

# US – HOT-ROLLED STEEL<sup>1</sup>

(DS184)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	<i>Japan</i>	<i>ADA Arts. 2, 3, 6 and 9</i>	Establishment of Panel	<i>20 March 2000</i>
			Circulation of Panel Report	<i>28 February 2001</i>
Respondent	<i>United States</i>		Circulation of AB Report	<i>24 July 2001</i>
			Adoption	<i>23 August 2001</i>

## 1. MEASURE AND PRODUCT AT ISSUE

- Measure at issue: US definitive anti-dumping duties.
- Products at issue: Imports of certain hot-rolled steel products from Japan.

## 2. SUMMARY OF KEY PANEL/AB FINDINGS

- ADA Art. 6.8 (facts available): The Appellate Body upheld the Panel's findings that the United States acted inconsistently with Art. 6.8 in applying facts available to exporters, as the United States Department of Commerce ("USDOC") had rejected certain information submitted after the deadline without considering whether it was still submitted within a reasonable period of time. The Appellate Body upheld the Panel's finding that the United States acted inconsistently with Art. 6.8 and Annex II when it applied "adverse" facts available to an exporter in respect of certain resale prices by its affiliated company despite the difficulties faced by that exporter in obtaining the requested information and USDOC's reluctance to take any step to assist it.
- ADA Art. 9.4 ("all others" rate): Having found that margins established based *in part* on facts available are to be excluded in calculating an "all others" rate under Art. 9.4, the Appellate Body upheld the Panel's finding that the relevant US statute requiring the inclusion of margins based partially on facts available was inconsistent *as such* and *as applied* with Art. 9.4.
- ADA Art. 2.1 ("ordinary course of trade"): The Appellate Body concluded that the USDOC's 99.5 per cent test (i.e. arm's-length test) was inconsistent with Art. 2.1 because the test did not properly assess the possibility of high-priced sales, as compared to low-priced sales, between affiliates being not "in the ordinary course of trade" within the meaning of Art. 2.1. The Appellate Body found that the USDOC's reliance on downstream sales was "in principle, permissible" under Art. 2.1.
- ADA Art. 3.1 and 3.4 (domestic industry): The Appellate Body upheld the Panel's finding that the captive production provision in the US statute was not inconsistent *as such* with Art. 3, as it allowed the International Trade Commission ("ITC") to examine *both* the merchant market and the captive market along with the market as a whole and thus to evaluate relevant factors in an "objective manner" under Art. 3. However, the Appellate Body, reversed the Panel's finding that the statute was applied in this case consistently with Art. 3.1 and 3.4, as the ITC report did not refer to data for the captive market.
- ADA Art. 3.5 (causation): Having found that the non-attribution language in Art. 3.5 requires "separating and distinguishing" the injurious effects of the other factors from the injurious effects of the dumped imports, the Appellate Body reversed the Panel's interpretation and its finding that the ITC properly ensured that the injurious effects of the other factors had not been attributed to the dumped imports.

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

- Special standard of review (ADA Art. 17.6): Having observed that ADA Art. 17.6 distinguishes between a panel's "assessment of the facts" and its "legal interpretation" of the ADA, the Appellate Body noted the following: (i) that the standard of review under ADA Art. 17.6 complements the "objective assessment" requirement in DSU Art.11. (i.e. the panels must make an "objective" assessment of the facts in order to determine whether the domestic authorities properly established the facts and evaluated them in an objective and unbiased manner); and (ii) the same rules of treaty interpretation apply to the ADA as to other covered agreements, but under the ADA, panels must determine whether a measure rests upon a "permissible interpretation" of that Agreement.

<sup>1</sup> *United States – Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan*

<sup>2</sup> Other issues addressed in this case: AD, Art. 10, Art. 3; conditional appeal (AD, Art. 2.4); GATT, Art. X:3; DSU, Art. 19.1; request to exclude certain evidence (AD, Art. 17.5(ii)); terms of reference (panel request).