

US – CARBON STEEL¹

(DS213)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	European Communities	ASCM Art. 21.3	Establishment of Panel	10 September 2001
			Circulation of Panel Report	3 July 2002
Respondent	United States		Circulation of AB Report	28 November 2002
			Adoption	19 December 2002

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** US laws, regulations, administrative procedures and policy bulletin governing “sunset” reviews of countervailing duties (CVDs), and their application in a sunset review of a CVD order on imports from Germany (the US authorities' decision not to revoke the CVD order).
- **Product at issue:** Corrosion-resistant carbon steel flat products imported from Germany.

2. SUMMARY OF KEY PANEL/AB FINDINGS²

- **ASCM Art. 21.3 (sunset review – *de minimis* standard):** The Appellate Body reversed the Panel's finding that the US law was in violation of Art 21.3, on the grounds that Art. 21.3 does not require the application of a 1 per cent *de minimis* standard in sunset reviews. The Appellate Body disagreed with the Panel's reasoning that the *de minimis* requirement of Art. 11.9 of the ASCM (which applies to original investigations) is implied in Art. 21.3, on the grounds that Art. 21.3 does not have an express reference to the *de minimis* standard nor is there a textual link (cross-reference) between the two Articles.
- **ASCM Art. 21.3 (sunset review – initiation by investigating authority):** The Appellate Body upheld the Panel's findings that the automatic self-initiation of sunset reviews by investigating authorities under US law and accompanying regulations are consistent with the ASCM. The Appellate Body stated that its review of the context of Art. 21.3 revealed no indication that the ability of authorities to self-initiate a sunset review is conditioned on compliance with any evidentiary standards, including those set forth in Art. 11.4. (as such claim) The Appellate Body found no reason to disturb the Panel's finding that although the US measure imposed severe limitations on the ability of the authority to come up with a new rate of subsidization, it did not preclude the assessment of a likely rate of subsidization by the authority. Therefore, the US measure did not *mandate* WTO-inconsistent behaviour and, as such, was not in violation of Art. 21.3. (as applied claim) The Panel noted that the US authority had made the determination that the revocation of the CVD would likely lead to continuation or recurrence of subsidization, which “likelihood” determination, the Panel stated, should have been based on an adequate factual basis. The Panel found the application of US CVD law in the particular sunset review to be inconsistent with Art. 21.3 as the US authority had failed to take into account a document submitted by the German exporters that would have been relevant in its analysis on the likelihood of continuation or recurrence of subsidization. (This Panel finding of a violation was not appealed.)

¹ *United States – Countervailing Duties on Certain Corrosion-Resistant Carbon Steel Flat Products from Germany*

² Other issues addressed: panel's terms of reference; DSU Article 11; mandatory and discretionary distinction.