

US – SECTION 129(C)(1) URAA¹ (DS221)

PARTIES		AGREEMENTS	TIMELINE OF THE DISPUTE	
Complainant	Canada	GATT ADA ASCM	Establishment of Panel	23 August 2001
			Circulation of Panel Report	15 July 2002
Respondent	United States		Circulation of AB Report	NA
			Adoption	30 August 2002

1. MEASURE AT ISSUE

- **Measure at issue:** Section 129(c)(1) of the Uruguay Round Agreements Act of the United States, which established, *inter alia*, a mechanism that permitted the agencies concerned to issue a second determination (a “Section 129 determination”), where such action was appropriate, to respond to the recommendations in a WTO panel or Appellate Body report.

2. SUMMARY OF KEY PANEL FINDINGS

- The Panel rejected Canada's claim that Section 129(c)(1) mandated action that was inconsistent with the GATT, the ADA and the ASCM, as the Panel found that Canada had failed to establish its claim.

Canada claimed that Section 129(c)(1) had the effect of precluding the United States from implementing adverse WTO reports with respect to what it termed “prior unliquidated entries”² (i.e. entries made before the end of the reasonable period of time for implementing adverse WTO reports that were not liquidated as of that date).

The Panel found, however, that Section 129(c)(1) applied only to the treatment of unliquidated entries (i.e. entries that occurred “on or after” the end of the reasonable period of time) and did not apply to the so-called “prior unliquidated entries”. Therefore, the Panel was not convinced by Canada's assertion that Section 129(c)(1) nevertheless had the effect of precluding the United States from implementing adverse WTO reports with respect to “prior unliquidated entries”. In other words, the Panel concluded that because Section 129(c)(1) did not apply to “prior unliquidated entries,” it neither required nor precluded the United States to act in a certain way in its treatment of “prior unliquidated entries”.

Since Canada failed in establishing that Section 129(c)(1) had the effect of precluding the United States from implementing adverse WTO reports with respect to “prior unliquidated entries”, the Panel did not consider it necessary to examine whether Canada was correct in arguing that the GATT, the ADA and the ASCM required the United States to implement adverse WTO reports with respect to such “prior unliquidated entries”.

3. OTHER ISSUES³

- **As such challenge:** The Panel stated that it was clear that a Member may challenge a statutory provision of another Member as such, provided that the statutory provision mandated the other Member to take action that was inconsistent with its WTO obligations or not to take action which was required by its WTO obligations. Thus, the Panel considered that Canada's principal claims would be sustained only if Canada established that Section 129(c)(1) mandated the United States either to take action that was inconsistent with the WTO obligations or not to take action which was required by those WTO provisions.

¹ *United States – Section 129(c)(1) of the Uruguay Round Agreements Act*

² “Liquidation”, refers to the process by which the US Customs Service makes a final settlement with the importer regarding the final, definitive amount of duties owed. Accordingly, the Customs Service either returns to the importer any excess amount of the deposit paid by the importer over the definitive duties owed or collects from the importer an additional amount to the extent that the definitive duties owed are greater than the deposit. The US Customs Service liquidates based on the amount of definitive anti-dumping and countervailing duties owed as provided in the final, definitive duty determinations made by the United States Department of Commerce.

³ Other issues addressed: terms of reference.