

US – STEEL SAFEGUARDS¹

(DS248, 249, 251, 252, 253, 254, 258, 259)

PARTIES		AGREEMENTS	TIMELINE OF THE DISPUTE	
Complainants	Brazil, China, European Communities, Japan, Korea, New Zealand, Norway, Switzerland	GATT Art. XIX:1 SA Arts. 2, 3.1 and 4	Establishment of Panel	3 June 2002 (EC); 14 June 2002 (Japan, Korea); 24 June 2002 (China, Switzerland, Norway); 8 July 2002 (New Zealand); 29 July 2002 (Brazil)
			Circulation of Panel Report	2 May 2003
Respondent	United States		Circulation of AB Report	10 November 2003
			Adoption	10 December 2003

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** US definitive safeguard measures on a wide range of steel products.
- **Product at issue:** Certain steel product imports², except for those from Canada, Mexico, Israel and Jordan.

2. SUMMARY OF KEY PANEL/AB FINDINGS³

- **GATT Art. XIX:1(a) (unforeseen developments):** The Appellate Body upheld the Panel's findings (i) that an investigating authority must provide a "reasoned conclusion" in relation to "unforeseen developments" for each specific safeguard measure at issue; and (ii) that the United States International Trade Commission ("ITC") relevant explanation was *not* sufficiently reasoned and adequate and thus inconsistent with GATT Art. XIX:1(a).
- **SA Arts. 2.1 and 3.1 (conditions for safeguard measures – increased imports):** Recalling the relevant legal standard that it elaborated in *Argentina – Footwear Safeguards* and rejecting the US argument (comparison of end-points), the Appellate Body upheld the Panel's conclusions that the measures on CCFRS, hot-rolled bar and stainless steel rod were inconsistent with Arts. 2.1 and 3.1 because the United States failed to provide a "reasoned and adequate" explanation of how the facts (i.e. downward trend at the end of the period of investigation) supported the determination with respect to "increased imports" of these products. However, the Appellate Body, reversing the Panel's finding with respect to "tin mill products and stainless steel wire", found that the ITC determination containing "alternative explanations" was not inconsistent with Arts. 2.1 and 4, as the Safeguards Agreement does not necessarily "preclude the possibility of providing multiple findings instead of a single finding in order to support a determination" under Arts. 2.1 and 4.
- **SA Arts. 2 and 4 (parallelism):** The Appellate Body upheld the Panel's finding that the ITC did not satisfy the "parallelism" requirement, as it should have considered any imports excluded from the application of the measure as an "other factor" in the causation and non-attribution analysis under Art. 4.2(b) and it should have provided one single joint, rather than two separate, determination[s] (i.e. excluding either Canada and Mexico, or, alternatively, Israel and Jordan) based on a reasoned and adequate explanation on whether imports from sources other than the FTA partners (i.e. Canada, Israel, Jordan, and Mexico), *per se*, satisfied the conditions for the application of a safeguard measure.
- **SA Arts. 2.1, 3.1 and 4.2(b) (conditions for safeguard measures – causation):** As regards the Panel's findings of violations for the ITC's causation analyses concerning all products other than stainless steel rod, the Appellate Body (i) reversed the Panel's findings with respect to tin mill and stainless steel wire based on its reversal of the Panel's decision on increased imports, and (ii) declined to rule on the issue of causation for all the other seven products based on its findings of violations in respect of previous claims discussed above.

¹ *United States – Definitive Safeguard Measures on Imports of Certain Steel Products*

² Specifically, these products included the following: CCFRS (certain carbon flat-rolled steel); tin mill products; hot-rolled bar; cold-finished bar; rebar; welded pipe; FFTJ; stainless steel bar, stainless steel wire; and stainless steel rod.

³ Other issues addressed: issuance of separate panel reports (DSU Art. 9.2); time period for data relied upon by the ITC; judicial economy (panel); *amicus curiae* submission; conditional appeals (Appellate Body's completion of panel's analysis); ITC's divergent findings.