

US – SECTION 301 TRADE ACT¹

(DS152)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	<i>European Communities</i>	<i>DSU Art. 23.2(a) and (c)</i>	Establishment of Panel	<i>2 March 1999</i>
			Circulation of Panel Report	<i>22 December 1999</i>
Respondent	<i>United States</i>		Circulation of AB Report	<i>NA</i>
			Adoption	<i>27 January 2000</i>

1. MEASURE AT ISSUE

- Measure at issue: US legislation (i.e. Sections 301-310 of the Trade Act of 1974) authorizing certain actions by the Office of the United States Trade Representative ("USTR"), including the suspension or withdrawal of concessions or the imposition of duties or other import restrictions, in response to trade barriers imposed by other countries.

2. SUMMARY OF KEY PANEL FINDINGS²

- DSU Art. 23.2(a) (Section 304 – unilateral decision): Based on the terms of Art. 23.2(a), the Panel first set out that it is for the WTO, through the DSU process, and not an individual WTO Member, to determine that a measure is inconsistent with WTO obligations. The Panel then concluded that Sec. 304 was "not inconsistent" with US obligations under Art. 23.2(a) because, while the statutory language of Sec. 304 in itself constituted a serious threat that unilateral determinations contrary to DSU Art. 23.2(a) might be taken, the United States had (i) lawfully removed this threat by the "aggregate effect of the Statement of Administrative Action ('SAA')" and (ii) made a statement before the Panel that it would render determinations under Section 304 in conformity with its WTO obligations. In this regard, the Panel added the caveat, however, that should the United States repudiate or remove in any way its undertakings contained in the SAA and confirmed in statements before the Panel, then, the finding of conformity would no longer be warranted.
- DSU Art. 23.2(a) (Section 306): Regarding Sec. 306, which mandated the USTR to consider whether another Member had implemented the DSB's recommendations within 30 days after the lapse of the reasonable period of time, the Panel concluded that Sec. 306 was not inconsistent with DSU Art. 23.2(a) because any prima facie inconsistency under Sec. 306 was removed by the US undertakings in the SAA not to act inconsistently with its obligations under the WTO Agreement.
- DSU Art. 23.2(c) (Sections 305 and 306(b)): For the same reasoning as above, the Panel found that both Sec. 305 and Sec. 306(b) were not inconsistent with DSU Art. 23.2(c), which obliges parties to follow the DSU Art. 22 procedures for determining the level of suspension of concessions or other obligations. As for both Sec. 306(b) (which required the USTR to determine within 30 days after the expiration of the reasonable period of time what further action to take under Sec. 301 in case of a failure to implement DSB recommendations) and Sec. 305 (which required the USTR to implement, within 60 days after the expiration of the reasonable period of time, the action it decided upon earlier under Sec. 306(b)), the Panel concluded once again that any inconsistency based on the mandate contained in the statutory languages of these provisions had been effectively curtailed by the undertakings given in the SAA and in statements made before the Panel.

¹ *United States – Sections 301-310 of the Trade Act of 1974*

² Other issues addressed in this case: mandatory/discretionary legislation distinction; examination by panels of Members' law; GATT claims; Vienna Convention on the Law of Treaties.