguard measures, the member should offer appropriate trade compensation to partners in order to maintain the overall balance of trade concessions. The EU estimates that it is entitled to such compensation up to a value of €2.4 bn.

Failure to provide compensation would open the way for the affected partner (EU in this case) to suspend trade concessions vis-à-vis the member concerned (US in this case).

On 7 March, the Commission requested consultations with the USA in order to seek compensation. The WTO provides for a 30-day period for these consultations.

WTO rules also require the EU to introduce a request to suspend trade concessions within a strict time limit failing which this right is lost. In order to preserve this right, the EU must notify the WTO Committee on Trade in Goods not later than two month after the imposition of US measures. Such notification should take place, even if, the measure is only to be applied after a panel ruling. The EC has started preparatory work for such suspension of concessions.

Under Article 8.3 of the Safeguards agreement, suspension of concessions may be applied as soon as a measure has been declared to be incompatible with the WTO. (e.g. following a panel or Appellate Body (AB) ruling). However, an immediate suspension of concessions may also be possible when a safeguard measure has not been taken as a result of an absolute increase of imports. It should be noted that for most of the products affected by the US Safeguard measures, imports decreased over the most recent representative period.