

## US – 1916 ACT<sup>1</sup>

### (DS136, 162)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainants	European Communities Japan	GATT Art. VI  ADA Arts. 1, 4, 5 and 18	Establishment of Panel	1 February 1999 (EC) 26 July 1999 (Japan)
			Circulation of Panel Report	31 March 2000 (EC) 29 May 2000 (Japan) 2000
Respondent	United States		Circulation of AB Report	28 August 2000
			Adoption	26 September 2000

#### 1. MEASURE AT ISSUE

- Measure at issue: United States' Anti-Dumping Act of 1916, which provided for, *inter alia*, a private right of action, the remedy of treble damages for private complaints and the possibility of criminal penalties in respect of anti-dumping practices.

#### 2. SUMMARY OF KEY PANEL/AB FINDINGS

- GATT Art. VI and ADA (applicability): The Appellate Body upheld the Panel's finding that GATT Art. VI and the ADA applied to the 1916 Act. Art. VI applies to action taken in response to situations involving dumping and the 1916 Act provided for specific action to be taken in situations that present the constituent elements of dumping within the meaning of that provision.
- GATT Art. VI and ADA (substantive violations)<sup>2</sup>: The Appellate Body upheld the Panel's findings on the following claims: the 1916 Act was inconsistent with: (i) GATT Art. VI which, read in conjunction with the ADA, limits the permissible responses to dumping to definitive anti-dumping duties, provisional measures and price undertakings; (ii) GATT Art. VI:1 because it did not require a finding of "material injury"; (iii) ADA Art. 4 (and 5 as well in case of Japan) because the Act did not require that a complaint be made "on behalf of the domestic industry"; (iv) ADA Art. 5.2 (Japan) because the Act failed to require the type of evidence (i.e. dumping, injury and causation and a *de minimis* threshold for the level of dumping) to be included in an anti-dumping application under Art. 5.2; (v) ADA Art. 5.5 (EC) because the Act failed to provide for notification to the governments concerned before a case was initiated; and finally, in conclusion, (vi) ADA Art. 1 (and 18.1 as well for Japan) because the 1916 Act failed to meet the requirements of imposing anti-dumping measures in conformity with the provisions of GATT Art. VI and the ADA and to take specific action against dumping of exports only in accordance with the provisions of the GATT, as interpreted by the ADA.
- GATT Art. VI:2: The Appellate Body upheld the Panel's finding that the 1916 Act, by providing for non-anti-dumping measures (i.e. the imposition of fines, imprisonment or treble damages as a response to dumping), violates the requirement of Art. VI:2 that actions taken against dumping be limited to anti-dumping duties.

#### 3. OTHER ISSUES<sup>3</sup>

- Challenge against 1916 Act as legislation *as such*: The Appellate Body upheld the Panel's conclusion that the 1916 Act could be challenged *as such* under GATT Art. VI and the ADA, even though no monetary awards had been made, nor criminal penalties imposed, and even though not one of the measures identified in ADA Art. 17.4 had been adopted.

<sup>1</sup> *United States – Anti-Dumping Act of 1916*

<sup>2</sup> Unless otherwise indicated, these findings are for the claims by both Japan and the European Communities.

<sup>3</sup> Other issues addressed in this case: timely challenge of jurisdiction issue; mandatory/discretionary legislation; panel request (DSU Art. 6.2, preliminary ruling); enhanced third party rights (DSU Art. 10); Panel's examination of domestic law; WTO Agreement Art. XVI:4 and ADA Art. 18.4 (consequential violations); GATT Arts. III and VI (relationship); and ADA and GATT VI (relationship).