

## US – LAMB<sup>1</sup> (DS177, 178)

PARTIES		AGREEMENTS	TIMELINE OF THE DISPUTE	
Complainants	Australia, New Zealand	SA Arts. 2 and 4 GATT Art. XIX:1	Establishment of Panel	19 November 1999
			Circulation of Panel Report	21 December 2000
Respondent	United States		Circulation of AB Report	1 May 2001
			Adoption	16 May 2001

### 1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** A definitive safeguard measure imposed by the United States.
- **Product at issue:** Fresh, chilled and frozen lamb meat from Australia and New Zealand.

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

- **GATT Art. XIX:1(a) (unforeseen developments):** The Appellate Body held that an investigating authority must demonstrate the existence of unforeseen developments “in the same report of the competent authorities” as that containing other findings related to the safeguard investigation at issue to show a “logical connection” between the conditions set forth in Art. XIX and the “circumstances” such as “unforeseen developments”. As there was no such demonstration in the United States International Trade Commission (ITC) Report, the Panel’s ultimate finding that the United States violated Art. XIX:1(a) was upheld.
- **SA Art. 4.1(c) (injury determination – domestic industry):** The Appellate Body upheld the Panel’s finding that the measure was inconsistent with Art. 4.1(c), as the ITC based its serious injury analysis not only on the producers of lamb meat but also in part on lamb growers and feeders. The Appellate Body stated that the “domestic industry” under Art. 4.1(c) extends solely to the producers of the like or directly competitive products, and thus only to the lamb meat producers in this case.
- **SA Art. 4.2(a) (injury determination – threat of serious injury):** While upholding the Panel’s finding that the data the ITC relied on for the threat of serious injury analysis was not sufficiently representative of the domestic industry, the Appellate Body found that it was Art. 4.2(a) (“read together with the definition of domestic industry in Art. 4.1(c)) that the United States had violated, rather than Art. 4.1(c) itself. Also, having concluded that a threat of serious injury analysis requires an assessment of evidence from the most recent past in the context of the longer-term trends for the entire investigative period, the Appellate Body reversed the Panel’s interpretation of Art. 4.2(a) and concluded (after finding that the Panel had violated DSU Art. 11) that the ITC determination was inconsistent with Art. 4.2(a) as the ITC had failed to adequately explain the price-related facts.
- **SA Art. 4.2(b) (injury determination – causation):** The Appellate Body reversed the Panel’s interpretation that the SA requires that increased imports be “sufficient” to cause serious injury or that imports “alone” be capable of causing or threatening serious injury. Instead the Appellate Body explained that where several factors are causing injury simultaneously, “a final determination about the injurious effects caused by increased imports can only be made if the injurious effects caused by all the different causal factors are distinguished and separated”. The Appellate Body then found that the ITC had acted inconsistently with Art. 4.2(b), as the ITC Report failed to separate out the injurious effects of different factors and to explain the nature and extent of the injurious effects of the factors other than imports.

### 3. OTHER ISSUES<sup>2</sup>

- **Standard of review (SA):** Panels are required to examine whether the competent authorities (i) have examined all relevant factors; and (ii) have provided a “reasoned and adequate” explanation of how the facts support their determination.

<sup>1</sup> United States – Safeguard Measures on Imports of Fresh, Chilled or Frozen Lamb Meat from New Zealand and Australia

<sup>2</sup> Other issues addressed: panel’s standard of review (DSU Art. 11 in general and in relation to Art. 4.2 claim); meaning of the term “threat of serious injury”; judicial economy; requirements of panel request (DSU Art. 6.2); confidential information.