

## US – STEEL PLATE<sup>1</sup>

(DS206)

PARTIES		AGREEMENTS	TIMELINE OF THE DISPUTE	
Complainant	India	ADA Arts. 6.8, 15 and 18.4	Establishment of Panel	24 July 2001
			Circulation of Panel Report	28 June 2002
Respondent	United States		Circulation of AB Report	NA
			Adoption	29 July 2002

### 1. MEASURE AND PRODUCT AT ISSUE

- Measure at issue: US imposition of anti-dumping duties on certain imports manufactured by Steel Authority of India, Ltd. (SAIL).
- Product at issue: Certain cut-to-length carbon steel plates imported from India.

### 2. SUMMARY OF KEY PANEL FINDINGS

- ADA Art. 18.4 (facts available): The Panel held that the US authority's practice in the application of "facts available" was not a measure that could be the subject of a claim. Firstly, because such practice could be changed by the authority as long as it provided a reason for the change. Moreover, according to past WTO jurisprudence, a law can only be found inconsistent with WTO obligations if it mandates a violation. Second, the "practice" challenged by India was not within the scope of Art. 18.4, which only refers to "laws, regulations and administrative procedures".
- ADA Art. 6.8 and Annex II(3) ("facts available"): (*as applied claim*) The Panel found that the US authority acted inconsistently with the ADA in finding that SAIL had failed to provide necessary information in response to questionnaires during the course of the investigation and in consequently basing their determination entirely on "facts available", because the information provided by SAIL met all criteria laid down in Annex II(3) and, therefore, it was a must for the US authority to use that information in their determination. (*as such claim*) The Panel rejected India's claim that the US legislation required resort only to "facts available" in circumstances in which Art. 6.8 and Annex II(3) do not permit submitted information to be disregarded. As for India's argument that the US authority's practice reflected a policy where "facts available" were relied upon in circumstances outside the scope of Annex II(3), the Panel stated that this was a mere exercise of discretion, and the legislation itself did not, on its face, mandate WTO-inconsistent behaviour.
- ADA Art. 15 (S&D treatment): The Panel rejected India's claim under Art. 15, first sentence, stating that the provision imposed no specific or general obligation on the United States to undertake any particular action with respect to India's status as a developing country. The Panel also rejected India's claim under the second sentence of the Article, stating that it only requires administrative authorities to *explore* the possibilities of constructive remedies and cannot be understood to require any particular outcome.

<sup>1</sup> United States – Anti-Dumping and Countervailing Measures on Steel Plate from India