

US – CORROSION RESISTANT STEEL SUNSET REVIEW¹

(DS244)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	<i>Japan</i>	<i>ADA Art. 11.3</i>	Establishment of Panel	<i>22 May 2002</i>
			Circulation of Panel Report	<i>14 August 2003</i>
Respondent	<i>United States</i>		Circulation of AB Report	<i>15 December 2003</i>
			Adoption	<i>9 January 2004</i>

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** (i) US statute for sunset review of anti-dumping duties, in conjunction with the Statement of Administrative Action (SAA), certain provisions of the US regulations related to sunset reviews and the Sunset Policy Bulletin; and (ii) application of the aforementioned measures in the sunset review determination of the product at issue.
- **Product at issue:** Corrosion-resistant carbon steel flat products from Japan.

2. SUMMARY OF KEY PANEL/AB FINDINGS

Sunset review

- **ADA Art. 11.3 (continuation of dumping and injury):** The Appellate Body made some general observations with regard to such a determination: (i) the second condition of Art. 11.3 involved a prospective determination on the part of the investigating authorities, requiring a forward-looking analysis of what would be likely to occur if the duty were terminated; (ii) as to the standard of “likely”, a positive determination may be made only if the evidence demonstrated that dumping would be “probable” (not possible or plausible) if the duty were terminated; and (iii) Art. 11.3 does not prescribe any particular methodology to be used by investigating authorities in making a likelihood determination.
- **ADA Arts. 11.3 and 2.4 (fair comparison):** The Appellate Body reversed the Panel's finding and concluded that the United States violated Art. 11.3 by relying on dumping margins calculated in previous reviews using the “zeroing” methodology. While there is no obligation under Art. 11.3 for investigating authorities to calculate or rely on dumping margins in determining the likelihood of continuation or recurrence of dumping, they must calculate dumping margins in conformity with Art. 2.4 should they choose to rely upon margins in making their likelihood determination.
- **ADA Arts. 11.3 and 6.10 (individual dumping margins):** The Appellate Body concluded that the United States was not in violation of Arts. 6.10 and 11.3 by making a “likelihood” determination in a sunset review on an order-wide basis. The Appellate Body observed that Art. 11.3 does not expressly state that a likelihood determination must be separately made for each known producer (or on a company-specific basis), and that Art. 6 (which is relevant and applies to Art. 11.3 investigations by virtue of the cross reference in Art. 11.4) is also silent on this matter.

3. OTHER ISSUES

- **As such challenge:** In order to determine whether an as such challenge was possible in the present case, the Appellate Body first looked at the type of measures that can be the subject of dispute settlement proceedings and second whether there were any limitations upon the types of measures that may, as such, be the subject of dispute settlement under DSU Art. 3.3 or the applicable covered agreement. The Appellate Body found, contrary to the Panel, that the Sunset Policy Bulletin can be challenged in WTO dispute settlement. The Appellate Body did not, however, find any provision of the Bulletin to be inconsistent, as such, with the Anti-Dumping Agreement.

¹ *United States – Sunset Review of Anti-Dumping Duties on Corrosion Resistant Carbon Steel Flat Products from Japan*