

WORLD TRADE ORGANIZATION

Dispute Settlement Reports

2000 Volume X

Pages 4591-5118





CAMBRIDGEUNIVERSITY PRESS

University Printing House, Cambridge CB2 8BS, United Kingdom

One Liberty Plaza, 20th Floor, New York, NY 10006, USA

477 Williamstown Road, Port Melbourne, VIC 3207, Australia

314-321, 3rd Floor, Plot 3, Splendor Forum, Jasola District Centre, New Delhi - 110025, India

103 Penang Road, #05-06/07, Visioncrest Commercial, Singapore 238467

Cambridge University Press is part of the University of Cambridge.

It furthers the University's mission by disseminating knowledge in the pursuit of education, learning and research at the highest international levels of excellence.

www.cambridge.org

Information on this title: www.cambridge.org/9780521828567

© World Trade Organization, 2000, 2002.

Material in this report may be reproduced, provided the source is acknowledged.

This publication is in copyright. Subject to statutory exception and to the provisions of relevant collective licensing agreements, no reproduction of any part may take place without the written permission of Cambridge University Press.

A catalogue record for this publication is available from the British Library

ISBN 978-0-521-82856-7 Hardback

Cambridge University Press has no responsibility for the persistence or accuracy of URLs for external or third-party internet websites referred to in this publication, and does not guarantee that any content on such websites is, or will remain, accurate or appropriate.

French edition and Spanish edition paperbacks of this title are both available directly from WTO Publications, World Trade Organization, Centre William Rappard, 154 rue de Lausanne, CH-1211 Geneva 21, Switzerland http://www.wto.org



THE WTO DISPUTE SETTLEMENT REPORTS

The *Dispute Settlement Reports* of the World Trade Organization (the "WTO") include panel and Appellate Body reports, as well as arbitration awards, in disputes concerning the rights and obligations of WTO Members under the provisions of the *Marrakesh Agreement Establishing the World Trade Organization*. The *Dispute Settlement Reports* are available in English, French and Spanish. Starting with 1999, the first volume of each year contains a cumulative index of published disputes.

This volume may be cited as DSR 2000:X



TABLE OF CONTENTS

	Page
United States - Anti-Dumping Act of 1916 Complaint by the European Communities (WT/DS136)	
Report of the Panel	4593
United States - Anti-Dumping Act of 1916 Complaint by Japan (WT/DS136, WT/DS162)	
Report of the Appellate Body	4793
United States - Anti-Dumping Act of 1916 Complaint by Japan (WT/DS162)	
Report of the Panel	4831
Canada - Certain Measures Affecting the Automotive Industry (WT/DS139, WT/DS142)	
Award of the Arbitrator under Article 21.3(c) of the DSU	5079
Canada - Term of Patent Protection (WT/DS170)	
Report of the Appellate Body	5093



US - 1916 Act (EC)

UNITED STATES - ANTI-DUMPING ACT OF 1916

Complaint by the European Communities

Report of the Panel

WT/DS136/R

Adopted by the Dispute Settlement Body on 26 September 2000 as Upheld by the Appellate Body Report

TABLE OF CONTENTS

			Pa	age		
I.	INTR	ODUCTION	45	598		
II.	FAC	TUAL ASPECTS	46	600		
	A.	Description of the US 1916 Act	46	600		
	B.	Description of other Relevant US	S Acts 46	501		
		1. Antidumping Act of 1921	and Tariff Act of 1930 46	501		
			46			
	C.	Instances of Application of the U	S 1916 Act46	502		
III.	CLA	MS AND MAIN ARGUMENTS				
	A.	Requests Dealt with by the Panel in the Course of the Proceedings				
		1. Preliminary Objection by Request for a Ruling by the	the United States and he Panel46	604		
		2. Request by Japan for Enh	anced Third Party Rights 46	506		
	B.	B. Overview of the Claims of the Parties and Findings				
		Requested				
	C.	The Distinction between Discretionary and Mandatory Legislation and its Relevance to the Present Case				
	D.	Applicability of Article VI of the GATT 1994 and the Anti-Dumping Agreement				
		1. The Meaning and Scope of GATT 1994 and the Anti-	of Article VI of the -Dumping Agreement	518		
		2. The Nature of the 1916 A Antitrust Law?	ct: Anti-Dumping or46	524		
		. ,	inctive Features of the46	624		
		(-)	istinction Between d Antitrust46	531		



Report of the Panel

					Page
		(c)	State	ments by US Executive Branch Officials	4638
		(d)		Classification of the 1916 Act in the	
				egal System	4642
		(e)		taneous or Consecutive Filings of 1916	
				laims and 1930 Tariff Act Petitions in Involving the Same Matter	1612
		(f)		delevant US Case Law	
		(1)	(i)	The Distinction between Issues of	4044
			(1)	Fact and Issues of Law	4644
			(ii)	Comments on the Case Law in General	4647
			(iii)	United States v. Cooper Corp	
			(iv)	Zenith Radio Corp. v. Matsushita	
				Electric Industrial Co. and In re	
				Japanese Electronic Products Antitrust	4650
			()	Litigation	4650
			(v)	Helmac Products Corp. v. Roth (Plastics) Corp	4659
			(vi)	Geneva Steel Corp. v. Ranger Steel	
				Supply Corp. and Wheeling-	4661
г	37' 1		A 1	Pittsburgh v. Mitsui & Co	
E.				VI:2 of the GATT 1994	
	1.		_	iments	4664
	2.			Relevant Context of Article VI:2 of 94	1667
	3.			ing History	
	<i>3</i> . 4.		-	ce of Article 18.1 of the Anti-Dumping	4000
	••				4672
	5.	The I	nterpret	ation of the Footnote to Article 18.1 of	
				nping Agreement	4676
F.				VI:1 of the GATT 1994 and	
				3, 4 and 5.5 of the Anti-Dumping	
~					
G.				III:4 of the GATT 1994	
	1.				4681
	2.			t as a Law Affecting the Internal Sale Products and the Robinson-Patman	
				arable Legislation	4682
	3.		_	s Favourable Treatment" Standard	
		(a)		ral Arguments	
		(b)		delevance of Trade Effects	
		· /			



US - 1916 Act (EC)

				Pa	ge		
		(c)		Relevance of the Absence of Successful cations of the 1916 Act	00		
		(4)			00		
		(d)		ent-by-element comparison of the 1916 nd the Robinson-Patman Act	90		
			(i)	The Injury/Predation Standards 469			
			(ii)	The Measurement of Price			
				Discrimination	96		
			(iii)	Offering for Sale vs. Actual Sale as threshold Requirements for Complaints 470	00		
			(iv)	Defences Available under the			
				Robinson-Patman Act, but not			
				Expressly Provided for in the	^^		
		77: 1 4: C	A 1	1916 Act	JU		
	H.			XVI:4 of the Agreement Establishing	n2		
				g and Scope of Article XVI:4470			
				ce to an Article XVI:4 Inquiry of the	,,		
				Between Mandatory and Discretionary			
				470	05		
				with Article 18.4 of the Anti-			
				greement			
IV.	THIR	D PARTY SU	BMISS	IONS	10		
	A.						
	B.	Japan			12		
	C.	Mexico			14		
V.	INTE	RIM REVIEW	··········		17		
	A.			47			
	B.	Comments b	y the E	uropean Communities	17		
	C.	Comments b	y the U	nited States	19		
VI.	FIND				26		
	A.	A. Facts at the Origin of the Dispute and Issues to be Addressed by the Panel					
		1. Facts	at the (Origin of the Dispute472	26		
		2. Issue	s to be	Addressed by the Panel	27		
	B.	Procedural Is	ssues	473	31		
		1. Requ	est for a	a Preliminary Ruling by the			
				s473	31		
		2. Requ	est for l	Enhanced Third Party Rights by Japan 473	32		
		3. Burd	en of Pi	oof473	34		



Report of the Panel

Pı	eliminary	Issues		Pag 473	
. Pi 1.	•				
	(a)		before the Panel		
	(b)		should the Panel Consider the text of		
			916 Act, the Context of its Enactment,		
			ase-Law Relating to it and Other Relevant s of Information	473	
		(i)	Arguments of the Parties and Approach of the Panel	47	
		(ii)	Consideration by Panels of Domestic Law in General		
		(iii)	Consideration of the Case-Law	/.	
		` ′	Relating to the 1916 Act	47	
		(iv)	Consideration of the Historical Context		
			and Other Evidence of the Meaning of the 1916 Act	47	
2.	Rela	tionship	between Article III and Article VI		
			1994	47	
	(a)	Issue	before the Panel	47	
	(b)		oach to be Followed by the Panel	47	
			icle VI of the GATT 1914 to the	47	
15			Remarks on the Possibility of	47	
1.			the 1916 Act in a WTO-Compatible		
	Man	ner and	on its "Mandatory/Non-Mandatory"		
	Natu				
	(a)		before the Panel	47	
	(b)		possibility of Interpreting the 1916 Act	47	
	(-)		WTO-Compatible Manner	47	
	(c)		latory/Non-Mandatory Nature of the Act	47	
2.	Does		6 Act Fall Within the Scope of	,	
			the GATT 1994?	47	
	(a)	Issue	before the Panel	47	
	(b)		the 1916 Act, on the Basis of its Terms		
			Fall within the Scope of Article VI of	4.5	
			ATT 1994?		
		(i)	Approach of the Panel	47	



US - 1916 Act (EC)

				Page		
		(ii)	Scope of Article VI of the GATT 1994	. 4753		
		(iii)	Examination of the 1916 Act on the Basis of the Scope of Article VI	4755		
			Similarities			
			Specific Arguments of the United			
			States	4756		
		(iv)	Conclusion	4759		
	(c)	Impact of the Historical Context and of the				
		Legisla	ative History of the 1916 Act	4760		
		(i)	Approach of the Panel	4760		
		(ii)	Review of the Historical Context and			
			Legislative History	4760		
		(iii)	Conclusion	4764		
	(d)		of the US Case-Law Relating			
		to the	1916 Act	4764		
		(i)	Approach by the Panel	4764		
		(ii)	The US Supreme Court and the 1916 Act	. 4765		
		(iii)	The Interpretation of the Transnational Price Discrimination Test of the 1916 Act at the Circuit Court Level	4766		
			"Dumping" as an International Trade Concept Applied in an Anti-Trust			
			Context			
			The Brooke Group Recoupment Test	4769		
			The Interlocutory Decisions Relied upon	4554		
			by the European Communities			
		(iv)	Conclusion	. 4772		
3.			on the Applicability of Article VI of			
			94 to the 1916 Act	. 4773		
	(a)		116 Act falls within the Scope of VI of the GATT 1994	4773		
	(b)		116 Act is a Mandatory Law within the ng of GATT 1947/WTO Practice	. 4774		
	(c)	Article	nding Remarks on the Applicability of VI to the Price Discrimination Test	4775		
Violet	ion of A		VI:1 and VI:2 of the GATT 1994			
1.			article VI:1 of the GATT 1994			
1.	v ioiati	OH OF A	11 11 11 01 11 11 17 17 17 17 17 17 17 17 17 17 17	- / / /		

DSR 2000:X 4597

E.



Report of the Panel

				Page			
		(a)	Issue before the Panel	4777			
		(b)	Analysis	4777			
		(c)	Conclusion	4778			
	2.	Anti-	Anti-Dumping Duties as Sole Remedy under				
		Artic	ele VI				
		(a)	Issues before the Panel	4779			
		(b)	Ordinary Meaning of the Terms of Article VI:2 of the GATT 1994	4780			
		(c)	Context	4781			
		(d)	Preparatory Work	4784			
		(e)	Conclusion on the Violation of Article VI:2 of the GATT 1994	4785			
	3.	Conc	cluding Remarks on Burden of Proof with				
			ect to the Violation of Article VI of the T 1994	4785			
F.	Violation of Provisions of the Anti-Dumping						
	Agre	ement.		4786			
	1.	Preli	minary Remarks	4786			
	2.	Revi					
		Agreement					
		(a)	General Comments Regarding the EC Claims				
			under Article 1 and Article 2.1 and 2.2 of the Anti-Dumping Agreement	1786			
		(b)	Violation of Article 3				
		(c)	Violation of Article 4				
		(d)	Violation of Article 5.5				
	3.	()	clusion				
G.			Article III:4 of the GATT 1994				
Н.			Article XVI:4 of the Agreement Establishing	1702			
11.			Atticle AVI.4 of the Agreement Establishing	4790			
I.	Nulli	fication	or Impairment	4790			
J.	Summary of Findings						
CON		•	ND RECOMMENDATIONS				

I. INTRODUCTION

VII.

1.1 On 4 June 1998, the European Communities requested consultations with the United States pursuant to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (hereinafter the "DSU"), Article XXIII of the General Agreement on Tariffs and Trade 1994 (hereinafter the "GATT 1994") and Article 17.3 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (hereinafter the "Anti-Dumping Agreement")