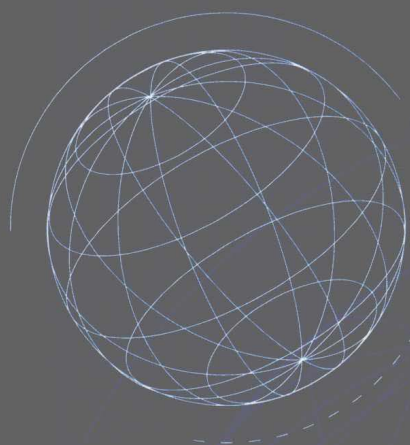




Dispute Settlement Reports 2008
Volume VIII: Pages 2771 to 3176

2008



CAMBRIDGE

WORLD TRADE ORGANIZATION

Dispute Settlement Reports

2008
Volume VIII

Pages 2771-3176



CAMBRIDGE
UNIVERSITY PRESS

CAMBRIDGE UNIVERSITY PRESS

Cambridge, New York, Melbourne, Madrid, Cape Town, Singapore, São Paulo,
Delhi, Dubai, Tokyo

Cambridge University Press

The Edinburgh Building, Cambridge CB2 8RU, UK

Published in the United States of America by Cambridge University Press, New York

www.cambridge.org

Information on this title: www.cambridge.org/9780521193894

© World Trade Organization 2003, 2005, 2007, 2008, 2009 and 2010

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.

First published 2010

Printed in the United Kingdom at the University Press, Cambridge

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

Library of Congress Cataloguing in Publication data

ISBN 978-0-521-19389-4 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.

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. Volumes comprising one or more complete cases contain a cumulative list of published disputes. The cumulative list for cases that cover more than one volume is to be found in the first volume for that case.

This volume may be cited as DSR 2008:VIII

TABLE OF CONTENTS

Page

**United States - Customs Bond Directive for Merchandise
Subject to Anti-Dumping/Countervailing Duties
(WT/DS343, WT/DS345)**

Report of the Appellate Body 2773
Report of the Panel 2925

Cumulative List of Published Disputes 3157

UNITED STATES - CUSTOMS BOND DIRECTIVE FOR MERCHANDISE SUBJECT TO ANTI-DUMPING/COUNTERVAILING DUTIES

Report of the Appellate Body

WT/DS343/AB/R

WT/DS345/AB/R

*Adopted by the Dispute Settlement Body
on 1 August 2008*

Thailand, *Appellant/Appellee/Third Participant*
India, *Appellant/Appellee/Third Participant*
United States, *Appellant/Appellee*
Brazil, *Third Participant*
Chile, *Third Participant*
China, *Third Participant*
European Communities, *Third Participant*
Japan, *Third Participant*
Korea, *Third Participant*
Mexico, *Third Participant*
Viet Nam, *Third Participant*

Present:
Sacerdoti, Presiding
Member
Baptista, Member
Ganesan, Member

TABLE OF CONTENTS

	Page
I. INTRODUCTION	2785
II. ARGUMENTS OF THE PARTICIPANTS AND THE THIRD PARTICIPANTS	2793
A. Claims of Thailand – Appellant in US – Shrimp (Thailand)....	2793
1. Ad Note to Article VI:2 and 3 of the GATT 1994	2793
2. Cash Deposits and Anti-dumping Duties	2797
3. The Reasonableness of the EBR, as Applied to Subject Shrimp	2800
B. Arguments of the United States – Appellee in US – Shrimp (Thailand)	2800

1.	Ad Note to Article VI:2 and 3 of the GATT 1994.....	2800
2.	Cash Deposits and Anti-dumping Duties.....	2806
3.	The Reasonableness of the EBR, as Applied to Subject Shrimp.....	2807
C.	Claims of the United States – Other Appellant in US – Shrimp (Thailand).....	2808
1.	The Reasonableness of the EBR, as Applied to Subject Shrimp.....	2808
2.	The Panel's Analysis of the Term "Necessary" under Article XX(d) of the GATT 1994.....	2810
D.	Arguments of Thailand – Appellee in US – Shrimp (Thailand).....	2811
1.	The Reasonableness of the EBR, as Applied to Subject Shrimp.....	2811
2.	The Panel's Analysis of the Term "Necessary" under Article XX(d) of the GATT 1994.....	2814
E.	Claims of India – Appellant in US – Customs Bond Directive.....	2815
1.	Ad Note to Article VI:2 and 3 of the GATT 1994.....	2815
2.	Cash Deposits and Anti-dumping Duties.....	2819
3.	The Reasonableness of the EBR, as Applied to Subject Shrimp.....	2820
4.	"As Such" Consistency of the Amended CBD with Articles 1 and 18.1 of the Anti-Dumping Agreement and Articles 10 and 32.1 of the SCM Agreement.....	2820
5.	Consistency of the Amended CBD with Article 9 of the Anti-Dumping Agreement and Article 19 of the SCM Agreement.....	2821
6.	Completing the Analysis on Article 18.4 of the Anti- Dumping Agreement and Article 32.5 of the SCM Agreement.....	2822
7.	The Panel's Terms of Reference.....	2823
8.	The Availability of a Defence under Article XX(d) of the GATT 1994 to the United States.....	2824
9.	Prima Facie Case by the Panel under Article XX(d) of the GATT 1994.....	2825
F.	Arguments of the United States – Appellee in US – Customs Bond Directive.....	2826
1.	Ad Note to Article VI:2 and 3 of the GATT 1994.....	2826
2.	Cash Deposits and Anti-dumping Duties.....	2829

3.	The Reasonableness of the EBR, as Applied to Subject Shrimp	2830
4.	"As Such" Consistency of the Amended CBD with Articles 1 and 18.1 of the Anti-Dumping Agreement and Articles 10 and 32.1 of the SCM Agreement	2831
5.	Consistency of the Amended CBD with Article 9 of the Anti-Dumping Agreement and Article 19 of the SCM Agreement.....	2831
6.	Completing the Analysis on Article 18.4 of the Anti-Dumping Agreement and Article 32.5 of the SCM Agreement.....	2832
7.	The Panel's Terms of Reference.....	2832
8.	The Availability of a Defence under Article XX(d) of the GATT 1994 to the United States.....	2833
9.	Prima Facie Case by the Panel under Article XX(d) of the GATT 1994.....	2833
G.	Claims of the United States – Other Appellant in US – Customs Bond Directive.....	2834
1.	The Reasonableness of the EBR, as Applied to Subject Shrimp	2834
2.	The Panel's Analysis of the Term "Necessary" under Article XX(d) of the GATT 1994	2835
H.	Arguments of India – Appellee in US – Customs Bond Directive	2836
1.	The Reasonableness of the EBR, as Applied to Subject Shrimp	2836
2.	The Panel's Analysis of the Term "Necessary" under Article XX(d) of the GATT 1994	2840
I.	Arguments of the Third Participants	2840
1.	Brazil	2840
2.	Chile	2843
3.	European Communities	2844
4.	India	2846
5.	Japan.....	2847
6.	Korea.....	2849
7.	Thailand	2850
III.	ISSUES RAISED IN THESE APPEALS.....	2851
IV.	THE MEASURE AT ISSUE	2853
A.	Introduction	2853

B.	Background	2854
1.	The Retrospective Anti-Dumping Duty Assessment System of the United States	2854
2.	Overview of Customs Bond Requirements in the United States	2855
3.	The Enhanced Continuous Bond Requirement.....	2856
V.	THE INTERPRETATION OF THE <i>AD</i> NOTE TO ARTICLE VI:2 AND 3 OF THE GATT 1994.....	2860
A.	Introduction.....	2860
B.	The Temporal Scope of the Ad Note	2863
1.	Interpretation of the Phrase "pending final determination of the facts in any case of suspected dumping"	2869
2.	Impermissible Response to Dumping	2873
3.	The Ad Note to Article VI:2 and 3 of the GATT 1994 and Article 7 of the Anti-Dumping Agreement (Provisional Measures)	2874
4.	The Panel's Legal Characterization of Cash Deposits ..	2875
C.	Conclusion	2878
VI.	THE REASONABLENESS OF THE EBR, AS APPLIED TO SUBJECT SHRIMP	2878
A.	The Assessment of Reasonableness under the Ad Note	2884
B.	The Reasonableness of the EBR, as Applied to Subject Shrimp.....	2887
VII.	INDIA'S CLAIMS THAT THE AMENDED CBD IS "AS SUCH" INCONSISTENT WITH ARTICLES 1 AND 18.1 OF THE <i>ANTI- DUMPING AGREEMENT</i> AND ARTICLES 10 AND 32.1 OF THE <i>SCM AGREEMENT</i>	2889
VIII.	INDIA'S CLAIMS THAT THE AMENDED CBD IS INCONSISTENT WITH ARTICLE 9 OF THE <i>ANTI-DUMPING AGREEMENT</i> AND ARTICLE 19 OF THE <i>SCM AGREEMENT</i>	2891
IX.	INDIA'S REQUEST FOR COMPLETION OF THE ANALYSIS ON ARTICLE 18.4 OF THE <i>ANTI-DUMPING AGREEMENT</i> AND ARTICLE 32.5 OF THE <i>SCM AGREEMENT</i>	2893
X.	THE PANEL'S TERMS OF REFERENCE	2894
XI.	WHETHER THE PANEL MADE A <i>PRIMA FACIE</i> CASE FOR THE UNITED STATES.....	2900
XII.	THE PANEL'S ANALYSIS OF THE TERM "NECESSARY" IN ARTICLE XX(D) OF THE GATT 1994	2902
XIII.	FINDINGS AND CONCLUSIONS.....	2909

LIST OF ANNEXES

- ANNEX I Notification of an Appeal by Thailand in *US – Shrimp (Thailand)*
- ANNEX II Notification of an Appeal by India in *US – Customs Bond Directive*
- ANNEX III Notification of an Other Appeal by the United States in *US – Shrimp (Thailand)*
- ANNEX IV Notification of an Other Appeal by the United States in *US – Customs Bond Directive*

TABLE OF CASES CITED IN THIS REPORT

Short Title	Full Case Title and Citation
<i>Argentina – Footwear (EC)</i>	Appellate Body Report, <i>Argentina – Safeguard Measures on Imports of Footwear</i> , WT/DS121/AB/R, adopted 12 January 2000, DSR 2000:I, 515
<i>Brazil – Aircraft</i>	Appellate Body Report, <i>Brazil – Export Financing Programme for Aircraft</i> , WT/DS46/AB/R, adopted 20 August 1999, DSR 1999:III, 1161
<i>Brazil – Aircraft</i>	Panel Report, <i>Brazil – Export Financing Programme for Aircraft</i> , WT/DS46/R, adopted 20 August 1999, as modified by Appellate Body Report, WT/DS46/AB/R, DSR 1999:III, 1221
<i>Brazil – Desiccated Coconut</i>	Appellate Body Report, <i>Brazil – Measures Affecting Desiccated Coconut</i> , WT/DS22/AB/R, adopted 20 March 1997, DSR 1997:I, 167
<i>Brazil – Desiccated Coconut</i>	Panel Report, <i>Brazil – Measures Affecting Desiccated Coconut</i> , WT/DS22/R, adopted 20 March 1997, upheld by Appellate Body Report, WT/DS22/AB/R, DSR 1997:I, 189
<i>Brazil – Retreaded Tyres</i>	Appellate Body Report, <i>Brazil – Measures Affecting Imports of Retreaded Tyres</i> , WT/DS332/AB/R, adopted 17 December 2007
<i>Canada – Wheat Exports and Grain Imports</i>	Appellate Body Report, <i>Canada – Measures Relating to Exports of Wheat and Treatment of Imported Grain</i> , WT/DS276/AB/R, adopted 27 September 2004, DSR 2004:VI, 2739
<i>Chile – Price Band System</i>	Appellate Body Report, <i>Chile – Price Band System and Safeguard Measures Relating to Certain Agricultural Products</i> , WT/DS207/AB/R, adopted 23 October 2002, DSR 2002:VIII, 3045, and Corr.1
<i>EC – Hormones</i>	Appellate Body Report, <i>EC Measures Concerning Meat and Meat Products (Hormones)</i> , WT/DS26/AB/R, WT/DS48/AB/R, adopted 13 February 1998, DSR 1998:I, 135
<i>EEC – Parts and Components</i>	GATT Panel Report, <i>European Economic Community – Regulation on Imports of Parts and Components</i> , L/6657, adopted 16 May 1990, BISD 37S/132

Short Title	Full Case Title and Citation
<i>Guatemala – Cement I</i>	Appellate Body Report, <i>Guatemala – Anti-Dumping Investigation Regarding Portland Cement from Mexico</i> , WT/DS60/AB/R, adopted 25 November 1998, DSR 1998:IX, 3767
<i>Japan – Agricultural Products II</i>	Appellate Body Report, <i>Japan – Measures Affecting Agricultural Products</i> , WT/DS76/AB/R, adopted 19 March 1999, DSR 1999:I, 277
<i>Korea – Alcoholic Beverages</i>	Panel Report, <i>Korea – Taxes on Alcoholic Beverages</i> , WT/DS75/R, WT/DS84/R, adopted 17 February 1999, as modified by Appellate Body Report, WT/DS75/AB/R, WT/DS84/AB/R, DSR 1999:I, 44
<i>Korea – Dairy</i>	Appellate Body Report, <i>Korea – Definitive Safeguard Measure on Imports of Certain Dairy Products</i> , WT/DS98/AB/R, adopted 12 January 2000, DSR 2000:I, 3
<i>Korea – Various Measures on Beef</i>	Appellate Body Report, <i>Korea – Measures Affecting Imports of Fresh, Chilled and Frozen Beef</i> , WT/DS161/AB/R, WT/DS169/AB/R, adopted 10 January 2001, DSR 2001:I, 5
<i>Mexico – Anti-Dumping Measures on Rice</i>	Appellate Body Report, <i>Mexico – Definitive Anti-Dumping Measures on Beef and Rice, Complaint with Respect to Rice</i> , WT/DS295/AB/R, adopted 20 December 2005, DSR 2005:XXII, 10853
<i>Mexico – Corn Syrup (Article 21.5 – US)</i>	Appellate Body Report, <i>Mexico – Anti-Dumping Investigation of High Fructose Corn Syrup (HFCS) from the United States – Recourse to Article 21.5 of the DSU by the United States</i> , WT/DS132/AB/RW, adopted 21 November 2001, DSR 2001:XIII, 6675
<i>US – 1916 Act</i>	Appellate Body Report, <i>United States – Anti-Dumping Act of 1916</i> , WT/DS136/AB/R, WT/DS162/AB/R, adopted 26 September 2000, DSR 2000:X, 4793
<i>US – 1916 Act (EC)</i>	Panel Report, <i>United States – Anti-Dumping Act of 1916, Complaint by the European Communities</i> , WT/DS136/R and Corr.1, adopted 26 September 2000, upheld by Appellate Body Report, WT/DS136/AB/R, WT/DS162/AB/R, DSR 2000:X, 4593

Short Title	Full Case Title and Citation
<i>US – 1916 Act (Japan)</i>	Panel Report, <i>United States – Anti-Dumping Act of 1916, Complaint by Japan</i> , WT/DS162/R and Add.1, adopted 26 September 2000, upheld by Appellate Body Report, WT/DS136/AB/R, WT/DS162/AB/R, DSR 2000:X, 4831
<i>US – Canadian Pork</i>	GATT Panel Report, <i>United States – Countervailing Duties on Fresh, Chilled and Frozen Pork from Canada</i> , DS7/R, adopted 11 July 1991, BISD 38S/30
<i>US – Certain EC Products</i>	Appellate Body Report, <i>United States – Import Measures on Certain Products from the European Communities</i> , WT/DS165/AB/R, adopted 10 January 2001, DSR 2001:I, 373
<i>US – Corrosion-Resistant Steel Sunset Review</i>	Appellate Body Report, <i>United States – Sunset Review of Anti-Dumping Duties on Corrosion-Resistant Carbon Steel Flat Products from Japan</i> , WT/DS244/AB/R, adopted 9 January 2004, DSR 2004:I, 3
<i>US – Customs Bond Directive</i>	Panel Report, <i>United States – Customs Bond Directive for Merchandise Subject to Anti-Dumping/Countervailing Duties</i> , WT/DS345/R, circulated to WTO Members 29 February 2008
<i>US – Gambling</i>	Appellate Body Report, <i>United States – Measures Affecting the Cross-Border Supply of Gambling and Betting Services</i> , WT/DS285/AB/R, adopted 20 April 2005, DSR 2005:XII, 5663, and Corr.1
<i>US – Hot-Rolled Steel</i>	Appellate Body Report, <i>United States – Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan</i> , WT/DS184/AB/R, adopted 23 August 2001, DSR 2001:X, 4697
<i>US – Offset Act (Byrd Amendment)</i>	Appellate Body Report, <i>United States – Continued Dumping and Subsidy Offset Act of 2000</i> , WT/DS217/AB/R, WT/DS234/AB/R, adopted 27 January 2003, DSR 2003:I, 375
<i>US – Oil Country Tubular Goods Sunset Reviews</i>	Appellate Body Report, <i>United States – Sunset Reviews of Anti-Dumping Measures on Oil Country Tubular Goods from Argentina</i> , WT/DS268/AB/R, adopted 17 December 2004, DSR 2004:VII, 3257

Short Title	Full Case Title and Citation
<i>US – Section 129(c)(1) URAA</i>	Panel Report, <i>United States – Section 129(c)(1) of the Uruguay Round Agreements Act</i> , WT/DS221/R, adopted 30 August 2002, DSR 2002:VII, 2581
<i>US – Shrimp (Thailand)</i>	Panel Report, <i>United States – Measures Relating to Shrimp from Thailand</i> , WT/DS343/R, circulated to WTO Members 29 February 2008
<i>US – Softwood Lumber V</i>	Appellate Body Report, <i>United States – Final Dumping Determination on Softwood Lumber from Canada</i> , WT/DS264/AB/R, adopted 31 August 2004, DSR 2004:V, 1875
<i>US – Stainless Steel (Mexico)</i>	Appellate Body Report, <i>United States – Final Anti-Dumping Measures on Stainless Steel from Mexico</i> , WT/DS344/AB/R, adopted 20 May 2008
<i>US – Upland Cotton</i>	Appellate Body Report, <i>United States – Subsidies on Upland Cotton</i> , WT/DS267/AB/R, adopted 21 March 2005, DSR 2005:I, 3
<i>US – Wool Shirts and Blouses</i>	Appellate Body Report, <i>United States – Measure Affecting Imports of Woven Wool Shirts and Blouses from India</i> , WT/DS33/AB/R, adopted 23 May 1997, and Corr.1, DSR 1997:I, 323
<i>US – Zeroing (EC)</i>	Appellate Body Report, <i>United States – Laws, Regulations and Methodology for Calculating Dumping Margins ("Zeroing")</i> , WT/DS294/AB/R, adopted 9 May 2006, and Corr.1, DSR 2006:II, 417
<i>US – Zeroing (EC)</i>	Panel Report, <i>United States – Laws, Regulations and Methodology for Calculating Dumping Margins ("Zeroing")</i> , WT/DS294/R, adopted 9 May 2006, as modified by Appellate Body Report, WT/DS294/AB/R, DSR 2006:II, 521
<i>US – Zeroing (Japan)</i>	Appellate Body Report, <i>United States – Measures Relating to Zeroing and Sunset Reviews</i> , WT/DS322/AB/R, adopted 23 January 2007

ABBREVIATIONS USED IN THIS REPORT

Abbreviation	Description
1959 Group of Experts Report	GATT Report of the Group of Experts, Anti-Dumping and Countervailing Duties, GATT document L/978, adopted 13 May 1959, BISD 8S/151
1960 Group of Experts Report	GATT Second Report of the Group of Experts, Anti-Dumping and Countervailing Duties, GATT Document L/1141, adopted 27 May 1960, BISD 9S/194
1991 Directive	Customs Directive on Monetary Guidelines for Setting Bond Amounts, No. 099-3510-004 (23 July 1991) amended 9 July 2004 (Exhibits THA-1 and IND-2)
<i>Ad Note</i>	<i>Ad Note</i> to Article VI:2 and 3 of the GATT 1994
Amended CBD	Amended Customs Bond Directive – collectively, the July 2004 Amendment, the Current Bond Formulas, the August 2005 Clarification, and the October 2006 Notice
Antidumping Act of 1916	Title VIII (under the heading "Unfair Competition") of the United States Revenue Act of 1916, 39 Stat. 756 (1916)
Antidumping Act of 1921	United States Antidumping Act of 1921, 42 Stat. 11, codified under <i>United States Code</i> , Title 19, as amended
<i>Anti-Dumping Agreement</i>	<i>Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994</i>
August 2005 Clarification	United States Customs, "Clarification to July 9, 2004 Amended Monetary Guidelines for Setting Bond Amounts for Special Categories of Merchandise Subject to Antidumping and/or Countervailing Duty Cases" (Exhibits THA-4 and IND-5)
Basic bond requirement	Basic requirements listed for a continuous bond as set out in the 1991 Directive