US – EXPORT RESTRAINTS
(DS194)

<table>
<thead>
<tr>
<th>PARTIES</th>
<th>AGREEMENT</th>
<th>TIMELINE OF THE DISPUTE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Complainant</td>
<td>Canada</td>
<td>ASCM Art. 1.1</td>
</tr>
<tr>
<td>Respondent</td>
<td>United States</td>
<td></td>
</tr>
</tbody>
</table>

- Establishment of Panel 11 September 2000
- Circulation of Panel Report 29 June 2001
- Circulation of AB Report NA
- Adoption 23 August 2001

1. MEASURE AT ISSUE

- **Measure at issue:** Treatment of “export restraints” under US countervailing duty (“CVD”) law (statute), in light of the relevant Statement of Administrative Action (“SAA”) and Preamble to CVD Regulations, and relevant United States Department of Commerce (“USDOC”) practice.

2. SUMMARY OF KEY PANEL FINDINGS

- **ASCM Art. 1.1 (a): (1): (iv) (definition of a subsidy – financial contribution):** The Panel first concluded that an “export restraint” cannot constitute government-entrusted or government-directed provision of goods in the sense of subpara. (iv) of Art. 1.1(a)(1), and thus does not constitute a “financial contribution” within the meaning of Art. 1.1. According to the Panel, the “entrusts or directs” standard of subpara. (iv) requires an “explicit and affirmative action of delegation or command”, rather than mere government intervention in the market which leads to a particular result or effect.

- **Nature of the US law at issue (mandatory vs discretionary):** To answer the ultimate question of whether the United States was in violation of the ASCM, the Panel examined whether the US law at issue “required” the USDOC (i.e. executive branch of the government) to treat export restraints as “financial contributions” in CVD investigations. Having found that the US statute, as interpreted in light of the SAA and the Preamble to the CVD Regulations, did not require the USDOC to treat export restraints as “financial contribution” and that there was no measure in the form of a US “practice” that required the treatment of export restraints as a “financial contribution”, the Panel concluded that the statute at issue did not violate Art. 1.1.

3. OTHER ISSUES

- **Mandatory vs discretionary legislature:** Having referred to the principle that “only legislation that mandates a violation of GATT/WTO obligations can be found as such to be inconsistent with those obligations” as the “classical test”, the Panel distinguished this case (pertaining to ASCM) from the Section 301 dispute (pertaining to DSU Art. 23.2(a)) in which the panel eventually found that discretionary legislation may violate certain WTO obligations, and decided to apply the classical test to this dispute. The Panel also decided to address first the consistency of the measures with the substantive WTO rules, and then to examine the mandatory or discretionary character of the measures.

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1 United States – Measures Treating Export Restraints as Subsidies
2 “Export restraints” for the purpose of this case were considered as referring to “a border measure that takes the form of a government law or regulation which expressly limits the quantity of exports or places explicit conditions on the circumstances under which exports are permitted, or that takes the form of a government-imposed fee or tax on exports of the product calculated to limit the quantity of exports.”
3 Other issues addressed: preliminary request to dismiss claims; operation of each measure, including USDOC’s practice (whether each instrument has a functional life of its own).