

US – OFFSET ACT (BYRD AMENDMENT)¹ (DS217, 234)

PARTIES		AGREEMENTS	TIMELINE OF THE DISPUTE	
Complainants	Australia, Brazil, Chile, European Communities, India, Indonesia, Japan, Korea, Thailand, Canada, Mexico	ADA Arts. 5 and 18 ASCM Arts. 11 and 32	Establishment of Panel	12 July 2001 (Australia, Brazil, Chile, European Communities, India, Indonesia, Japan, Korea, Thailand), 10 September 2001 (Canada, Mexico)
			Circulation of Panel Report	16 September 2002
Respondent	United States		Circulation of AB Report	16 January 2003
			Adoption	27 January 2003

1. MEASURE AT ISSUE

- **Measure at issue:** US Continued Dumping and Subsidy Act of 2000 under which anti-dumping and countervailing duties assessed on or after 1 October 2000 were to be distributed to the affected domestic producers for qualifying expenditures.

2. SUMMARY OF KEY PANEL/AB FINDINGS²

- **ADA Art. 18.1 (specific action against dumping) and ASCM Art. 32.1 (specific action against subsidies):** The Appellate Body upheld the Panel's analysis that the US measure was a specific action against dumping of exports and of subsidies as it was related to the determination of, and designed and structured to dissuade the practice of, dumping or subsidization. On this basis the Appellate Body held that the US measure was inconsistent with the ADA and the ASCM as it was a specific action that was not permissible under the said agreements.
- **ADA Art. 5.4 (initiation of dumping investigation – application by domestic industry) and ASCM Art. 11.4 (initiation of subsidy investigation – application by domestic industry):** The Appellate Body reversed the Panel's findings that the measure at issue was inconsistent with ADA Art. 5.4 and ASCM Art. 11.4. Emphasizing that the interpretation of these Articles must be based on the principles of interpretation in the VCLT, which focus on the ordinary meaning of the words of the provision, the Appellate Body stated that it found difficulty with the Panel's approach of continuing the analysis beyond the ordinary meaning of the text of the provisions of the ADA to examine whether the measure at issue defeated the object and purpose of these provisions. The Appellate Body concluded that the requirement of Arts. 5.4 and 11.4 were fulfilled when a sufficient number (quantity) of domestic producers have expressed support for the application and, contrary to the Panel's analysis, the investigation authority is not required to examine the motives (quality) of domestic producers that elect to support the investigation.
- **WTO Agreement Art. XVI:4 (WTO conformity of laws, regulations and administrative procedures):** The Appellate Body concluded that the US measure was in violation of Art. XVI:4, as it was inconsistent with ADA Art. 18.1 and ASCM Art. 32.1. Therefore, the Appellate Body found that the US measure nullified or impaired benefits accruing to the appellees under those agreements.

¹ United States – Continued Dumping and Subsidy Offset Act of 2000

² Other issues addressed: good faith fulfilment of treaty obligations (DSU Arts. 7, 9.2 and 17.6).