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# *Decisions of the Appellate Body of the World Trade Organization*

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*United States — Countervailing Measures Concerning Certain Products from the European Communities*, WT/DS212/AB/R, adopted 8 January 2003. United States, Appellant; European Communities, Appellee; Brazil, India and Mexico, Third Participants. Division: Lockhart, Abi-Saab and Bacchus. Major Topics Addressed by the Appellate Body: definition of ‘subsidy’; continued subsidy or benefit to recipient after privatization; mandatory versus discretionary legislation and challenge of an administrative practice as such.

*United States—Continued Dumping and Subsidy Offset Act of 2000*, WT/DS217,234/AB/R, adopted 27 January 2003. United States, Appellant; Australia, Brazil, Canada, Chile, European Communities, India, Indonesia, Japan, Korea, Mexico and Thailand, Appellees; Argentina, Costa Rica, Hong Kong (China), Israel and Norway, Third Participants. Division: Sacerdoti, Baptista, Lockhart. Major Topics Addressed by the Appellate Body: scope of impermissible ‘specific actions against’ dumping or subsidies under Article 18.1 of the *Anti-Dumping Agreement* and Article 32.1 of the *SCM Agreement*; incentives for industry support under Article 5.4 of the *Anti-Dumping Agreement* and Article 11.4 of the *SCM Agreement*; good faith.

*European Communities — Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India—Recourse to Article 21.5 of the DSU by India*, WT/DS141/AB/RW, adopted 24 April 2003. India, Appellant; European Communities, Appellee; Japan, Korea and US, Third Participants. Division: Abi-Saab, Bacchus and Taniguchi. Major Topics Addressed by the Appellate Body: (i) examination in Art. 21.5 proceedings of matter not pursued in original proceedings; (ii) calculation of volume of dumped imports, for purposes of determining injury, under Arts. 3.1 and 3.2 of the *Anti-Dumping Agreement*, and (iii) information on ‘all relevant economic factors’ listed in Art. 3.4 of the *Anti-Dumping Agreement*.

*European Communities — Anti-Dumping Duties on Malleable Cast Iron Tube or Pipe Fittings from Brazil*, adopted 18 August 2003. Brazil, Appellant; European Communities, Appellee; Chile, Japan, Mexico and US. Division: Ganesan, Baptista and Sacerdoti. Major Topics Addressed by the Appellate Body: (i) effect of devaluation during period

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of investigation; (ii) inclusion of actual data relating to ‘low volume’ sales in determining amounts for administrative, selling and general costs for construction of normal value; (iii) requirement to evaluate volume and prices of dumped imports from each country individually as a precondition to cumulation under Art. 3.3 of the Anti-Dumping Agreement; (iv) evidence of consideration of factors listed in Art. 3.4 of the Anti-Dumping Agreement under Art. 17.6(i) of the Anti-Dumping Agreement; (iv) disclosure of investigation information under Arts. 6.2 and 6.4 of the Anti-Dumping Agreement; (v) implicit analysis of growth factor under Art. 3.4; and (vi) evaluation of cost efficiency as an other known causal factor under Art. 3.5.

*Japan — Measures Affecting the Importation of Apples*, WT/DS245/AB/R, adopted 10 December 2003. Japan, Appellant/Appellee; US, Appellant/Appellee; Australia, Brazil, European Communities, New Zealand, and Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu, Third Participants. Division: Lockhart, Baptista and Sacerdoti. Major Topics Addressed by the Appellate Body: sufficient scientific evidence under Article 2.2 of the SPS Agreement; provisional measures under Article 5.7 of the SPS Agreement; based on a risk assessment under Article 5.1 of the SPS Agreement.

*United States — Definitive Safeguard Measures on Imports of Certain Steel Products*, WT/DS248, 249, 250, 251, 252, 253, 254, 258, 259/AB/R, adopted 10 December 2003. United States, Appellant/Appellee; Brazil, China, European Communities, Japan, Korea, New Zealand, Norway and Switzerland, Appellant/Appellees; Canada, Cuba, Mexico, Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu, Thailand, Turkey and Venezuela, Third Participants. Division: Bacchus, Abi-Saab and Lockhart. Major Topics Addressed by the Appellate Body: (i) reasoned and adequate explanation of unforeseen developments under Art. XIX:1(a) of GATT and Art. 3.1 of the Agreement on Safeguards; (ii) reasoned and adequate explanation of facts supporting finding of increased imports under Arts. 2.1 and 3.1 of the Agreement on Safeguards; (iii) reasoned and adequate explanation establishing explicitly that imports from non-excluded sources satisfy conditions for application of safeguard measures under Arts. 2.1 and 4.2 of the Agreement on Safeguards.

*United States — Final Countervailing Duty Determination with Respect to Certain Softwood Lumber from Canada*, WT/DS257/AB/R, adopted 17 February 2004. United States, Appellant/Appellee; Canada, Appellant/Appellee; European Communities, India and Japan, Third Participants. Division: Baptista, Lockhart and Sacerdoti. Major Topics Addressed by the Appellate Body: (i) financial contribution by providing goods under Art. 1.1(a)(1)(iii) of the SCM Agreement; (ii) determination of benefit under Art. 14 of the SCM Agreement; (iii) downstream subsidization under Arts. 10 and 32.1 of the SCM Agreement and Art. VI:3 of GATT.

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