GUIDE TO DISPUTE SETTLEMENT

Peter Gallagher

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Foreword

At the end of the Uruguay Round of Negotiations in 1995 the more than 120 governments participating in the negotiations agreed to set up new procedures to resolve trade disputes among them by mutual agreement backed by international law and legal sanctions. For the first time in history, this process – the dispute settlement system of the World Trade Organization (WTO) – applies principles of fairness, open-dealing and mutual benefit by 'law' to trade relations between sovereign economies. Dealing with international conflict in this way helps to secure economic opportunity for billions of people as employees, entrepreneurs and consumers because it provides unique protection against unfair, arbitrary or burdensome regulations that affect international trade.
The establishment of a this orderly mechanism for the settlement of disputes between Members of the WTO has been described as the "WTO's most individual contribution".
The new WTO system is at once stronger, more automatic and more credible than its GATT predecessor. This is reflected in the increased diversity of countries using it and in the tendency to resolve cases 'out of court' before they get to the final decision. The system is working as intended — as a means above all for conciliation and for encouraging resolution of disputes, rather than just for making judgements. By reducing the scope for unilateral actions, it is also an important guarantee of fair trade between smaller countries and the major trading nations.
The purpose of this Guide is to help you to understand the purpose of the system and the role it plays in the management of the international economy. We hope that this Guide will help you understand what is going on when a government takes a 'case' to the WTO and what the results of the case mean. The Guide may also help you to see how you can participate, whether as a citizen, a businessperson, a consumer, or an official in supporting your own government's role in the system or even, possibly, supporting your government in bringing or responding to a WTO case.
Peter Gallagher, a former trade negotiator and specialist in the Uruguy Round agreements has written this guide with the support of the WTO. The guide has been reviewed for accuracy by the WTO but the explanations, opinions and conclusions it presents are those of Mr. Gallagher. The guide was originally intended to be read on screen as part of a a computer based training package

Start here

A unique experiment

This Guide is about a unique global effort to maintain peace in world trade. Just six years ago, almost all the governments of the world agreed to set up new procedures to resolve trade disputes among them by mutual agreement backed by international law and legal sanctions. For the first time in history, this process – the dispute settlement system of the World Trade Organization (WTO) – applies principles of fairness, open-dealing and mutual benefit by 'law' to trade relations between sovereign economies. Dealing with international conflict in this way helps to secure peace and economic opportunity for billions of people as employees, entrepreneurs and consumers because it provides unique protection against unfair, arbitrary or burdensome regulations that affect international trade.

The WTO is the only international body dealing with the rules of trade between nations. At its heart are the WTO Agreements, negotiated and signed by more than 140 of the world's trading nations. The Agreements are like contracts, binding governments to keep their trade regulations and policies within agreed limits so that global markets can operate as well and as fairly as possible for everyone's benefit.

The dispute settlement guarantee

"…The relevance of Article 23 [dispute settlement] obligations for individuals and the market place is particularly important since they radiate on to all substantive obligations under the WTO. If individual economic operators cannot be confident about the integrity of WTO dispute resolution and may fear unilateral measures outside the guarantees and disciplines which the [WTO] ensures, their confidence in each and every of the substantive disciplines of the system will be undermined as well."

Panel report in *US – Section 301* (WT/DS152/R) at 7.94

The global goals of the WTO

The ultimate goal of the Organization is to improve global welfare by helping the citizens of member countries to gain the most benefit from participation in the global economy. This includes improving the economic opportunities of the poorest Member countries by helping them to access rapidly-expanding global markets, expanding their income and helping them to use their resources as effectively as possible.

Governments set out to achieve these goals more than 50 years ago when they created a system of global trade rules known as the GATT (General Agreement on Tariffs and Trade). These rules applied in exactly the same way to every Member government of GATT, from the world's richest and most powerful economy to the world's smallest and poorest economies. It was a remarkable and far-sighted agreement that brought enormous benefits to the world by helping to spur and to spread the benefits of economic growth in the second half of the 20th century.

In 1995, the rules of the GATT were extended, improved, and re-named as the rules of the World Trade Organization. But the key ideas and purposes of the WTO remained the same as they had been in GATT. As far as possible, the WTO replaces the role of 'power' in international trade relations with the rule of 'law' and with voluntary agreements based on mutual advantage between all countries. Every Member has the same 'vote' in the Organization; every member has the same entitlements; all members work together to resolve problems and establish peaceful conditions for trade. In the WTO, as a general rule, a decision is made only when every Member is ready to accept it.

There is broad agreement that the 'experiment' has been a success, so far. There has been a 'flood' of cases bought by both developed and developing countries – more than 250 cases in the first seven years – which seems to demonstrate the faith that the Members place in the system. Despite the pressures that this heavy caseload has placed on the institutions of the dispute settlement system, cases have been adjudicated in accordance with the accelerated timetable and respected independent analysts have praised the quality of the jurisprudence.

The majority of disputes notified to the WTO have been resolved without recourse to the full, compulsory adjudication process. But almost all respondent parties that have been the subject of an adverse decision by the Dispute Settlement Body (DSB) have voluntarily implemented the recommendations without the need for enforcement measures. Threats of unilateral measures by the major industrialized countries that undermined confidence in the trading system in the 1980s have disappeared. The WTO system has successfully resolved disputes between the largest economies, involving billions of dollars of trade, without bilateral conflict and without drawn-out processes that could prolong uncertainty for the commercial interests affected.

Business pressures can mean conflicts

This does not mean that there are no disagreements. Far from it! Few areas of international relations see more passion, hot tempers and bitter argument than trade and commerce.

You can probably see why disputes might arise: where business and profits are at stake, it seems there are no holds barred. Governments know, as well as business does, that sometimes in commercial deals there are 'winners and losers': if possible, 'our' winners and 'their' losers. So Governments everywhere feel the pressure to work hand-in-hand with business and with consumer or other lobby groups to ensure that their own citizens and economies are taking advantage of every opportunity.

This sort of pressure flows over into the WTO every day. In every meeting room in the WTO Headquarters you'll find officials meeting to deal with issues and disagreements that arise between Member governments because each of them is trying to help their own industries and consumers.

Keeping trade benefits in perspective

But business is only business: there are some much bigger issues at stake in world trade, as all WTO Member governments know. They understand that to achieve their goals of peaceful global growth from international trade, they can't focus only on 'winners and losers'. A broader vision is needed because, in reality, international trade agreements are very different from business deals.

Unlike business deals where each side usually seeks an advantage over the other in price, a trade deal to open markets and to maintain fair regulation and competition works because it creates winners on *both sides*. That's the key difference between the gains from trade and commercial profits: trade gains are always *mutual gains*. So although governments are, naturally, keen to ensure that their citizens profit from trade, they are aware that they cannot do this by 'gaining the upper hand' in trade regulations and policies. They know from the lessons of the great economic depression of the 1930's, and from the wars that followed, what happens when governments try to 'gain the upper hand'. And they are determined not to see that happen again.

The 'experiment'

So, there's a crucial balance to be struck by every government between helping firms and consumers in their own economies and ensuring that this 'help' doesn't reduce the gains from trade to the economy as a whole, or to the global economy in the long run. The purpose of the WTO dispute settlement system is to help governments find this balance. Disputes that are adjudicated in the WTO almost always start with some regulation intended to help a commercial interest in a member economy. If the regulation hurts the interests of other members, the Dispute Settlement system helps to restore the balance by interpreting and applying the rules of the trading system to that particular circumstance. The Member governments of the WTO don't 'punish' each other, but national regulations may have to be changed to ensure that mutual trade benefits are restored.

We've called the dispute settlement system an 'experiment' because some of its procedures – like the 'automatic' progress between stages and the binding decisions of the Dispute Settlement Body – are a new approach to international relations that has never been tried before. Also, the pressure of a large number of 'cases' right from the start, has been a tough test for the new procedures and institutions. It has been used actively, even aggressively, by a wide range of members and has helped governments to resolve some very difficult and potentially damaging disputes. So far, most Members of the WTO would say that the experiment has been successful: although they've not yet completed the 'review' of the system that they proposed to undertake at the five-year mark.

The purpose of this Guide is to help you to understand the purpose of the system and the role it plays in the management of the international economy. We hope that this Guide will help you understand what is going on when a government takes a 'case' to the WTO and what the results of the case mean. The Guide may also help you to see how you can participate, whether as a citizen, a businessperson, a consumer, or an official in supporting your own government's role in the system or even, possibly, supporting your government in bringing or responding to a WTO case.

How this Guide is organized

You may already know something about the WTO dispute settlement system: if so, you might want to look at the table of contents of the Guide and read only those parts that look like they might interest you. But if you'd like to start from the beginning, here's a 'guide to the guide':

Table 1
An overview of the Guide to WTO Dispute Settlement

Guide section	Section content	Comment
Start Here	1. What is a dispute? 2. How are disputes settled? 3. An illustrated 'timetable' of dispute settlement 4. Law and democracy 5. An FAQ (short, plain language answers)	You should read this section if this is your first introduction to the WTO disputes settlement system. It contains basic information about how the disputes are resolved and how the rules of the WTO are enforced. It also shows you step-by-step how the WTO resolves disputes.
A closer look	6. The grounds for complaint 7. Mutually acceptable solutions	Here's where we get a bit more technical. This section looks at

Guide section	Section content	Comment
	8. Dispute resolution - not rulemaking 9. Case-by-case approach 10. The Panel process 11. The Appeal process 13. Implementing dispute decisions 14. Developing country provisions	the main players in the system in more depth, detailing the different roles of the Council and Panels and the Appellate Body. We also look a little more closely at the 'legal' nature of the disputes system and at the methods used to enforce Council decisions on disputes, when necessary. Finally we look at the provisions of the DSU that apply only to developing countries.
Should you bring a complaint?	15. Has there been a breach of obligation? 16. Is there a 'non-violation' case to answer? 17. Do previous cases clarify WTO obligations? 18. Are you ' vulnerable' as a plaintiff? 19. How does intervention by other parties affect a dispute? 20. Is it realistic to expect commercial benefit or relief? 21. How long will it take? 22. How much will it cost? 23. What are the alternatives to Dispute Settlement? 24. Is 'unilateral action' an option? 25. Should you consider conciliation? 26. Is independent legal advice available? 27. Who may represent a Member?	This is what matters to you most, right? You want to know what's in it for you to get support from your government for a WTO complaint. Or maybe your government is facing a complaint from another Member over a regulation that you want to preserve. Here's where we try to provide the information that will help you to evaluate your choices and to understand the choices facing Member governments. Be careful! The answers might not be as simple as you hoped.
Disputes by subject		Already, after only 5 years, the WTO has settled a wide range of disputes. You may want to review the activity so far by issue. This section provides a key to cases that have been decided under the WTO.
The 'state of play'		This section reproduces the latest information, at the time of writing, on disputes in different stages of the dispute settlement process. You can find updated information in this format on the WTO website.
Developing country experience	By the numbers Leading costs and lagging benefits? Legal assistance	The great majority of WTO members are developing countries. As a group, they were less active in dispute settlement than industrialized countries before the DSU was adopted. Now, they are much more active in pursuing their rights under the Agreements. Many developing countries still experience problems accessing the system, however.

What is a dispute?

A WTO dispute is a difference between two or more Member governments of the WTO where one Member claims that the actions or regulations or policies of another are damaging its interests. In most cases, disputes arise when an exporting country believes that an importing country is not treating its exported products or services fairly, in accordance with the WTO rules.

The difference becomes a WTO dispute when it is 'notified' to the WTO Secretariat by the complainant country under the provisions of one or more of the WTO Agreements. The first formal indication of a dispute is in the form of a 'request for consultations', which are confidential talks between the parties to the dispute held, normally, in Geneva. The 'request for consultations' starts a timetable of events that can lead to a ruling on the dispute by the Dispute Settlement Body (DSB) of the WTO, unless the countries concerned reach an agreement between themselves that resolves the problem.

Note that a dispute involves only governments: it's usually based on some commercial concern with the regulations of another government, but there is no WTO dispute until the government of one or other Member economy of the WTO notifies the WTO Secretariat that a dispute exists. This means that, at a commercial level, the problem might already have a long history. Importing or exporting companies or investors or their agents may have had many meetings with the officials of the governments concerned. Often, there will have been exchanges – such as messages and letters or formal diplomatic notes - between the governments of the two (or more) economies over the issue. A WTO dispute exists, however, only after one or other member government decides to 'notify' the dispute.

Also, the word 'dispute' might mislead you. Don't think of a dispute as a 'trade war' or some form of a struggle between governments. It's probably more accurate, in most cases, to talk about 'resolving differences' rather than 'settling disputes'. Some of the issues certainly raise the temperature of officials and business people who are involved: after all, thousands of millions of dollars of trade can be at stake in WTO disputes such as those on the US Foreign Sales Corporations tax-subsidies or the EU ban on imports of meat that may contain artificial growth hormones. But many other disputes are simply differences that all sides are keen to resolve in an efficient, fair and friendly manner.

Technically, the grounds for a dispute under the WTO are the same as they were under Article XXIII of the General Agreement on Tariffs and Trade (GATT), which is now one of the WTO Agreements. That is, one Member alleges that another Member has done something to reduce the benefits it expects to derive from the WTO Agreements, probably – but not necessarily – in violation of the WTO rules themselves.

How are disputes settled?

Members of the WTO are encouraged to resolve their own disputes rather than have the WTO issue a ruling. The Understanding on Dispute Settlement (DSU) says that it's 'clearly preferable' to secure a 'positive solution' to the dispute that is 'mutually acceptable' to the parties and 'consistent with the covered agreements'. This is why the disputes process always begins with consultations between the Members concerned and why the process can be interrupted at any point and brought to a speedy end if the Members concerned reach a mutually acceptable solution between themselves.

If one or other of the Members in disputes asks for it, a process of 'conciliation' is also available at the time of the consultations. The Director-General of the WTO offers his 'good offices' to try to broker a settlement for Members if they request it.

If the Members involved cannot agree among themselves on the solution, then the Dispute Settlement Body (DSB) – the WTO General Council in another guise – has to make a decision about what the Agreements require. To do this, the DSB establishes a Panel of three experienced people to assess the facts of the case in the light of the provisions of the Agreements that the complainant claims are relevant to the case. The role of the Panel is to help the DSB by making a recommendation for a decision and – possibly – a suggestion for measures that should be taken to put the situation right.

At its second meeting on the case, after the Panel report has been circulated to all WTO Members, the DSB may reject the panel's findings and recommendations but only if all the members of the Body are united in a consensus to reject the recommendation. This is unlikely to happen very often – it never *has* happened - so it's important that the recommendations are of the highest standard.

Table 2
Roles in the dispute settlement system

Who …	**… does what?**
The Dispute Settlement Body	Establishes a Panel to make recommendations on a dispute and accepts – absent a contrary consensus – the recommendations of the Panel as amended (possibly) by the Appellate Body. The only body with authority, in principle, to determine the meaning of the Agreements.
The Panel	Temporary tribunal (3 persons) that examines the dispute and makes recommendations in light of the Agreements.
Appellate Body	A standing body of distinguished legal experts that reviews issues of law and legal reasoning in Panel reports, as requested by the Parties. May reverse unsound Panel conclusions or recommendations before they are adopted by the DSB.
Arbitrators	May be appointed by the DSB to determine a 'reasonable period of time' for the implementation of a decision. Under Article 25 of the DSU, parties may choose to have a dispute arbitrated as an alternative to a Panel procedure. Arbitration decisions, which parties are likely to seek only when they agree on the precise issues for resolution, must be notified to the DSB. The provisions of Articles 21 and 22 of the DSU on remedies and on the surveillance of implementation of a decision apply to Arbitral awards.
Director-General of WTO	May use his 'good offices' to assist parties to a dispute reach a 'conciliated' mutual agreement.
Experts	Assist Panels, at the request of a Panel, with advice on technical matters. A Panel may choose its own expert assistants.
WTO Secretariat	Provides administrative support to the DSB. Provides secretarial and legal assistance to the panels. May offer some impartial assistance to developing country members in the preparation of a dispute.

This is where the Appellate Body plays an important role. This group of eminent legal specialists may review the Panel recommendations to ensure that they are legally sound. The Members who are parties to a dispute may ask the Appellate Body to review the Panel report and recommendations *before* the DSB takes a decision on the case. If the Appellate Body changes the recommendations of the Panel then the DSB makes its decision on the Panel report *as amended* by the Appellate Body. Only the DSB, however, has the right to make the final decision in a dispute, normally by adopting the recommendations of the Panel – as modified in some cases by the Appellate Body.

The DSB also monitors the implementation of the rulings and recommendations, and has the power to authorize "retaliation" [suspension of concessions] when a country does not comply with a ruling within a

'reasonable period of time'. "Retaliation" means that the DSB authorizes the 'winner' of the case to withdraw some WTO benefits – such as reduced tariff rates – that it may have formerly extended to the 'loser'.

Three important points to note in this overview of the procedures:

1. The *process is 'automatic'* once the dispute is notified to the WTO. It can be brought to an end only by the disputants finding a mutually acceptable solution or by a decision of the DSB followed by implementation of the DSB decision.
2. There are *no "opt outs"* for Members. Every WTO Agreement is covered by the DSU and a decision of the DSB is binding on all members, big and small, and must be implemented in accordance with a timetable that is monitored by the DSB.
3. *Most disputes are not adjudicated* by a Panel and are not decided by the DSB. Panels have been established in only about one third of all disputes notified to the WTO since January 1995. In some cases the parties notified the WTO of mutually agreed solutions and in other cases neither party wished to continue beyond the consultation phase.

Table 3

Case statistics (to end 2000)

Time period	Notification of consultations*	Panels established*	Mutually agreed solutions
1995 – July 1996	50	20	11
Aug 1996 – July 1997	51	12	7
Aug 1997 – July 1998	42	15	11
Aug 1998 – July 1999	39	17	2
Aug 1999 – Jan 2000	10	6	1
2000	33	12	3
Totals	**225**	**82**	**35**

*some of these are related matters e.g. complaints by several Members on almost identical matters

How are rulings enforced?

In most cases, no special action is needed to enforce decisions of the DSB. When a Member's policies are successfully challenged, most Members inform the DSB at the meeting where the decision is taken of their intention to comply with the decision and, often, indicate when they expect to implement it.

WTO 'cases' are not intended to be contentious: there's no shame in loosing a case. There is no 'punishment' because there is no 'wrong-doing'. The outcome of a case is that the WTO Members, acting through the DSB, rule on the requirements of the Agreements as they apply in the particular circumstances of the case. The Member who has 'lost' has not been found at fault but has been found to act in a way that reduces the benefits of the Agreement to other Members. This has to be corrected within 'a reasonable period of time' by changing the policies or regulations. The 'reasonable period of time' is frequently agreed between the 'winning' and 'loosing' members very soon after the DSB decision: or either side can ask the DSB to appoint an arbitrator to determine the 'reasonable period of time'. The maximum time allowed is normally 15 months from the date of the DSB decision.

The DSB regularly reviews progress in implementing its decisions. If the situation is not put right within the 'reasonable period of time' then the DSB may authorize the winning 'complainant' to withdraw equivalent rights and concessions from the loosing Member ('retaliation') or may require the loosing Member to pay 'compensation' – normally by giving the complainant other equivalent trade access to its markets.

Compensation and retaliation are rarely authorized by the DSB. They are temporary measures that do not solve the problem that gave rise to the dispute in the first place, because they do not put the situation right. The DSU requires the loosing member to put the situation right by changing its policies or measures: offering compensation or suffering retaliation is no substitute for this.

The dispute timetable

There's a saying in most parts of the world that 'justice delayed is justice denied'. One of the strengths of the WTO disputes mechanism is that it has timetables for dealing with disputes that are designed to avoid delays.

The 'clock' starts running on the timetable for a dispute on the day that the dispute is notified to the WTO and it runs for a total of about one year to 18 months, depending on the difficulty of the issues involved.

Table 4

How long to settle a dispute?

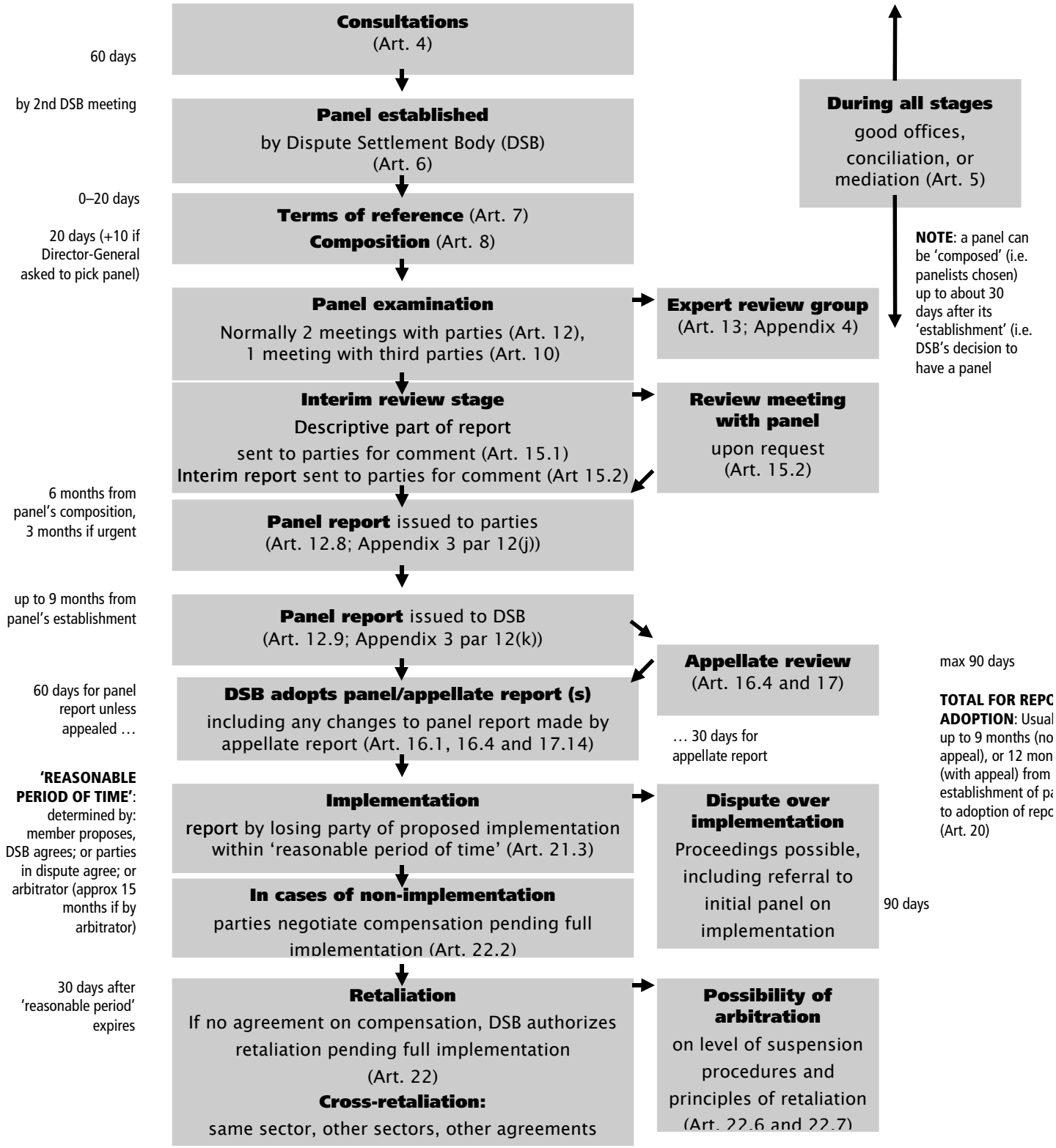
Time allowed	**Process**
60 days	Consultations, mediation, etc
45 days	Panel set up and panelists appointment
6 months	Final panel report to parties
3 weeks	Final panel report to WTO members
60 days	Dispute Settlement Body adopts report (if no appeal)
Total = 1 year	**(without appeal)**
60-90 days	Appeals report
30 days	Dispute Settlement Body adopts appeals report
Total = 1y 3m	**(with appeal)**
15 months	Time to implement (maximum without appeal) Up to 18 months (with appeal)
Total = 2y 6m	**(without appeal)**

These approximate periods for each stage of a dispute settlement procedure are target figures — the DSU Agreement is flexible. The countries concerned can settle their dispute themselves at any stage. Also this timetable does not take into account the time needed to prepare a dispute. Over the period since 1995 when the DSU came into effect, the average time between the DSB decision to establish a Panel and the DSB decision on the recommendation of the Panel (possibly amended by the Appellate Body) has been close to the 15-month target.

The panel process

The various stages a dispute can go through in the WTO. At all stages, countries in dispute are encouraged to consult each other in order to settle 'out of court'.
At all stages the WTO Director-General is available to offer his good offices, to mediate or to help achieve a conciliation.

NOTE: some specified times are maximums, some are minimums; some binding, some not



The 'law' and democracy

One question comes up all the time: has the WTO become a sort of 'world trade court', imposing rigid new international 'laws' on Member governments?

You can see why people might be concerned about this. The new WTO dispute settlement system can lead 'automatically' to a decision on a dispute that a Member government will be 'forced' to accept because all WTO member economies have agreed in advance to be bound by the decisions of the DSB on disputes. Although Members can intervene in the process at several points through the DSB – and the participants in a case can bring it to an end at any time if they reach agreement - it takes a very unusual circumstance ('consensus against') to 'stop the clock' in a dispute or to reject the recommendations of the dispute Panel. It sounds like the system could be 'undemocratic' and inflexible: taking power out of the hands of elected governments and giving it to an international organization.

It's true that Members have made two 'trade-offs' in the WTO dispute settlement system that result in greater certainty, predictability and 'equity' among members but tend to reduce the detailed Member government control that was possible under the less formal GATT process.

In the first 'trade off', Members decided to accept the 'automatic' disputes process – despite the limits that it places on Members' control – in order to overcome some of the problems with the GATT system, which sometimes appeared open to 'manipulation' by interested parties.

> Members wanted the WTO system to work faster, with more predictability and fairness for all members than the former GATT system. The GATT dispute settlement on the whole worked reasonably well, but it was possible for any Member – such as the 'loser' in a case - to delay or frustrate the decision-making process. So, the 'compulsory' nature of the WTO system can be thought of as a 'democratic' device that ensures that there are no 'opt outs'. All members, big and small, are equal partners in the Agreements and have equal rights under them; including the right to have their benefits in the Agreements protected by the dispute settlement system. The disputing Members can stop the automatic 'clock' at any time by resolving the problem for themselves. In fact, as the statistics show, it *is stopped more often than not* by the disputants deciding not to proceed with the next step of a dispute, possibly because they reached a 'mutually satisfactory conclusion'. This is the most common outcome for all of the disputes notified to the WTO so far. Finally, there is also reason to believe that Members perceived the greater certainty of the 'automatic' system to be necessary to prevent some of the largest WTO members – who had expressed dissatisfaction with the GATT system – from taking matters into their own hands.

The second 'trade-off' in the WTO dispute settlement system involved acceptance of binding 'court like' process where decisions are based on legal interpretations of the Agreements in place of the diplomatic processes which *used* to take place under GATT and which are still the origins of the Agreements themselves. This 'trade-off' adds greatly to the certainty and 'fairness' of the disputes system, although it sometimes seems to make Members subordinate to the system itself.

> The WTO dispute settlement system is unique among international tribunals for imposing judgments that Members have agreed, in advance, to accept. No other international tribunal – including the

International Court of Justice (the 'World Court') - is in quite the same position. This has led to some fears that the legal decision-making process might take control away from Member governments, who are accountable to citizens, and put it in the hands of 'judges' and lawyers, who are not accountable.

These fears are, however, misplaced. First, the binding nature of the decisions makes the whole WTO stronger and more effective: it means that the rules apply fairly to all, without "opt outs" and without regard to the economic power of the parties to a dispute. Second, both the institutions of the dispute settlement system and the rules of the WTO themselves leave Members a very wide latitude to establish their own policies as long as they comply with the rules. Even when they 'lose' a case, as we will see, Member governments retain the right to determine their own policies and cannot be 'dictated to' by the WTO.

Ask yourself, would governments have agreed to the 'binding' arbitration on any other terms?

In all this talk of 'legal' processes, it's important to remember that the Dispute Settlement system is not a 'court' and the rules are not 'laws' like the laws adjudicated by courts in Member countries. Although the WTO dispute settlement system is more 'court like' than the former GATT dispute settlement system the rules of the WTO are, and will remain, agreements negotiated among Member governments. In fact the DSU retains a preference for the resolution of disputes based on negotiated settlements based on 'mutual satisfaction' *not laws* in Article 3.7 (emphasis added):

> The aim of the dispute settlement mechanism is to secure **a positive solution** to a dispute. A solution **mutually acceptable to the parties** to a dispute and consistent with the covered agreements **is clearly to be preferred**.

It's clear, too, that the WTO Member governments have asserted their supreme authority in the Organization. The most 'court like' components of the system – the Panels and especially the Appellate Body - are subsidiary to the Council of Members (the DSB), unlike the courts in most Member countries, for example, which usually have constitutional independence of the 'legislative' bodies under the constitution. Members have specified – and the Appellate Body has several times noted – that only Members are able to interpret or change any of the 'laws' to which the new 'judicial' process refers. So it's more accurate to say that the binding system of arbitration in the WTO makes all members 'equal before the system' rather than subordinate to the system.

Frequently Asked Questions

(i) What sort of disputes does the WTO deal with?

Disputes between Member governments – more than 140 economies – over trade policies and trade-related measures covered by a WTO Agreement.

(ii) Can you give me some examples?

Here is a selection from cases that have been decided since 1995. Well over 200 disputes have been notified, covering goods trade, intellectual property, trade-related investment measures, and services trade:

- A complaint against Australian export subsidies to a company making leather car seats (Australia had to withdraw the subsidies and recover the funds paid)
- A complaint against India for failing to give the required level of protection to pharmaceutical patents

(India had to change its laws)

- A complaint against the EC administration of import restrictions on poultry (the EC had to change its procedures)
- A complaint against Guatemala for not conducting adequate investigations before applying anti-dumping duties to imported cement (Guatemala had to revise its anti-dumping procedures)
- A complaint against Japan for unnecessarily restrictive quarantine procedures applied to varieties of imported fruit (Japan had to change its testing and fumigation procedures)
- A complaint against Korean safeguard measures restricting imports of dairy products (Korea had to bring its safeguard procedures into line with the WTO and GATT agreements)
- A complaint that US regulations intended to preserve rare sea-turtles were really trade restrictions on the import of shrimps (the US had to change its laws to reduce the trade impact and to make the law apply more fairly among importers)

(iii) Are all the WTO rules covered by the dispute system?

Yes. The WTO dispute settlement system covers every Agreement including the 'plurilateral' agreements on government procurement and civil aircraft, and the DSU itself.

(iv) Can businesses or citizens use the WTO dispute system?

Not directly. Only Member governments can be 'plaintiffs' or 'defendants' in a WTO case. No citizen has access to the dispute settlement system and no decisions within the system directly implicate citizens' rights. But business or citizens' interests are frequently behind the decision of a government to notify a dispute, of course.

(v) How long does it take to win a case and get a remedy through the WTO?

After two months of initial consultations, recent cases have taken an average of 13 to 16 months from the establishment of a Panel by the DSB to a decision by the DSB on the recommendation of the Panel - including a review by the Appellate Body. The 'reasonable period of time' for implementation has been set at the maximum of 15 months in several cases. So the total, in some recent cases, from first notification to the end of the implementation period has been more than 30 months. Taking into account the preparation time for a case, you should probably plan on up to three years for any moderately complex case from the time officials first begin to put the case together to the time that a successful complaint results in changes in regulations – particularly where one of the parties to the dispute is a developing country.

(vi) Is it possible to get a temporary injunction to stop some action?

No. The WTO dispute settlement system does not provide for injunctive directions to governments or for interim judgments.

(vii) Does the WTO hand out fines or other punishments?

No. The dispute settlement system is about resolving disputes between Member governments; not about 'punishment'. In most cases the only decision taken is that a Member should change its regulations or practices.

Even when there is some compensation or retaliation authorized by the Dispute Settlement Body, it is equivalent to the harm caused and contains no 'punitive' measures intended to influence future behavior, for example.

(viii) How much does it cost to bring a case?

That depends a lot on the case. As a guide, it probably costs a plaintiff government and businesses in the plaintiff country several million dollars over three years (or so), if all costs are taken into account.

A Member government will probably need to dedicate one or two professional staff full time to the development and prosecution of a WTO case with the associated administrative and support costs. Senior officials and Ministers will have to be available for supervision and to make key decisions. Agencies and Ministries in the Capital whose portfolios and responsibilities may be affected by the decisions in a case will need to be consulted and there will be information costs associated with data collection – including from business, statistical sources and from foreign sources. Some Members choose to use external legal firms to assist with the preparation or review of a case, but this is not essential.

The participants in a case will need to ensure representation in Geneva (and possibly elsewhere) during the preliminary phases including the formal consultation phase. They will need to have representatives at the DSB meetings before and after the establishment of a Panel and during the decision and implementation phases of the case. They may need to have representatives appear before the Panel on two occasions and before the Appellate Body, if an appeal is made.

Businesses in the Member states will also need to consult with government agencies and may participate in the evaluation of the case or give advice to their government on the progress of implementation. Businesses will probably be called upon by a government to help with information on the facts of a case.

(ix) Are there judgments for costs against the parties?

No. Parties to a WTO dispute bear their own costs. There are no judgments as to costs. The costs of the Panelists and the Appellate Body are met from the WTO budget.

(x) Can several defendants be joined in a case?

No. The dispute settlement system is structured to handle only those disputes where there is a single respondent. There may be more than one complainant in a case and several parties may be associated with a case as interested 'third parties'. These 'third party' members have rights to provide and receive information at the Panel stage and rights to make submissions to the Appellate Body if the complainant or respondent appeal the Panel recommendations. But no assessment is made of their rights or obligations in the matter, so they are not implicated by the recommendations except to the extent that the restoration of a respondent's compliance with the Agreements may consequently benefit their interests: for example, if the respondent restores certain rights subject to MFN application. Multiple cases referring to the same matter may be referred by the DSB to a single Panel for recommendation but these are technically separate cases.

(xi) Do you need a lawyer to represent you?

No. Member governments represent themselves in the dispute settlement system as elsewhere in the WTO. The general practice in the WTO is that Members may be represented at meetings, including at meetings of the

disputes Panels, by whomever they designate: so Members may include government lawyers or external advisors on their delegations.

(xii) How do I research earlier cases?

The WTO website provides full public access to reports of WTO and GATT Panels and of the WTO Appellate Body as soon as they are circulated to the Membership.

(xiii) Is there just one court at the WTO or are there several?

There are no 'courts' in the WTO although some of the institutions in the dispute settlement system are required to act in a 'court like' manner. The Member governments in Council – usually represented by their ambassadors to the WTO – form the supreme decision-making body. When it deals with disputes, the General Council is designated the Dispute Settlement Body (DSB). The DSB may appoint a Panel for each dispute to advise it on the dispute and to recommend a means of resolving the dispute. The standing Appellate Body also reports to the DSB. There is no appeal from the DSB.

(xiv) How far can you keep on appealing a decision?

Panel reports may be appealed only once and only by parties to the case. Members who are designated as interested 'third parties' by the DSB may also join in appeals.

(xv) Can we get a Panel to give us an advisory opinion?

No. Panels are established by the DSB for a specific case and have no other function than to advise on the resolution of a dispute in that case. Neither the Panel nor the Appellate Body is competent to interpret the Agreements in the abstract but only to make recommendations related to a specific case before it. The Understanding on Dispute Settlement refers Members to the decision-making processes of the covered Agreements – normally the Council established to manage the Agreement - for advice on the Agreements themselves.

(xvi) Who is responsible in my government for representing me?

This varies from government to government. Usually the agency responsible for international trade agreements (the Ministry of Foreign Affairs or the Trade Ministry) is charged with responsibility for the WTO dispute settlement system.

(xvii) Does the WTO provide legal assistance for developing countries?

Yes. Within the limits of its resources and its mandate to remain impartial, the Secretariat is directed by the Dispute Settlement Understanding to assist developing countries with e.g. the preparation of a case. Recently, the limits on the Secretariat's role have led some donors to establish a trust fund that will be used to provide more detailed and 'partial' assistance to developing countries (see the 'Advisory Centre on WTO Law', below).

A closer look

The Grounds for Complaint

A complaint may be brought against measures that 'nullify or impair' the benefits of one or more of the WTO Agreements or measures that impede the attainment of the objectives of one of the WTO Agreements. 'Nullification' is simply the extreme case of 'impairment': the phrase means that the actions of one Member are denying wholly (or partially) the benefits of the Agreement to another.

In the majority of disputes, a member alleges – in accordance with Article XXIII.1 (a) of the GATT (1994) - that another Member has **violated** the terms of an Agreement. Such a violation, if confirmed, would amount to a '*prima facie*' case of nullification and impairment: that is, it would amount to a *presumption* of harm to the interests of the complainant or an impairment of the objectives of the Agreement.. So, when the Panel finds that the complaint deals with a violation of one of the Agreements, it place the onus on the defending member to rebut the allegation

Note that it is not necessary for a complainant Member to establish that it is actually harmed by some trade effects of the measure alleged to violate an Agreement because the *prima facie* presumption of harm applies where the measure is found to violate a rule.

Table 5
Grounds for complaint

Type of ground	Description	Remedy
Violation	Measure in violation of an Agreement (Article XXIII.1 (a) of GATT)	The measure must be withdrawn
Non-violation	Measures that nullify or impair a benefit but do not violate an Agreement (Article XXIII.1 (b) of GATT)	Measure/situation may remain in place but measures should be taken to redress the 'impairment' of benefits
	Situations involving no measure that nonetheless nullify or impair a benefit (Article XXIII.1(c) of GATT)	

The benefits of an Agreement might also be denied or reduced by a **measure that does not violate** an Agreement or by a **situation** between members that involves no 'measures' at all. These 'exotic' cases are

included as grounds for complaint by Article XXIII.1 (b) and (c) of GATT (1994) and by Articles 26 (1) and (2) of the DSU. There have been several findings related to *measures* that resulted in non-violation nullification and impairment under the GATT (none under the WTO, so far) but no non-violation *situation* has ever resulted in a decision of nullification and impairment.

You might wonder what business the WTO has in judging *any* dispute that does not involve a violation of the rules. It's a question that has exercised many expert commentators over the years. Probably, the inclusion of non-violation grounds for action in the 1947 text of the GATT was intended to deal with the use of non-tariff barriers that were not dealt with very successfully in the text of the GATT. If this is the case, the 'non-violation' clause could be seen as a sort of 'catch-all' that allowed the dispute settlement system to resolve trade disputes where the text of the GATT itself was deficient. But the cost of this diplomatic 'catch-all' seems to have been a certain amount of legal ambiguity.

There are two types of 'non-violation' cases in the history of the GATT dispute settlement system: those attached to claims about breaches of tariff bindings and those that are not. From 1947 to 1990, the GATT Council adopted only three 'non-violation' Panel recommendations, all of which were cases related to a tariff issue. In this form of non-violation complaint a complainant might claim that some other regulation – a measure not covered by the GATT or not in violation of GATT – had resulted in a breach of a tariff binding. For example, the United States claimed in the 1982 *Citrus* case that EC tariff preferences for Mediterranean countries, instituted after the negotiation of a bound tariff rate on imports of citrus fruit from the USA, had breached the tariff binding. Under some circumstances this sort of claim might succeed as a *violation* case (under Articles I and II of the GATT) but the USA also claimed, in the alternative, that the EC action was a non-violation case because, if the later preferential treatment of Mediterranean imports was found not to breech the binding, it nevertheless upset the 'reasonable expectations' of the United States about the value of the tariff binding at the time of negotiation (and thus nullified or impaired a benefit of the Agreement).

As you might guess, non-violation claims have to navigate some tricky ground. GATT dispute panels tried to put some scope to the claims of non-violation cases by linking the tariff-based non-violation cases to the concept of 'reasonable expectations' of the benefit of a binding. But this has to some extent compounded the ambiguity; apart from problems of finding evidence of 'reasonable expectation', the Panels could face questions such as how long should a 'reasonable expectation' of the value of a binding endure? Should the concept of 'reasonable expectation' – apparently available to WTO Panels – apply to the GATS schedules, which are constructed as 'positive lists', quite distinct from tariffs?

There have been Panel recommendations on three WTO cases, up to the end of 2000, which have involved non-violation claims: all linked to 'legitimate expectations' in the alternate to a violation claim. The first case involved Korea's implementation of its obligations under the Government Procurement Agreement (a 'plurilateral' WTO Agreement); a second case was linked to an alleged breech of 'national treatment' for imported film stock in Japan.

Neither of these non-violation claims succeeded before the Panel, although the latter Panel made an important observation about non-violation claims that indicates that they must refer – unlike violation cases – to some actual present harm to the complainant. Whereas violation claims are about *prima facie* nullification and impairment, requiring no demonstration of actual harm, non-violation claims are not linked to any such presumption of nullification and impairment with the result that the complainant must show harm exists. See the panel report in WT/DS44/R at 10.57.

Only in the third case (India – Patent protection for pharmaceutical and agricultural chemical products

(WT/DS50)) did the Panel make an affirmative finding on non-violation nullification or impairment. This case concerned the expectations of the United States concerning the competitive position of its firms in the Indian marketplace following India's implementation of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

The Appellate Body report in the *India- Patent Protection* case reversed the Panel's positive finding on the non-violation claim, however, citing confused reasoning in dealing with the concept of 'reasonable expectations'. It acknowledged that the reasoning of the GATT Panels on this point is available to WTO Panels as guidance. But the Appellate Body report constructs further strict limits around this terminology by reference to the Vienna Convention on the Interpretation of Treaties:

> "The legitimate expectations of the parties to a treaty are reflected in the language of the treaty itself. The duty of a treaty interpreter is to examine the words of the treaty to determine the intentions of the parties. This should be done in accordance with the principles of treaty interpretation set out in Article 31 of the *Vienna Convention*." WT/DS50/AB/R para 45

Mutually agreed solutions

The DSU states (section 3.7) the preference of Members for a resolution of disputes based on 'mutually agreed solutions' that are consistent with the covered agreements rather than on Panel recommendations. This preference reminds us that the system is built on agreements between member governments and not on an abstract code of 'laws'. The preferred outcome is not the determination of whether one side or the other is in breech of an Agreement but the resolution of the problem on (almost) any basis that the disputants can agree.

Disputants normally arrive at mutually agreed solutions during bilateral discussions – possibly as part of the 'consultation' process. Mutual agreement is possible at any time up to the circulation of a panel report. You might imagine that the 'respondent' in most disputes would try very hard to put the matter to rest through 'mutual agreement' at the consultation phase or, in any case, before the Panel report is issued. In practice, however, some members seem ready to 'take their chances' with a Panel. A mutually agreed solution may be delayed during the formal 'consultations' because the disputants wait to see the strength of the other side's 'case' before a Panel before they seriously consider settlement on a bilateral basis. Mutual agreement also becomes less likely the further a panel process proceeds as parties become entrenched in a legal struggle that - perhaps goaded by the media - governments feel compelled to 'win'. A few disputes have however been settled by mutual agreement after an interim Panel report was circulated – when the outcome seemed to be clear:

- In EC - Butter (WT/DS72), the parties reached a mutually agreed solution after the Panel had submitted its final report
- In EC – Scallops (Request by Canada, WT/DS7) the mutually agreed solution was reached after the Panel had issued the Interim Report
- In U.S.A. - DRAM Semiconductors (WT/DS99), the parties reached agreement at the stage of the proceedings under Article 21.5 of the DSU, after the Compliance Panel had issued its Interim Report.

There are *some* legal conditions that the DSU attaches to mutually agreed solutions. Under the provisions of sections 3.5 and 3.6 of the DSU, they must be notified to the DSB; they must be consistent with the WTO Agreements; must not nullify or impair benefits accruing to any Member under the Agreements, nor impede the attainment of any objective of those Agreements.

Why does the DSU express a preference for dispute resolution by 'mutual agreement'? The Understanding does not spell out its reasons; it is content to say that the reasons are 'clear' ('clearly to be

preferred'). Perhaps this indicates that we should look for inchoate motives: shared experiences of Members such as the history of the dispute settlement system or the 'culture' of the WTO. What is 'clear' is that mutually agreed solutions are particularly compatible with the 'diplomatic' character of the trade agreements in the GATT and – to a lesser extent – in the WTO. The GATT and the GATT dispute settlement system is said to have had a 'diplomatic' character – often contrasted with the more legalistic character of the WTO, particularly the DSU.

We could speculate that the preference expressed in the DSU relates to the practical advantages of a 'diplomatic' solution to a bilateral dispute:

- Quick to conclude: once the parties are willing
- Low cost: much less for the parties and for the WTO itself than pursuing a full Panel-plus-Appeal process
- Sufficiently robust for a purely bilateral matter: third parties will be interested but have no need to adhere to the agreement
- Less contentious: because more 'private'

The problem with 'diplomatic' agreements

'Diplomatic' agreements are sufficient to represent an understanding between the parties engaged in the agreement, but they are not necessarily drafted with tight, legal precision. They might contain ambiguous language reflecting compromises that satisfy the parties but that might be open to unintended interpretation if subjected to rigorous analysis or analysis outside the context in which it was drafted. This means 'diplomatic' agreements may not be robust if circumstances change or if more countries seek to adhere to the agreement.

Although these problems have been among the reasons that Members have moved in the direction of more 'legalistic' WTO Agreements and procedures, the choice of the 'diplomatic' approach to agreements is nevertheless practical in some circumstances. Diplomatic agreements can be reached relatively quickly once the parties are ready to 'deal'; also, what they lack in forensic precision may be compensated by language which expresses aspects of the relationship in a way that the parties find satisfying and which helps to heal a breach in a relationship.

The preference also seems to reflect an intention on the part of the drafters of the DSU to avoid a purely 'legal' system of dispute settlement. In such a system, 'mutual agreement' would not be the 'preferred' outcome: rather the preferred outcome for every case would probably be an adjudication that contributed to the overall 'jurisprudence'.

Why might the disputants want to reach a 'mutually agreed' solution? The lower costs are likely to be a significant motive – although many 'plaintiff' parties may already have invested significant resources in the preparation of a dispute. But questions of 'face' are probably even more important. A 'mutually agreed' solution has a smaller impact on the credibility of 'loser's' policies than an imposed solution: it implies that concessions may have been made by both sides to achieve a solution. This avoids the – unintended but inevitable – perception of a foreign policy reversal when a solution is imposed by the DSU on the 'loser' in a case that is adjudicated by a Panel.

Are 'mutually agreed solutions' the only alternative outcome to a decision by the DSU? No: it seems not. A surprising implication of the statistics on WTO disputes is that the majority of disputes are *neither*

decided by a Panel nor are they the subject of a 'mutually agreed solution' that is notified to the DSU. For example, as of July 2000 there had been 225 disputes notified, but only 120 resolved by Panels or 'mutual agreement'. So what happens in the other cases?

At any one time, the number of 'disputes notified' includes many cases that will, in due course, proceed to either a 'mutually agreed' or adjudicated solution. But because the number of cases is growing quickly, there are apparently many more notified cases waiting for the next step in the dispute settlement system process than cases either 'mutually agreed' or resolved by a Panel recommendation, so far. Also, some cases just seem to disappear after notification without either side requesting the establishment of a Panel or notifying a 'mutually agreed' solution. Perhaps circumstances change so that the dispute goes away – for example, the underlying commercial issues might be resolved - or perhaps one side or the other *unilaterally* takes steps that eliminate the dispute. Whatever the reason, the WTO has no authority to investigate the outcome of the notified dispute and no interest in doing so if the parties are content to let the matter 'fall off' the schedule of disputes.

If a mutually agreed solution is notified before the final report of the Panel is ready, no further dispute processes are undertaken. The Panel confines its report to a brief description of the case and a report that a solution has been found (Article 12.7 of the DSU). The disputants notify the relevant Agreements councils and committees of the mutual agreement "where any member may raise any point relating thereto" (DSU section 3.6). This formulation does not explicitly appear to give the Members the right to object to, or seek to modify any notified solution. But, of course, every Member retains the right to begin dispute proceedings with respect to any measure – including a measure that forms part of a 'mutually agreed solution' - if they consider that it impairs their benefits under the Agreement or the achievement of the objectives of the Agreement.

As with all dispute settlement outcomes, mutually agreed solutions do not bind other members and do not imply an interpretation of the Agreements. Unlike 'imposed' outcomes, however, they are not subject to the reviews of implementation of cases by the DSB.

There is a second type of 'mutually agreed' solution that can occur after the DSB decision: an agreement on implementation. If the DSB finds that there has been a violation of an Agreement, then the DSU requires that Panels recommend the restoration of compliance with the Agreement(s). But the disputants may reach agreement between them on the 'reasonable period of time' for implementation and on other details that resolve their dispute: avoiding the intervention of arbitrators or decisions by the DSB on the rectification of the dispute. Any such mutual agreement should be reported to the DSB.

Dispute Resolution – not rulemaking

It's very important to understand that the intent of the dispute settlement system is to resolve disputes, not to interpret the rules of the WTO in a way that makes new rules or adds to existing rules. At most, the dispute settlement system 'clarifies' existing WTO rules.

The duty of the dispute Panels is to assist the DSB to resolve the dispute:

> …Accordingly, a panel should make an objective assessment of the matter before it, including an objective assessment of the facts of the case and the applicability of and conformity with the relevant covered agreements, and make such other findings as will assist the DSB in making the recommendations or in giving the rulings provided for in the covered agreements. Panels should consult regularly with the parties to the dispute and give them adequate opportunity to develop a mutually satisfactory solution.

The components of the Panel's forensic task, therefore, are:

- To make an objective assessment of the facts of the case

- To assess the applicability of certain provisions of the relevant agreements to the case
- To assess conformity of measures cited in the complaint with the cited provisions of the relevant agreements
- To make other findings that will assist the DSB in making recommendations or rulings in accordance with the provisions of the covered agreements

The task of the Appellate Body is still more limited:

> …The Appellate Body shall hear appeals from panel cases. …An appeal shall be limited to issues of law covered in the panel report and legal interpretations developed by the panel. *Article 17.1 and 17.6 of the DSU*

When the Panel's work is done, and any appeal is heard, the DSU obliges the Panel to make a recommendation. Where it finds that a measure is inconsistent with a covered Agreement:

> …it shall recommend that the Member concerned bring the measure into conformity with that agreement. *Article 19 of the DSU*

The Panel or Appellate Body may, in addition, make suggestions about implementation:

> In addition to its recommendations, the panel or Appellate Body may suggest ways in which the Member concerned could implement the recommendations. *Article 19 of the DSU*

In practice, almost all Panels have limited themselves to recommendations that the 'losing' member restore compliance with the Agreement(s).

Although none of these provisions seem to allow much room for 'creative' input by the Panels or the members of the Appellate Body, the report of any Panel or Appellate Body clearly shows the members engaged in interpreting the Agreements in the light of the facts of the case. You might expect the interpretations to make room for original contributions to the body of WTO 'case law' and to comprise, in fact if not in law, a body of precedents – similar to those that are created by courts in countries that are part of the common law tradition – that would apply in future disputes and would influence decisions by future Panels and even Member Governments in their relations with each other.

Neither the Panels nor the Appellate Body has any definitive or precedent-making role. It is important not to assume that because they behave in many senses like other tribunals that operate in domestic legal systems, the Panel and Appellate Body reports have the same 'creative' effect as the judgments of domestic courts. Although understandable, such assumptions about the WTO dispute settlement system are simply not consistent with the rules and practices as specified in the Agreements.

We have seen that the functions of the Panels and the Appellate body are defined in such a way as to limit their 'creative' input in interpreting or adding to the rights or obligations of Members. In addition, the WTO Council (or Ministerial Council) specifically reserves for itself the right to adopt any interpretation of a WTO Agreement that could implicate rights or obligations. The Agreement Establishing the WTO is very specific on this point.

> The Ministerial Conference and the General Council shall have the exclusive authority to adopt interpretations of this Agreement and of the Multilateral Trade Agreements. In the case of an interpretation of a Multilateral Trade Agreement in Annex 1, they shall exercise their authority on the basis of a recommendation by the Council overseeing the functioning of that Agreement. The decision to adopt an interpretation shall be taken by a three-fourths majority of the Members. (Article IX.2)

This means that the recommendations of Panels and the reports of the Appellate Body do not comprise 'interpretations of the Agreements', *even* when adopted in the normal way by the DSB – which is the WTO Council in another guise.

This point about who is authorized to make an 'interpretation' of the Agreements and what that means isn't easy to understand; but it's crucial for understanding the relationship between the dispute system and the Agreements. Under WTO rules, contained in the *Agreement Establishing the WTO,* an interpretation of the Agreements requires, at a minimum, an intention to interpret the Agreement concerned **plus** a two-thirds majority decision in the Council. Neither of these is present in the normal course of a decision by the DSU on a dispute Panel recommendation.

- The decision of the DSB is made on a recommendation from a Panel to require, for example, that the respondent in a *violation* dispute comply with the Agreement(s). It's not a recommendation to interpret the Agreements, as we have seen, because neither the Panel or the Appellate Body may properly make such a recommendation.
- The decision of the DSB on the recommendation of a Panel is taken in accordance with Article 2.4 of the DSU: that is, by consensus not by a two-thirds (or greater) majority as required for a change in the provisions of the Agreement(s).

But, you ask, don't the decisions *effectively* interpret the Agreements simply by endorsing one side or the other of a dispute under an Agreement? The answer is 'no'; the recommendations only '*clarify*' the provisions of the Agreement(s) as they apply to a specific case, without modifying the rights or obligations of members. The DSU itself makes this point in some detail:

> The dispute settlement system of the WTO is a central element in providing security and predictability to the multilateral trading system. The Members recognize that it **serves to preserve the rights and obligations of Members** under the covered agreements, **and to clarify the existing provisions of those agreements** in accordance with customary rules of interpretation of public international law. Recommendations and rulings of the DSB cannot add to or diminish the rights and obligations provided in the covered agreements. *Article 3.2*

The Appellate Body has identified the 'customary rules of interpretation of international law', that are to be used in clarifying the existing provisions of the Agreements as we'll see later. But these interpretive practices aren't intended to lead to new WTO rights or obligations: the interpretations can be no more than 'clarifications'. After all, as the DSU says, the system is intended to 'preserve the rights and obligations of Members' meaning that the recommendations of the DSB 'cannot add to or diminish' those rights and obligations.

The case-by-case approach

"Ok," you say, "but isn't this distinction between an 'interpretation' that might alter the rights and obligations of Members and a 'clarification' that does not alter those rights and obligations a lot like 'splitting hairs'? Isn't it a very fine distinction? Is it really 'watertight?"

It is a fine distinction and some respected commentators on the WTO argue that it is not completely satisfactory. They say that it allows Panels and the Appellate Body to make *authoritative*, if not *legislated* 'law' – the decisions that we call 'clarifications' - much more quickly and much more frequently than the WTO Members can ever hope to do for themselves. After all, they say, Members in Council have to follow the laborious qualified-majority procedure to make official interpretations and would probably be able to make these changes only at meetings of the Ministerial Council – which normally meets once every two years.

In response to these claims, let's admit that an 'authoritative clarification', even if it's tied to a specific set of circumstances that is not intended to have any consequences for the rights and obligations of Members, *nevertheless* has the potential to change the way in which Members view the value of rights and obligations in analogous circumstances. But notice that this does *not* give the statement the force of a rule or a 'law'.

If a Panel or the Appellate Body finds, for example, that in order to comply with the provisions of the WTO Agreement on Safeguards, it is necessary to demonstrate that the threat from imports affected by a safeguard measure was, in fact, unforeseen - as required by Article XIX of GATT on Safeguards but not explicitly by the WTO Agreement - then Members perceptions of their rights and obligations with respect to safeguard action in future under the WTO Agreement may well have been altered. Yet this reasoning, which founded a recommendation in the case (WT/DS121 Argentine Footwear – a case bought by the EC), is only a clarification of the way in which the Agreement on Safeguards applied to a specific safeguard action by Argentina. Although an 'authoritative' statement, it is *not* a new rule on Safeguards and does *not* add anything to the Agreement on Safeguards or to Article XIX of GATT.

The Appellate Body, in its report on Japan – Taxes on Alcoholic Beverages acknowledged the subtle power of GATT Panel reports (and by extension, WTO Panel reports) to alter the 'legitimate expectations' of Members. The Appellate Body said, "…adopted panel reports are an important part of the GATT *acquis* ['legacy']. They are often considered by subsequent panels. They create legitimate expectations among WTO Members, and, therefore, should be taken into account where they are relevant to any dispute." (WT/DS8/AB/R – section E). But the Appellate Body added, "However, they are not binding, except with respect to resolving the particular dispute between the parties to that dispute. In short, their character and their legal status have not been changed by the coming into force of the WTO Agreement."

The conclusion that the Appellate Body drew from this reasoning was that even adopted Panel Reports did not comprise a standard by which the Agreements must subsequently be interpreted. They did not, in other words, have any role as binding precedent. This view was confirmed, said the Appellate Body, by the assertion – that we saw earlier – of the exclusive role of the Council in making any interpretation of the Agreements that could alter rights and obligations of Members. The Appellate Body agreed with the Panel, in this case, however, that the reasoning in any earlier Panel reports, including those GATT Panel reports that were not adopted, might contain useful guidance for subsequent Panels.

So the distinction between 'interpretations' and 'clarifications' is authorized by the Agreements and confirmed by the reports of the Appellate Body. It remains a point of debate among commentators, however, and may be one of those matters that will become clearer in practice. A lot of national constitutions contain similar fine distinctions in the 'separation of powers' that are only clarified by practice, in the end. As we will see when we look at the work of the Appellate Body, it has been particularly careful to acknowledge Members' rights to make interpretations of the Agreements and to give Members a wide latitude of choice when determining whether particular policies conform to the Agreements.

The Panel Process

"Our function in this case is judicial"
Panel report in US – Section 301 (WT/DS152/R at 7.12)

When consultations fail to resolve a dispute – as they frequently do – the disputant bringing the complaint may request the DSB in writing to establish a Panel to make recommendations on the compulsory resolution of the dispute. The role of the Panel is to make an "objective assessment of the matter before it" by reviewing the facts and legal arguments submitted by the parties to the dispute, and by making findings on the consistency of a Member's measures with the WTO Agreements (Article 11 of the DSU).

(i) Who may serve on a Panel?

A new panel is formed for each dispute. Panels usually comprise three individuals with relevant trade policy, law or economics experience, who are selected by the parties to examine the particular dispute. The Panelists serve in their personal capacity and may not be nationals of the countries involved in the dispute unless the disputants agree otherwise. The DSU takes the trouble to characterize potential Panelists as:

> … well-qualified governmental and/or non-governmental individuals, including persons who have served on or presented a case to a panel, served as a representative of a Member or of a contracting party to GATT 1947 or as a representative to the Council or Committee of any covered agreement or its predecessor agreement, or in the Secretariat, taught or published on international trade law or policy, or served as a senior trade policy official of a Member
> *(Article 8 of the DSU)*

In other words, people from 'inside' the trade policy milieu – although, the DSU also stipulates that the members of a particular Panel should also have "a sufficiently diverse background and a wide spectrum of experience".

Nominations for each Panel are drawn by the Secretariat from a 'roster' of names, and qualifications, contributed by Members. Disputants may object to individual nominees for "compelling reasons" but if there is no agreement on the composition of the Panel within 20 days then the Director-General of the WTO, with the advice of the Chairman of the DSB and the Chairman of the Committee of the relevant Agreement or Council may decide who should be on the Panel.

(ii) What must Panels consider?

What does a Panel have to consider in order to make an 'objective assessment of the matter before it'? Briefly, a Panel must determine the facts of the case described in its terms of reference and, after considering the arguments and rebuttals of the parties to the dispute, must evaluate these facts in the light of the covered Agreements and make a recommendation. A panel need not consider every matter in a case: it need only make the decisions it considers necessary to resolve the dispute.

Panels appear to be tribunals in the 'adversarial' tradition of the common-law system because they meet to hear and evaluate the arguments of the parties to the dispute including the initial submissions and rebuttals of each side as to the facts of the case and the alleged breeches of the Agreements. But the Panels also have broad authority to investigate the facts of the case for themselves, in the traditions of the 'first instance' tribunals in civil-law countries. They need not establish all of the facts 'de novo', the Appellate Body has ruled in its report on EC Hormones (WT/DS48/AB/R at 117), but neither must they adopt an attitude of 'total

deference' to the parties.

The Appellate Body has confirmed that Panels have virtually unfettered discretion to seek information and advice and the Parties to the dispute have a legal obligation to respond fully to Panel requests for information. In its report on United States – Shrimp ('Shrimp-Turtle') the Appellate Body stated

> It is particularly within the province and the authority of a panel to determine the need for information and advice in a specific case, to ascertain the acceptability and relevancy of information or advice received, and to decide what weight to ascribe to that information or advice or to conclude that no weight at all should be given to what has been received.
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> …
>
> The thrust of Articles 12 and 13, taken together, is that the DSU accords to a panel established by the DSB, and engaged in a dispute settlement proceeding, ample and extensive authority to undertake and to control the process by which it informs itself both of the relevant facts of the dispute and of the legal norms and principles applicable to such facts. That authority, and the breadth thereof, is indispensably necessary to enable a panel to discharge its duty imposed by Article 11 of the DSU to "make an objective assessment of the matter before it, including an objective assessment of the facts of the case and the applicability of and conformity with the relevant covered agreements …" (WT/DS58/AB/R, paras.104 and 106)

In *Canada - Measures Affecting the Export of Civilian Aircraft* (WT/DS70/AB/R) the Appellate Body said that the word 'should' in Article 13 must be taken as an obligation on Members to respond to a Panel's request for information, not as an exhortation:

> A Member *should* respond promptly and fully to any request by a panel for such information as the panel considers necessary and appropriate. (Article 13 of the DSU, emphasis added)

If there were any doubt about the legal obligation on members to provide full information to the Panel, says the Appellate Body, then the 'right to seek information' conferred on the Panel by Article 13 would be meaningless. In practice, Panels usually rely on the disputants to supply the facts of the case – which they verify by providing the factual part of their report to the parties for comment at an early stage.

Of course, Panels do not have powers to compel the parties to give evidence: this is a dispute settlement between sovereigns, after all. Where a Panel is unable to elicit the cooperation of Parties to a dispute in providing information, it may choose to draw 'adverse inferences' from the refusal: that is, they may decide that the Party refusing to provide the information had 'something to hide'.

Panels may accept evidence in confidence from the Parties and protect its further disclosure. This procedure is becoming more common as Panels seek confidential commercial information in order to make assessments about the existence of a subsidy, for example. The Appellate Body has confirmed on a number of occasions that all information submitted to a Panel by a Party to a dispute – other than non-confidential summaries – and all deliberations of the Panel must be treated as confidential. This is the intention of Article 18.2 of the DSU and para.3 of Annex 3 ("Working Procedures"). Special procedures may be adopted by each Panel and by the Appellate Body to further protect 'confidential business information', including stipulations that any documents be returned to the Party providing them and all copies be destroyed at the conclusion of a case.

Finally, a Panel need not consider every allegation made by the complainant or every argument offered in rebuttal. The Appellate Body – which has encouraged Panels to exercise 'judicial economy' in their work – has declared that a Panel need address only those claims which must be addressed in order to resolve the matter in issue in the dispute (United States – Shirts and Blouses, WT/DS33/AB/R, p. 19). This means, said

the Appellate Body, that a panel has the discretion to determine the claims it must address in order to resolve the dispute between the parties -- *provided* that those claims are within that panel's terms of reference.

(iii) Request for a panel

The complainant's request for a panel will result in the establishment of a Panel unless there is a consensus not to form a Panel. This is so unlikely that it is probably safe to say that the establishment of a Panel is 'inevitable.' But the complainant must be careful in composing its request to be complete, or its case may not succeed.

What does a complainant have to include in its written request for the establishment of a Panel? The requirements are indicated in DSU Article 6.2 which says that the request:

> … shall indicate whether consultations were held, identify the specific measures at issue and provide a brief summary of the legal basis of the complaint sufficient to present the problem clearly. In case the applicant requests the establishment of a panel with other than standard terms of reference, the written request shall include the proposed text of special terms of reference.

In several WTO cases the respondents have tried to avail themselves of a 'procedural' defence, asking the Appellate Body to reverse the finding on the basis that the request for the Panel was not in the right form. The response of the Appellate Body to this legal 'tactic' has been to emphasize that what is required – in line with the overall expectation that the parties will deal with each other in 'good faith' – is *fairness.* The request must be made in a form that allows the respondent to know precisely what is being claimed.

The Appellate Body has made several attempts to clarify the requirements of the DSU on the form of the request. The most important rulings are found in its reports on *EC – Bananas* (WT/DS27) and in *Korea – Safeguards on Dairy* (WT/DS98). In those reports the Appellate Body says that the complainant does not have to detail its case in the request: but it must set out all of its claims using *at a minimum* a list of references to the articles of the covered Agreements that are alleged to have been breached. In some cases, however, a 'mere listing' of the Articles may not be enough to indicate what legal claims the complainant is making. The level of detail required depends on the information needed to give the respondent a fair opportunity to prepare a defence.

> "… whether the mere listing of the articles claimed to have been violated meets the standard of Article 6.2 must be examined on a case-by-case basis. In resolving that question, we take into account whether the ability of the respondent to defend itself was prejudiced, given the actual course of the panel proceedings, by the fact that the panel request simply listed the provisions claimed to have been violated." (WT/DS98/AB/R at 127)

The Appellate Body also distinguishes between the *claims* that must be set out in a request for a Panel – and provide the basis for a panel's terms of reference – and the *arguments* that support and detail the claims. Here is what the Appellate Body said:

> [In the EC- Bananas case] it was sufficient for the Complaining Parties to list the provisions of the specific agreements alleged to have been violated without setting out detailed arguments as to which specific aspects of the measures at issue relate to which specific provisions of those agreements. In our view, there is a significant difference between the *claims* identified in the request for the establishment of a panel, which establish the panel's terms of reference under Article 7 of the DSU, and the *arguments* supporting those claims, which are set out and progressively clarified in the first written submissions, the rebuttal submissions and the first and second panel meetings with the parties (WT/DS27/AB/R at 141)

Claims that are not specific – and therefore not reflected specifically in the terms of reference for the Panel – will fail. In *India – Pharmaceutical Patents* (WT/DB50/AB/R) the United States used an inclusive formula – 'including but not necessarily limited to' – when referring to provisions of the TRIPS Agreement that it believed

were violated by India's measures. The Appellate Body ruled that this formulation was insufficiently specific to allow the Panel to consider a matter under an article that had not specifically been named in the US request or the terms of reference of the Panel. Furthermore, the Appellate Body rejected the Panel's proposal to allow the United States in that case to amend its claim during arguments before the Panel.

Parties must be forthcoming and open with each other at all stages of the disputes process, the Appellate Body says, to ensure that the DSU requirement of 'good faith' is met:

> All parties engaged in dispute settlement under the DSU must be fully forthcoming from the very beginning both as to the claims involved in a dispute and as to the facts relating to those claims. Claims must be stated clearly. Facts must be disclosed freely. This must be so in consultations as well as in the more formal setting of panel proceedings. In fact, the demands of due process that are implicit in the DSU make this especially necessary during consultations. For the claims that are made and the facts that are established during consultations do much to shape the substance and the scope of subsequent panel proceedings. If, in the aftermath of consultations, any party believes that all the pertinent facts relating to a claim are, for any reason, not before the panel, then that party should ask the panel in that case to engage in additional fact-finding. But this additional fact-finding cannot alter the claims that are before the panel -- because it cannot alter the panel's terms of reference. (*India – Pharmaceutical Patents* WT/DB50/AB/R at 94)

(iv) Terms of reference

The Panel's terms of reference are important because they

- give the respondent and third parties sufficient information concerning the claims to allow them to prepare a case
- "establish the jurisdiction of the Panel by defining the precise claims at issue in the dispute" (Brazil – Desiccated Coconut WT/DS22/AB/R at 22)

The Appellate Body has repeatedly stated that a panel may consider *only* those claims it has the authority to consider under its Terms of Reference - which are adopted by the DSB based on the written request from the complainant made toward the end of the consultation period. In its report on India - Patents on Pharmaceutical Products (WT/DS50/AB/R at 92) the Appellate Body criticized the decision of the Panel to consider *any* claim made prior to the end of the Panel meeting. The Appellate Body said that although a Panel has some discretion in establishing its own working procedures, this discretion does not extend to usurping the role of the DSB by, as in this case, agreeing to extend the terms of reference provided by the DSB under Art 7 of the Understanding.

(v) Burden of proof

In the cases brought so far under the WTO dispute settlement system, there have been several debates about the 'burden of proof'. The Appellate Body has applied the procedure that it says is

> '…a generally accepted cannon of evidence in civil law, common law and in fact, of most jurisdictions, that the burden of proof rests upon the party, whether complainant or defending, who asserts the affirmative of a particular claim or defence' (United States Woven Blouses and Shirts - WT/DS33/AB/R at 14)

Parties – and even Panels – are sometimes confused about the 'burden of proof' when the complainant is alleging violation of the terms of an Agreement – and therefore '*prima facie* nullification and impairment.' Even where a *prima facie* violation of an agreement is alleged, the complainant is under an obligation ('burden of proof') to demonstrate that the facts support its allegations. Only *after* the fact of the inconsistency of a measure with the Agreement(s) is established does the 'burden of proof' shift to the respondent. At that stage, the *prima facie* presumption of nullification and impairment 'in the absence of effective refutation by the defending party,

requires a panel, as a matter of law, to rule in favour of the complaining party presenting the *prima facie* case' (Appellate Body report on EC Hormones - WT/DS48/AB/R at 104).

(vi) Are there ethical standards for Panels?

The 'Rules of Conduct' for disputes adopted by the DSB in 1996 sets standards of behavior for every one serving

- on a Panel
- in the Appellate Body
- as an Arbitrator determining the 'reasonable period of time' for implementation
- as an expert advising a Panel

The Rules also cover any person who holds a role as a chairman of one of the covered Agreements during the course of a dispute, and members of the WTO Secretariat.

In summary, the rules apply a 'governing principle' to the conduct of these persons that explicitly requires them to act with the highest professional and ethical standards in connection with a dispute:

> Each person covered by these Rules … shall be independent and impartial, shall avoid direct or indirect conflicts of interest and shall respect the confidentiality of proceedings of bodies pursuant to the dispute settlement mechanism (WT/DSB/RC/1)

(vii) What processes does a Panel follow?

Panels have detailed working procedures set out in Annex 3 to the DSU. The Working Procedures provide among other things for:

Confidential panel processes The members of the Panel meet in private meetings among themselves and in 'closed-door' meetings with the parties. The parties meet with the Panel only at the latter's invitation. No formal records are taken of these meetings.

Two sets of written submissions from the parties (first written submissions and rebuttal submissions). Written submissions are the primary means of persuading the panel. These present the facts of the case and the legal arguments relating to the specific trade rules alleged to have been breached, usually in exhaustive detail. "Oral" statements made at the panel meetings are in fact written and provided to the panel and other parties prior to delivery.

Two substantive meetings are held with the parties, including a third party session. Although practice varies between panels, questions from the panel are often provided in writing, and written responses generally permitted, particularly on questions of a technical nature. Questions from one party to the other are put through the panel. Witnesses are not required and are never called by any party to a dispute.

Panel decision-making is not addressed in the DSU. Panels are permitted to determine for themselves how they will arrive at the views reported in their reports and the recommendations that they make. Under the GATT there were a number of dissenting reports from individual Panelists. In WTO cases so far there has only been one minor dissent recorded in a panel report (WT/DS165/R concerning US measures taken in retaliation against the EC).

A panel should aim to issue its report within six months, or within three months in cases of urgency. But, in practice, it is not uncommon for panel reports to be delayed beyond the six-month time period where the subject matter involves complex technical or scientific issues such as under the Sanitary and Phytosanitary Agreement or where the parties themselves seek delays. Where the dispute concerns the Agreement on Subsidies and Countervailing Measures on disputes involving prohibited and actionable subsidies there is an accelerated set of procedures.

The main stages of a dispute (please also see the illustrated timetable) are:

1. Each party to the dispute transmits to the panel its written submission on the facts and arguments in the case, in advance of the first substantive meeting of the Panel. At that first meeting, the complainant presents its case and the responding party its defence. Third parties that notified their interest in the dispute may also present their views at the first substantive meeting. Formal rebuttals are made at the second substantive meeting.
2. In cases where a party raises scientific or other technical matters, the panel may appoint an expert review group to provide an advisory report.
3. The panel submits descriptive (factual and argument) sections of its report to the parties, giving them two weeks to comment. After taking any comments on the facts into account, the panel then submits an interim report, including its findings and conclusions, to the parties, giving them one week to request a review. The period of review is not to exceed two weeks, during which the panel may hold additional meetings with the parties.
4. A final report is submitted to the parties and three weeks later, it is circulated to all WTO members.
5. If the panel decides that the measure in question is inconsistent with the terms of the relevant WTO Agreement, the panel recommends that the member concerned bring the measure into conformity with that agreement. It may also suggest ways in which the member could implement the recommendation.

Panel reports are adopted by the DSB within 60 days of circulation, unless one party notifies its decision to appeal or a consensus emerges in the DSB against the adoption of the report (has never happened).

(viii) Who may appear before a Panel?

The short answer is: any person delegated by a Member government to represent it before a Panel may do so. This includes government officials, private lawyers and even members of ‘civil society’, such as business people, representatives of NGOs and lobbyists. However, no person who is not a member of the delegation of one of the Parties to the dispute – or a WTO official - may attend a Panel meeting – for example as an ‘observer’ - let alone represent a government before a panel. This bar on attendance has attracted a criticism from commentators who think that the WTO, in general, and the dispute settlement system in particular, should be more ‘open’.

The reason that Panel meetings are not ‘open’ to the public is that Member governments do not want them to be. The Working Procedures annexed to the DSU impose this rule and the Members may change it in the future if they wish. Some commentators argue that it would help to improve ‘civil society’s’ understanding of the WTO if the Panel hearings were open. This may be so: but there is no reason to think that open panel hearings would improve the function of the system.

Panel meetings are not like 'court' hearings in a democratic state where constitutional legitimacy requires that the courts operate in a manner where justice is 'seen to be done'.

Firstly, no popular constitution underlies the WTO; it's a forum embodying agreements among sovereign governments, not a body created by citizens. The legitimacy of the dispute settlement system lies in Members' acceptance of the DSU, not in constitutional ideas such as 'justice' or 'democratic legitimacy' (important though those concepts are).

Secondly, Panel meetings with the parties do not have the same impact on the Panel's recommendations as, for example, a court hearing has on a verdict. The opportunity for oral presentations, argument and rebuttal is not as important in a case as the precision of the claims and the written presentation and analysis of the facts in the parties' written submissions. Observing the Panel's work in the hearings would not add much to outside understanding of the case.

Thirdly, Panels and those that appear before them have well-defined 'Rules of Conduct' that guide their actions, particularly when it comes to confidential information. It would be impractical to seek to apply these same rules to observers and it is not clear that the demand for 'openness' would be satisfied if the Panel meetings were open only for limited public statements.

(ix) Expert assistance

Article 13.2 of the DSU says

> Panels may seek information from any relevant source and may consult experts to obtain their opinion on certain aspects of the matter. With respect to a factual issue concerning a scientific or other technical matter raised by a party to a dispute, a panel may request an advisory report in writing from an expert review group. Rules for the establishment of such a group and its procedures are set forth in Appendix 4.

Appendix 4 of the DSU contains more detailed provisions concerning the selection of independent experts, the right of the Panel to set terms of reference for the expert group and the process by which the expert group's opinions are made available to the Parties before the Panel decides on the use of the expert advice.

The Appellate Body has endorsed panel practice, so far, giving panels wide latitude in their use of expert advice. It has also endorsed the use of individual experts, rather than an expert group, where the panel deems it appropriate. Given this latitude, it appears that Panels may decide to consider any information from any person in addition to the Parties to the dispute – although they are under no obligation to do so and normally have no procedures for doing so.

The Appeal Process

The Appeals process is the most visible institutional innovation in the WTO dispute settlement system. No such institution existed in the GATT system and none exists in any other international legal context.

The function of the Appellate Body is to hear appeals on issues of law covered in a panel report and legal interpretations developed by a panel (Articles 17.1 and 17.6 of the DSU). The focus on issues of law and legal interpretation means that the Appellate Body does not review the panel's assessment of the facts of a case unless a claim is made that a panel failed to make an "objective assessment of the facts" under Article 11 of the DSU.

The Appellate Body is a standing body – unlike the Panels that are established only for a particular case. It comprises seven persons who serve three at a time to hear any appeal. Its members are appointed by the DSB for four-year terms although a member may be reappointed once. The current membership of the Appellate Body includes prominent academics, judges and trade officials with extensive expertise in law, trade policy and economics. Although appointment to the Appellate Body is merit-based, the DSU recognizes the need for Appellate Body members to represent the diversity of Members' legal systems and traditions.

(i) The need for appellate process

The Appellate Body protects the interests of Members by ensuring that the 'automatic' dispute settlement system does not produce unsound decisions that could upset the balance of rights and obligations under the Agreements or affect the reasoning of future panels or the expectations of Members implementing the Agreements.

(ii) What does the Appellate Body review?

An appeal is limited by the provisions of Article 17.6 of the DSU to issues of law arising in the panel report and legal interpretations developed by the panel. However, "issues of law" include not only the panel's legal interpretations of WTO provisions, but also the conduct of its processes under the procedural requirements of the DSU. The Appellate Body will, for example, review claims that the panel failed to make an objective assessment of the facts under Article 11 of the DSU or failed to accord due process to a party.

(iii) Basis of legal interpretations

Article 11 of the DSU requires the Panel to make "an objective assessment of the matter before it, including an objective assessment of the facts of the case and the applicability of and conformity with the relevant covered agreements". Where this means clarifying the meaning of the Agreements as they apply to the facts of the case, the Appellate Body has declared on numerous occasions that the legal interpretations of panels must be based on:

The 'general rule of interpretation' established by Article 31 of the Vienna Convention on the Law of Treaties, according to which the provisions of the WTO agreement must be interpreted "in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose". The Appellate Body has further elaborated the 'general rule' of interpretation by adding, "interpretation must give meaning and effect to all the terms of the treaty. An interpreter is not free to adopt a reading that would result in reducing whole clauses or paragraphs of a treaty to redundancy or inutility" (see United States – Reformulated Gasoline WT/DS2/AB/R, p. 23).

A supplementary rule of interpretation in Article 32 of the Vienna Convention (see case Japan – Alcoholic beverages, WT/DS8/AB/R) that takes account of "the preparatory work of the treaty and the circumstances of its conclusion" when the text of the treaty is ambiguous or obscure or leads to a result that is 'manifestly absurd or unreasonable'.

Article 3:2 of the DSU, according to which the WTO dispute settlement process "serves to preserve the rights and obligations of Members under the covered agreement" and "cannot add to or diminish the rights and

obligations" of Members.

Article XVI:1 of the Agreement Establishing the WTO, according to which "the WTO shall be guided by the decisions, procedures and customary practices followed by the CONTRACTING PARTIES to GATT 1947."

(iv) Review of 'objective assessment'

When it has been asked to decide whether the Panel had fulfilled its obligation to make an 'objective assessment' of the facts, the Appellate Body has construed this obligation in such a way that an appeal on this ground will be very difficult to sustain.

In the case EC – Poultry Products (WT/DS69/AB/R, p.133), the Appellate Body said that an allegation that the panel failed to comply with its duty to make an objective assessment "is a very serious allegation" which, "goes to the very core of the integrity of the WTO dispute settlement process itself". In EC – Hormones (WT/DS26/AB/R also at 133), the Appellate Body said an appeal would not be upheld because the Panel made a simple error of judgment in the appreciation of the evidence but only if the Panel made "an egregious error that calls into question the good faith of the panel". For such a claim to succeed, there must be evidence of a deliberate disregard, willful distortion or misrepresentation of the evidence on the part of panel.

(v) Review of Panel request

The Appellate Body has apparently tried not to complicate Members' resort to the dispute settlement system and has insisted that any dispute must be approached 'in good faith' by all sides.

For example, the Appellate Body has indicated that failure by a complainant to strictly comply with the procedural rules of the DSU – for example in making a request for a panel – does not automatically void the panel process. The Appellate Body has emphasized that Article 3.10 of the DSU commits Members in a dispute to engage in dispute settlement procedures "in good faith in an effort to resolve the dispute". This requires that both complaining and responding Members comply with the requirements of the DSU in good faith. In the case United States – Tax Treatment of Foreign Sales Corporations (FSC) (WT/DS108/AB/R at 166) the Appellate Body clarified what this 'good faith' means:

> "By good faith compliance, complaining Members accord to the responding Members the full measure of protection and opportunity to defend, contemplated by the letter and spirit of the procedural rules. The same principle of good faith requires that responding Members seasonably and promptly bring claimed procedural deficiencies to the attention of the complaining Member, and to the DSB or the Panel, so that corrections, if needed, can be made to resolve disputes. The procedural rules of WTO dispute settlement are designed to promote, not the development of litigation techniques, but simply the fair, prompt and effective resolution of trade disputes."

(vi) What can the Appellate Body do?

The Appellate Body is a standing body without 'terms of reference' such as those provided to a Panel on a case-by-case basis. Under Article 17.13 of the DSU, the Appellate Body has powers to uphold, modify or reverse the legal findings and conclusions of the panel. The only additional stipulation is that the Appellate Body "shall address each of the issues" raised in the Parties' appeal(s).

The recommendations that the Appellate Body forwards to the DSB – along with the recommendations of the Panel - reflect the changes, if any that it has made to the Panel report. The Parties to the dispute must

accept the decisions of the Appellate Body 'unconditionally': which means that there is no further appeal from a decision of the Appellate Body.

Where the Appellate Body has reversed a panel's legal conclusion on a measure, it has decided on some occasions to "complete the legal analysis" by making a finding on a legal issue which was not addressed by the panel. For example, in *Canada – Certain Measures Concerning Periodicals*, the Appellate Body reversed the panel's findings on the issue of "like products" under the first sentence of Article III:2 of the GATT 1994 and proceeded to examine the consistency of the measure with the second sentence of Article III:2 (WT/DS31/AB/R pp 23 and 24). Similarly, the Appellate Body in *United States – Shrimp* considered its responsibility to complete the analysis and secure a positive solution to a dispute as provided by Article 3.7 of the DSU, where "the facts on the record of the panel proceedings permit" (WT/DS58/AB/R pg 124)

(vii) What processes does the AB follow?

The Working Procedures for Appellate Review (WT/AB/WP/3) contain detailed provisions on duties, responsibilities and rules of conduct of Appellate Body members, the process of appellate review, and timetables. The timetable for the Appellate Body is tight, considering that the seven members may be reviewing several cases at the same time. Article 17 of the DSU requires that, as a general rule, proceedings should not exceed 60 days from the date a party formally notifies its decision to appeal to the date the Appellate Body circulates its report (and must not, in any case, exceed 90 days).

Between the circulation of the final version of the Panel report and the DSB meeting at which the Panel's recommendations will be considered, parties to the dispute may appeal the Panel recommendations by notifying the DSB and the WTO Secretariat. Within ten days of the notice, the appellant must lodge a detailed statement of appeal including:

- A precise statement of the grounds for the appeal, including the specific allegations of errors in the issues of law covered in the panel report and legal interpretations developed by the panel, and the legal arguments in support thereof;
- A precise statement of the provisions of the covered agreements and other legal sources relied on; and
- The nature of the decision or ruling sought.

Any other party to the dispute may, within 25 days of the notice of appeal, lodge a written submission, with similar content, rebutting the allegations in the appeal. Only parties to the dispute may appeal a panel report. However, Article 17.4 of the DSU stipulates that third parties who have notified the DSB of a substantial interest in the matter may make written submissions and be provided an opportunity to be heard by the Appellate Body.

Given the short timetable, the Appellate Body must quickly establish a timetable for written submissions and an 'oral' hearing (within five days of receiving the submission from parties opposed to the appeal). In effect the 'oral' hearing procedures are themselves mostly written procedures.

Table 6
TIMETABLE FOR APPEALS

	General Appeals	**Prohibited Subsidies Appeals**
	Day	Day
Notice of Appeal	0	0
Appellant's Submission	10	5

Other Appellant(s) Submission(s)	15	7
Appellee(s) Submission(s)	25	12
Third Participant(s) Submission(s)	25	12
Oral Hearing	30	15
Circulation of Appellate Report	60 – 90	30 - 60
DSB Meeting for Adoption	90 - 120	50 - 80

(viii) Who may appear before the AB?

As in the case of Panels, only the delegates of Member governments may participate in a meeting with the Appellate Body. The 'oral' hearing is not an open meeting. As in the case of Panels it is a matter for the Member involved to determine the composition of their delegation.

The Appellate Body decided on a request by St Lucia in the EC – Bananas Case (WT/DS27/AB/R, pg 10 – 12) that there was nothing in WTO or GATT provision or practice that determined who could represent a Member in a Panel meeting with parties or who could represent a Member at the oral hearings of the Appellate Body. It therefore raised no objections to St Lucia appointing two lawyers who were not government officials to represent it in the oral hearing. Furthermore, the Appellate Body endorsed the practice: "given the Appellate Body's mandate to review only issues of law or legal interpretation in panel reports, it is particularly important that governments be represented by qualified counsel in Appellate Body proceedings" (WT/DS27/AB/R, pg 12).

Although Panels may decide for themselves whom to consult other than the parties to a dispute, the Appellate Body has generally deferred to the Members, allowing parties to exercise their discretion not only about representation at hearings but also about the inclusion of submissions from non-government organizations. In the US – Shrimp case, the Appellate Body allowed the United States to attach three submissions from non-government organizations to its own submission. The Appellate Body said that it would consider these to form part of the US submission *and* would consider them in its deliberations to the extent that he views that they expressed were adopted by the US as its own views. As it turned out, the US provided only qualified endorsement of the additional submissions and the Appellate Body, while accepting them as part of the US submission, did not consider them further.

In a notice of procedural decision (WT/DS135/9) related to hearings in a later case – EU – Asbestos – the Appellate Body appeared, for once, to depart from this deferential posture. In response to a large number of requests, it established, on its own authority, a set of procedures for non-government bodies to submit so-called *amicus-curiae* ('friends of court') briefs for possible consideration – at the Appellate Body's discretion. This procedural initiative was, however, strongly criticized by Members in the DSB, many of whom - particularly developing countries – are opposed to any further opening of the dispute settlement system to non-government organizations, whether as *amicus-curiae* or observers or in any other capacity.

(ix) Consequences of 'judicial' processes

Is the Appellate Body a 'judicial' body? The creation of the Appellate Body certainly gives the dispute settlement system a *more judicial* character than it had under the GATT. The judicial character of its work is emphasized by:

- The 'collegiality' of the Appellate Body, which allocates joint responsibility to each 'division' for its decisions

- The continuing mandate of the Appellate Body – in contrast to the temporary mandate of the Panels
- The finality of its decisions on matters of law: there's no further appeal from the Appellate Body

It appears that the drafters of the DSU intended this new judicial orientation in the dispute settlement system to establish more certainty and predictability in the interpretation of the Agreements as they apply to particular disputes.

There had been a slow but progressive movement, even under the GATT, towards more certain and predictable processes based on better legal understanding of the Agreements. At first, under GATT there were no 'panels' only ad-hoc working groups established to deal with disputes. Then in the 1950s the Panel system was introduced to provide more focused, written advice to the GATT Council. Panels – although comprising mostly diplomats from GATT missions – dealt with progressively more difficult issues as GATT turned its attention to non-tariff barriers in the 1970s: issues where the text of the GATT itself was often ambiguous and even deficient. Eventually, in the 1980s, the need for careful, sophisticated reasoning about the nature of the obligations in the GATT and in the Tokyo Round non-tariff barrier 'codes' prompted the creation of a small legal unit in the GATT secretariat to assist with disputes.

There are obvious benefits that flow from the certainty and precision that legal reasoning and procedures bring to the WTO dispute settlement system; especially the protection they offer for Members' rights under the 'automatic' decision-making procedures. But there are also some potential costs. Some commentators suggest that the creation of a 'court like' institution inside the WTO could change the character of the Organization or affect its ability to settle disputes. Academic analysts, civil society groups and even Member government officials are asking questions such as:

- Is there a danger that a 'court-like' institution could supplant the authority of Members by making 'new' rules through appellate decisions that are difficult (if not impossible) to overturn in the DSB, given the requirement for a negative consensus to do so?
- Is there a danger that a 'court-like' institution could encourage an harmful climate of 'legalism' in the WTO, where the resolution of differences by negotiation, compromise and mutual agreement among sovereigns would be replaced by litigious procedures managed by – and for the profit of – law firms?

There has been too little experience of the WTO dispute settlement system, so far, to answer these speculative questions. Many commentators and practitioners argue that the system needs time to adjust to dramatic changes such as binding arbitration and appeals. It does appear, however, that the high volume of cases brought since 1995 is testing the system thoroughly, so more definitive answers to these questions may appear in the near future simply as a matter of practice. Or, maybe the questions will change.

For the present, a robust debate continues outside – and even inside - the WTO on the role of the new institutions and over the new 'legal' processes. Here's how some of the arguments and counter-arguments line up ('no punches pulled'!):

Could the Appellate Body 'make new rules'?	
Yes: and it's doing that already	**No: they don't and they can't**
It looks like the Appellate Body decided to rule on issues that were not the subject of appeal in order to 'resolve a dispute' in the Shrimp-Turtle case. In that case it re-interpreted part of the GATT 1994 Agreement (Article XX) by constructing an interpretation from an Agreement not mentioned in the complaint (the Agreement Establishing WTO).	The Appellate Body was urged to 'complete the analysis' of Article XX by some appellants in the case because the Panel report erred in its interpretation. It is, after all, part of the Appellate Body's duty to help find a solution to the dispute and it did this by showing that the measures did not comply with one part of Article XX.

The Appellate Body seems prepared to add and subtract rights by 'interpreting' the Agreements and even the 'negotiators' intentions'! Consider the 'creative' interpretation that it gave to the meaning of GATT Article XX in Shrimp-Turtle, and the continuing force it gave to old GATT 'safeguard' language in the Argentina – Footwear case (WT/DS121).	Not true! First, the Appellate Body has adopted standard legal interpretation procedures that rely on the plain meaning of the text of the agreements taken in context – including the negotiating context. This is what the Vienna Convention requires. Second, it repeatedly defers to the DSU stipulation that nothing it does can add to or subtract from Members' rights.
The Appellate Body decision to accept 'amicus curiae' submissions from Non-Government Organizations in the EC-Asbestos case seems to show that they are prepared to establish their own procedures without reference to the Members – and even to accept direct lobbying by non-members such as the NGOs.	Many Members were clearly unhappy about this decision. But it was only a procedural matter, within the competence of the Appellate Body and related to one case only – in which the Appellate Body rightly anticipated a great deal of public interest. The Appellate Body has already shown, in Shrimp-Turtle, however, that it is very conscious of its duty to distinguish those submissions that represent Members' views and those that do not. They made it very clear that they were under no obligation to consider any views from 'amicus' submissions.
Even if the Appellate Body does not seek to impose its interpretations on the Agreements, won't it be pressured by disputants to 'fill in' the gaps and ambiguities in the Agreements, left when the negotiators failed to reach agreement on details?	If there is ambiguity in an Agreement then the Appellate Body may indeed be required to interpret the Agreement using approaches provided in the Vienna Convention (including Article 32). But the recommendation if adopted will bind only the parties to the particular dispute. Ambiguities are no longer a 'cost free' solution for negotiators who can't agree. But this is hardly the fault of the Appellate Body and could turn out to be a positive discipline.

Could the new 'legalism' replace negotiated agreements with litigation?	
Yes, and its already happening	**No, there are safeguards in place**
The WTO Agreements have already started to replace the 'outcomes' based disciplines of GATT with detailed implementation rules such as those in the TRIPS Agreement that embody specific standards all Members must adopt. Aren't Members loosing control over their own trade policies?.	This concern is exaggerated. Most Agreements are still 'outcomes'-based: they contain no policy formulas and allow Members wide latitude of choice in the implementation of WTO principles and rules. The Appellate Body has, in fact, acted to preserve the widest possible discretion for Members in some of its highest-profile decisions. For example in US – Reformulated Gasoline it acknowledged that WTO members have broad autonomy to determine their own policies on the environment. It rolled back the Panel's narrow interpretations of SPS obligations in EC - Hormones and went a long way to defer to Member state policies - against the Panel's reasoning - in US – Shrimp-turtle Some expert commentators (e.g. Prof John Jackson) argue that the Appellate Body has shown much greater deference to Members' policy autonomy than the GATT Panels did.
Isn't the greatly increased caseload in the dispute settlement system evidence that lawyers are loose in the WTO and looking to build up business?	The case load has increased by comparison with GATT, but so has membership and the level of membership *participation.* The increased caseload may be due to the greater confidence Members have in the new, more 'automatic' procedures or to the much larger membership of WTO or to the universal coverage of the Agreements. In fact, only one third of notified WTO disputes are proceeding to a Panel recommendation. There is no evidence that 'litigious' behavior is driving the number of cases.
Are the major economies using the dispute settlement system as a 'weapon' to gain leverage in unrelated disputes? Hasn't there been evidence of 'tit-for-tat' disputes between the major economies?	The Appellate Body made it very clear in US – FSC (WT/DS108/AB/R at 166) that the WTO dispute settlement system has no room for litigation techniques, but only for the fair, prompt and effective resolution of disputes It has repeatedly emphasized the requirement of the DSU that all Members approach the resolution of disputes in good faith and has refused appeals where it found 'good faith' lacking.

Isn't there a danger with the new 'legal' processes that some Members will try to litigate issues that they could not negotiate in the WTO – for example by seeking rulings that 'fill-in' ambiguities in the Agreements.	It's hard to think of any examples of this. Cases brought so far that have tested the 'edges' of the Agreements – such as Shrimp-Turtle or Japan – Photographic Paper – have not been successful for the parties seeking to 'extend' ambiguous aspects of the Agreements. The Appellate Body may be required to rule on ambiguous articles, but it has already established a standard procedure for doing so that has long been used for the interpretation of other treaties. Besides, recommendations by the Panels and the Appellate body, if adopted by the DSB, do not bind any Member other than the Parties in a particular case.

The Dispute Settlement Body

What's left for the Council of Members - the DSB - to do, in the new 'automatic' dispute settlement system? They seem to have lost their discretion to establish a Panel or to accept Panel or Appellate Body recommendations. Has the dispute settlement system left the DSB as a 'figurehead'? Members retain, in fact, all of the key powers to decide but a less active role in the process. One way of looking at the system is that the DSB has 'legislative' powers that may be used to override the 'judicial' powers of the Panels and the Appellate Body – but are unlikely to be used in this way in the normal course of events.

The DSB has the power to

- Appoint Panelists and adopt terms of reference for Panels
- Adopt or reject a recommendation of a Panel or the Appellate Body – at least in principle
- Maintain surveillance of the implementation of recommendations
- Appoint arbitrators to make recommendations on the 'reasonable period of time'
- Appoint a second, 'implementation' Panel to make recommendations on measures to restore conformity with the Agreement(s)
- Authorize the suspension of concessions or obligations (retaliation)

Appointment of panelists and panel terms of reference: since each Panel is 'ad-hoc', the power to appoint is significant, with important potential consequences for the decision on the case. The DSU gives disputants some say in the appointments, but the ultimate decision rests with the DSB. The power to adopt terms of reference for a Panel is less significant. The terms of reference themselves are very important: they put a perimeter around the matters into which the Panel may enquire. The Appellate Body has repeatedly emphasized their importance, too, in ensuring a fair hearing for the complainant and a fair opportunity for the respondent to prepare its case. The parties may agree terms of reference that the DSB may approve, but the DSU provides standard terms if no agreement is forthcoming so that the DSB discretion in this matter is limited.

Adoption of panel and Appellate Body reports: Panel recommendations have no binding force and do not give rise to obligations on the defending party to bring its measures into conformity *unless* they are adopted by the DSB. Under the GATT dispute settlement system, panel reports were adopted by consensus, i.e. where no delegation present at the meeting objected to the adoption of a report. This gave respondent parties the opportunity to block adverse reports simply by refusing to join a consensus. It was not a common occurrence – but the opportunity itself was sufficient to make it a fundamental weakness of the GATT dispute settlement system.

A panel report must be adopted at a DSB meeting within 60 days after the date of circulation to the Members, unless a party to the dispute notifies its decision to appeal or if the DSB decides by consensus not to adopt the report (Article 16.4 of the DSU). An Appellate Body report must be adopted by the DSB and unconditionally accepted by the parties to the dispute within 30 days after its circulation, unless the DSB decides by consensus not to adopt the report (DSU Article 17.14)

Surveillance of implementation: There is no power in the DSU to require *specific action* by a Member to implement a DSB recommendation or ruling: Members of the WTO always retain the right to shape their own

> The procedure by which the DSB adopts a Panel report is remarkable for two reasons. First, it is the only part of the WTO where a decision (to adopt) is 'automatic' in the absence of a negative consensus. Second, the consensus procedure in the DSB has no 'fall-back' voting formula. In other WTO provisions where consensus is the 'preferred' decision-making process, there are detailed provisions for 'fall-back' qualified majority voting: for example in Article X of the Agreement Establishing the WTO. The standard in the DSB is set higher: consensus or nothing.
>
> But the achievement of 'consensus' – even negative consensus - is not quite the hurdle that it appears to be. The 'consensus rule' appears to be a great 'leveler', removing all distinctions between Members based on power or interest because every Member, individually, has an equal ability to upset a consensus. In practice, however, the procedure is more nuanced since in a consensus decision Members are not asked to declare their views unless they oppose the proposition. Neither absence nor abstention counts against a consensus. So Members may defer to the greater interest of those directly affected by a decision or to the wishes of more powerful economies, allowing the consensus to proceed by silently abstaining *without thereby agreeing* with the proposition. It is very likely that many consensus decisions in the WTO succeed on the basis of widespread 'abstention' rather than on the basis of a true consensus of opinion.
>
> 'Consensus against' may not be an *impossible* hurdle for the DSB to vault, after all.

policies and regulations as long as they conform with its obligations under the Agreements. The one exception in the DSU concerns rulings under Article 4.7 of the Agreement on Subsidies and Countervailing Measures. In this case, where a measure is found to be a prohibited subsidy, the panel "shall recommend that the subsidizing Member withdraw the subsidy without delay".

Ultimately this period of time for implementation may be determined by the DSB according to the circumstances of a case, but the DSU emphasizes that 'prompt' compliance action is 'essential' (Articles 3.3. and 21.1). The Understanding recommends no longer than 15 months from the date of adoption of the Panel report and Arbitrators have tended to treat this as the maximum period.

There have been some attempts by Arbitrators to establish 'jurisprudence' on the 'reasonable period of time'. In the *Canada – Patent Protection of Pharmaceuticals* case, the Arbitrator suggested that a reasonable period would be longer where legislative amendments were required than if administrative action, such as changes to regulations, would effect implementation (WT/DS114/13 at 49).

In this and other cases, Arbitrators have ruled that the management of the consequences of the required action are not relevant considerations in determining the 'reasonable' period. The reasonable period of time would not, for example, include time for "structural adjustment" of an affected domestic industry (*ibid*. at 52). Claims that the summer vacation period should be taken into account in calculating the reasonable period of time have also been rejected (*ibid*. at 61).

The normal format of DSB decisions on a dispute is to approve the recommendations of the Panels – as amended by the Appellate Body – that a member restore conformity of its measures with the Agreement(s). The responding party is expected to make the appropriate changes, possibly in line with suggestions from the Panel - although so far these have been offered in only one or two cases. In many cases the respondent party informs the DSB at the meeting where the report of the Panel is adopted that it intends to take steps to implement the recommendations within a period of time that has been agreed in advance with the complainant, or is a period of time acceptable to the DSB. The DSB, after adopting the Panel report, maintains an item on its regular agenda under which it receives reports from the complainant and/or respondent on the status of implementation. The item is removed once both parties signal that the implementation is complete.

Appoint arbitrators or a second Panel: Implementation does not always go so smoothly. There are four outcomes contemplated in the DSU that imply a decision by the DSB:

1. The respondent makes a proposal for implementation that is acceptable to the complainant and completes implementation within a 'reasonable period of time' that may be agreed between the parties or is acceptable to the DSB. This is the 'normal' case.
2. There is a 'disagreement as to the existence or consistency' of the implementing measures and the DSB establishes an 'implementation Panel' (preferably the same Panel as made the initial recommendations on the case), under Article 21.5 of the DSU, to make recommendations within 90 days on implementation
3. In either case (1) or (2), if the parties are unable to agree on a 'reasonable period of time' for the restoration of conformity with the Agreement(s) and the respondent does not propose a period for implementation that is acceptable to the DSB, the DSB appoints an arbitrator to recommend a period.
4. The respondent fails to make any proposal for implementation or fails to implement the recommendations of the second Panel within a reasonable period of time, in which case it may offer compensation – as a temporary measure – or the complainant may request authorization from

the DSB for the suspension of obligations or concessions (retaliation).

Implementing dispute decisions

Implementation can be straightforward when the parties to a dispute agree on the manner and timing. Many cases that are pursued to the final Panel report do end in agreement between the Parties and nothing more is heard of the problem. Problems arise, however, when the Parties do not agree on implementation and experience has shown that the DSU does not necessarily have the answers to these problems.

Problems specifying 'rectification': 'Rectification' means 'putting things right'. That's what the outcome of any dispute should be. Contrary to widespread belief the WTO doesn't, in general, try to tell Members – who are sovereign governments - what they must do to comply with their obligations under the Agreements. So the dispute settlement process ends only with a direction to the 'losing' Member to bring its measures into conformity with the Agreements *somehow or other*. If the 'somehow or other' is not proposed by the respondent or is not satisfactory to the complainant or the DSB, the DSB may re-activate the disputes procedure with a second Panel established to develop a recommendation on implementing measures.

But several matters about this process are unclear: for example, under Article 21.5, the DSU says nothing about the terms of reference for this Panel or about the opportunity for the Parties to object to its decisions or appeal them if they are legally unsound. There is also another problem with this Article – its relationship to the 'retaliation' procedures in Article 22 (see below).

Problems with enforcement: The WTO does not have any enforcement mechanisms of its own: it has no economic powers, it doesn't issue fines and it can't tell sovereign members what precise policy decisions they must make. Enforcement, if needed, takes the form of authorized actions between the parties.

If the respondent does not implement a decision or implementation is unreasonably delayed, the DSB may authorize temporary, and voluntary, compensation for an inconsistent measure - to be offered by the respondent pending restoration of compliance. Or, as a last resort, the DSB may authorize the complainant to withdraw concessions (e.g. increase tariffs) or suspend its obligations to the respondent under the Agreements. But the procedure for deciding on appropriate compensation or retaliation – potentially involving still further arbitration on the level of compensation - is very complex and not well defined in the DSU (Article 22) and is the focus of some continuing controversy among Members.

(i) Compensation

Article 22 of the DSU says that where a Member fails to implement the recommendations and rulings of the DSB within the 'reasonable period of time' the DSB may authorize compensation or the suspension of concessions (retaliation).

Compensation is a sort of temporary 'band-aid' relief for damage caused by a violation of WTO rules. The DSU is very specific in saying that it is not intended to be a substitute for bringing measures into conformity with the Agreements (Article 22.1). You can see why: if it were to be permitted as a permanent solution to a dispute then large Member economies – especially – might use compensation to 'buy their way out' of their obligation to conform with the Agreements.

'Compensation' is *not* financial compensation. It usually takes the form of improved access to the responding Member's market, is voluntary, and if granted must be consistent with the WTO Agreements (Article 22.2). For example, compensation in the form of tariff reductions must be applied on a Most-Favoured-Nation (MFN) basis, i.e. it must be extended to the like products of all WTO Members, not just that of the complainant. If compensation is not agreed within 20 days after the expiry of the reasonable period of time, the complainant may request the DSB to authorize the suspension of concessions (retaliation).

(ii) Retaliation

'Retaliation' takes the form of the suspension of equivalent concessions or obligations that would normally be owed by the complainant party to the respondent party. It is usually in the form of punitive tariffs (100% *ad valorem*) on selected product items from the respondent country, applied over and above the normal tariff rate in the complainant country. This measure represents a suspension of the complainant's obligations to bind its tariff rates and to offer the respondent MFN tariff treatment. A 'retaliatory' tariff is likely to eliminate the responding Member's exports of the particular product.

Article 22.4 of the DSU requires that the suspended concessions be equivalent to the level of nullification or impairment suffered as a result of the measure found to be WTO-inconsistent. In the event of disagreement between the parties on the level of proposed retaliation, Articles 22.6 and 22.7 of the DSU provide for arbitration. Arbitration in the EC – Bananas and EC – Hormones cases has shown that complainants may greatly overstate the impact of the nullification and impairment: the awards in these cases have been much lower than the original requests.

WTO Members have disagreed about the sequence of events that precedes a complainant's rights to request retaliation. Unfortunately, it turns out that there is an ambiguity in the text of the DSU:

- Article 21.5 of the DSU calls for the original panel to decide any disagreement about implementing measures within 90 days of the 'date of referral of the matter to it', *and*
- Article 22.6 of the DSU calls for an arbitrated award of 'retaliation' within 60 days of the expiry of the 'reasonable period of time'.

The DSU does not say whether complaining Members may request the authorization of retaliation *before* the completion of Article 21.5 processes examining the consistency of implementing measures, or whether Article 21.5 panel decisions may be appealed, or whether the complainant has the right to an arbitral award of retaliation under Article 22.6 pending any appeal outcome. The controversy reflects the concern of respondent parties that that complaining Members could take matters into their own hands *and* the concern of complainants that respondents might use the second panel process under Article 21.5 – possibly over and over again - to delay implementation.

Fortunately, so far, most Parties have agreed between them on procedures to work around this ambiguity. In *Brazil – Aircraft Subsidies*, Brazil and Canada agreed that:

- Brazil would not reject to the establishment of an Article 21.5 panel;
- Canada would not request authorization to suspend concessions until after circulation of the Article 21.5 report;
- In the event of a finding of non-conformity by the Article 21.5 panel, Canada would request authorization for suspension and Brazil could request arbitration under Article 22.6 of the DSU (WT/DS46/13 Annex).

A 'sequencing' problem

" This [sequencing] issue is vividly illustrated in the *Bananas* dispute opposing the EC and the United States. The Appellate Body report condemned the EC bananas policy and requested the EC to bring their measures into compliance with their obligations. As a result, the EC made some changes to its policy, but the United States alleged that the implementing actions were inadequate and that the policy was still at odds with the EC's obligations under the WTO. Since there was disagreement between the parties to the dispute as to the adequacy of the implementing action, a [Article 21.5] panel was established to decide the issue. At this stage, the parties could no longer agree on the interpretation of the DSU. According to the EC, a finding by a panel that the implementing action is inadequate must precede a request to adopt countermeasures. The United States however … requested the panel to also rule on whether the proposed countermeasures by the US were equivalent with the damage the US suffered from the EC bananas policy. Furthermore, the United States imposed countermeasures (to be repaid if the US lost the case, as the US have claimed) even before the panel had pronounced on the equivalence of the US proposed countermeasures. "

Horn, H and Mavroidis, P C "*Remedies In The WTO Dispute Settlement System And Developing Country Interests",* World Bank 1999, p. 17

A similar agreement was reached in Brazil's complaint in *Canada – Aircraft Subsidies*.
Following the finding by the Article 21.5 ('implementation') panel in *Brazil – Aircraft Subsidies* that Brazil's measures were still WTO-inconsistent, Brazil notified its intention to appeal at the 22 May 2000 DSB meeting and requested arbitration on the level of nullification or impairment (under Article 22.6). Canada also stated it would not seek to apply suspension pending the Appellate Body and arbitration reports on the implementation Panel report. The Appellate Body rejected Brazil's appeals in both *Brazil – Aircraft Subsidies* and *Canada – Aircraft Subsidies*.

But some of the disagreements on the 'sequencing' issue have been the cause of large-scale trade frictions (see text box 'A sequencing problem') and have, in the view of some commentators, prompted additional, litigious action in the WTO.

Cross-sector retaliation: One of the important innovations of the DSU as compared with the former GATT dispute settlement system was the provision in Article 22.3 for suspensions of obligations and concessions:

- Under Agreements other than the Agreement breached by the respondent, or
- In sectors (goods, services, intellectual property) other than the sector of trade in which the breech took place.

This 'cross-sector retaliation' was a hard-fought issue between some developed and developing countries during the Uruguay Round of trade negotiations; developing countries expressing concern that measures taken against their goods trade in retaliation for deficiencies in their compliance with rules in the 'new' sectors of WTO activities would jeopardize their development plans.

As it turned out, the first significant use of the provision was by a developing country: Ecuador, in the EC-Bananas case.

> "On 8 November 1999, Ecuador requested authorization from the DSB to suspend the application to the European Communities of concessions or other obligations under the TRIPS Agreement, GATS and GATT 1994, in an amount of US$450 million. At the request of the European Communities, the DSB referred the issue of the level of suspension to the original panel for arbitration. The decision of the arbitrators was circulated to WTO Members on 24 March 2000. The arbitrators found that the level of nullification or impairment suffered by Ecuador amounted to US$201.6 million per year. The arbitrators found that Ecuador may request authorization by the DSB to suspend concessions or other obligations under the GATT 1994 (not including investment goods or primary goods used as inputs in manufacturing and processing industries); under the GATS with respect to "wholesale trade services" (CPC 622) in the principal distribution services; and, to the extent that suspension requested under GATT 1994 and GATS was insufficient to reach the level of nullification and impairment determined by the arbitrators, under TRIPS in a number of sectors of that Agreement. After Ecuador had modified its request in conformity with the arbitrator's findings, the DSB authorized Ecuador, on 18 May 2000, to suspend concessions to the European Communities equivalent to US$201.6 million." *WTO Annual Report, 2000*.

Retaliation is an 'asymmetric' discipline and tends to backfire: The withdrawal of equivalent obligations or concessions is less likely to be an effective threat when the complainant is a small economy. A small economy is unlikely to have the 'weight' to inflict much pain on a larger economy, which probably has a wide range of alternative market opportunities. Not even the use of cross-sector retaliation or un-sanctioned 'carousel' methods of retaliation is likely to improve the 'leverage' of a small economy. Furthermore, the increase in protection for one or two specific sectors in the complainant country, particularly a small complainant country, is very likely to be harmful for its own economy: raising the domestic price of inputs or final goods, reducing consumption, distorting investment in the long term by adding artificially to the returns to specialized factors of production. The more significant the traded items that are caught up in the retaliatory action, the more noxious the action will be for the complainant's economy. The 'carousel' method may reduce the structural damage – assuming it does not have the same domestic impact on investment or wages etc in the protected sectors.

Retaliation is rare: (fortunately!) Why? We can speculate that there are two reasons. First, most countries are aware of its limited value (see previous paragraph). Second, trade and economic relations in the WTO – or foreign relations generally – are a 'repeated game', to use strategic terms. This means that there is likely to be a positive 'payoff' in the next 'round' of engagements if you cooperate now. There is also likely to be an adverse payoff in the next 'round' for 'defection' or 'non-cooperation' now. It's a lot like the 'golden rule': what you do to your trading partners today, maybe done to you tomorrow. The WTO principle of 'reciprocity' in trade negotiations makes this simple strategic consideration explicit. So, most countries cooperate most of the time: whether or not they agree with the decision, they accept the DSB's ruling with as much good grace as they can, withdraw or amend the offending measure and *move on.*

Role of the Secretariat

The Secretariat plays a very important role in the dispute settlement system: providing impartial assistance to the Chairman of the DSB, to the Panels and to the Appellate Body. The Secretariat also provides limited legal assistance to developing countries and technical assistance, in the form of training courses, under Article 27 of the DSU.

In practice, the role of the Secretariat is a delicate one. Article 27 gives some clues:

> The Secretariat shall have the responsibility of assisting panels, especially on the legal, historical and procedural aspects of the matters dealt with, and of providing secretarial and technical support.

Because the Panels are 'ad-hoc' and the Appellate Body has a limited remit to *review* cases, the Secretariat frequently finds itself called upon to provide the institutional memory and the experience that Panels need when deciding how to go about their work. The Secretariat provides, in fact, some of the 'continuity' that creates a 'system' out of a series of WTO dispute cases (of course the DSB and the Appellate Body also contribute to this continuity). This is what the DSU means by 'assisting panels … [with] the legal, historical and procedural aspects of the matters dealt with …" In fact, the Chairman of the DSB frequently calls on the experience and 'continuity' represented in the Secretariat when composing a list of Panelists to propose to disputants.

The 'secretarial and technical support' functions mentioned in Article 27 are also much more important than this modest reference suggests. The 'legal secretary' who is appointed by the Legal Division of the WTO Secretariat to work with each Panel can influence the Panel report by, for example, helping the members of the Panel with legal interpretations. The legal secretary can also assist the members of the Panel to manage the large documentary submissions that are becoming common in WTO cases by helping them to determine the key issues.

Developing country provisions

Most of the 'special and differential' treatment of developing country interests in the WTO is found in the substantive agreements themselves where, almost without exception, there is provision for lower thresholds and longer timeframes for implementation of WTO obligations by developing countries.

The DSU also provides for longer time-frames for developing countries – including the possibility of extending the time for consultations and the time allowed by Panels for developing countries to prepare briefs (Article 12.10). Also, Panels are required to "explicitly indicate" how they took account of relevant provisions on differential and more-favourable treatment for developing countries under the covered agreements if this matter is raised with them by developing-country parties (Article 12.11).

In ensuring implementation of decisions in cases bought by developing countries, the Understanding requires the DSB to take account into "not only the trade coverage of measures complained of, but also their impact on the economy of developing country Members concerned" (Article 21.8).

Article 24 of the DSU is devoted to the interests of least-developed countries – the poorest countries that are Members of the WTO. It urges Members to use 'due restraint' when considering whether to bring a formal complaint against a least-developed member and urges the use of the 'good offices' of the Director-General to try to ensure that matters are settled by consultation rather than proceed to a Panel request. If measures maintained by a least-developed member are found to nullify or impair benefits, to use restraint in considering whether to seek compensation or authorization for retaliation.

Review of the DSU

> Ministers… Invite the Ministerial Conference to complete a full review of dispute settlement rules and procedures under the World Trade Organization within four years after the entry into force of the Agreement Establishing the World Trade Organization, and to take a decision on the occasion of its first meeting after the completion of the review, whether to continue, modify or terminate such dispute settlement rules and procedures.
>
> **DECISION ON THE APPLICATION AND REVIEW OF THE UNDERSTANDING ON RULES AND PROCEDURES GOVERNING THE SETTLEMENT OF DISPUTES**

Members at first expected to complete the review of the DSU by the end of 1998, in time for the Seattle Ministerial meeting. This would have allowed Ministers to make any required changes to the DSU. But the review was completed but no proposals were put to the Ministerial Council directly as a result of the Review. Several Members did submit a proposal for DSU amendments to the Third Session of the Ministerial Conference. However, a final agreement was not reached.

Subsequent to the Third Ministerial Conference several Members submitted a similar proposed amendment to the General Council for its consideration. As of July 2001, however, there was still no agreement on proposals to revise the DSU despite weeks of consultations and debate in the DSB. The focus of the proposal is the so-called "sequencing" issue which can be described as follows:

> **'Sequencing': the relationship between Articles 21.5 and 22.6** of the DSU concerning the right of a 'winning' party to take retaliatory action under Art. 22.6 in the absence of compliance (in its view) by the 'loosing' party before recourse to procedures under Art. 21.5.

The proposal to amend the DSU would create a new Article 21 of the DSU that would clarify the sequencing issue related to Articles 21 and 22. The amended DSU would require a compliance panel to decide disagreements over measures taken to implement a panel or Appellate Body ruling before Members could request WTO authorization to impose retaliatory trade sanctions. The proposal also addressed some other issues such as time frames for disputes, third-party rights and certain aspects of special and differential treatment for developing countries. However, some Members remain dissatisfied with the proposal arguing that it does not go far enough on matters of transparency. Others did not consider it comprehensive enough.

A number of proposals on other matters have also been submitted to the DSB in the context of the review. Among these:

- The European Communities suggested that a body of 15-24 professional panelists be set up, from which panels could be created and have argued that greater weight should be given to consultations and to strengthen the rights of 'third parties' in a dispute.
- Developing countries argued that the DSU's special and differential treatment provisions in favor of developing countries have not yet given the benefits hoped for (although the creation of the Advisory Center on WTO Law is expected to meet some of those concerns).

Should you bring a complaint?

15. Has there been a breach of obligation?
16. Is there a 'non-violation' case to answer?
17. Do previous cases clarify WTO obligations?
18. Are you ' vulnerable' as a plaintiff?
19. How does intervention by other parties affect a dispute?
20. Is it realistic to expect commercial benefit or relief?
21. How long will it take?
22. What will it cost?
23. What are the alternatives to Dispute Settlement
24. Is 'unilateral action' an option?
25. Should you consider conciliation?
26. Is independent legal advice available?
27. Who may represent a Member?

Well, 'you' can bring a complaint to the WTO only if you're a Member government. But Governments usually bring cases that are prompted by some firm's commercial interests. So we'll imagine two cases:

- *First*, that you are an exporter or importer that has a problem with a foreign trade regulation
- *Second*, that you are the advisor to the Trade Minister, trying to evaluate the options to put to the government.

In both cases the only way to decide whether 'you' should bring a complaint is to ask yourself what you want and then whether a WTO dispute procedure will get you what you want more effectively – lets say, at less 'cost' - than other means. So there are no surprises, we'll summarize the answers at the beginning:

If 'you' are a firm the two big problems you face are the time it takes to get regulations changed by the dispute settlement system and the limited value you can expect from the likely remedies if you win the case. Even if the government agrees quickly to do what you want and even if the problem is resolved at the 'consultation' stage, the chances are the timeframe could be too long for you. Markets, products and competitors will have moved on by the time the talks conclude. Even if your side 'wins', you may be no better off in a commercial sense because the main 'remedy' – restoration of conformity with the Agreement(s) – could very well be just as 'bad' for you, commercially, as the initial problem and if it's 'good' then your competitors will probably benefit from the change, too. Finally, you can't deal with contract disputes in WTO: the International Chamber of Commerce (ICC) arbitration procedures are the way to cover that sort of problem.

If 'you' are a government, there are many circumstances where it might be worthwhile to notify a complaint and start the consultation process: but only after you'd tried other bilateral approaches. There are only a few circumstances where you'd want to pursue a complaint to a Panel recommendation and DSB decision: in fact, you'd probably do this only when there was really no other way to get what you want, because it's expensive and, potentially, risky.

In summary: when there's no other way, the WTO dispute settlement system offers an invaluable process for securing fair opportunities for trade in accordance with the provisions of the Agreements. But look at the

alternatives carefully; they might offer better 'value' solutions in many cases.

You are a firm

You've identified a problem with your market that is due to the regulations or policies of a foreign government. It's not a matter covered in your contract with your customers or suppliers and it's not a risk you insured in your trade finance arrangements. You have some idea of what this problem is costing you (loss of sales, loss of growth opportunities) and what you would expect to gain (e.g. sales, lower costs) if the regulation were changed. What do you do?

1. First exhaust your options for securing changes to the regulation by lobbying the foreign government. You might be able to do this on your own account: perhaps you have investments in the foreign market, or employees there. That may be sufficient to secure you an interview with the officials in the foreign government. Or you may be able to secure help from the foreign trade or diplomatic service of your own government to approach the officials of the foreign government seeking a change in the regulations. Perhaps your national Chamber of Commerce or industry Association might be able to help, too. Chances are, if your firm has a problem then others in your country or in your industry in other countries will have a similar problem – it may be possible to approach the foreign government through an industry group already working on the problem.
2. Check with your own Trade Ministry whether the foreign regulation or policy might be in breech of a WTO obligation. If you have some idea of the nature of the problem, it may help you to read the relevant WTO Agreement. You can get all the Agreements and a lot of explanatory material from the WTO website. They aren't very entertaining to read, but they're not written in very difficult language and many of them are short, considering the complexity of the issues they cover.
3. Try to find out as much as you can about the origins and effects of the regulations that are causing problems. The more you know about them and their effects, the more likely you are to be able to support your government's efforts on your behalf. Ask your commercial agent in the country (if you have one) to give you some background on the regulations. Ask your own Chamber of Commerce if they have any information from other firms. Be sure to get copies of the regulations. See if you can find more information in the financial press of the country concerned. Many government agencies also maintain websites where they detail the regulations that they administer. You may be able to find a great deal of information from the websites belonging to agencies of the foreign government. Use the Internet search engines, too. You should also read the WTO's TPRM (Trade Policy Review Mechanism) reports for the country concerned. You can download these reports from the WTO website. They can often help you understand what is going on in the economy of the country and why the regulations might be the way they are.
4. Give your own government officials as much information as you can about the nature of the regulation and the size of the problem in financial terms. It's not essential to have a 'legal' interest in order to bring a complaint in the WTO against a regulation which breeches an Agreement, but it certainly helps to convince your own government to take up the case if you can show loss of sales, loss of growth opportunities or increased costs due to the regulation.
5. Decide what you want. Do you want the regulation changed in some way? Replaced? With what? Remember that the WTO does not tell governments that lose a case precisely what they must do to

restore compliance with the covered Agreements. So you can't *always* be certain about the changes that will be made to foreign regulations if you win. You need to take account of the possibility that the foreign government might replace the regulation with another that could be equally bad from your point of view, although consistent with the WTO Agreements. It can be a good idea to try to establish your own contacts with the foreign government, either directly with foreign government officials or through an industry association. These contacts may provide you with information on the intentions of the foreign government if they lose the case. This contact can be very useful, too, at the consultations stage of a case and right up to the final Panel report, when both sides still have the option of reaching a 'mutual agreement'. WTO cases are not intended to be 'contentious' and there is no legal impediment – from the WTO's viewpoint – to your contact with the foreign officials. It is certainly worth considering.

6. If you are hoping for restoration of past commercial losses, or compensation for the time and effort you have to put into preparing a case, then forget about a WTO complaint. The WTO does not require governments to offer any compensation for actions that they took prior to the decision in a case – much less for the costs of bringing a case – and only rarely authorizes compensation for continuing trade problems. Furthermore, any compensation offered will be in the form of market opportunities that will probably benefit other industries or other countries (including your competitors).
7. Think about time and resources carefully. From the time of the first request for consultations until implementation of a decision by the DSB, cases have taken up to 30 months to move through the WTO. You can add another few months to the 'front end' of that for preparation of the case and information collection. Do you have a sufficiently large stake in this to pursue the case given that you'll have to put executive time and effort into working with your own government and, probably, helping them to collect information? Remembering that a 'win' will probably help your competitors just as much as you. Shouldn't you see if your industry association or chamber of commerce will take on the task of working through this case with the government?

You are a government

The DSU requires every Member to "exercise its judgment as to whether action under these procedures would be fruitful" (Article 3.7). Note the use of the term 'fruitful'. The DSU does not say: 'consider whether you'll win'. Being in a position to 'win' a case may not be sufficient reason to start a dispute settlement process. The following are some questions that should certainly be considered as part of making a judgment about whether dispute settlement action would be 'fruitful'.

(i) Has there been a breach of obligation?

There need not be: the Appellate Body has read the right of Members to bring a case very broadly (see next question). But most cases concern a measure that is inconsistent with a provision of a covered Agreement. This allegation must be substantiated, but once that has been done it establishes a prima facie case of nullification and impairment, creating a presumption in favor of the complainant. No case of 'pure' non-violation impairment – unassociated with any tariff obligation, for example – has succeeded although there have been some cases in GATT that were never adopted (e.g. Japan – Nullification and Impairment of Benefits L/5479).

(ii) Does there need to be a trade interest?

No, the Appellate Body has confirmed (in the EC – Bananas case WT/DS37/AB/R at 133 - 135) that there is no need for a Member to have a 'legal interest' in a case in order to bring a dispute. In the Banana case, for example, the USA was found to have the right to bring a case although it did not export bananas to Europe. In that case, too, the potential effect of the European measures on the US future opportunities or on prices in the US domestic market was considered a plausible basis for its interest.

The Appellate Body has read the rights of Members to bring a case in the first paragraph of Article XXIII of GATT 1994 very broadly, suggesting that the 'self-regulating' requirements of DSU Article 3.7 may be the only relevant restraint. However, in the absence of a trade interest it becomes much more difficult to determine whether the expense and inevitable foreign-relations cost of a case is justified by the opportunities that could be opened up by success. Also the Appellate Body has been critical of any lack of 'good faith' in the disputes process; a case that is merely litigious may be given short shrift.

(iii) Is there a 'non-violation' case to answer?

Be careful of 'non-violation' complaints. Few have succeeded under GATT and none under WTO. All successful GATT cases have been associated with breeches of obligations in the tariff schedules. The evidentiary burden on a Member bringing a non-violation complaint is apparently much greater than in the case of a violation complaint. Article 26 of the DSU embodies GATT practice in requiring "detailed justification in support of any complaint relating to a measure which does not conflict with the relevant covered agreement". What evidence is needed? In the case of a non-violation measure associated with a tariff obligation or, we could speculate, a GATS scheduled concession or a TRIPS obligation, the GATT jurisprudence (EC – Oilseeds and Norway – Sardines are the classic GATT references) suggests that the complainant must show that the measure could not have been reasonably anticipated and that it in some way upset the competitive position of exports from the complainant country. These matters were again considered by the Panel in Japan – Photographic Film (WT/DS44) and by the Appellate Body in India – Patent Protection (WT/DS50).

(iv) Is there a process in the covered Agreement?

Several of the most important WTO Agreements have special rules and procedures related to disputes that prevail over rules and procedures in the DSU (Article 1.2). In the case of breeches of Agreements such as that on Textiles and Clothing or Subsidies and Countervailing Measures, Anti-Dumping etc, the procedures in the Agreement should be implemented first.

(v) Do previous cases clarify WTO obligations?

Yes. The general rule is that no decision of the DSB – much less a Panel or Appellate Body recommendation – can interpret the Agreements but can only clarify their application in a particular case. So there are no 'rules of precedent' in the WTO. However, adopted Panel reports under the WTO or under the GATT do affect Members' expectations and provide guidance for Panels. Even un-adopted GATT Panel reports may contain helpful reasoning on particular points. In the construction of a case it is essential to check the history of similar issues in earlier Panel reports. Although they may not be 'relied upon' in the same sense as a precedent in a common law jurisdiction, they are nevertheless influential. Supportive 'precedent' strengthens a case.

(vi) Are you 'vulnerable' as a plaintiff?

The DSU specifies that dispute settlement is not a 'contentious' matter and that "… it is also understood that complaints and counter-complaints in regard to distinct matters should not be linked," (Article 3.10). Some commentators have pointed out, however, that it is difficult to avoid the conclusion that 'counter-claims' on distinct matters are being used as 'leverage'. Whatever the truth of this matter, it would be prudent as a matter of course – and consistent with the DSU's requirement for openness and good faith in the dispute settlement process – to consider whether the respondent might not have some complaints about your own measures. This might, in fact, open up avenues for exchange and mutual agreement that could avoid a dispute altogether.

(vii) How does intervention by other parties affect a dispute?

Members may join together as complainants or may notify their 'substantial interest' in the matter of a dispute to the DSB in order to protect their 'third party' rights (Article 10 of the DSU). The intervention of interested 'third parties' does not seem to promise any advantage to either side in a dispute. There may, however, be some advantage for multiple complainants in a case. Multiple complainants must have the same claims – related to the same Agreements – but may have quite different arguments and factual cases to advance in support of their claims. This may broaden the base of attack on a measure that is said to violate an Agreement, potentially improving the chances of success since only one violation case need succeed before the Panel must recommend withdrawal of the measure. Multiple complainants may also have more success at the consultations stage in persuading the respondent to accept a mutually agreed solution. This may be due to difficulties (and expense) anticipated by the respondent in answering multiple arguments in support of nullification or impairment of rights. But it may also be due to foreign policy considerations: despite the absence of 'contention' in dispute settlement cases, every dispute has potentially adverse effects on a bilateral relationship. Faced with multiple complainants, a respondent is more likely to wish to deal with the problem quickly.

(viii) Is it realistic to expect commercial benefit or relief?

No. As a rule, the commercial interests behind a dispute can usually find other, more direct, means to resolve or manage their problems such as contract arbitration or risk management. Although the timetable for the resolution of disputes is now much tighter than it was under the GATT, the length of time it takes to complete a case – often more than two years from the request for consultations to the implementation of a decision, plus many months of preparation – makes the WTO dispute settlement system unsuitable for most commercial purposes. Also, it must be remembered, that:

- There is no guarantee about the outcome: other than that a violation must be corrected. *How* it is corrected is usually a matter for the respondent government to decide.
- There is no provision for restitution of 'losses' from measures found to violate the Agreements.
- Compensation when granted on a temporary basis is likely to provide trade opportunities for firms in sectors other than the sector where the offending measures are found.

The main exceptions to the 'rule' that WTO cases are unlikely to provide commercial benefit or relief are cases bought under the accelerated disputes procedures under the Agreement on Subsidies and Countervailing Measures and cases where the commercial opportunities denied or frustrated by an inconsistent government measure are specifically due to the measure and so great as to warrant the investment of time and effort by a firm or industry association to support a government case.

(ix) How long will it take?

From first beginning to put a case together to final implementation of a recommendation to withdraw an inconsistent measure can easily take from two to three years, particularly where developing countries are involved, because the DSU affords developing countries more time to prepare and respond to a case. See Table 4 (above) for the formal timetable.

(x) How much will it cost?

That depends a lot on the case. As a guide, it probably costs a plaintiff government and businesses in the plaintiff country several millions of dollars over three years (or so), if all costs are taken into account.

A Member government will probably need to dedicate one or two professional staff full time to the development and prosecution of a WTO case with associated administrative and support costs. Senior officials and Ministers will have to be available for supervision and to make key decisions. Agencies and Ministries in the Capital whose portfolios and responsibilities may be affected by the decisions in a case will need to be consulted and there will be information costs associated with data collection – including from business, statistical sources and from foreign sources.

External legal advisors are likely to be very expensive, if used. The use of a law firm to draft or advise on a case is not necessary and may not convey a great advantage on a complainant or respondent. The use of representatives – whether officials or not - with legal training and experience is necessary in an Appeal, where the issues to be considered are matters of law and legal interpretation.

The participants in a case will need to ensure representation in Geneva (and possibly elsewhere) during the preliminary phases including the formal consultation phase. They will certainly need to be represented at the DSB meetings before and after the establishment of a Panel and during the decision and implementation phases of the case. They will also need to have representatives appear before the Panel on two occasions and before the Appellate Body, if an appeal is made.

Businesses in the Member states will also need to consult with government agencies and may participate in the evaluation of the case or give advice to their government on the progress of implementation.

(xi) What are the alternatives to Dispute Settlement?

The first alternative is to avoid a formal dispute. It’s less costly and frequently more effective to resolve matters bilaterally without resort to the WTO dispute settlement system at all. Many disputes are quickly resolved on a bilateral basis without resort to formal dispute settlement processes: although the *alternative of formal adjudication* sometimes brings one side or the other to agree more quickly on an informal bilateral settlement (see text box).

In some cases, governments may be parties to other multilateral or bilateral regional trade agreements that contain disputes mechanisms – such as the disputes panels created by the North American Free Trade Agreement. These disputes mechanisms can complement WTO dispute settlement. In some cases, too, governments may be parties to commercial contracts where disputes can be adjudicated by, for example, the International Chamber of Commerce. But there is no formal alternative to WTO dispute settlement for the resolution of differences *under the WTO Agreements*.

(xii) Is 'unilateral action' an option?

> United States – Imposition of Import Duties on Automobiles from Japan …was one of such cases where the parties reached a mutually satisfactory solution. Faced with a stalemate in the bilateral negotiations with Japan over access to the Japanese automobiles and auto parts market, the United States announced on 16 May 1995 its intention to impose a 100 per cent tariff on Japanese luxury cars as of 28 June 1995. Japan requested urgent consultations pursuant to the DSU, alleging that the United States violated, inter alia, GATT Articles I and II. Separately, the United States indicated its intention to request consultations with Japan over the auto and auto parts issue under the DSU. On 28 June 1995, Japan and the United States reached an agreement on the auto and auto parts issue, and the United States withdrew its announcement of the 100 per cent tariff. WTO Director-General Renato Ruggiero remarked, "the **WTO dispute settlement system has done its job as a deterrent against conflict and a promoter of an agreement**. The knowledge that both sides were prepared to use the system played a crucial role in pressing them towards a deal." *WTO Annual Report, 1996 (emphasis added)*

No. Article 23 of the DSU specifically prohibits any decisions on the nullification or impairment of benefits under the WTO Agreements except through the DSU procedures. Members undertake to make no decision, either, on the 'reasonable period of time' for implementation of a DSB decision or on the level of concessions that could be suspended in retaliation or sought in compensation as the result of a DSB decision, *except* through the normal WTO dispute settlement system procedures. This means that Members have undertaken not to use national processes or laws such as the United States' Trade Act Section 301 to make such decisions.

One of the most unusual cases so far considered in the WTO dispute settlement system concerned the possibility of unilateral action. This was a *violation* case in which there was no actual *measure* identified by the complainant. In *United States – Sections 301–310 of the Trade Act*, the European Communities (WT/DS152) claimed that merely the *threat* of unilateral measures constituted a *prima facie* case of nullification and impairment of the benefits of the Agreements – specifically of the benefits of the DSU. The Panel agreed with this claim saying,

> "Merely carrying a big stick is, in many cases, as effective a means to having one's way as actually using the stick … The threat of unilateral action can be as damaging on the market-place as the action itself"

However the Panel found that there was, in fact, no violation by the USA because statements by the US Administration adopted by Congress and confirmed by US undertakings before the Panel demonstrated that the Administration's mandate to take unilateral action in a WTO dispute before DSU procedures were exhausted had been curtailed. The DSB adopted the Panel report, which was not appealed.

(xiii) Should you consider conciliation or mediation?

Definitely. Conciliation appears to have been an underused facility of the DSU. This may well be because, as several commentators have pointed out, it is a 'diplomatic' procedure that is at odds with the 'litigious' attitude of Members armed with detailed WTO 'legal' cases. Although the Appellate Body has gone on record strongly criticizing the litigious approach to the resolution of disputes, there seems no doubt that the increasing legalism of the WTO dispute settlement system has promoted the desire to 'win' rather than to resolve a dispute.

Although there is little evidence of its formal use to date under Article 5 of the DSU, conciliation and mediation is available to the Parties right up to the point of the final Panel report. It is likely that some degree of informal conciliation and mediation takes place in many disputes, by the WTO Secretariat, at the level of the DSB or by the Chairmen of the Committees of the covered Agreements when disputes first arise. Informal conciliation or mediation may explain, in part, the number of notified disputes that do not proceed to a Panel.

Conciliation may be most valuable to the complainant if it appears that the legal case for the complaint is faulty or the facts are uncertain or the respondent appears willing to be flexible but unwilling to make a simple concession. Sometimes Members may need to find external motives – such as the intervention of the Director-General - for making a concession in order to counter domestic political pressures to 'stay the course'.

Conciliation and mediation should be considered in every case involving a measure maintained by a least-developed country.

(xiv) Is independent legal advice a good idea?

Most Members now use legal services – either internal or external - to assist with the preparation or review of a case. Also, the Appellate Body has encouraged governments to appoint representatives at Appellate hearings that have legal training because the appellate process is focused on legal interpretations.

The drafters of the DSU were apparently mindful of the greater need for legal representation when they required the WTO Secretariat (in Article 27) to make at least one qualified lawyer available to assist developing countries. The Secretariat has provided two part-time legal positions, filled by external appointments, for this purpose. But the rush of WTO dispute settlement cases and the strong role played by the Appellate Body quickly resulted in a greater demand for legal advice. At the initiative of some developed country Members, an external organization was created that could offer what the WTO could not: 'partisan' legal assistance for developing countries in WTO disputes. The Advisory Centre on WTO Law (see text box) is expected to begin operations in mid-2001.

Independent legal advice on WTO trade law can be very expensive. In part this is because there is a limited community of international lawyers with trade experience and most of them are practicing in lucrative developed country markets. Also the Parties' submissions in cases where law firms are given responsibility for the drafting are increasingly swelled by an exhaustive review of the facts and a detailed exploration of legal claims – some or even many of which may be included as 'insurance' in case they are considered germane by the Panel. Charges for these monumental submissions are correspondingly great.

The Advisory Centre on WTO Law

The Centre was established in 1999 by 32 WTO member countries (nine developed and 23 developing) as a "law office" specialised in WTO law, that can provide legal services and training exclusively to developing countries and economies in transition. It is expected to begin operations in mid-2001 once its funding is complete.

Functions: The Centre's mandate and modest size (one Executive Director, four experienced lawyers and support staff) require the Centre to stay within its own niche, to avoid overlap and to complement the training and technical co-operation provided by the WTO Secretariat and other relevant institutions. The Centre will organise seminars on WTO jurisprudence and provide legal advice. Internships will be opened for government officials from developing country Members and Least-Developed Countries (LDCs). The Centre will also provide support throughout dispute settlement proceedings in the WTO at discounted rates for its Members and LDCs in accordance with the terms set out in annex IV of the Agreement.

Financing: Members from developing countries and economies in transition pay a one-time financial contribution (in accordance with their capacity to pay) to an endowment fund that forms the financial core of the Centre. LDCs are not required to make such payments to enjoy all the benefits and will furthermore receive priority in the provision of the Centre's services. Developed countries can become Members by making a minimum contribution of US$1,000,000 to the endowment fund and/or by donating multiyear funds of US$ 1,250,000. Developed countries have no access to the legal services in dispute settlement proceedings.

For more information*: http://www.itd.org/links/acwlintro.htm*

In its current configuration, the successful management of a WTO dispute settlement case appears to require both diplomatic and legal contributions. The application of legal reasoning to the factual situation of a WTO case can greatly improve the strength and completeness of the arguments advanced by the Parties. But it is not necessary to have formal legal qualifications in order to draft or present a case and legal skills are usually not sufficient, on their own, to conduct a successful case. Trade administrators, who have experience of the WTO disputes system and who understand the business or community needs and expectations that lie behind a dispute, are usually needed too.

The lawyers may help to 'win' a case that goes to a Panel and/or to the Appellate Body, but diplomatic contributions may well keep the case 'out of court' or help to win a quick resolution based on mutually agreed implementation options.

(xv) Who may represent a Member?

Whomever the Member decides, says the Appellate Body. Specifically, Members may be represented before the Panels or the Appellate Body by non-government legal advisors, if they so choose

> We note that there are no provisions in the *Marrakesh Agreement Establishing the World Trade Organization* (the "*WTO Agreement*"), in the DSU or in the *Working Procedures* that specify who can represent a government in making its representations in an oral hearing of the Appellate Body. With respect to GATT practice, we can find no previous panel report which speaks specifically to this issue in the context of panel meetings with the parties. We also note that representation by counsel of a government's own choice may well be a matter of particular significance -- especially for developing-country Members -- to enable them to participate fully in dispute settlement proceedings. Moreover, given the Appellate Body's mandate to review only issues of law or legal interpretation in panel reports, it is particularly important that governments be represented by qualified counsel in Appellate Body proceedings. *EC- Bananas (WT/DS27/AB/R at 12)*

Disputes by subject

To understand the WTO dispute settlement system, there is no substitute for reading at least the summaries of the Panel reports and especially the reports of the Appellate Body.

The Panel reports themselves frequently review the submissions at length and are may be best read in extract by non-specialists. The brief summaries of the Panel reports provided by the WTO Secretariat in the WTO Annual Reports or in the 'State of Play' document that can be downloaded from the 'Disputes' section of the WTO website are an invaluable guide to the main questions considered by the Panels and the views and recommendations contained in the Panel reports. You should consider reading these first of all.

Appellate Body reports – like the Panel reports - can be downloaded from the WTO 'on-line documents' facility. The document number is the same as the Panel report number (see table below) with the extension "/AB/R". Appellate Body reports, too, are summarized in the WTO Secretariat's 'State of Play' document and in the Annual Reports, but they are sufficiently authoritative – and not sufficiently short - to repay reading in the original.

Cases adjudicated to January 2001#

Short Title:	Panel Document	Complainant	Main issues*
Argentina - Certain measures affecting imports of.footwear	WT/DS56	USA	Customs, schedules
Argentina - Measures Affecting the Export of Bovine Hides	WT/DS155	EC	Quotas, National treatment,
Argentina – Safeguard Measures on Imports of Footwear	WT/DS121	EC	Safeguards
Australia – Measures affecting the importation of Salmon	WT/DS18	Canada	Sanitary and phytosanitary
Australia – Subsidies Provided to Producers of Leather	WT/DS126	USA	Subsidies and countervailing measures
Brazil – Export Financing Programme for Aircraft	WT/DS46	Canada	Subsidies and countervailing measures
Brazil – Measures Affecting Desiccated Coconut		Philippines	Subsidies and countervailing measures
Canada - Certain Measures Affecting the Automotive Industry	WT/DS139 and WT/DS142	EC, Japan	MFN, Subsidies and countervailing measures, services, National treatment, Article XXIV of GATT
Canada - Patent Protection of Pharmaceutical Products	WT/DS114	EC	Intellectual property,
Canada - Term of Patent Protection, Complaint By...	WT/DS170	USA	Intellectual property,
Canada – Certain Measures Concerning Periodicals		USA	Quota, National treatment,
Canada – Measures affecting the export of civilian aircraft	WT/DS70	Brazil	Subsidies and countervailing measures
Canada – Measures affecting the importation of milk	WT/DS103	USA, New Zealand	Schedules, agriculture
Chile – Taxes On Alcoholic Beverages	WT/DS87 and 110	EC	National treatment,
European Communities – Customs Classification	WT/DS62 WT/DS67	USA	Customs, Schedules, Legitimate expectations

Short Title:	Panel Document	Complainant	Main issues*
	WT/DS68		
EC - Trade Description Scallops	WT/DS7/R	Canada	Schedules
European Communities – Measures Affecting Meat (Hormones)	WT/DS26 WT/DS48	USA	Sanitary and phytosanitary
European Communities – Regime for (bananas)	WT/DS27	USA, Ecuador, Guatemala, Honduras	MFN, Services, Quota, National treatment,, Schedules
Guatemala - Definitive Anti-Dumping Measures On Cement	WT/DS156	Mexico	Anti-dumping
Guatemala – Anti-Dumping Investigation Regarding Imports of Portland Cement	WT/DS60	Mexico	Anti-dumping
India – Patent protection for pharmaceutical products	WT/DS50	USA	Intellectual property, Legitimate expectations, Non-violation
India – Patent Protection for Pharmaceutical products	WT/DS79	EC	Intellectual property,
India – Quantitative Restrictions On Imports	WT/DS90	USA	Quota, BOP
Indonesia – Certain Measures Affecting the Automobile Industry	WT/DS54 WT/DS55 WT/DS59 WT/DS64	EC, Japan	MFN, Subsidies and countervailing measures, National treatment, TRIMS
Japan - Alcoholic beverages		USA	National treatment,
Japan – Measures Affecting Agricultural Products	WT/DS76	USA	Sanitary and phytosanitary
Japan – Measures Affecting Consumer Photographic Film	WT/DS44	USA	National treatment, Non-violation
Korea - Definitive Safeguard Measure On Imports Of Certain Dairy Products	WT/DS98	EC	Safeguard
Korea - Measures Affecting Government Procurement	WT/DS163	USA	Non-violation, Government Procurement
Korea - Measures Affecting Imports of Fresh, Chilled and Frozen Beef	WT/DS/161 and 169	USA, Australia	Quota, National treatment, Schedules, Agriculture, Import Licensing
Korea – Definitive safeguard measure on imports of certain dairy products	WT/DS98	EC	Safeguards
Korea – Taxes On Alcoholic Beverages	WT/DS75 WT/DS84	USA, EC	National treatment,
Mexico - Anti-Dumping Investigation of High-Fructose Corn Syrup	WT/DS132	USA	Anti-dumping
Turkey – Restrictions on imports of textile and clothing	WT/DS34	India	Textiles and clothing, Quotas, Article XXIV of GATT
United States - Anti-Dumping Act of 1916	WT/DS136 WT/DS162	EC, Japan	Anti-dumping, National treatment,
United States - Anti-Dumping Measures On Stainless Steel Plate	WT/DS179	Korea	Anti-dumping
United States - Definitive Safeguard Measures Wheat Gluten	WT/DS166	EC	Agriculture, safeguard
United States - Import Measures On Certain Products	WT/DS165	EC	MFN, schedules, DSU

Short Title:	Panel Document	Complainant	Main issues*
United States - Imposition of Countervailing Duties	WT/DS138	EC	Subsidies and countervailing measures
United States - measures affecting wool shirts and blouses		India	Textiles and clothing,
United States - Reformulated Gasoline		Venezuela	National treatment,
United States - Section 110(5) of US Copyright Act	WT/DS160	EC	Intellectual property,
United States - Tax treatment for "Foreign Sales...	WT/DS108	EC	Subsidies and countervailing measures, National treatment,
United States – Anti-dumping duty on dynamic random	WT/DS99	Korea	Anti-dumping
United States – Import Prohibition of Certain Shrimp and Shrimp Products	WT/DS58	India, Malaysia, Pakistan, Thailand	Quotas, 'environment', Article XX
United States – Sections 301–310 of the Trade Act Of	WT/DS152	EC	DSU
US – Restrictions On Imports of Cotton and Man-Made		Costa Rica	Textiles and clothing,

#Not all cases related to the same matter are listed

*Please note that 'main issues' is an informal description of the main claims. It is not a complete description.

In preparing a complaint or a response, you should read through the reports of the Panel and the Appellate Body on the Agreement(s) that are listed in the complaint (the table above and the 'state of play' document will help you to identify the cases). If, however, your interest is in learning more about the WTO and the dispute settlement system then you might consider reading at least the Panel report summaries and scanning the Appellate Body reports on some of the following selection of WTO cases.

(i) DSU Procedures

US - Reformulated Gasoline and **Japan - Alcohol** (Appellate Body report): rules of interpretation and procedure for the Panels and Appellate Body including the use of the Vienna Convention and the additional rules of interpretation

EC – Bananas and **Korea – Dairy Products** (Appellate Body reports): rules of procedure for complaints particularly requirements affecting the request for a panel; rules concerning representation before the Panel or Appellate Body; a Member does not need to demonstrate a 'legal interest' in order to bring a complaint

US – Import measures on certain products (Appellate Body report): right to interpret the DSU rests with Members; retaliation for non-implementation may not precede the determination of the inconsistency of implementing measures.

EC – Hormones (Appellate Body report): mere errors of judgment do not void a Panel's 'objective assessment of the facts.' A panel does not need to examine the facts of a case 'de novo' (i.e. 'starting from the beginning') in order to meet the required standard of review.

India – Patents on pharmaceutical products (Appellate Body report): a panel may consider only those claims it has the authority to consider under its Terms of Reference

US – FSC (Appellate Body report): litigious behavior may not meet the test of 'good faith' required by the DSU and may lead to the failure of a claim.

India – Quantitative restrictions on imports of agricultural equipment (Appellate Body report): Use of expert evidence

United States – Woven shirts (Appellate Body report): burden of proof falls in general on the party making the positive assertion

(ii) Safeguards

Korea – Dairy Safeguards: a Member may be required to apply both GATT [1947] and other WTO disciplines where these are relevant and not specifically inconsistent

(iii) SPS

EC – Hormones: The risk that is to be evaluated in a risk assessment under Article 5.1 is not only risk ascertainable in a science laboratory operating under strict controlled conditions, but also risk in human societies as they actually exist. The evidentiary burden of proof in an SPS case does not lie only with the country maintaining the measure: it is first up to the complainants to establish a prima facie case of the inconsistency of an SPS measure with the SPS Agreement.

Australia – Salmon: Requirement for risk assessment and the nature of arbitrary and unjustifiable distinctions between imported products that amount to disguised restriction on trade

(iv) TRIMS

Indonesia – Measures affecting the automobile industry: local content laws violate the TRIMS agreement.

(v) Non-violation complaints

India – Pharmaceutical Patents (Complaint by the USA): clarifies the 'legitimate expectations' that may be impaired by non-violating measures

(vi) Intellectual Property

India – Pharmaceutical Patents (USA and EC complaints)

Canada – Term of Patent Protection

(vii) Textiles and Clothing

US – Cotton and man-made fiber underwear (complaint by Costa Rica): requirement of the ATC agreement that safeguards be imposed only after serious damage is demonstrated to be due to imports.

(viii) 'Environment'

US – Import prohibition on certain shrimp: The general exceptions in Article XX do apply to the conservation of the natural environment and may permit a wide range of measures inconsistent with other obligations of the Agreements as long as these measures conform to the provisions of the preambular requirements of Article XX.

(ix) National treatment

Chile – Taxes on alcoholic beverages (Appellate Body report): National treatment requires equality of competitive conditions for all directly competitive or substitutable imported products in relation to domestic products, and not simply for some of these imported products (as defined by, e.g. fiscal categories).

EC – Bananas: National treatment under GATS article II.

(x) Export subsidies

Canada – Measures affecting the export of civilian aircraft: The "benefit" that characterizes an export subsidy is not necessarily to be determined by the "cost to government" of a "financial contribution", but may also be determined to be the benefit to the recipient of that contribution. A "benefit" is conferred when "the recipient has received a 'financial contribution' on terms more favourable than those available to the recipient in a competitive market."

United States - Imposition of Countervailing Duties on lead and bismuth carbon steel products: an investigation authority conducting a review of countervailing duties must determine, in the light of all the facts before it, whether there is a continuing need for the application of these duties.

United States - Tax treatment for "Foreign Sales Corporations": application of a tax subsidy measure, in a manner which results in, or threatens to lead to, circumvention of its export subsidy commitments with respect to agricultural products under Articles 10.1 and 8 of the Agreement on Agriculture.

Australia – Subsidies provided to producers and exporters of automotive leather: in some cases, only full repayment of the subsidy would enable the recommendation to withdraw to operate as an effective remedy for having granted a prohibited subsidy in violation of the SCM Agreement.

(xi) Anti-dumping

Guatemala - Definitive anti-dumping measures on Portland cement: standards for investigation of an anti-dumping claim including the conduct of the investigation and the respondent's rights of due process.

United States - Anti-dumping Act of 1916: GATT Article VI and the WTO AD Agreement apply to any action taken in response to situations involving "dumping", as that concept is defined in WTO law. Inconsistent measures may not be justified by reference to (pre-existing) legislation inconsistent with those agreements.

Mexico - Anti-dumping investigation of high-fructose corn syrup :Each of the injury factors set forth in the Anti-Dumping Agreement must be specifically addressed in an investigation. Specifically, a positive finding on the threat of injury must be assessed by reference to the entire domestic industry, and not only that portion of it that directly competes with imports.

Remember, too, that GATT cases – both those where the Panel report was adopted and some of those where it was not adopted – may also be relevant. You will find references to some key reports in the WTO Panel reports. You can also download the adopted GATT Panel reports from the WTO website (disputes section).

WORLD TRADE ORGANIZATION

WT/DS/OV/2
7 November 2001

(01-5552)

UPDATE OF WTO DISPUTE SETTLEMENT CASES

NOTE: This summary has been prepared by the Secretariat under its own responsibility. The summary is for general information only and is not intended to affect the rights and obligations of Members.

NEW DEVELOPMENTS SINCE LAST UPDATE
(UP UNTIL 5 NOVEMBER 2001)

WT/DS No.	Short Title	Action	Section
WT/DS240	Romania – Wheat	Request for Consultations	Section I
WT/DS239	US – Silicon Metal	Request for Consultations - Revision	Section I
WT/DS236	US - Softwood Lumber	Request for the establishment of a Panel	Section I
WT/DS234	US – Offset Act	Request to the Director-General to compose the Panel Constitution of the Panel	Section II
WT/DS217	US – Offset Act	Request to the Director-General to compose the Panel Constitution of the Panel	Section II
WT/DS213	US – Carbon Steel	Request to the Director-General to compose the Panel	Section II
WT/DS212	US – Countervailing Measures on Certain EC Products	Request to the Director-General to compose the Panel Constitution of the Panel	Section II
WT/DS210	Belgium – Rice	Further suspension of panel proceedings	Section II
WT/DS206	US – Steel Plate	Request to the Director-General to compose the Panel Constitution of the Panel	Section II
WT/DS202	US – Line Pipe	Circulation of Panel Report	Section II
WT/DS192	US – Cotton Yarn	Adoption of Appellate Body Report and	Section V

WT/DS No.	Short Title	Action	Section
		Panel Report	
WT/DS189	Argentina – Ceramic Tiles	Adoption of Panel Report	Section V
WT/DS132/AB/RW	Mexico – Corn Syrup	Circulation of Compliance Appellate Body Report	Section III.D
WT/DS58/AB/RW	US – Shrimp	Circulation of Compliance Appellate Body Report	Section III.D

STATISTICAL OVERVIEW

	Complaints notified to the WTO[1]	**Active Cases**[2]	**Appellate Body and Panel Reports Adopted**[3]	**Mutually Agreed Solutions**	**Other Settled or Inactive**[4] **Cases**
Reporting period/ date	since 1.1.1995	on reporting date	since 1.1.1995	since 1.1.1995	since 1.1.1995
Number	240	18	56	35	22

EXPLANATORY NOTES:

[1] This category encompasses all requests for consultations notified to the WTO, including those requests which have led to panel and appellate review proceedings.

[2] This category encompasses pending or suspended panel proceedings or appellate review proceedings, with the exception of proceedings pursuant to Article 21.5 of the DSU.

[3] This category does not include reports resulting from proceedings pursuant to Article 21.5 of the DSU.

[4] This category includes cases where the contested measure has been terminated, a panel request was withdrawn, etc.

	Active Panels on Implementation of WTO rulings[1]	**Adopted Appellate Body and Panel Reports on Implementation of WTO rulings**[2]	**Active Arbitrations on Level of Suspension of Concessions**[3]	**WTO Authorizations of Suspension of Concessions**[4]
Reporting period/ date	on reporting date	since 1.1.1995	on reporting date	since 1.1.1995
Number	2	6	2	5

EXPLANATORY NOTES:

[1] This category encompasses pending or suspended panel or appellate review proceedings pursuant to Article 21.5 of the DSU.

[2] This category includes reports resulting from proceedings under Article 21.5 of the DSU.

[3] This category covers arbitration proceedings pursuant to Article 22.6 and 22.7 of the DSU and Article 4.11 of the Subsidies Agreement.

[4] This category covers authorizations granted by the WTO pursuant to Article 22.7 of the DSU and Article 4.10 of the Subsidies Agreement.

Pending Consultations (MOST RECENT LISTED FIRST)

WT/DS240 - Romania – Import Prohibition on Wheat and Wheat Flour

Complaint by Hungary. On 18 October 2001, Hungary requested consultations with Romania concerning Romania's Joint Decree of the Ministry of Agriculture, Food Industry and Forestry No. 119069 (16.07.2001), Ministry of Family and Health No. 495 (18.07.2001) and the National Consumer Protection Authority No. 1/3687 (19.07.2001) prohibiting the import of wheat and wheat flour which does not meet certain quality standards.

In particular, Hungary claims that:

- the import prohibition has been imposed in a manner inconsistent with Romania's obligations under Article XI:1 of the GATT 1994, and
- the introduction of the abovementioned quality requirements is in breach of Article III:4 of the GATT 1994 because domestically produced products are not subject to the same quality requirements.

WT/DS239 - United States – Anti-dumping Duties on Silicon Metal from Brazil

Complaint by Brazil. On 17 September 2001, Brazil requested consultations with the US. On 1 November 2001, Brazil requested that we cancel their original request for consultations and replace it with a new request. In this new request, Brazil requested consultations with the US in respect of the following:

- Antidumping duties imposed by the US on imports of silicon metal from Brazil: *Antidumping Duty Order: Silicon Metal From Brazil,* 56 Fed. Reg. 36135 (July 31, 1991) (US case number A-351-806).
- Section 351.106(c) of the US Department of Commerce's ("Department") regulations[1], which establishes that a *de minimis* margin of 0.5 percent applies for administrative reviews.
- US "zeroing" methodology when establishing margins of dumping, as reflected in Chapter 6 of the Antidumping Manual of the Department[2] and in Section 771(35) of the Tariff Act of 1930.

On 28 September 2001, Thailand requested to join the consultations on the grounds that it had a substantial trade interest in the matter.

[1] 19 C.F.R. § 351.106(c).

[2] Available at http://ia.ita.doc.gov/admanual/.

WT/DS238 - Argentina – Definitive Safeguard Measure on Imports of Preserved Peaches

Complaint by Chile. On 14 September 2001, Chile requested consultations with Argentina in respect of a definitive safeguard measure which Argentina applies on imports of peaches preserved in water containing added sweetening matter, including syrup, preserved in any other form or in water. According to Chile:

- Argentina's definitive safeguard measure are inconsistent include Articles 2, 4, 5 and 12 of the Agreement on Safeguards, and Article XIX:1 of GATT 1994.
- The definitive safeguard measure does not comply with the relevant WTO rules and seriously affects the competitiveness of Chilean peaches in the Argentinean market. In particular, Chile considered that Argentina failed to respect the requirements of Article XIX:1 of GATT 1994 as regards the existence of "unforeseen developments" and of an increase of imports.
- Chile was of the opinion that the conclusions derived from the investigation carried out by the Government of Argentina do not support a finding of injury to the domestic industry or threat of injury.
- Chile also claimed that the investigating authority did not take into account the existence of other factors when attributing the injury allegedly suffered by the domestic industry exclusively to an alleged increase of imports.
- In addition, Chile considered that the level of the definitive safeguard measure is so high that it is equivalent to an import prohibition.

WT/DS237 – Turkey – Certain Import Procedures for Fresh Fruits

Complaint by Ecuador. On 31 August 2001, Ecuador requested consultations with Turkey concerning certain import procedures for fresh fruits and, in particular, bananas. The procedure requires, according to Ecuador, the issuance by the Turkish Ministry of Agriculture of a document, known as "Kontrol Belgesi". Ecuador explained that this procedure is established under the "Communiqué for Standardization in Foreign Trade" published by the Under-Secretariat of Foreign Trade in the Official Journal 24271 of 25 December 2000 (Annex 1 thereof). Ecuador alleged that this procedure, as applied by the Turkish authorities, is a barrier to trade which is inconsistent with the obligations of Turkey under GATT 1994, the Agreement on the Application of Sanitary and Phytosanitary Measures, the Agreement on Import Licensing Procedures, the Agreement on Agriculture and the GATS. In particular, Ecuador considered that the provisions of the WTO agreements with which Turkey's "Kontrol Belgesi" procedure appears to be inconsistent include the following:

- Articles II, III, VIII, X and XI of the GATT 1994;
- Articles 2.3 and 8 and Annexes B and C of the Agreement on the Application of Sanitary and Phytosanitary Measures
- Paragraphs 2, 3, 5 and 6 of Article 1 of the Agreement on Import Licensing Procedures;
- Article 4 of the Agreement on Agriculture; and
- Articles VI and XVII of the General Agreement on Trade in Services (GATS).

The EC requested to be joined in the consultations.

WT/DS236 - United States – Preliminary Determinations with respect to Certain Softwood Lumber from Canada

Complaint by Canada. On 21 August 2001, Canada requested consultations with the US concerning the preliminary countervailing duty determination and the preliminary critical circumstances determination made by the US Department of Commerce on 9 August 2001, with respect to certain softwood lumber from Canada. This request also concerned US measures on company-specific expedited reviews and administrative reviews. In particular:

- As far as the preliminary countervailing duty determination is concerned, Canada considered this determination to be inconsistent with US obligations under Articles 1, 2, 10, 14, 17.1, 17.5, 19.4 and 32.1 of the SCM Agreement and Article VI(3) of GATT 1994.
- With respect to the preliminary critical circumstances determination, Canada considered this determination to be inconsistent with Articles 17.1, 17.3, 17.4, 19.4 and 20.6 of the SCM Agreement.
- As regards US measures on company-specific expedited reviews and administrative reviews, Canada considered these measures, *inter alia*, fail to provide for company-specific expedited reviews or administrative reviews in countervailing duty cases in which the investigation was conducted on an aggregate or country-wide basis, and that mandate that a single country-wide duty rate calculated in an administrative review supersedes all individual rates previously determined in the countervailing duty proceeding. Canada alleged these measures are inconsistent with US obligations under Article VI:3 of the GATT 1994 and Articles 10, 19.3, 19.4, 21.1, 21.2 and 32.1 of the SCM Agreement. Canada also considered that the US had failed to ensure that its laws and regulations are in conformity with its WTO obligations as required by Article 32.5 of the SCM Agreement and Article XVI:4 of the WTO Agreement.

On the grounds that the affirmative preliminary countervailing duty and critical circumstances determinations had an immediate and significant trade impact, Canada requested urgent consultations pursuant to Article 4.8 of the DSU. Although accepting Canada's request to enter into consultations, the US did not accept this to be a case of urgency for the purposes of Article 4.8 of the DSU since the measures in question involve the posting of bond for or deposit of preliminary duties which could be refunded in whole or in part.

On 25 October 2001, Canada requested the establishment of a panel. At its meeting on 5 November 2001, the DSB deferred the establishment of a panel.

WT/DS235 - Slovakia – Safeguard Measure on Imports of Sugar

Complaint by Poland. On 11 July 2001, Poland requested consultations with Slovakia concerning the quantitative restrictions imposed by Slovakia on imports of sugar (tariff heading 1701). The imposition of the measure in question was notified to the Committee on Safeguards and circulated in document G/SG/N/10/SVK/1. Poland considered that this safeguard measure has been imposed in a manner inconsistent with Slovakia's obligations under the Safeguards Agreement. According to Poland, it appeared that Slovak authorities acted inconsistently with various provisions of the Safeguards Agreement, namely, Article 3.1, Article 4.2(b), Article 5.2(a), Article 7.4, Article 12.1(b), Article 12.1(c) and Article 12.3

Poland considered that the investigation and the safeguard measure imposed have nullified or impaired the benefits accruing to Poland directly or indirectly under the Safeguards Agreement.

WT/DS233 – Argentina – Measures Affecting the Import of Pharmaceutical Products

Complaint by India. On 25 May 2001, India requested consultations with Argentina concerning Argentina's Law No. 24.766 and Decree No. 150/92. According to India, these measures constitute unnecessary obstacles to international trade and prevent Indian medicines, drugs and other pharmaceuticals from entering into the Argentinean market, thus discriminating against Indian drugs *vis-à-vis* like products of other countries and of Argentina.

According to India, the above measures require that before entering the Argentinean market, all drugs and other pharmaceuticals must be registered with the National Administration of Drugs, Foodstuffs and Medical Technology, Ministry of Health of Argentina. The above Decree contains two annexes listing countries.

- In respect of Annex I countries, pharmaceutical products are required to be manufactured in facilities approved by the relevant governmental bodies of these countries or by the Argentinean Ministry of Health and meet the National Health Authority's manufacturing and quality control requirements.
- In respect of Annex II countries, manufacturing facilities are required to be inspected and approved by the Ministry of Health of Argentina before export of these pharmaceutical products into Argentina.

According to India, it does not figure in either of those two annexes. This alleged discrimination would have led to total lack of market access for Indian drugs and pharmaceutical products in Argentina. India considered that infringement of the following provisions have taken place:

- Articles 2 (especially 2.2), 5 (especially 5.1 and 5.2) and 12 of the TBT Agreement
- Articles I and III of the GATT 1994; and
- Article XVI:4 of the Agreement establishing the WTO.

WT/DS232 – Mexico – Measures Affecting the Import of Matches

Complaint by Chile. On 17 May 2001, Chile requested consultations with Mexico in respect of a series of Mexican laws and regulations which are alleged to constitute unnecessary barriers to the import of Chilean matches. According to Chile, pursuant to these laws and regulations, matches have been classified in Mexico as an explosive and hazardous product, due to a confusion between the chemical element "*fósforo*" (phosphor) and "*fosfóros (o cerillos) de seguridad*" (matches). As a result, Chilean matches have been subject to control by the National Defense Ministry and, consequently, to a series of requirements regarding packaging, entry, liquidation, transportation and storage applicable to explosives and other hazardous substances, with the aim of providing protection to the Mexican industry. According to Chile, these measures are inconsistent with, *inter alia*, the following provisions:

- Articles 1, 2 and 5 of the TBT Agreement;
- Articles 1, 3 and 5 of the Agreement on Import Licensing Procedures; and,
- Article III:4 of the GATT 1994.

WT/DS230 – Chile – Safeguard Measures and Modification of Schedules regarding Sugar

Complaint by Colombia. On 17 April 2001, Colombia requested consultations with Chile concerning:

(1) definitive safeguard measures imposed by Chile on 20 January 2000 in respect of a number of agricultural products, including sugar, and extended in November 2000 for the duration of one year; and

(2) Chile's decision of 14 March 2001 not to recognize Colombia's substantial interest to be consulted with respect to the modification of concessions regarding, *inter alia*, refined sugar (HS sub-heading 17.01.99.00).

In November of 2000, Chile had notified its intention to modify these concessions pursuant to Article XXVIII of GATT 1994. According to Colombia, the above measures are inconsistent with Chile's obligations under the following provisions:

- Articles 2, 3, 4, 5, 7, 9 and 12 of the Safeguards Agreement;
- Articles II, XIX and XXVIII of GATT 1994; and
- the Understanding on the Interpretation of Article XXVIII of the GATT 1994 and the Guidelines of 10 November 1980 regarding Procedures for Negotiations under Article XXVIII.

According to Colombia, the Chilean measures, taken together or individually, appear to nullify and impair benefits accruing to Colombia under the cited agreements. As indicated by Colombia in its request, this new request replaces in its totality the request for consultations by Colombia circulated as WT/DS228/1.

WT/DS229 – Brazil – Anti-Dumping Duties on Jute Bags from India

Complaint by India. On 9 April 2001, India requested consultations with Brazil concerning:

- the determination by the Brazilian government to continue to impose anti-dumping duties on jute bags and bags made of jute yarn from India, based on an allegedly forged document regarding dumping margin attributed to a non-existing Indian company;
- its refusal to reconsider the decision to continue anti-dumping duties on Indian jute products despite the fact that the non-existence of that company was brought to the notice of the authorities;
- non-consideration of the fresh evidence regarding cost of production, domestic sales prices, export prices, etc., of Indian jute manufacturers, and refusal to initiate review of the decision to impose anti-dumping duties;

- the general practice of Brazil regarding review and imposition of anti-dumping duties; and
- Brazilian anti-dumping laws and regulations, including, but not limited to, Article 58 of Decree No. 1.602 of 1995.

According to India, the provisions with which these determinations and legal provisions appear to be inconsistent include, but are not limited to, the following:

- Articles VI and X of GATT 1994;
- Articles 1, 2, 3, 5, 6 (especially 6.6, 6.7, 6.8 and Annex II, 6.9, 6.10), 11, 12, 17.6(i), 18.3, 18.4; and
- Article XVI of the WTO Agreement.

In addition, the determination to continue the anti-dumping duties allegedly nullifies and impairs benefits accruing to India under, or otherwise impedes the attainment of objectives of, the cited agreements.

WT/DS226 – Chile – Provisional Safeguard Measure on Mixtures of Edible Oils

Complaint by Argentina. On 19 February 2001, Argentina requested consultations with Chile concerning a provisional safeguard measure on imports of mixed edible oils (tariff heading 1517.9000 of the Chilean Harmonised System), adopted by the Chilean authorities on 11 January 2001, and consisting of an *ad valorem* duty of 48% on imports of those products. On 10 January 2001 the notification by Chile of the initiation of the investigation was circulated as document G/SG/N/6/CHL/5, and on 19 January 2001 the notification of the recommendation by the Chilean investigating authority to impose a provisional safeguard measure was circulated as document G/SG/N/7/5/Suppl.1. According to Argentina:

- Chile did not comply with its obligation pursuant to Article 12.4 of the Safeguards Agreement (SA) to hold consultations immediately following adoption of the measure.
- Argentina also opined that there is no clear definition of like or directly competitive product, the affected domestic industry, or the period of investigation during which the performance of imports was assessed.
- In addition, as regards the assessment of injury or threat of injury, in Argentina's view, it is not clear from a preliminary analysis with respect to which industry such assessment was made, since it appears that the data used do sometimes not relate to the same industry.
- Furthermore, Argentina argued that there does not seem to be clear evidence of a causal link between increased imports and the threat of serious injury to the domestic industry.
- Argentina also considered that the investigating authority did not take into account "factors other than increased imports causing injury to the domestic industry at the same time," as provided for by Article 4.2(b) SA.
- Finally, the notification does not indicate the reasons why any delay could cause irreparable damage to the domestic industry, and, therefore, does not establish the existence of "critical circumstances".
- Argentina believed that the said provisional safeguard measure is inconsistent with Chile's obligations under Article XIX of GATT 1994 and the SA, including, but not limited to, Articles 2, 4, 6 and 12.

WT/DS225 – United States – Anti-dumping duties on Seamless Pipe from Italy

Complaint by the European Communities. On 5 February 2001, the EC requested consultations with the US concerning anti-dumping duties imposed by the US on imports of seamless line and pressure pipe ("seamless pipe") from Italy. The request relates in particular to the final results of a sunset review of the measure, carried out by the US Department of Commerce (DOC) and published in the federal register on 7 November 2000. It also covers certain aspects of the procedures followed by the DOC for initiating sunset reviews which are contained in Section 751 c) of the Tariff Act of 1930 and in the implementing regulations issued by the DOC.

With regard to the final results of the sunset review, the EC considered that:

- the DOC's finding that the revocation of the anti-dumping order was likely to lead to the continuation of dumping is inconsistent with the obligations of the United States under the Anti-Dumping Agreement and, in particular is in breach of Articles 5.8, 11.1 and 11.3 thereof.
- The EC noted that in this instance the DOC has found in the sunset review that dumping will continue at a rate of 1,27%, which is below the 2% *de minimis* threshold for new investigations in Article 5.8 which, in the view of the EC, applies also in sunset reviews of anti-dumping measures.
- In addition, according to the EC, the DOC should have made a positive demonstration to the effect that the expiry of the measures would be likely to lead to, *inter alia*, the continuation or recurrence of dumping, whereas it has only found that dumping of less than *de minimis* level will continue. This was, in the view of the EC, not sufficient to justify the continuation of the measure.

With regard to the initiation of the sunset review, the EC considered that:

- the procedure used was inconsistent with Articles 11.1, 11.3, and 18.4 of the Anti-Dumping Agreement and with Article XVI.4 of the Agreement establishing the WTO.
- The EC considered that by self-initiating sunset reviews without positive evidence, and by not requiring such evidence from its domestic industry for initiation, the DOC is unreasonably shifting the burden of proof in sunset reviews to exporters.
- In the view of the EC, by placing all respondents (domestic industry and exporters) on the same footing in the investigation, the DOC had removed the appropriate threshold for initiation of reviews foreseen in Article 11.3 of the Anti-Dumping Agreement.

WT/DS224 – United States – US Patents Code

Complaint by Brazil. On 31 January 2001, Brazil requested consultations with the US concerning the provisions of the United States Patents Code (US Patents Code), in particular those of Chapter 18 [38] – "*Patent Rights in Inventions Made with Federal Assistance"*. Brazil detected several discriminatory elements in the US Patents Code, including, but not limited to, the following examples:

- the stipulation that no small business firm or non-profit organization which receives title to any subject invention shall grant to any person the exclusive right to use or sell any subject invention in the US unless

such person agrees that any products embodying the subject invention or produced through the use of the invention will be manufactured substantially in the US.

- Brazil also referred to a requirement that each funding agreement with a small business firm or non-profit organization shall contain appropriate provisions to effectuate the above-mentioned requirement; and
- the statutory restrictions limiting the right to use or sell any federally owned invention in the US only to a licensee that agrees that any products embodying the invention or produced through the use of the invention will be manufactured substantially in the US.

Brazil requested consultations with the US on these and other provisions of the US Patents Code, to "understand how the US justifies the consistency of such requirements with its obligations under the TRIPs Agreement, especially Articles 27 and 28, the TRIMs Agreement, Article 2 in particular, and Articles III and XI of GATT 1994".

WT/DS223 – European Communities – Tariff-Rate Quota on Corn Gluten Feed from the United States

Complaint by the United States. On 25 January 2001, the US requested consultations with the EC concerning the application by the EC of a tariff-rate quota (TRQ) on corn gluten feed imported from the US. On 20 August 1998, the EC imposed a TRQ of 5 Euros per metric ton (MT) on the first 2,730,000 MT of corn gluten feed imported into the EC from the US. The TRQ was made applicable beginning on the earlier of 1 June 2001 or 5 days after the date of the DSB's adoption of a decision that the US safeguard measure on wheat gluten was incompatible with the WTO Agreements. The EC cited Articles 8.2 and 8.3 of the Safeguards Agreement as authority for this measure.

According to the US:

- EC representatives stated that the DSB adoption of its recommendations and rulings in *US – Definitive Safeguard Measures on Imports of Wheat Gluten from the EC* triggers the application of the TRQ.
- the EC provided written notification of this measure to the Committee on Safeguards and the Council for Trade in Goods, but never placed the measure on the agenda of the Council for Trade in Goods.
- the EC at no point consulted with the US on how measures imposed by the EC might meet the requirement to maintain substantially equivalent levels of concessions and other obligations to that existing under the GATT 1994.
- In the view of the US, it therefore appears that the corn gluten feed TRQ does not satisfy the requirements of Articles 8.1, 8.2, and 8.3 of the Safeguards Agreement for a Member to suspend concessions or other obligations.
- In the view of the US, the imposition of the TRQ on corn gluten feed imported from the US appears to be inconsistent with Articles I, II and XIX of the GATT 1994, and Articles 8.1, 8.2, and 8.3 of the Safeguards Agreement.
- According to the US, the EC's measures also appear to nullify or impair the benefits accruing to the US directly or indirectly under the cited agreements.

WT/DS220 – Chile – Price Band System and Safeguard Measures relating to Certain Agricultural Products

Complaint by Guatemala. On 5 January 2001, Guatemala requested consultations with Chile concerning:

(1) the Chilean legislation regarding safeguards and price band systems, including Law 18.525, as subsequently amended by Law 18.591 and Law 19.546, as well as implementing regulations and complementary and/or amending provisions;
(2) the initiation of an investigation regarding products subject to the price band system contained in notification (G/SG/N/6/CHL/2), the conduct of the investigation, the preliminary determination contained in notification (G/SG/N/7/CHL/2/Suppl.1), and the definitive determination contained in notifications (G/SG/N/8/CHL/1), (G/SG/N/10/CHL/1), (G/SG/N/8/CHL/1/Suppl.1) and (G/SG/N/10/CHL/1/Suppl.1); these notifications indicate that wheat, wheat flour, sugar and edible vegetal oils are subject to said safeguard measures;
(3) the request for an extension of these measures contained in notifications (G/SG/N/10/CHL/1/Suppl.2) and (G/SG/N/10/CHL/1/Suppl.2/Corr.1).

Guatemala considers that the measures referred to:

- under (1) are inconsistent with, *inter alia*, Article II of GATT 1994 and Article 4 of the Safeguards Agreement,
- under (2) are inconsistent with, *inter alia*, Articles 2, 3, 4, 5, 6 and 12 of the Safeguards Agreement, and Article XIX:1 of GATT 1994, and
- under (3) appears to be inconsistent with, *inter alia*, Chile's obligations under GATT 1994 and Articles 2, 3, 4, 5, 6, 8 and 12 of the Safeguards Agreement.

WT/DS218 – United States- Countervailing Duties on Certain Carbon Steel Products from Brazil

Complaint by Brazil. On 21 December 2000, Brazil requested consultations with the US concerning an aspect of US countervailing duty practice and the imposition of countervailing duties on certain carbon steel products originating in Brazil. Brazil is concerned with the practice of the United States of applying its countervailing duty laws so as to consistently find that privatized companies benefit from pre-privatization subsidy benefits, and the unwillingness of the United States to bring its practice into conformity with the SCM Agreement. In addition, Brazil is concerned with the results of a continued imposition of an order and a final countervailing duty decision by the United States based on a finding that the benefits from equity infusions provided to companies prior to their privatization are passed through to the companies following a change in ownership and control.

This is, in the view of Brazil, illustrated by two measures:

(1) the decision by the United States to continue a countervailing order on certain cut-to-length plate from Brazil, following a five-year review, based on a finding that subsidization from pre-privatization equity infusions would continue if the order were revoked; and

(2) the decision by the United States in its continued final countervailing duty determination related to exports of certain hot-rolled steel from Brazil, and the legal effects thereof.

Brazil considered that findings that three companies were benefitting from subsidies provided prior to their privatization are in breach of Articles 1.1(b), 10, 14, 19 and 21 of the SCM Agreement, in so far as they are based on supposed benefits from equity infusions granted to the companies prior to their privatization. In addition, Brazil considers that the decision not to terminate the investigation is in breach of Article 11.9 of the SCM Agreement. Brazil notes that the Commerce Department relied on the same analysis of subsidization following a privatization, which was found to be inconsistent with WTO obligations by the Appellate Body in the case on *United States – Imposition of Countervailing duties on Certain Hot-Rolled Lead and Bismuth Carbon Steel Products originating in the United Kingdom*.

WT/DS216 – Mexico – Provisional Anti-Dumping Measure on Electric Transformers

Complaint by Brazil. On 20 December 2000, Brazil requested consultations with Mexico concerning the 17 July 2000 provisional anti-dumping measure on electronic transformers having a power of more than 10.000 KVA, classified under tariff line 8504.23.01 of the General Import Law, from Brazil. Brazil considered that the above determination and the resulting provisional measures are inconsistent with Mexico's obligations under the AD Agreement and the GATT 1994, in particular:

- Articles 5.2, 5.3 and 5.8 of the AD Agreement (lack of sufficient evidence of dumping, injury and causation);
- Article 5.8 of the AD Agreement (failure by Mexico to terminate the investigation "promptly" when presented with evidence that it was factually impossible to find dumping or injury during the period of investigation);
- Article 6.8 and Annex II of the AD Agreement (use by Mexico of "best information available" in a manner inconsistent with the requirements established in those provisions);
- Article 7.1(i) of the AD Agreement (imposition by Mexico of provisional measures pursuant to an investigation which was not initiated in accordance with Article 5 of the AD Agreement);
- Article 7.1(ii) of the AD Agreement (imposition by Mexico of provisional measures without a valid preliminary determination of: (1) dumping, as defined in Article 2 of the AD Agreement; (2) injury, as defined under Articles 3.4 and 3.7 of the AD Agreement).

WT/DS215 – Philippines – Anti-Dumping Measures regarding Polypropylene Resins from Korea

Complaint by Korea. On 15 December 2000, Korea requested consultations with the Philippines concerning the Preliminary and Final Determinations of the Tariff Commission of the Philippines on Polypropylene Resins from Korea, dated 15 November 1999 and 11 September 2000 respectively. Korea considered that errors were made by the Philippines in those determinations which resulted in erroneous findings and defective conclusions with regard to, among others, like product, dumping, injury, and causality, as well as the imposition, calculation and collection of anti-dumping margins which are incompatible with the obligations of

the Philippines under the provisions of the Anti-Dumping Agreement, in particular, but not necessarily limited to, Articles 2, 3, 5, 6 (including Annex II), 7, 9, and 12, and Article VI of GATT 1994.

WT/DS209 – European Communities – Measures Affecting Soluble Coffee

Complaint by Brazil. On 12 October 2000, Brazil requested consultations with the EC concerning measures applied under the EC's Generalized System of Preferences scheme (GSP) that affect imports of soluble coffee originating in Brazil. The measures in question include:

(1) the "graduation" mechanism, which progressively and selectively reduces or eliminates preferences granted to specific products and/or beneficiary countries under the GSP scheme; in the case of Brazilian soluble coffee, preferential treatment has been progressively reduced and finally eliminated on 1 January 1999; and

(2) the "drugs regime", which confers a special preferential treatment for products originating in the Andean and Central American Common Market countries that are conducting a campaign to combat drugs; in the case of soluble coffee, this special preferential treatment currently amounts to duty free access of exports originating in those countries into the EC's market.

As Brazil currently understands, the EC legislation that establishes the special treatment for products – among which soluble coffee – is Council Regulation (EC) No. 1256/96, dated 20 June 1996, and current Council Regulation (EC) No. 2820/98, dated 21 December 1998. Brazil considered that the above measures, both separately and jointly, adversely affect the importation into the EC of soluble coffee originating in Brazil. Brazil alleged that these measures are inconsistent with the obligations of the EC under the 1979 Decision of the GATT Contracting Parties on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries (Enabling Clause), as incorporated in GATT 1994, and under Article I of GATT 1994. Brazil considered that these measures nullify or impair the benefits accruing to Brazil directly or indirectly under the cited provisions.

WT/DS208 – Turkey – Anti-Dumping Duty on Steel and Iron Pipe Fittings

Complaint by Brazil. On 9 October 2000, Brazil requested consultations with Turkey concerning the anti-dumping duty on steel and iron pipe fittings from Brazil, imposed by communication No. 2000/3 (published in the Turkish official gazette on 26 April 2000). Brazil considered that Turkey failed to ensure proper notifications in this case, that its establishment of the facts was not proper, and that its evaluation of these facts was not unbiased nor objective, particularly in relation to:

(1) the initiation of the investigation;
(2) the conduct of the investigation, including the evaluation, findings and determinations of dumping and injury;
(3) the evaluation, findings and determinations of the causal link between dumping and injury;
(4) the imposition of the anti-dumping duty.

Brazil considered that Turkey has acted inconsistently with the following provisions: Article VI of the GATT 1994; Article 2 of the Anti-Dumping Agreement (including paragraphs 2.1, 2.2, 2.4 and 2.6); Article 3 of the Anti-Dumping Agreement (including paragraphs 3.1, 3.2, 3.3, 3.4, 3.5, 3.6 and 3.7) Article 5 of the Anti-Dumping Agreement (including paragraphs 5.2, 5.3, 5.5, 5.7 and 5.8); Article 6 of the Anti-Dumping Agreement (including paragraphs 6.1, 6.2, 6.4, 6.6, 6.9 and 6.10); Article 12 of the Anti-Dumping Agreement (including paragraphs 12.1 and 12.2); Article 15 of the Anti-Dumping Agreement.

WT/DS205 – Egypt - Import Prohibition on Canned Tuna with Soybean Oil

Complaint by Thailand. On 22 September 2000, Egypt requested consultations with Thailand concerning the prohibition imposed by Egypt on importation of canned tuna with soybean oil from Thailand, pursuant to Letter dated 2 January 2000 of the Ministry of Economy and Foreign Trade of Egypt and Circular Note no. 5 of the Year 2000 issued on 13 January 2000 by the Customs Authority of Egypt. Thailand considered that, through the above-mentioned measures, the Arab Republic of Egypt failed to carry out its obligations under the following provisions of the Marrakesh Agreement Establishing the World Trade Organization: Articles I, XI, and XIII of the GATT, and Articles 2, 3 and 5, and Annex B, paragraph 2 and paragraph 5, of the SPS Agreement.

WT/DS204 – Mexico – Measures Affecting Telecommunications Services

Complaint by the United States. On 17 August 2000, the US requested consultations with Mexico in respect of Mexico's commitments and obligations under the GATS with respect to basic and value-added telecommunications services. According to the United States, since the entry into force of the GATS, Mexico has adopted or maintained anti-competitive and discriminatory regulatory measures, tolerated certain privately-established market access barriers, and failed to take needed regulatory action in Mexico's basic and value-added telecommunications sectors. In the view of the United States, Mexico has, for example,

- enacted and maintained laws, regulations, rules, and other measures that deny or limit market access, national treatment, and additional commitments for service suppliers seeking to provide basic and value-added telecommunications services into and within Mexico;
- failed to issue and enact regulations, permits, or other measures to ensure implementation of Mexico's market access, national treatment, and additional commitments for service suppliers seeking to provide basic and value-added telecommunications services into and within Mexico;
- failed to enforce regulations and other measures to ensure compliance with Mexico's market access, national treatment, and additional commitments for service suppliers seeking to provide basic and value-added telecommunications services into and within Mexico;
- failed to regulate, control and prevent its major supplier, Teléfonos de México ("Telmex"), from engaging in activity that denies or limits Mexico's market access, national treatment, and additional commitments for service suppliers seeking to provide basic and value-added telecommunications services into and within Mexico; and

- failed to administer measures of general application governing basic and value-added telecommunications services in a reasonable, objective, and impartial manner, ensure that decisions and procedures used by Mexico's telecommunications regulator are impartial with respect to all market participants, and ensure access to and use of public telecommunications transport networks and services on reasonable and non-discriminatory terms and conditions for the supply of basic and value-added telecommunications services.

The United States considered that the alleged action and inaction on the part of Mexico may be inconsistent with Mexico's GATS commitments and obligations, including Articles VI, XVI, and XVII; Mexico's additional commitments under Article XVIII as set forth in the Reference Paper inscribed in Mexico's Schedule of Specific Commitments, including Sections 1, 2, 3, and 5; and the GATS Annex on Telecommunications, including Sections 4 and 5. On 10 November 2000, the United States requested the establishment of a panel. On the same date, the United States notified to the DSB a request for consultations concerning several recent measures adopted by Mexico affecting trade in telecommunication services. At its meeting on 12 December 2000, the DSB deferred establishment of a panel.

WT/DS203 – Mexico – Measures Affecting Trade in Live Swine

Complaint by the United States. On 10 July 2000, the US requested consultations with Mexico in respect of Mexico's 20 October 1999 definitive anti-dumping measure on live swine for slaughter (merchandise classified under tariff classification 0103.92.99 of the General Import Law) exported from the United States, independently from the country or origin, and actions by Mexico in the conduct of the anti-dumping investigation resulting in that measure. The US considered that:

(i) Mexico made a determination of threat of material injury in contravention of Articles 3 and 12 of the Anti-Dumping Agreement, by failing to:

- evaluate all relevant economic factors and indices having a bearing on the state of the industry;
- perform an objective examination of the consequent impact of imports found to be dumped on domestic producers of the like product;
- determine that there was a clearly foreseen and imminent change in circumstances that would create a situation in which dumping of imports of live swine of a weight more than or equal to 50 kilograms and less than 110 kilograms would cause injury; and
- determine that material injury would occur unless protective action were taken.

(ii) The US further considered that Mexico failed to comply with the requirements of Article 6 of the Anti-Dumping Agreement, by failing to:

- provide respondent US exporters with timely opportunities to see and prepare presentations on the basis of all information used by the investigating authority that is relevant to the anti-dumping investigation; and
- inform respondent US exporters, before the final determination was made, of the essential facts under consideration which form the basis of Mexico's decision to apply definitive measures.

(iii) In addition, the US request concerned three sets of measures affecting trade in live swine (merchandise classified under tariff classification 0103 of the General Import Law) exported from the United States. The US considered that those three sets of Mexican measures are restricting or prohibiting the entry of US live swine:

- according to the US, Mexico has prohibited the importation of certain swine if they exceed 110 kilograms in weight.
- notwithstanding the alleged ban on importation, Mexico allegedly maintains sanitary restrictions, including inspection and quarantine measures, on the importation of swine weighing 110 kilograms or more, which are applied to neither smaller imported swine nor domestic Mexican swine. The US considered such application of more restrictive sanitary measures against larger imported swine to constitute arbitrary and unjustified discrimination and that these measures are maintained without sufficient scientific evidence and are not based on a risk assessment.

The US understands that Mexico may have adopted technical regulations, not constituting sanitary measures, that are applicable to imported swine but not to domestic swine.

In the view of the US the aforementioned three measures are inconsistent with Mexico's obligations under:

(i) Articles 2.2, 2.3, 3, 5.1, 5.6, 7 and 8 of the SPS Agreement;
(ii) Article 4.2 of the Agriculture Agreement;
(iii) Articles 2 and 5 of the TBT Agreement; and
(iv) Articles III:4 and XI:1 of the GATT 1994.

WT/DS201 – Nicaragua – Measures Affecting Imports from Honduras and Colombia (II)

Complaint by Honduras. On 26 June 2000, Honduras requested consultations with Nicaragua in respect of Law 325 of 1999 whereby a tax is established on goods and services coming from or originating in Honduras and Colombia as well as implementing Decree 129-99 and Ministerial Order 041-99. Honduras considered that Law 325 of 1999 and implementing Decree 129-99 are incompatible with Nicaragua's obligations under the GATT 1994, and in particular Articles I and II thereof, and that the aforementioned measures as well as Ministerial Order 041-99 are incompatible with Nicaragua's obligations under Articles II and XVI of the GATS.

WT/DS200 – United States – Section 306 of the Trade Act of 1974 and Amendments Thereto

Complaint by the European Communities. On 5 June 2000, the EC requested consultations with the US concerning Section 306 of the Trade Act of 1974, as last amended by Section 407 of the Trade and Development Act of 2000 (Public Law 106-200). The EC considered that Section 306, as amended, provides for a mandatory and unilateral revision of the list of products subject to suspension of GATT 1994 concessions or other Section 301(a) action 120 days after the application of the first suspension and then every 180 days thereafter, in order to affect imports from Members which have been determined by the United States not to

have implemented recommendations made pursuant to a WTO dispute settlement proceeding. In particular, the EC alleged that:

- Section 306, as amended, is in breach of the DSU since it mandates unilateral action without any prior multilateral control.
- the measure mandates suspension of or threats to suspend concessions or other obligations other than those on which authorisation was granted by the DSB. As a practical result, all US concessions bound in its Schedule of commitments under the GATT 1994 can, according to the EC, be unilaterally modified at will.
- the measure is in breach of the obligation of equivalence, in that it creates a structural imbalance between the cumulative level of the suspension of concessions and the level of nullification and impairment as determined under relevant DSU procedures.
- the measure creates a chilling effect on the market-place, thus affecting the security and predictability of the multilateral trading system.

Hence, the EC considered that Section 306 of the Trade Act of 1974, as amended by Section 407 of the Trade and Development Act of 2000, is inconsistent with, in particular, the following WTO provisions: Articles 3.2, 21.5, 22 and 23 of the DSU; Article XVI:4 of the WTO Agreement; and Articles I, II and XI of the GATT 1994.

WT/DS197 – Brazil – Measures on Minimum Import Prices

Complaint by the United States. On 30 May 2000, the US requested consultations with Brazil concerning the use of the latter's minimum import prices for customs valuation purposes. The measures at issue are Decree No. 2.498/98 and other related statutes and regulations, which establish a system to verify the declared values of imported goods. The US asserted that Brazil utilises this verification system – in conjunction with non-automatic import licensing procedures – to prohibit or restrict the import of products with declared values below what the US considers arbitrarily determined minimum prices. The US considered that Brazil's measures are inconsistent with its obligations under Articles 1 through 7, and 12 of the Customs Valuation Agreement; general notes 1, 2 and 4 of Annex 1 of the Customs Valuation Agreement; Articles II and XI of the GATT 1994; Articles 1 and 3 of the Agreement on Import Licensing Procedures; Articles 2 and 7 of the Agreement on Textiles and Clothing; and Article 4.2 of the Agreement on Agriculture.

WT/DS196 – Argentina – Certain Measures on the Protection of Patents and Test Data

Complaint by the United States. On 30 May 2000, the US requested consultations with Argentina concerning Argentina's legal regimes governing patents in Law 24,481 (as amended by Law 24,572), Law 24,603, and Decree 260/96; and data protection in Law 24,766 and Regulation 440/98, and in other related measures. The US considered that Argentina:

- fails to protect against unfair commercial use of undisclosed test or other data, submitted as a requirement for market approval of pharmaceutical or agricultural chemical products;
- improperly excludes certain subject matter, including micro-organisms, from patentability;
- fails to provide prompt and effective provisional measures, such as preliminary injunctions, for purposes of preventing infringements of patent rights from occurring;
- denies certain exclusive rights for patents, such as the protection of products produced by patented processes and the right of importation;
- fails to provide certain safeguards for the granting of compulsory licenses, including timing and justification safeguards for compulsory licenses granted on the basis of inadequate working;
- improperly limits the authority of its judiciary to shift the burden of proof in civil proceedings involving the infringements of process patent rights; and
- places impermissible limitations on certain transitional patents so as to limit the exclusive rights conferred by these patents, and to deny the opportunity for patentees to amend pending applications in order to claim certain enhanced protection provided by the TRIPS Agreement.

According to the US, Argentina's legal regimes governing patents and data protection are therefore inconsistent with Argentina's obligations under the TRIPS Agreement, including Articles 27, 28, 31, 34, 39, 50, 62, 65 and 70 of the Agreement.

WT/DS191 – Ecuador – Definitive Anti-Dumping Measure on Cement from Mexico

Complaint by Mexico. On 15 March 2000, Mexico requested consultations with Ecuador concerning a definitive anti-dumping measure imposed by Ecuador, through publication in the Official Register No. 361 of 14 January 2000, on imports of cement from Mexico falling under tariff subheading 2523.29.00, as well as Ecuador's actions preceding that measure. Mexico alleged that the definitive anti-dumping measure and the actions that preceded it, including the imposition of the provisional anti-dumping measure and the initiation of the investigation, violate, *inter alia*, Articles 1, 2, 3, 4, 5, 6, 7, 9, 12, 18 and Annex II of the Anti-Dumping Agreement as well as Article VI of the GATT 1994.

WT/DS187 – Trinidad and Tobago – Provisional Anti-Dumping Measure on Macaroni and Spaghetti from Costa Rica

Complaint by Costa Rica. On 17 January 2000, Costa Rica requested consultations with Trinidad and Tobago in respect of Legal Notice No. 237 of the Ministry of Trade and Industry of Trinidad and Tobago, pursuant to which provisional anti-dumping duties are imposed on the importation of macaroni and spaghetti from Costa Rica, the actions preceding that decision (see WT/DS185) as well as the 1992 Anti-Dumping and Countervailing Duties Act of 1992, as amended by the Anti-Dumping and Countervailing Duties (Amendment) Act of 1995 and the Anti-Dumping and Countervailing Duties Regulations of 1996. Costa Rica claimed that these measures are inconsistent particularly with certain paragraphs of Articles 1, 2, 3, 4, 5, 6, 7, 10, 12, 18 as well as Annex I and II of the Anti-Dumping Agreement.

WT/DS186 – United States – Section 337 of the Tariff Act of 1930 and Amendments Thereto

Complaint by the European Communities. On 12 January 2000, the EC requested consultations with the US in respect of Section 337 of the US Tariff Act (19 USC. § 1337) and the related Rules of Practice and Procedure of the International Trade Commission contained in Chapter II of Title 19 of the US Code of Federal Regulations. The EC alleged that those measures violate Article III of GATT 1994 and TRIPS Agreement Articles 2 (in conjunction with Article 2 Paris Convention), 3, 9 (in conjunction with Article 5 Berne Convention), 27, 41, 42, 49, 50 and 51.

WT/DS185 – Trinidad and Tobago – Certain Measures Affecting Imports of Pasta from Costa Rica

Complaint by Costa Rica. On 18 November 1999, Costa Rica requested consultations with Trinidad and Tobago in respect of

(i) the anti-dumping investigation being carried out by Trinidad and Tobago at the request of the company "Cereal Products Limited" against imports of pasta from the Costa Rican company "Roma Prince Sociedad Anónima",
(ii) proceedings undertaken as part of a preliminary hearing prior to the initiation of the anti-dumping investigation, and
(iii) Articles 3 and 5 of the 1996 Antidumping and Countervailing Duties Regulation of Tobago and Trinidad.

Costa Rica claimed that these measures are inconsistent with Articles 2, 3, 5, 6 and 12 of the Anti-Dumping Agreement.

WT/DS183 – Brazil – Measures on Import Licensing and Minimum Import Prices

Complaint by the European Communities. This request, dated 14 October 1999, is in respect of a number of Brazilian measures, particularly Brazil's non-automatic licensing system and the minimum pricing practice, which allegedly restrict EC exports - notably of textile products, Sorbitol and Carboxymethylcellulose (CMC). The EC claimed that those Brazilian measures violate, in particular, Articles II, VIII, X and XI of the GATT 1994; Article 4.2 of the Agreement on Agriculture; Articles 1, 3, 5 and 8 of the Agreement on Import Licensing Procedures; and Articles 1 through 7 of the Agreement on Implementation of Article VII of the GATT 1994.

WT/DS182 – Ecuador – Provisional Anti-Dumping Measure on Cement from Mexico

Complaint by Mexico. On 5 October 1999, Mexico requested consultations with Ecuador concerning a provisional anti-dumping measure imposed by Ecuador, through publication in the Official Register of 14 July 1999, on imports of cement from Mexico falling under tariff heading 2523.29.00, as well as Ecuador's actions preceding that measure. Mexico considered that the provisional anti-dumping measure and the actions

preceding it violate, *inter alia*, Articles 1, 2, 3, 4, 5, 6, 7, 9, 12, 18 and Annex II of the Anti-Dumping Agreement as well as Article VI of the GATT 1994.

WT/DS180 – United States – Reclassification of Certain Sugar Syrups

Complaint by Canada. On 6 September 1999 Canada requested consultations with the US in respect of the proposed reclassification of certain sugar syrups by the US Customs Service. Canada claimed that these US measures are in violation of Article II of the GATT 1994 and Article 4 of the Agreement on Agriculture. In addition, Canada alleged that these measures nullify or impair benefits accruing to it under the same provisions of the GATT and the Agreement on Agriculture.

WT/DS174 – European Communities – Protection of Trademarks and Geographical Indications for Agricultural Products and Foodstuffs

Complaint by the United States. On 1 June 1999, the US requested consultations with the EC in respect of the alleged lack of protection of trademarks and geographical indications for agricultural products and foodstuffs in the EC. The US contended that EC Regulation 2081/92, as amended, does not provide national treatment with respect to geographical indications and does not provide sufficient protection to pre-existing trademarks that are similar or identical to a geographical indication. The US considered this situation to be inconsistent with the EC's obligations under the TRIPS Agreement, including but not necessarily limited to Articles 3, 16, 24, 63 and 65 of the TRIPS Agreement.

WT/DS172 – European Communities – Measures Relating to the Development of a Flight Management System

Complaint from the United States. On 21 May 1999, the US requested consultations with the EC in respect of alleged actionable subsidies granted or maintained to a French company, Sextant Avionique ("Sextant"), to develop a new flight management system ("FMS") adapted to Airbus aircraft. The US alleged that the French government has agreed to grant, and the European Commission has approved, a loan, on preferential and non-commercial terms, in the amount of 140 million French francs, to be disbursed over three years, for a project in which Sextant will develop a FMS adapted to Airbus aircraft. The US considered that this aid:

- is a specific subsidy within the meaning of Articles 1 and 3 of the SCM Agreement, which subsidy has caused and continues to cause adverse effects within the meaning of Article 5 of the SCM Agreement.
- has caused and continues to cause serious prejudice within the meaning of Articles 5(c) and 6 of the SCM Agreement because the subsidy may involve the direct forgiveness of debt;
- may displace or impede imports of FMS from the United States into France;
- may displace or impede exports of FMS from the United States to third country markets; and

- may cause significant price undercutting by the subsidised product as compared with the price of a like product of another Member in the same market or may cause significant price suppression, price depression or lost sales in the same market.
- has caused and continues to cause a nullification or impairment of benefits accruing directly or indirectly to it under GATT 1994 within the meaning of Article XXIII:1(b) of GATT 1994, and Article 5(b) of the SCM Agreement.

WT/DS173 – France – Measures Relating to the Development of a Flight Management System

Complaint by the United States. On 21 May 1999, the US requested consultations with France. This complaint is identical to the one addressed to the EC above (WT/DS172).

WT/DS171 – Argentina – Patent Protection for Pharmaceuticals and Test Data Protection for Agricultural Chemicals

Complaint by the United States. On 6 May 1999, the US requested consultations with Argentina in respect of

(i) the alleged absence in Argentina of either patent protection for pharmaceutical products or an effective system for providing exclusive marketing rights in such products, and

(ii) Argentina's alleged failure to ensure that changes in its laws, regulations and practice during the transition period provided under Article 65.2 of the TRIPS Agreement do not result in a lesser degree of consistency with the provisions of the TRIPS Agreement.

Under item (i), the US contended that the TRIPS Agreement does not permit WTO Members to allow third parties to market products subject to exclusive marketing rights without the consent of the right holder. According to the United States, Argentina's law does not provide product patent protection for pharmaceutical inventions, or a system that conforms to Article 70.9 of the TRIPS Agreement with regard to the grant of exclusive marketing rights. The US therefore contended that Argentina's legal regime appears to be inconsistent with Articles 27, 65 and 70 of the TRIPS Agreement.

Under item (ii), the US contended that prior to August 1998, Argentina provided a ten year term of protection against unfair commercial use for undisclosed test data or other data submitted to Argentine regulatory authorities in support of applications for marketing approval for agricultural chemical products. The US further alleged that since the issuance in 1998 of Regulation 440/98, which *inter alia* revoked earlier regulations, Argentina has provided no effective protection for such data against unfair commercial use. The United States therefore alleges that Argentina's legal regime is inconsistent with Article 65.5 of the TRIPS Agreement.

WT/DS168 – South Africa – Anti-dumping Duties on the Import of Certain Pharmaceutical Products from India

Complaint by India. On 1 April 1999, India requested consultations with South Africa in respect of a recommendation for the imposition of definitive anti-dumping duties by the South African Board on Tariffs and Trade (BTT), contained in its Report No. 3799, dated 3 October 1997, on the import of certain pharmaceutical products from India. India alleged that South Africa initiated anti-dumping proceedings against the importation of ampicillin and amoxycillin of 250mg capsules from India. The BTT allegedly made a preliminary determination on 26 March 1997 that ampicillin and amoxycillin of 250mg and 500mg capsules, exported by M/S Randaxy Laboratories Ltd of India, were being dumped into the South African Customs Union (SACU). This was allegedly followed by a recommendation to impose final duties on these products by the BTT, which was reported on 10 September 1997. India contended that:

- the definition and calculation by the BTT of normal value is inconsistent with South Africa's WTO obligations, because erroneous methodology was used for determining the normal value and the resulting margin of dumping.
- the determination of injury was not based on positive evidence and did not include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, which led to an erroneous determination of material injury suffered by the petitioner.
- the South African authorities' establishment of the facts was not proper and that their evaluation was not unbiased or objective.
- the South African authorities have not taken into account India's special situation as a developing country.

India alleged violations of Articles 2, 3, 6(a) to (c) individually and in conjunction with 12, 12 and 15 of the Anti-Dumping Agreement; and Articles I and VI of GATT 1994.

WT/DS167 – United States – Countervailing Duty Investigation with respect to Live Cattle from Canada

Complaint by Canada. On 19 March 1999, Canada requested consultations with the US concerning the initiation of a countervailing duty investigation by the US, on 22 December 1998, with respect to live cattle from Canada. Canada alleged that:

- the initiation of this investigation is inconsistent with US obligations under the Subsidies Agreement, including the fact that the written application filed with the US Department of Commerce was not made by or on behalf of the domestic industry, and that there was not, sufficient information provided with respect to the measures or actions alleged to be subsidies, for purpose of initiating an investigation under the SCM Agreement.
- the measures or actions alleged to be subsidies either are not, in law or fact, subsidies within the meaning of the Subsidies Agreement, or do not confer more than a *de minimis* level of countervailing subsidy.
- this initiation of investigation is inconsistent with US obligations under the Agreement on Agriculture relating to "due restraint".

Canada alleged violations of Articles 1, 2, 10, 11.1 – 11.5, and 13.1 of the Subsidies Agreement; and Article 13 of the Agreement on Agriculture.

WT/DS159 – Hungary – Safeguard Measure on Imports of Steel Products from the Czech Republic

Complaint by the Czech Republic. On 21 January 1999, the Czech Republic requested consultations with Hungary in respect of the imposition of quantitative restrictions by Hungary on imports of a broad range of steel products from the Czech Republic. The Czech Republic alleged that Hungary imposed a safeguard measure in the form of an import quota on imports of a broad range of steel products from the Czech Republic, and that this measure only applies to the Czech Republic. The Czech Republic contended that these quantitative restrictions are in breach of Hungary's obligations under GATT Articles I and XIX, as well as provisions of the Agreement on Safeguards.

WT/DS158 – European Communities- Regime for the Importation, Sale and Distribution of Bananas II

Complaint by Guatemala, Honduras, Mexico, Panama and the United States. On 20 January 1999, these countries (complaining parties) requested consultations with the EC in respect of the implementation of the recommendations of the DSB in *European Communities – Regime for the Importation, Sale and Distribution of Bananas*. The complaining parties state that the 15-month reasonable period of time for the EC to implement the DSB's recommendations and rulings ended on 1 January 1999 (see WT/DS27). The complaining parties alleged that the EC modified its regime in a manner that will not permit this dispute to conclude at this time on the basis of a solution that is acceptable to their governments, and as a result, jointly and severally, request consultations with the EC concerning the EC banana regime established by EC Regulation 404/93, as amended and implemented by Council Regulation 1637/98 of 20 July 1998 and EC Commission Regulation 2362/98 of 28 October 1998. The complaining parties contended that their objective is to clarify and discuss in detail with the EC the various aspects of the EC's modified banana regime, including their effect on the market, their concerns about their WTO-inconsistency, and ways that the EC might modify its regime in order to produce a satisfactory settlement of this dispute.

WT/DS157 – Argentina – Anti-Dumping Measures on Imports of Drill Bits from Italy

Complaint from the European Communities. On 14 January 1998, the EC requested consultations with Argentina in respect of definitive anti-dumping measures allegedly imposed by Argentina on imports of drill bits from Italy. The EC stated that on 12 September 1998, Argentina imposed definitive anti-dumping measures on imports of drill bits from Italy. The investigation which led to the imposition of these measures had allegedly been initiated on 21 February 1997. The EC alleged that due to the fact that Argentina's investigation exceeded 18 months, it was in violation of Article 1 of the Anti-Dumping Agreement.

WT/DS154 – European Communities – Measures Affecting Differential and Favourable Treatment of Coffee

Complaint by Brazil. On 7 December 1998, Brazil requested consultations with the EC in respect of the special preferential treatment under the EC's Generalised System of Preferences (GSP). Brazil asserted that the EC GSP scheme is applicable to products originating in the Andean Group of countries and the Central American Common Market countries, that are conducting programs to combat drug production and trafficking. In the case of soluble coffee, this special preferential treatment, contained in Council Regulation (EC) No. 1256/96, amounts to duty free access into the EC market. Brazil stated that it is aware that there is a proposed Council Regulation which would unify all EC laws and regulations concerning the operation of the GSP scheme for both agricultural and industrial products. Brazil contended that this special treatment adversely affects the importation into the EC of soluble coffee originating in Brazil. Brazil alleged that this special treatment is inconsistent with the Enabling Clause, as well as with Article I of GATT 1994. Brazil further alleges that this special treatment nullifies or impairs benefits accruing to Brazil directly or indirectly under the cited provisions.

WT/DS153 – European Communities – Patent Protection for Pharmaceutical and Agricultural Products

Complaint by Canada. On 2 December 1998, Canada requested consultations with the EC in respect of the protection of inventions in the area of pharmaceutical and agricultural chemical products under the relevant provisions of EC legislation, particularly Council Regulation (EEC) No. 1768/92 and European Parliament and Council Regulation (EC) No. 1610/96, in relation to EC obligations under the TRIPS Agreement. Canada considered that under the above Regulations, a patent term extension scheme, which is limited to pharmaceutical and agricultural chemical products, has been implemented. Canada alleged that Regulations (EEC) No. 1768/92 and (EC) No. 1610/96 are inconsistent with the EC's obligations not to discriminate on the basis of field of technology, as provided by Article 27.1 of the TRIPS Agreement, because these Regulations only apply to pharmaceutical and agricultural products.

WT/DS150 – India – Measures Affecting Custom Duties

Complaint by the European Communities. On 30 October 1998, the EC requested consultations with India concerning a series of increases in customs duties allegedly implemented by India. The EC stated that the measures in question relate to Schedule 1 of the 1975 Customs Tariff Act, the Special Customs Duty, and the Special Additional Duty. The EC contended that under these measures, the aggregate value of tariffs resulting from the addition of the different duties applied by India exceed India's WTO bound rates under a series of tariff headings. The EC alleged violations of Articles II:1(b) and III:2 of GATT 1994.

WT/DS149 – India – Import Restrictions

Complaint by the European Communities. On 29 October 1998, the EC requested consultations with India concerning import restrictions allegedly maintained by India under its Export and Import Policy, 1997-2002, for reasons other than Article XVIII:B of GATT 1994. The EC stated that India notified these restrictions to

the WTO in Part A of Annex I to its notification of 20 May 1997 under paragraph 9 of the Understanding on the Balance-of-Payments Provisions of GATT 1994 (WT/BOP/N/24). India claimed that these restrictions are justified under Article XX and/or Article XXI of GATT 1994. The EC contended that these import restrictions constitute an infringement of Articles III, X, XI, XIII and XVII of GATT 1994, Article 4.2 of the Agreement on Agriculture, and Articles 1, 2 and 3 of the Agreement on Import Licensing Procedures, and cannot be justified under Articles XX or XXI of GATT 1994.

WT/DS148 – Czech Republic – Measure Affecting Import Duty on Wheat from Hungary

Complaint from Hungary. On 12 October 1998, Hungary requested consultations with the Czech Republic in respect of a regulation adopted by the Czech Republic which entered into force on 9 October 1998, and which allegedly increased the import duty of wheat originating in Hungary. Hungary asserted that the increased import duty on wheat (HS1001.1000, 1001.9099) exceeds several times the respective bound rates in the Czech Schedule for 1998. Hungary also alleged that it is the only country subject to this measure. Hungary contended that this measure is inconsistent with Articles I and II of GATT 1994, and Article 4 of the Agreement on Agriculture. Hungary invoked the urgency provision of the DSU (4.8), due to the severe economic and trade losses that are being caused by this measure, which was expected to remain in force until 26 April 1999.

WT/DS147 – Japan – Tariff Quotas and Subsidies Affecting Leather

Complaint by the European Communities. On 8 October 1998, the EC requested consultations with Japan concerning the management of the tariff quotas for leather and the subsidies allegedly benefiting the leather industry and "Dowa" regions in Japan. The EC stated that the management of the three tariff quotas is specified in a notice published every year by the Ministry of International Trade & Industry (MITI), which is based on Article 6 of the Ministerial Order on the tariff quota system for heavy oil, crude oil, etc. The EC contended that:

- the complexity of the management of the tariff quota system, as well as the fact that applications for licenses may only be submitted on a single day, appears open to criticism.
- many licenses are granted for quantities without real economic interest, and some have a very short validity period.
- the system leads to a situation that deters foreign companies from establishing in Japan for purposes of importing leather directly.
- subsidies were granted on the basis of the "Law concerning Special Fiscal Measures", which extended the duration of 15 subsidy programmes.
- these subsidies are specific and that the total value of these different subsidy programmes is liable to cause serious prejudice to its interests.

The EC alleged violations of Articles 1(6), 3(5)(g), (h), (i) and (j) of the Import Licensing Agreement, and Article 6 of the Subsidies Agreement.

WT/DS145 – Argentina – Countervailing Duties on Imports of Wheat Gluten from the European Communities

Complaint by the European Communities. On 23 September 1998, the EC requested consultations with the EC in respect of definitive countervailing duties allegedly imposed by Argentina on imports of wheat gluten from the EC. The EC stated that Argentina imposed a countervailing duty on wheat gluten imports from the EC with effect from 23 July 1998. The investigation which led to the imposition of these duties had been initiated on 23 October 1996 and, consequently, the EC contended that the investigation exceeded 18 months, contrary to Article 11.11 of the Subsidies Agreement. The EC also claimed a violation of Article 10 of the same Agreement.

WT/DS144 – United States – Certain Measures Affecting the Import of Cattle, Swine and Grain from Canada

Complaint by Canada. On 25 September 1998, Canada requested consultations with the US in respect of certain measures, imposed by the US state of South Dakota and other states, prohibiting entry or transit to Canadian trucks carrying cattle, swine, and grain. Canada alleged that these measures adversely affect the importation into the United States of cattle, swine, and grain originating in Canada. Canada alleges violations of Articles 2, 3, 4, 5, 6, 13 and Annexes B and C of the SPS Agreement; Articles 2, 3, 5 and 7 of the TBT Agreement; Article 4 of the Agreement on Agriculture; and Articles I, III, V, XI and XXIV:12 of GATT 1994. Canada also made a claim of nullification or impairment of benefits accruing to it under the cited Agreements. Canada invoked Article 4.8 of the DSU for expedited consultations in view of the perishable nature of the goods in question.

WT/DS143 - Slovak Republic – Measure Affecting Import Duty on Wheat from Hungary

Complaint from Hungary. On 18 September 1998, Hungary requested consultations with the Slovak Republic in respect of a regulation adopted by the Slovak Republic which entered into force on 10 September 1998, which allegedly increased the import duty of wheat originating in Hungary. Hungary asserted that the increased import duty on wheat (HS1001.1000, 1001.90) amounts to 2540 SKK/t which equals to approximately 70% *ad valorem*. Hungary alleged that:

- the bound rates for these tariff lines in the Slovak Schedule for 1998 are set at 4.4% (HS1001.1000), 27% (HS1001.9010) and 22.5% (HS1001.9091, 1001.9099).
- it is the only country subject to this measure.
- this measure is inconsistent with Articles I and II of GATT 1994, and Article 4 of the Agreement on Agriculture.

Hungary invoked the urgency provision of the DSU due to the severe economic and trade losses that are being caused by this measure, which was expected to remain in force until 10 March 1999.

WT/DS140 – European Communities – Anti-Dumping Investigations Regarding Unbleached Cotton Fabrics from India

Complaint by India. On 3 August 1998, the EC requested consultations with India in respect of alleged repeated recourse by the EC to anti-dumping investigations on unbleached cotton fabrics (UCF), from India. India considered, in the light of the information which had become available before and after the adoption of Regulation 773/98, that:

- the determination of standing, the initiation, the selection of the sample, the determination of dumping and the injury are inconsistent with the EC's WTO obligations.
- the establishment by the EC of the facts was not proper and that the EC's evaluation of facts was not unbiased and objective.
- the EC has not taken into account the special situation of India as a developing country.

India alleged violations of Articles 2.2.1, 2.4.1, 2.4.2, 2.6, 3.3, 3.2, 3.4, 3.5, 4.1(I), 5.2, 5.3, 5.4, 5.5, 5.8, 6.10, 7.1(I), 7.4, 9.1, 9.2, 12.1, 12.2 and 15 of the Anti-Dumping Agreement, and Articles I and VI of GATT 1994. India also alleged nullification and impairment of benefits accruing to it under the cited agreements.

WT/DS137 – European Communities – Measures Affecting Imports of Wood of Conifers from Canada

Complaint by Canada. On 17 June 1998, Canada requested consultations with the EC in respect of certain measures concerning the importation into the EC market of wood of conifers from Canada. The measures include, but are not limited to, Council Directive 77/93, of 21 December 1976, as amended by Commission Directive 92/103/EEC, of 1 December 1992, and any relevant measures adopted by EC Member states affecting imports of wood of conifers from Canada into the EC. Canada alleged that these adversely affect the importation into the EC market of wood of conifers from Canada. Canada alleged violations of Articles I, III and XI of GATT 1994, Articles 2, 3, 4, 5 and 6 of the SPS Agreement, and Article 2 of the TBT Agreement. Canada also made a claim for nullification and impairment of benefits accruing to it indirectly under the cited agreements.

WT/DS134 – European Communities - Measures Affecting Import Duties on Rice

Complaint by India. On 28 May 1998, India requested consultations with the EC in respect of the restrictions allegedly introduced by an EC Regulation establishing a so-called cumulative recovery system (CRS), for determining certain import duties on rice, with effect from 1 July 1997. India contended that the measures introduced through this new regulation will restrict the number of importers of rice from India, and will have a limiting effect on the export of rice from India to the EC. India alleged violations of Articles I, II, III, VII and XI of GATT 1994, Articles 1-7, 11 and Annex I of the Customs Valuation Agreement, Articles 1 and 3 of the Import

Licensing Agreement, Article 2 of the TBT Agreement, Article 2 of the SPS Agreement, and Article 4 of the Agreement on Agriculture. India also claimed nullification and impairment of benefits accruing to it under the various agreements cited.

WT/DS133 – Slovak Republic - Measures Concerning the Importation of Dairy Products and the Transit of Cattle

Complaint by Switzerland. On 11 May 1998, Switzerland requested consultations with the Slovak Republic concerning measures imposed by the Slovak Republic (in particular, a decree of 6 July 1996) with respect to the importation of dairy products and the transit of cattle. Switzerland contended that these measures had a negative impact on Swiss exports of cheese and cattle. Switzerland alleged that some of these measures are inconsistent with Articles I, III, V, X and XI of GATT 1994, Article 5 of the SPS Agreement, and Article 5 of the Import Licensing Agreement.

WT/DS131 – France - Certain Income Tax Measures Constituting Subsidies

Complaint by the United States. On 5 May 1998, the US requested consultations with France in respect of prohibited subsidies provided by France. The United States alleges that, based on unofficial English translations of the relevant legislation and descriptions in secondary sources, it is its understanding that under French income tax law, a French company may deduct temporarily, certain start-up expenses of its foreign operations through a tax-deductible reserve account. The US also believed that a French company may establish a special reserve equal to ten percent of its receivable position at year end for medium-term credit risks in connection with export sales. The US contended that each of these measures constitute an export subsidy, and that the deduction for start-up expenses constitute an import substitution subsidy, and as such both measures violate Article 3 of the SCM Agreement.

WT/DS130 – Ireland - Certain Income Tax Measures Constituting Subsidies

Complaint by the United States. On 5 May 1998, the US requested consultations with Ireland in respect of prohibited subsidies provided by Ireland. The US alleged that, based on unofficial copies of the relevant legislation and descriptions in secondary sources, it is its understanding that under Irish income tax law, "special trading houses" qualify for a special tax rate in respect of trading income from the export sale of goods manufactured in Ireland. The US contended that this measure constitutes an export subsidy and as such violates Article 3 of the SCM Agreement.

WT/DS129 – Greece - Certain Income Tax Measures Constituting Subsidies

Complaint by the United States. On 5 May 1998, the US requested consultations with Greece in respect of prohibited subsidies provided by Greece. The US alleged that, based on unofficial English translations of relevant legislation and descriptions in secondary sources, it is its understanding that under Greek income tax law,

Greek exporters are entitled to a special annual tax deduction calculated as a percentage of export income. The US contended that this measure constitutes an export subsidy and as such violates Article 3 of the SCM Agreement.

WT/DS128 – Netherlands - Certain Income Tax Measures Constituting Subsidies

Complaint by the United States. On 5 May 1998, the US requested consultations with the Netherlands in respect of prohibited subsidies provided by the Netherlands. The US alleged that, based on unofficial English translations of the relevant legislation and descriptions in secondary sources, it is its understanding that under Dutch income tax law, exporters may establish a special "export reserve" for income derived from export sales. The US contended that this measure constitutes an export subsidy and as such violates Article 3 of the SCM Agreement.

WT/DS127 – Belgium - Certain Income Tax Measures Constituting Subsidies

Complaint by the United States. On 5 May 1998, the US requested consultations with Belgium in respect of prohibited subsidies provided by Belgium. The US alleged that, based on unofficial English translations of relevant legislation and descriptions in secondary sources, it is its understanding that under Belgium income tax law, Belgian corporate taxpayers receive a special BEF 400,000 (index linked) tax exemption for recruiting a departmental head for exports (known as an "export manager"). The US contended that this measure constitutes an export subsidy and as such violates Article 3 of the SCM Agreement.

WT/DS123 – Argentina - Safeguard Measures on Imports of Footwear

Complaint by Indonesia. On 23 April 1998, Indonesia requested consultations with Argentina in respect of the same provisional and definitive safeguard measures imposed by Argentina in the dispute WT/DS121. On 15 April 1999, Indonesia requested the establishment of a panel. In a communication dated 10 May 1999, Indonesia informed the DSB that it was not pursuing its request for a panel at the next DSB meeting, but that this was without prejudice to its rights under the DSU to resurrect the panel request.

WT/DS120 – India - Measures Affecting Export of Certain Commodities

Complaint by the European Communities. On 16 March 1998, the EC requested consultations with India in respect of India's EXIM Policy (1997-2002), which allegedly sets up a negative list for the export of several commodities. The EC alleged that under this policy, raw hides and skins are listed as products the export of which requires an export licence, and that these licences are systematically refused. The EC contended that this is in effect an export embargo and violates Article XI of GATT 1994. On 12 October 2000, the EC requested the establishment of a panel. At its meeting of 23 October 2000, the DSB deferred the establishment of a panel.

WT/DS118 – United States - Harbour Maintenance Tax

Complaint by the European Communities. On 6 February 1998, the EC requested consultations with the US concerning the US Harbour Maintenance Tax (HMT), allegedly introduced by legislation in the US. The EC contended that the HMT violates Articles I, II, III, VIII and X of GATT 1994, as well as the Understanding on the Interpretation of Article II:1(B) of GATT 1994.

WT/DS117 – Canada - Measures Affecting Film Distribution Services

Complaint by the European Communities. On 20 January 1998, the EC requested consultations with Canada in respect of Canada's alleged measures affecting film distribution services, including the 1987 Policy Decision on film distribution and its application to European companies. The EC contended that these measures violate Articles II and III of GATS.

WT/DS116 – Brazil - Measures Affecting Payment Terms for Imports

Complaint by the European Communities. On 9 January 1998, the EC requested consultations with Brazil in respect of measures affecting payment terms for imports allegedly introduced by the Central Bank of Brazil. The EC contended that these measures violate Articles 3 and 5 of the Agreement on Import Licensing Procedures.

WT/DS115 – European Communities - Measures Affecting the Grant of Copyright and Neighbouring Rights

Complaint by the United States. On 6 January 1998, the US requested consultations with the EC regarding similar measures as in WT/DS82 in respect of Ireland. On 9 January 1998, the US requested the establishment of a panel.

WT/DS112 – Peru - Countervailing Duty Investigation against Imports of Buses from Brazil

Complaint by Brazil. On 23 December 1997, Brazil requested consultations with Peru in respect of a countervailing duty investigation being carried out by Peru against imports of buses from Brazil. Brazil contended that the procedures followed by the Peruvian authorities to initiate this investigation are inconsistent with Articles 11 and 13.1 of the Subsidies Agreement.

WT/DS111 – United States - Tariff Rate Quota for Imports of Groundnuts

Complaint by Argentina. On 19 December 1997, Argentina requested consultations with the US in respect of the alleged commercial detriment to Argentina resulting from a restrictive interpretation by the US of the tariff rate quota negotiated by the two countries during the Uruguay Round, regarding the importation of groundnuts. Argentina alleged violations of Articles II, X and XII of GATT 1994, Articles 1, 4 and 15 of the Agreement on

Agriculture, Article 2 of the Agreement on Rules of Origin, and Article 1 of the Import Licensing Agreement. Nullification and impairment of benefits is also alleged.

WT/DS109 – Chile - Taxes on Alcoholic Beverages

Complaint by the United States. On 11 December 1997, the US requested consultations with Chile in respect of Chile's internal taxes on alcoholic beverages, which allegedly impose a higher tax on imported spirits than on *pisco*, a locally brewed spirit. The US contended that this differential treatment of imported spirits violates Article III:2 of GATT 1994. Taxes on these beverages were at the time the subject of a complaint by the EC (WT/DS87), in respect of which a panel had already been established.

WT/DS107 – Pakistan - Export Measures Affecting Hides and Skins

Complaint by the European Communities. On 7 November 1997, the EC requested consultations with Pakistan in respect of a Notification enacted by the Ministry of Commerce of Pakistan prohibiting the export of, *inter alia*, hides and skins and wet blue leather made from cow hides and cow calf hides. The EC contended that this measure limits access of EC industries to competitive sourcing of raw and semi-finished materials.

WT/DS105 – European Communities - Regime for the Importation, Sale and Distribution of Bananas

Complaint by Panama. On 24 October 1997, Panama requested consultations with the EC in respect of the EC's regime for the importation, sale and distribution of bananas as established through Regulation 404/93, as well as any subsequent legislation, regulations or administrative measures adopted by the EC, including those reflecting the Framework Agreement on Bananas. Panama did not specify the WTO provisions which the EC regime violates. This is the same regime that was the subject of a successful challenge by the US, Ecuador, Guatemala, Honduras, and Mexico (WT/DS27).

WT/DS104 – European Communities - Measures Affecting the Exportation of Processed Cheese

Complaint by the United States. On 8 October 1997, the US requested consultations with the EC in respect of export subsidies allegedly granted by the EC on processed cheese without regard to the export subsidy reduction commitments of the EC. The US contended that these measures by the EC distort markets for dairy products and adversely affect US sales of dairy products. The US alleged violations of Articles 8, 9, 10 and 11 of the Agreement on Agriculture, and Article 3 of the Subsidies Agreement.

WT/DS100 – United States - Measures Affecting Imports of Poultry Products

Complaint by the European Communities. On 18 August 1997, the EC requested consultations with the US in respect of a ban on imports of poultry and poultry products from the EC by the US Department of Agriculture's Food Safety Inspection Service, and any related measures. The EC contended that although the ban is allegedly

on grounds of product safety, the ban does not indicate the grounds upon which EC poultry products have suddenly become ineligible for entry into the US market. The EC considered that the ban is inconsistent with Articles I, III, X and XI of GATT 1994, Articles 2, 3, 4, 5, 8 and Annex C of the SPS Agreement, or Article 2 and 5 of the TBT Agreement.

WT/DS97 – United States - Countervailing Duty Investigation of Imports of Salmon from Chile

Complaint by Chile. On 5 August 1997, Chile requested consultations with the US in respect of a countervailing duty investigation initiated by the US Department of Commerce against imports of salmon from Chile. Chile contended that the decision to initiate an investigation was taken in the absence of sufficient evidence of injury, in violation of Article 11.2 and 11.3. Chile also contended a violation of Article 11.4, in relation to the representative status of producers of salmon fillets.

WT/DS82 – Ireland - Measures Affecting the Grant of Copyright and Neighbouring Rights

Complaint by the United States. On 14 May 1997, the US requested consultations with Ireland in respect Ireland's alleged failure to grant copyright and neighbouring rights under its law. The US contended that this failure violates Ireland's obligations under Articles 9-14, 63, 65 and 70 of the TRIPS Agreement. On 9 January 1998, the United States requested the establishment of a panel.

WT/DS81 – Brazil - Measures Affecting Trade and Investment in the Automotive Sector

Complaint by the European Communities. On 7 May 1997, the EC requested consultations with Brazil in respect of certain measures in the trade and investment sector implemented by Brazil, including in particular, Law No. 9440 of 14 March 1997, Law No. 9449 of 14 March 1997, and Decree No. 1987 of 20 August 1996. The EC contended that these measures violate Articles I:1 and III:4 of GATT 1994, Articles 3, 5 and 27.4 of the Subsidies Agreement, and Article 2 of the TRIMs Agreement. The EC also claimed for nullification and impairment of benefits under both GATT 1994 and the Subsidies Agreement. See also WT/DS51, WT/DS52 and WT/DS65.

WT/DS80 – Belgium - Measures Affecting Commercial Telephone Directory Services

Complaint by the United States. On 2 May 1997, the US requested consultations with Belgium in respect of certain measures of the Kingdom of Belgium governing the provision of commercial telephone directory services. These measures include the imposition of conditions for obtaining a license to publish commercial directories, and the regulation of the acts, policies, and practices of BELGACOM N.V. with respect to telephone directory services. The US alleged violations of Articles II, VI, VIII and XVII of GATS, as well as nullification and impairment of benefits accruing to it under the specific GATS commitments made by the EC on behalf of Belgium.

WT/DS78 – United States - Safeguard Measure Against Imports of Broom Corn Brooms

Complaint by Colombia. On 28 April 1997, Colombia requested consultations with the US in respect of US Presidential Proclamation 6961 of 28 November 1996, adopting a safeguard measure against imports of broom and corn brooms. Colombia contended that the adoption of this safeguard measure is inconsistent with the obligations of the US under Articles 2, 4, 5, 9 and 12 of the Agreement on Safeguards, Articles II, XIII and XIX of GATT 1994. Colombia also claimed for nullification and impairment of benefits under GATT 1994.

WT/DS71 – Canada - Measures Affecting the Export of Civilian Aircraft

Complaint by Brazil. On 10 March 1997, Brazil requested consultations with Canada in respect of the same measures complained of in WT/DS70. However, the request was made pursuant to Article 7 of the Subsidies Agreement. In this request, Brazil contended that the measures are actionable subsidies within the meaning of Part III of the Subsidies Agreement, and cause adverse effects within the meaning of Article 5 of the Agreement.

WT/DS66 – Japan - Measures Affecting Imports of Pork

Complaint by the European Communities. On 15 January 1997, the EC requested consultations with Japan in respect of certain measures affecting imports of pork and its processed products imposed by Japan. The EC contended that these measures are in violation of Japan's obligations under Articles I, X:3 and XIII of the GATT 1994. The EC also contended that these measures nullify or impair benefits accruing to it under the GATT 1994.

WT/DS65 – Brazil - Certain Measures Affecting Trade and Investment in the Automotive Sector

Complaint by the United States. On 10 January 1997, the US requested consultations with Brazil concerning more or less the same measures as in WT/DS52 above. However, this request also included measures adopted by Brazil subsequent to consultations held with the US pursuant to the request under WT/DS52, which include measures conferring benefits to certain companies located in Japan, the Republic of Korea, and the EC. The US alleged violations under Articles I:1 and III:4 of GATT 1994, Article 2 of the TRIMs Agreement, and Articles 3 and 27.4 of the SCM Agreement. The United States also made a nullification and impairment of benefits claim under Article XXIII:1(b) of GATT 1994.

WT/DS63 – United States - Anti-Dumping Measures on Imports of Solid Urea from the Former German Democratic Republic

Complaint by the European Communities. On 28 November 1996, the EC requested consultations with the US in respect of Anti-Dumping duties imposed on exports of solid urea from the former German Democratic Republic by the United States. The EC contended that theses measures violate Articles 9 and 11 of the Anti-Dumping Agreement.

WT/DS61 – United States - Import Prohibition of Certain Shrimp and Shrimp Products

Complaint by the Philippines. On 25 October 1996, the Philippines requested consultations with the US in respect of a complaint by the Philippines regarding a ban on the importation of certain shrimp and shrimp products from the Philippines imposed by the US under Section 609 of US Public Law 101-62. Violations of Articles I, II, III, VIII, XI and XIII of GATT 1994 and Article 2 of the TBT Agreement are alleged. A nullification and impairment of benefits under GATT 1994 is also alleged. (See WT/DS58).

WT/DS53 – Mexico - Customs Valuation of Imports

Complaint by the European Communities. On 27 August 1996, the EC requested consultations with Mexico concerning the Mexican Customs Law. The EC claimed that Mexico applies CIF value as the basis of customs valuation of imports originating in non-NAFTA countries, while it applies FOB value for imports originating in NAFTA countries. Violation of GATT Article XXIV:5(b) is alleged.

WT/DS52 – Brazil - Certain Measures Affecting Trade and Investment in the Automotive Sector

Complaint by the United States. On 9 August 1996, the US requested consultations with Brazil concerning the same measures as identified in Japan's request in WT/DS51. Violations of the TRIMs Agreement Article 2, GATT Articles I:1 and III:4 as well as the Subsidies Agreement Articles 3 and 27.4 are alleged. In addition, the United States also made a non-violation claim under GATT Article XXIII:1(b).

WT/DS51 – Brazil - Certain Automotive Investment Measures

Complaint by Japan. On 30 July 1996, Japan requested consultations with Brazil concerning certain automotive investment measures taken by the Brazilian government. Violations of the TRIMs Agreement Article 2, GATT Articles I:1, III:4 and XI:1 as well as the Subsidies Agreement Articles 3, 27.2 and 27.4 are alleged. In addition, Japan made a non-violation claim under GATT Article XXIII:1(b).

WT/DS47 – Turkey - Restrictions on Imports of Textile and Clothing Products

Complaint by Thailand. On 20 June 1996, Thailand requested consultations with Turkey concerning Turkey's imposition of quantitative restrictions on imports of textile and clothing products from Thailand. Violations of GATT Articles I, II, XI and XIII as well as Article 2 of the Textiles Agreement are alleged. Earlier, Hong Kong (WT/DS29) and India (WT/DS34) separately requested consultations with Turkey on the same measure.

WT/DS45 – Japan - Measures Affecting Distribution Services

Complaint by the United States. On 13 June 1996, the US requested consultations with Japan concerning Japan's measures affecting distribution services (not limited to the photographic film and paper sector) through the

operation of the Large-Scale Retail Store Law, which regulates the floor space, business hours and holidays of supermarkets and department stores. Violations of the GATS Article III (Transparency) and Article XVI (Market Access) are alleged. The US also alleged that these measures nullify or impair benefits accruing to the US (a non-violation claim). The US requested further consultations with Japan on 20 September 1996, expanding the factual and legal basis of its claim.

WT/DS41 – Korea - Measures Concerning Inspection of Agricultural Products

Complaint by the United States. On 24 May 1996, the US requested consultations with Korea concerning testing, inspection and other measures required for the importation of agricultural products into Korea. The US claimed that these measures restrict imports and appear to be inconsistent with the WTO Agreement. Violations of GATT Articles III and XI, SPS Articles 2, 5 and 8, TBT Articles 2, 5 and 6, and Article 4 of the Agreement on Agriculture are alleged. The US requested consultations with Korea on similar issues on 4 April 1995 (WT/DS3).

WT/DS30 – Brazil - Countervailing Duties on Imports of Desiccated Coconut and Coconut Milk Powder from Sri Lanka

Complaint by Sri Lanka. On 23 February 1996, Sri Lanka requested consultations with Brazil concerning Brazil's imposition of countervailing duties on Sri Lanka's export of desiccated coconut and coconut milk powder. Sri Lanka alleged that those measures are inconsistent with GATT Articles I, II and VI and Article 13(a) of the Agriculture Agreement (the so-called peace clause). See WT/DS22.

WT/DS29 – Turkey - Restrictions on Imports of Textile and Clothing Products

Complaint by Hong Kong. On 12 February 1996, Hong Kong requested consultations with Turkey concerning Turkey's quantitative restrictions on imports of textile and clothing products. Hong Kong claimed that those measures are in violation of GATT Articles XI and XIII. The background to this dispute is a recently concluded customs union agreement between Turkey and the European Communities. Hong Kong claimed that GATT Article XXIV does not entitle Turkey to impose new quantitative restrictions in the present case.

WT/DS3 – Korea - Measures Concerning the Testing and Inspection of Agricultural Products

Complaint by the United States. On 6 April 1995, the US requested consultations with Korea involving testing and inspection requirements with respect to imports of agricultural products into Korea. The measures are alleged to be in violation of GATT Articles III or XI, Articles 2 and 5 of the Agreement on Sanitary and Phytosanitary Measures (SPS), TBT Articles 5 and 6 and Agriculture Article 4. (See WT/DS41).

ACTIVE PANELS

WT/DS146 – India - Measures Affecting the Automotive Sector

Complaint by the European Communities. On 6 October 1998, the European Communities requested consultations with India concerning certain measures affecting the automotive sector being applied by India. The EC stated that the measures include the documents entitled "Export and Import Policy, 1997-2002", "ITC (HS Classification) Export and Import Policy 1997-2002" ("Classification"), and "Public Notice No. 60 (PN/97-02) of 12 December 1997, Export and Import Policy April 1997-March 2002", and any other legislative or administrative provision implemented or consolidated by these policies, as well as MoUs signed by the Indian Government with certain manufacturers of automobiles. The EC contended that:

- under these measures, imports of complete automobiles and of certain parts and components are subject to a system of non-automatic import licenses.
- in accordance with Public Notice No. 60, import licenses may be granted only to local joint venture manufacturers that have signed an MoU with the Indian Government, whereby they undertake, *inter alia*, to comply with certain local content and export balancing requirements.
- The EC alleges violations of Articles III and XI of GATT 1994, and Article 2 of the TRIMs Agreement.

On 12 October 2000, the EC requested the establishment of a panel. At its meeting on 23 October 2000, the DSB deferred the establishment of a Panel. Further to a second request to establish a panel by the EC, the DSB established a panel at its meeting of 17 November 2000. Since a panel had already been established with a similar mandate in the framework of the case WT/DS175 (see below), the DSB decided to join the panel with the already established panel in that case pursuant to Article 9.1 of the DSU. Japan reserved its third-party rights. On 14 November 2000, the US requested the Director-General to determine the composition of the Panel. On 24 November 2000, the Panel was composed.

WT/DS164 – Argentina – Measures Affecting Imports of Footwear

Complaint by the United States. On 1 March 1999, the United States requested consultations with Argentina in respect of certain measures implemented by Argentina affecting imports of footwear. The United States contended that:

- in November 1998, Argentina adopted Resolution 1506 modifying Resolution 987 of 10 September 1997, which had established safeguard duties on imports of footwear from non-MERCOSUR countries. Resolution 1506 allegedly imposes a tariff-rate quota (TRQ) on such footwear imports in addition to the safeguard duties previously imposed, postpones any liberalization of the original safeguard duty until 30 November 1999, and liberalizes the TRQ only once during the life of the measure.
- Argentina has not notified this measure to the Committee on Safeguards.
- The United States alleged violations of Articles 5.1, 7.4 and 12 of the Agreement on Safeguards.

Further to the request of the United States, the DSB established a panel at its meeting of 26 July 1999. The panel has not yet been composed. See also complaint by Indonesia (WT/DS123) and complaint by the EC (WT/DS121).

WT/DS175 – India – Measures Relating to Trade and Investment in the Motor Vehicle Sector

Complaint by the United States. On 1 May 1999, the United States requested consultations with India in respect of certain Indian measures affecting trade and investment in the motor vehicle sector. The United States contended that the measures in question require manufacturing firms in the motor vehicle sector to:

(i) achieve specified levels of local content;
(ii) achieve a neutralization of foreign exchange by balancing the value of certain imports with the value of exports of cars and components over a stated period; and
(iii) limit imports to a value based on the previous year's exports.

According to the United States, these measures are enforceable under Indian law and rulings, and manufacturing firms in the motor vehicle sector must comply with these requirements in order to obtain Indian import licenses for certain motor vehicle parts and components. The United States considered that these measures violate the obligations of India under Articles III and XI of GATT 1994, and Article 2 of the TRIMS Agreement.

On 15 May 2000, the US requested the establishment of a panel. At its meeting on 19 June 2000, the DSB deferred the establishment of a Panel. Further to a second request to establish a panel by the US, the DSB established a panel at its meeting on 27 July 2000. The EC, Japan and Korea reserved their third-party rights. In accordance with Article 9.1 of the DSU, the DSB at its meeting on 17 November 2000, decided that a single panel would examine this dispute together with WT/DS146. On 14 November 2000, the US requested the Director-General to determine the composition of the Panel. On 24 November 2000, the Panel was composed.

WT/DS188 – Nicaragua – Measures Affecting Imports from Honduras and Colombia (I)

Complaint by Colombia. On 17 January 2000, Colombia requested consultations with Nicaragua in respect of Nicaragua's Law 325 of 1999, which provides for the imposition of charges on goods and services from Honduras and Colombia, as well as regulatory Decree 129-99. Colombia claimed that these measures are inconsistent, *inter alia*, with Articles I and II of GATT 1994. Further to Colombia's request, the DSB established a panel at its meeting of 18 May 2000. Canada, Costa Rica, the EC, Honduras and the US reserved their third-party rights. This panel has not yet been composed.

WT/DS195 – Philippines – Measures Affecting Trade and Investment in the Motor Vehicle Sector

Complaint by the United States. On 23 May 2000, the US requested consultations with the Philippines in respect of certain measures in the Philippines' Motor Vehicle Development Program ("MVDP"), including the Car Development Program, the Commercial Vehicle Development Program, and the Motorcycle Development Program. The United States asserted that:

- the MVDP provided that motor vehicle manufacturers located in the Philippines who meet certain requirements are entitled to import parts, components and finished vehicles at a preferential tariff rate.
- foreign manufacturers' import licenses for parts, components and finished vehicles are conditioned on compliance with these requirements. Among the requirements referred to by the United States are the requirement that manufacturers use parts and components produced in the Philippines and that they earn a percentage of the foreign exchange needed to import those parts and components by exporting finished vehicles.
- The United States considered that these measures are inconsistent with the obligations of the Philippines under Articles III:4, III:5 and XI:1 of the GATT 1994, Articles 2.1 and 2.2 of the TRIMS Agreement, and Article 3.1(b) of the SCM Agreement.

On 12 October 2000, the US requested the establishment of a panel. At its meeting on 23 October 2000, the DSB deferred the establishment of a panel. Further to a second request to establish a panel by the US, the DSB established a panel at its meeting of 17 November 2000. India and Japan reserved their third party rights. This panel has not yet been composed.

WT/DS206 – United States – Anti-Dumping and Countervailing Measures on Steel Plate From India

Complaint by India. On 4 October 2000, India requested consultations with the United States concerning:

(i) final affirmative determinations of sales of certain cut-to-length carbon quality steel plate products from India at less than fair value by US Department of Commerce (DOC) on 13 December 1999 and affirmed on 10 February 2000;
(ii) interpretation and use of provisions relating to facts available in the anti-dumping and countervailing duty investigations by DOC; and
(iii) determination and interpretation by the US International Trade Commission (ITC) of negligibility, cumulation and material injury caused by the said Indian steel imports.

India considered that these determinations are erroneous and based on deficient procedures contained in various provisions of US anti-dumping and countervailing duty law. According to India, these determinations and provisions raise questions concerning the obligations of the United States under the GATT 1994, the Anti-Dumping Agreement, the SCM Agreement, and the Agreement establishing the WTO (WTO Agreement). India considered that the provisions of these agreements with which these measures and determinations appear to be inconsistent, include, but are not limited to, the following: Articles VI and X of the GATT 1994; Articles 1, 2, 3 (especially 3.3), 5 (especially 5.8), 6 (especially 6.8), 12, 15, 18.4 and Annex II of the Anti-Dumping

Agreement; Articles 10, 11 (especially 11.9), 15 (especially 15.3), 22 and 27 (especially 27.10) of the SCM Agreement; Article XVI of the WTO Agreement.

Further to India's request, the DSB established a Panel at its meeting of 24 July 2001. Chile, the EC and Japan reserved their third-rights. On 16 October 2001, India requested the Director-General to determine the composition of the Panel. On 26 October 2001, the Panel was composed.

WT/DS207 – Chile – Price Band System and Safeguard Measures relating to Certain Agricultural Products

Complaint by Argentina. On 5 October 2000, Argentina requested consultations with Chile concerning:

(1) the price band system established by Law 18.525 (as subsequently amended by Law 18.591 and Law 19.546), as well as implementing regulations and complementary and/or amending provisions; and

(2) the provisional safeguard measures adopted on 19 November 1999 by Decree No. 339 of the Ministry of Economy and the definitive safeguard measures imposed on 20 January 2000 by Decree No. 9 of the Ministry of Economy on the importation of various products, including wheat, wheat flour and edible vegetal oils.

Argentina considered that these measures raised questions concerning the obligations of Chile under various agreements. According to Argentina, the provisions with which the measures relating to the said price band system are inconsistent, include, but are not limited to, the following: Article II of the GATT 1994, and Article 4 of the Agreement on Agriculture. According to Argentina, the provisions with which the safeguard measures are inconsistent, include, but are not limited to, the following: Articles 2, 3, 4, 5, 6 and 12 of the Safeguards Agreement, and Article XIX:1(a) of the GATT 1994.

On 19 January 2001, Argentina requested the establishment of a panel. At its meeting on 1 February 2001, the DSB deferred the establishment of a panel. Further to a second request to establish a panel by Argentina, the DSB established a panel at its meeting of 12 March 2001. Australia, Brazil, Colombia, Costa Rica, the EC, Ecuador, El Salvador, Guatemala, Honduras, Japan, Nicaragua, Paraguay, the US and Venezuela reserved their third party rights. On 7 May 2001, Argentina requested the Director-General to determine the composition of the Panel. On 17 May 2001, the Panel was composed.

WT/DS210 – Belgium – Administration of Measures Establishing Customs Duties for Rice

Request by the United States. On 12 October 2000, the US requested consultations with the EC concerning the administration by Belgium of laws and regulations establishing the customs duties applicable to rice imported from the United States. The United States considered that:

- Belgium has failed to administer the pertinent laws and regulations in a manner that is consistent with its WTO obligations, leading to the assessment of duties on rice imported from the United States in excess of the bound rate of duty, in contravention of Article II of the GATT 1194;

- Belgium's use of reference prices in the calculation of the applicable import duties would appear to be inconsistent with Article VII of the GATT 1994 and the Customs Valuation Agreement;
- Belgium's refusal to recognize widely accepted industry standards associated with the grading of rice appears to be inconsistent with Articles 2, 3, 5, 6, 7, and 9 of the Agreement on Technical Barriers to Trade;
- Belgium has failed to administer its customs valuation determinations and its assessment of tariffs in a transparent manner, thereby impeding trade, and appears to have applied the measures in a manner that discriminates against rice imported from the United States.
- According to the United States, the measures have restricted imports of rice into Belgium. Thus, the Belgian measures also appear to be inconsistent with Articles I, X and XI of the GATT 1994 and Article 4 of the Agreement on Agriculture.
- According to the United States, Belgium's measures appear to be inconsistent with the following specific provisions of the identified agreements: Articles I, II, VII, VIII, X and XI of the GATT 1994; Articles 1-6, 7, 10, 14, 16 and Annex I of the Customs Valuation Agreement; Articles 2, 3, 5, 6, 7 and 9 of the Agreement on Technical Barriers to Trade; Article 4 of the Agreement on Agriculture. Belgium's measures also appear to nullify or impair the benefits accruing to the United States directly or indirectly under the cited agreements.

On 19 January 2001, the US requested the establishment of a panel. At its meeting on 1 February 2001, the DSB deferred the establishment of a panel. Further to a second request to establish a panel by the US, the DSB established a panel at its meeting of 12 March 2001. India and Japan reserved their third-party rights. On 29 May 2001, the US requested the Director-General to determine the composition of the Panel. On 7 June 2001, the Panel was composed.

On 26 July 2001, the US requested the Panel, pursuant to Article 12.12 of the DSU, to suspend its work until 30 September 2001 in light of on-going consultations between the US and the EC. On 27 September, the US requested a further suspension of the Panel from 1 to 9 October 2001. On 9 October, the US requested to further suspend the work of the Panel until 1 November 2001. On 1 November, the US requested to further suspend the work of the Panel until 16 November 2001.

WT/DS211– Egypt – Definitive Anti-Dumping Measures on Steel Rebar from Turkey

Complaint by Turkey. On 6 November 2000, Turkey requested consultations with Egypt concerning an anti-dumping investigation by the Egyptian Ministry of Trade and Supply with respect to imports of rebar from Turkey. The investigation was completed and the final report released on 21 October 1999. As a result of the investigation, anti-dumping duties were imposed, ranging from 22.63-61.00 per cent ad valorem.

Turkey considered that:

- Egypt made determinations of injury and dumping in that investigation without a proper establishment of the facts and based on an evaluation of the facts that was neither unbiased nor objective.

- during the investigation of material injury or threat thereof and the causal link, Egypt acted inconsistently with Articles 3.1, 3.2, 3.4, 3.5, 6.1 and 6.2 of the Anti-Dumping Agreement.
- during the investigation of sales at less than normal value, Egypt violated Article X:3 of the GATT 1994, as well as Articles 2.2, 2.4, 6.1, 6.2, 6.6, 6.7 and 6.8, and Annex II, Paragraphs 1, 3, 5, 6 and 7 and Annex I, Paragraph 7 of the Anti-Dumping Agreement.

On 3 May 2001, Turkey requested the establishment of a panel. At its meeting on 16 May 2001, the DSB deferred the establishment of a panel. Further to a second request to establish a panel by Turkey, the DSB established a panel at its meeting of 20 June 2001. Chile, the EC, Japan and the US reserved their third party rights. On 18 July 2001, the Panel was composed.

WT/DS212 – United States – Countervailing Measures concerning Certain Products from the European Communities

Request by the European Communities. On 10 November 2000, the EC requested consultations with the US concerning the continued application by the United States of countervailing duties on a number of products. In particular, the EC claimed that:

- The continued application by the US of countervailing duties is based on an irrefutable presumption that non-recurring subsidies granted to a former producer of goods, prior to a change of ownership, "pass through" to the current producer of the goods following the change of ownership. According to the EC, this is what the US Department of Commerce ("DOC") refers to as its "*change in ownership"* methodology.
- According to the EC, this approach was found by the Appellate Body in "*United States – Imposition of Countervailing duties on Certain Hot-Rolled Lead and Bismuth Carbon Steel Products Originating in the United Kingdom"* to be inconsistent with the SCM Agreement. In the light of these findings, the EC considered that the continued application of the "*change in ownership"* methodology, and the continued imposition of duties based on it, are in breach of Articles 10, 19 and 21 of the SCM Agreement, because there is no proper determination of a benefit to the producer of the goods under investigation, as required by Article 1.1(b) of the SCM Agreement.
- The EC referred to, and included in this request for consultations, 12 US countervailing duty orders[3] where this "*change in ownership*" methodology was applied. All these cases involve alleged non-recurring subsidies granted to firms prior to a change of ownership.

[3] **Original imposition of countervailing duties (post-WTO measures)**: Stainless Sheet and Strip in Coils from France (C-427-815); Certain Cut-to-Length Carbon Quality Steel from France (C-427-817); Certain Pasta from Italy (C-475-819); Stainless Steel Sheet and Strip in coils from Italy (C-475-821); Certain Stainless Steel Wire Rod from Italy (C-475-823); Stainless Steel Plate in coils from Italy (C-475-825); Certain Cut-to-length Carbon-quality steel plate from Italy (C-475-827). **Administrative reviews:** Cold-Rolled Carbon Steel Flat Products from Sweden (C-401-401); Cut-to Length Carbon Steel Plate from Sweden (C-401-804); Grain-oriented electrical steel from Italy * (C-475-812). **Sunset reviews:** Cut-to-Length Carbon Steel Plate from United Kingdom (C-412-815); Certain Corrosion-Resistant

- Furthermore, the EC considered that if the US had properly examined the nature of the change of ownership in each of these cases, it would have found that it took place for fair market value, and that in such a case no benefit, as defined by Article 1.1(b) of the SCM Agreement read in conjunction with Article 14, was conferred on the producers of the goods subject to the duties by previous financial contributions from the Government to other producers.
- According to the EC, in these circumstances, the amount of countervailing duty would have been greatly reduced, or in some cases, zero.

On 1 February 2001, the EC requested further consultations with the US. Failing consultations and further to the request of the EC, the DSB established a panel at its meeting of 10 September 2001. Brazil, India and Mexico reserved their third-party rights. The Panel has not yet been composed. On 25 October 2001, the EC requested the Director-General to determine the composition of the Panel. On 5 November 2001, the Panel was composed.

WT/DS213 – United States – Countervailing Duties on Certain Corrosion-Resistant Carbon Steel Flat Products from Germany

Complaint by the European Communities. On 10 November 2000, the EC requested consultations with the US in respect of countervailing duties imposed by the US on imports of certain corrosion-resistant carbon steel flat products ("corrosion resistant steel"), dealt with under US case number C-428-817. This dispute relates, in particular, to the final results of a full sunset review of the above measure, carried out by the US Department of Commerce ("DOC") and published in the US Federal Register No. 65 FR 47407 of 2 August 2000. In this decision, the DOC found that revocation of the countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy. The EC considered that this finding is inconsistent with the obligations of the US under the SCM Agreement and, in particular, in breach of Articles 10, 11.9 and 21 (notably 21.3) thereof. In particular, the EC claimed as follows:

- The countervailing measure was first imposed by DOC prior to the entry into force of the WTO Agreement. The original rate of countervailing duty was 0.60%. In the sunset review, the DOC had found that subsidization will continue at a rate of 0.54%. As with the rate from the original investigation, this subsidy rate would be *de minimis* in a new investigation and immediate termination would be required under Article 11.9 of the SCM Agreement, since the amount of subsidy is below 1% *ad valorem*. The EC considered that Article 11.9 applies also in sunset reviews of countervailing measures. These reviews have the same effect as new investigations. They enable countervailing duties to be re-imposed and maintained for a further period of five years. In this respect they are fundamentally different from the retrospective duty assessment mentioned in footnote 52 of the SCM Agreement (the so-called "administrative reviews"

Carbon Steel Flat Products from France (C-427-810); Cut-to-Length Carbon Steel Plate from Germany (C-428-817); Cut-to-Length Carbon Steel Plate from Spain (C-469-804).

* Preliminary determination, plus final sunset results

in US practice), in which the DOC maintains the 0.5% *de minimis* threshold which appears to have been erroneously used by DOC in this case.

- The EC further considered that, under Article 21.3 of the SCM Agreement, countervailing duties have to be terminated after five years, unless the investigating authorities determine that their expiry would be likely to lead to, *inter alia*, the continuation or recurrence of subsidization. According to the EC, it is therefore for the DOC to make a positive demonstration to this effect. The EC considered that the DOC had not made such a demonstration, but, rather, that it had merely found that subsidies of less than the *de minimis* level provided for in Article 11.9 will continue. The EC did not consider that the presence of a level of subsidy which would automatically lead to the termination of a new investigation can be sufficient to warrant a further five years of countervailing measures in a sunset review, unless it can be demonstrated, on the basis of positive evidence, that there is a likelihood of the amount of subsidy increasing. According to the EC, in the present case, there is no possibility of any such increase.

On 5 February 2001, the EC requested further consultations. As the consultations failed, a panel was established by the DSB on 10 September 2001 further to the request of the EC. Japan and Norway reserved their third-party rights. On 18 October 2001, the EC requested the Director-General to determine the composition of the Panel.

WT/DS214 – United States – Definitive Safeguard Measures on Imports of Steel Wire Rod and Circular Welded Carbon Quality Line Pipe

Complaint by the European Communities. On 30 November 2000, the EC requested consultations with the US on US safeguard legislation and its application in two cases concerning the definitive safeguard measures imposed by the US on imports of certain steel wire rod ("wire rod") and certain circular welded carbon quality line pipe ("line pipe"). In particular, the EC considered as follows:

- Sections 201 and 202 of the Trade Act of 1974 contain provisions relating to the determination of a causal link between increased imports and injury or threat thereof which prevented the US from respecting Articles 4 and 5 of the Safeguards Agreement.
- Section 311 of the NAFTA Implementation Act contains provisions concerning imports originating in NAFTA countries which do not respect the requirement of parallelism between the imported products subject to the investigation and the imported products subject to the safeguard measure, contrary to Articles 2, 4 and 5 of the Safeguards Agreement.
- These provisions are in breach of the Most-Favoured-Nation principle under Article I of the GATT 1994.

According to the EC, these violations are confirmed by the application of the aforesaid US provisions in two specific cases where the US imposed definitive safeguard measures, (1) in the form of a tariff rate quota on imports of wire rod effective as of 1 March 2000; and (2) in the form of an increase in duty on imports of line pipe effective as of 1 March 2000. In the EC's view, in both the above mentioned cases the US measures are in breach of the US obligations under the provisions of GATT 1994 and of the Safeguards Agreement, in particular, but not necessarily exclusively, of: Article 2 Safeguards Agreement; Articles 3.1 and 3.2 Safeguards

Agreement; Articles 4.1 and 4.2 Safeguards Agreement; Article 5.1 Safeguards Agreement; Article 8.1 Safeguards Agreement; Articles 12.2, 12.3 and 12.11 Safeguards Agreement; Article I:1 of GATT 1994; Article XIX:1 of GATT 1994.

Further to the request of the EC, the DSB established a panel at its meeting of 10 September 2001. Argentina, Canada, Japan, Korea and Mexico reserved their third-party rights. The Panel has not yet been composed.

WT/DS217 – United States – Continued Dumping and Subsidy Offset Act of 2000

Joint complaint by Australia, Brazil, Chile, European Communities, India, Indonesia, Japan, Korea and Thailand. On 21 December 2000, all mentioned Members ("complainants") requested consultations with the US concerning the amendment to the Tariff Act of 1930 signed on 28 October 2000 with the title of "Continued Dumping and Subsidy Offset Act of 2000" (the "Act") usually referred to as "the Byrd Amendment". According to the complainants:

- the Act mandates the US customs authorities to distribute on an annual basis the duties assessed pursuant to a countervailing duty order, an anti-dumping order or a finding under the Antidumping Act of 1921 to the petitioners or interested parties who supported the petition, for their expenditure incurred with respect to "manufacturing facilities, equipment, acquisition of technology, acquisition of raw material or other inputs". In the view of the complainants, the Act leaves no discretion to the competent authorities, and, therefore, constitutes mandatory legislation. According to the complainants, these "offsets" constitute a specific action against dumping and subsidisation which is not contemplated in the GATT, the AD Agreement or the SCM Agreement.
- Allegedly, the "offsets" would provide a strong incentive to the domestic producers to file or support petitions for anti-dumping or anti-subsidy measures, thereby distorting the application of the standing requirements provided for in the AD Agreement and the SCM Agreement.
- The Act would make it more difficult for exporters subject to an antidumping or countervailing duty order to secure an undertaking with the competent authorities, since the affected domestic producers will have a vested interest in opposing such undertakings in favour of the collection of anti-dumping or countervailing duties.
- In the view of the complainants, this is not a reasonable and impartial administration of the US laws and regulations implementing the provisions of the ADA and the ASCM regarding standing determinations and undertakings.

For the above reasons, the complainants considered that the Act is inconsistent with the obligations of the United States under several provisions of the GATT, the AD Agreement, the SCM Agreement, and the WTO Agreement. By being inconsistent with those provisions, the Act appears to nullify or impair the benefits accruing to the requesting Members under the cited agreements in the manner described in Article XXIII.1 (a) of the GATT. Furthermore, the complainants stated that, whether or not in conflict with the cited Agreements, the Act may nullify or impair benefits accrued to them under those agreements and/or impede the attainment of objectives of those agreements in the manner described in Article XXIII.1 (b) of the GATT. In addition, the

complainants considered that the "offsets" paid under the Act constitute specific subsidies within the meaning of Article 1 of the SCM Agreement, which may cause "adverse effects" to their interests, in the sense of Article 5 of the SCM Agreement

On 12 July 2001, the complainants requested the establishment of a panel. At its meeting on 24 July 2001, the DSB deferred the establishment of a panel. Further to a second request to establish a panel by the complainants, the DSB established a panel at its meeting on 23 August 2001. Argentina; Canada; Costa Rica; Hong Kong, China; Israel; Norway and Mexico reserved their third-party rights.

Further to Canada and Mexico's request to establish a panel on a similar matter, the DSB, at its meeting of 10 September 2001, established a single panel pursuant to paragraphs 1 and 2 of Article 9 of the DSU. This panel would therefore examine not only Canada and Mexico's claims (see WT/DS234 below) but also those previously brought by Australia, Brazil, Chile, European Communities, India, Indonesia, Japan, Korea and Thailand. On 15 October 2001, all 11 complainants requested the Director-General to determine the composition of the Panel. On 25 October 2001, the Panel was composed.

WT/DS219 – European Communities – Anti-dumping duties on malleable cast iron tube or pipe fittings from Brazil

Complaint by Brazil. On 21 December 2000, Brazil requested consultations with the EC as regards definitive anti-dumping duties imposed by Council Regulation (EC) n° 1784/2000 concerning imports of malleable cast iron tube or pipe fittings originating, *inter alia*, in Brazil.

- Brazil considered that the EC's establishment of the facts was not proper and that its evaluation of these facts was not unbiased and objective, both at the provisional and definitive stage, particularly in relation to the initiation and conduct of the investigation (including the evaluation, findings and determination of dumping, injury and causal link between them).
- Brazil also challenged the evaluation and findings made in relation to the "community interest".
- In sum, Brazil considered that the EC had infringed Article VI of GATT 1994 and Articles 1, 2, 3, 4 ,5 , 6, 7, 9, 11, 12 and 15 of the Anti-dumping Agreement.

Further to Brazil's request, the DSB established a panel at its meeting of 24 July 2001. Chile, Japan, Mexico and the US reserved their third-party rights. The Panel was composed on 5 September 2001.

WT/DS221 – United States – Section 129(c)(1) of the Uruguay Round Agreements Act

Complaint by Canada. On 17 January 2001, Canada requested consultations with the US concerning Section 129(c)(1) of the Uruguay Round Agreements Act (the "URAA") and the Statement of Administrative Action accompanying the URAA. In Canada's view, in a situation in which the DSB has ruled that the US has, in an anti-dumping or countervailing duty proceeding, acted inconsistently with US obligations under the AD or SCM Agreements, the US law prohibits the US from complying fully with the DSB ruling. Under US law,

determinations whether to levy anti-dumping or countervailing duties are made after the imports occur. With regard to imports that occurred prior to a date on which the US directs compliance with the DSB ruling, the measures require US authorities to disregard the DSB ruling in making such determinations, even where the determination whether to levy anti-dumping or countervailing duties is made after the date fixed by the DSB for compliance. In such circumstances, determinations by the US to levy anti-dumping or countervailing duties would be inconsistent with its obligations under the AD or SCM Agreements.

Canada considered that these measures are inconsistent with US obligations under Article 21.3 of the DSU, in the context of Articles 3.1, 3.2, 3.7 and 21.1 of the DSU; Article VI of the GATT 1994; Articles 10 and note 36, 19.2, 19.4 and note 51, 21.1, 32.1, 32.2, 32.3, and 32.5 of the SCM Agreement; Articles 1, 9.3, 11.1, 18.1-4 and note 12 of the AD Agreement; and Article XVI:4 of the WTO Agreement.

Further to Canada's request, the DSB established a panel at its meeting of 23 August 2001. Chile, EC, India and Japan reserved their third-party rights. On 30 October 2001, the Panel was composed.

WT/DS222 – Canada – Export Credits and Loan Guarantees for Regional Aircraft

Complaint by Brazil. On 22 January 2001, Brazil requested consultations with Canada concerning subsidies which are allegedly being granted to Canada's regional aircraft industry. Brazil's claims are as follows:

- Export credits, within the meaning of Item (k) of Annex I to the SCM Agreement, are being provided to Canada's regional aircraft industry by the Export Development Corporation (EDC) and the Canada Account.
- Loan guarantees, within the meaning of Item (j) of Annex I to the SCM Agreement, are being provided by EDC, Industry Canada, and the Province of Quebec, to support exports of Canada's regional aircraft industry.
- Brazil takes the view that all of the above-mentioned measures are subsidies, within the meaning of Article 1 of the SCM Agreement, since they are financial contributions that confer a benefit.
- According to Brazil, they are also contingent, in law or in fact, upon export, and constitute, therefore, a violation of Article 3 of the SCM Agreement.

Further to Brazil's request, the DSB established a panel at its meeting of 12 March 2001. Australia, the EC, India and the US reserved their third party rights. On 7 May 2001, Brazil requested the Director-General to determine the composition of the Panel. On 11 May 2001, the Panel was composed.

On 9 August 2001, the Panel informed the DSB that it would not be possible to complete its work within the 3 months deadline from its composition. The panel expects to complete its work by October 2001.

WT/DS231 – European Communities – Trade Description of Sardines

Complaint by Peru. On 20 March 2001, Peru requested consultations with the EC concerning Regulation (EEC) 2136/89 which, according to Peru, prevents Peruvian exporters to continue to use the trade description "sardines" for their products.

Peru submitted that, according to the relevant Codex Alimentarius standards (STAN 94-181 rev. 1995), the species "*sardinops sagax sagax*" are listed among those species which can be traded as "sardines". Peru, therefore, considered that the above Regulation constitutes an unjustifiable barrier to trade, and, hence, in breach of Articles 2 and 12 of the TBT Agreement and Article XI:1 of GATT 1994. In addition, Peru argues that the Regulation is inconsistent with the principle of non-discrimination, and, hence, in breach of Articles I and III of GATT 1994.

Further to Peru's request, the DSB established a Panel at its meeting on 24 July 2001. Canada, Chile, Colombia, Ecuador, Venezuela and the US reserved their third-party rights. On 31 August 2001, Peru requested the Director-General to determine the composition of the Panel. On 11 September 2001, the Panel was composed.

WT/DS234 – United States – Continued Dumping and Subsidy Offset Act of 2000

Complaint by Canada and Mexico. On 21 May 2001, Canada and Mexico requested consultations with the US concerning the amendment to the *Tariff Act of 1930* signed into law by the President on October 28, 2000, entitled the "*Continued Dumping and Subsidy Offset Act of 2000*" (the Act), usually referred to as the Byrd Amendment.

A summary of Canada and Mexico's allegations is as follows:

- Canada and Mexico claimed that the express purpose of the Act is to remedy the "continued dumping or subsidization of import products after the issuance of antidumping orders or findings or countervailing duty orders". With that objective, the Act requires the US customs authorities to distribute, on an annual basis, the duties assessed pursuant to a countervailing duty order, an anti-dumping order or a finding under the *Antidumping Act of 1921* to the "affected domestic producers" for their "qualifying expenses". The "affected domestic producers" are the petitioners or interested parties who supported the petition. "Qualifying expenses" include the expenditure incurred with respect to "manufacturing facilities, equipment, acquisition of technology, acquisition of raw material or other inputs."
- According to Canada and Mexico, the "offsets" constitute a specific action against dumping and subsidization which is not contemplated in the GATT, the Anti-Dumping Agreement ("ADA") or the SCM Agreement.
- Moreover, the "offsets" provide a strong incentive to the domestic producers to file or support petitions for anti-dumping or countervailing measures, thereby distorting the application of the standing requirements provided for in the ADA and SCM Agreement.

- In addition, the Act makes it more difficult for exporters subject to an anti-dumping or countervailing duty order to secure an undertaking with the competent authorities, since the affected domestic producers will have a vested interest in opposing such undertakings in favour of the collection of anti-dumping or countervailing duties. In Canada and Mexico's view, this would not lead to an impartial and reasonable administration of the US laws, regulations and decisions or rulings implementing the provisions of the ADA and the SCM Agreement regarding standing determinations and undertakings.
- Furthermore, Canada and Mexico considered that the "offsets" paid under the Act constitute specific subsidies within the meaning of Article 1 of the SCM Agreement, which may cause "adverse effects" to their interests, in the sense of Article 5 of the SCM Agreement in the form of nullification and impairment of benefits accruing directly or indirectly to Canada and Mexico and serious prejudice in the sense of Article 6 of the SCM Agreement.
- For these reasons, Canada and Mexico alleged that the Act appears to be inconsistent with the obligations of the United States under the Marrakesh Agreement establishing the WTO, as well as the GATT, the ADA and the SCM Agreement. In particular, the Act is alleged to be inconsistent with the obligations of the United States under: (i) Article 18.1 of the ADA in conjunction with Article VI:2 of the GATT and Article 1 of the ADA; (ii) Article 32.1 of the SCM Agreement, in conjunction with Article VI:3 of the GATT and 10 of the SCM Agreement; (iii) Article X(3)(a) of the GATT; (iv) Article 5.4 of the ADA and Article 11.4 of the SCM Agreement; (v) Article 8 of the ADA and Article 18 of the SCM Agreement; (vi) Article 5 of the SCM Agreement; and (vii) Article XVI:4 of the Marrakesh Agreement establishing the WTO, Article 18.4 of the ADA and Article 32.5 of the SCM Agreement.
- According to Canada and Mexico, as a result of being inconsistent with the above provisions, the Act appears to nullify or impair the benefits accruing to Canada and Mexico under the cited Agreements in the manner described in Article XXIII:1 (a) of GATT.
- In addition, Canada and Mexico considered that the Act, whether or not it conflicts with the provisions of the cited Agreements, may nullify or impair benefits accruing to Canada and Mexico under the above-mentioned Agreements in the manner described in Article XXIII:1(b) of GATT.

At its meeting of 10 September 2001, the DSB established a single panel pursuant to paragraphs 1 and 2 of Article 9 of the DSU to examine not only Canada and Mexico's claims but also those previously brought by Australia, Brazil, Chile, European Communities, India, Indonesia, Japan, Korea and Thailand (see WT/DS217 above). In this regard, the countries who had reserved third-party rights to participate in the Panel established on 23 August 2001 were considered to be third-parties in the single Panel established at the 10 September meeting. Australia, Brazil, the EC, India, Indonesia, Japan, Korea and Thailand also reserved their third-party rights to this Panel. On 15 October 2001, the 11 complainants requested the Director-General to determine the composition of the Panel. On 25 October 2001, the Panel was composed.

Reports Issued

PANEL REPORTS

WT/DS202 – United States – Definitive Safeguard Measures on Imports of Circular Welded Carbon Quality Line Pipe from Korea

Complaint by Korea. On 13 June 2000, Korea requested consultations with the United States in respect of concerns the definitive safeguard measure imposed by the United States on imports of circular welded carbon quality line pipe (line pipe). Korea noted that on 18 February 2000 the United States proclaimed a definitive safeguard measure on imports of line pipe (subheadings 7306.10.10 and 7306.10.50 of the Harmonized Tariff Schedule of the United States). In that proclamation, the United States announced that the proposed date of introduction of the measure was 1 March 2000 and that the measure was expected to remain in effect for 3 years and 1 day. Korea considered that the US procedures and determinations that led to the imposition of the safeguard measure as well as the measure itself contravened various provisions contained in the Safeguards Agreement and the GATT 1994. In particular, Korea considers that the measure is inconsistent with the United States' obligations under Articles 2, 3, 4, 5, 11 and 12 of the Safeguards Agreement; and Articles I, XIII and XIX of the GATT 1994.

Further to Korea's request, the DSB established a panel at its meeting of 23 October 2000. Australia, Canada, EC, Japan and Mexico reserved their third-party rights. On 12 January 2001, Korea requested the Director-General to determine the composition of the Panel. On 22 January 2001, the Panel was composed.

On 29 October 2001, the Panel circulated its report to the Members. The Panel concluded that the US line pipe measure was imposed inconsistently with certain provisions of GATT 1994 and/or the Safeguards Agreement, in particular:

- the line pipe measure is not consistent with the general rule contained in the chapeau of Article XIII:2 because it has been applied without respecting traditional trade patterns;
- the line pipe measure is not consistent with Article XIII2:(a) because it has been applied without fixing the total amount of imports permitted at the lower tariff rate;
- the US acted inconsistently with Articles 3.1 and 4.2(c) by failing to include in its published report a finding or reasoned conclusion either (i) that increased imports have caused serious injury, or (ii) that increased imports are threatening to cause serious injury;
- the US acted inconsistently with Article 4.2(b) by failing to establish a causal link between the increased imports and the serious injury, or threat thereof;
- the US has not complied with its obligations under Article 9.1 by applying the measure to developing countries whose imports do not exceed the individual and collective thresholds in that provision;
- the US acted inconsistently with its obligations under Article XIX by failing to demonstrate the existence of unforeseen developments prior to the application of the line pipe measure;
- the US has acted inconsistently with its obligations under Article 12.3 by failing to provide an adequate opportunity for prior consultations with Members having a substantial interest as exporters of line pipe;

- the US has acted inconsistently with its obligations under Article 8.1 to endeavour to maintain a substantially equivalent level of concessions and other obligations;

All other claims by Korea were rejected by the Panel. The Panel also declined Korea's request for the Panel to find that the US safeguard measure should be lifted immediately and the ITC safeguard investigation on line pipe terminated.

COMPLIANCE PANEL REPORTS (ARTICLE 21.5)

Nil.

APPELLATE BODY REPORTS

Nil.

APPELLATE BODY COMPLIANCE REPORTS (ARTICLE 21.5)

WT/DS58/RW – United States - Import Prohibition of Certain Shrimp and Shrimp Products

(See WT/DS58 for precedents) On the grounds that the US had not implemented appropriately the recommendations of the DSB, on 12 October 2000, Malaysia requested that the matter be referred to the original panel pursuant to Article 21.5 of the DSU. In particular, Malaysia considered that by not lifting the import prohibition and not taking the necessary measures to allow the importation of certain shrimp and shrimp products in an unrestrictive manner, the United States had failed to comply with the recommendations and rulings of the DSB. At its meeting of 23 October 2000, the DSB referred the matter to the original panel pursuant to Article 21.5 DSU. Australia, Canada, the EC, Ecuador, India, Japan, Mexico, Pakistan, Thailand and Hong Kong, China reserved their third-party rights. On 8 November 2000, the Panel was composed.

The Panel circulated its report on 15 June 2001. The Panel concluded that:

- the measure adopted by the US in order to comply with the recommendations and rulings of the DSB violated Article XI.1 of the GATT 1994;
- in light of the recommendations and rulings of the DSB, Section 609 of Public Law 101-162, as implemented by the Revised Guidelines of 8 July 1999 and as applied so far by the US authorities, was justified under Article XX of the GATT 1994 as long as the conditions stated in the findings of this Report, in particular the ongoing serious good faith efforts to reach a multilateral agreement, remain satisfied.
- should any one of the conditions referred above cease to be met in the future, the recommendations of the DSB may no longer be complied with. In such a case, any complaining party in the original case may be entitled to have further recourse to Article 21.5 of the DSU.

On 23 July 2001, Malaysia notified the DSB its intention to appeal the above report. In particular, Malaysia sought review by the Appellate Body of the Panel's finding that the US measure at issue does not constitute unjustifiable or arbitrary discrimination between countries where the same conditions prevail and that it is therefore within the scope of the measures permitted under Article XX of the GATT 1994 as long as the conditions stated in the findings of the Panel Report, in particular the ongoing serious good faith efforts to reach a multilateral agreement, remain satisfied.

On 19 September, the Appellate Body informed the DSB of a delay in the circulation of its Report in this appeal. The Report was circulated to the Members on 22 October 2001. The Appellate Body upheld the contested findings of the Panel: Since it had upheld the Panel's findings that the US measure was now applied in a manner that met the requirements of Article XX of the GATT 1994, the Appellate Body refrained from making any recommendations.

WT/DS132/RW – Mexico - Anti-Dumping Investigation of High-Fructose Corn Syrup (HFCS) from the United States

On 12 October 2000, the US requested that the DSB refer the matter to the original panel, pursuant to Article 21.5 of the DSU, in order to establish whether Mexico had correctly implemented the DSB's recommendations. At its meeting of 23 October 2000, the DSB referred the matter to the original panel pursuant to Article 21.5 of the DSU. The EC, Jamaica and Mauritius reserved their third-party rights. The US and Mexico informed the DSB that they were discussing mutually agreeable procedures under Articles 21 and 22 of the DSU in relation to this matter. On 13 November 2000, the Panel was composed.

The Article 21.5 Panel circulated its report on 22 June 2001. The Panel concluded that Mexico's imposition of definitive anti-dumping duties on imports of HFCS from the US on the basis of the SECOFI redetermination was inconsistent with the requirements of the AD Agreement in that Mexico's inadequate consideration of the impact of dumped imports on the domestic industry, and its inadequate consideration of the potential effect of the alleged restraint agreement in its determination of likelihood of substantially increased importation, are not consistent with the provisions of Articles 3.1, 3.4, 3.7 and 3.7(i) of the AD Agreement. The Panel therefore considered that Mexico has failed to implement the recommendation of the original Panel and the DSU to bring its measure into conformity with its obligations under the AD Agreement.

On 24 July 2001, Mexico appealed the above Panel report. In particular, Mexico requested the Appellate Body to examine and reverse the Panel's conclusions that Mexico's imposition of definitive anti-dumping duties on imports of HFCS from the United States, on the basis of SECOFI's redetermination, was inconsistent with the requirements of the Anti-Dumping Agreement, in that

- Mexico's inadequate consideration of the impact of dumped imports on the domestic industry, and its inadequate consideration of the potential effect of the alleged restraint agreement in its determination of likelihood of substantially increased importation, are not consistent with the provisions of Article 3.1, 3.4, 3.7 and 3.7(i) of the Anti-Dumping Agreement, and
- Mexico therefore failed to implement the recommendation of the original Panel and of the DSB to bring its measure into conformity with its obligations under the Anti-Dumping Agreement;
- and that it has nullified or impaired benefits accruing to the United States under that Agreement.

According to Mexico, these conclusions are based on erroneous matters of law and legal interpretations of various provisions of the Anti-Dumping Agreement and the DSU.

On 20 September 2001, the Appellate Body informed that the issuance of the report would be delayed. The Report was circulated to the Members on 22 October 2001. The Appellate Body upheld the contested findings of the Panel and therefore recommended the DSB to request Mexico to bring its anti-dumping measure into conformity with its obligations under that Agreement.

Reports Appealed

PANEL REPORTS

WT/DS176 – United States – Section 211 Omnibus Appropriations Act

Complaint by the European Communities and its Member States. On 8 July 1999, the EC requested consultations with the US in respect of Section 211 of the US Omnibus Appropriations Act. The EC and its member States alleged as follows:

- Section 211, which was signed into law on 21 October 1998, did not allow the registration or renewal in the United States of a trademark, if it was previously abandoned by a trademark owner whose business and assets have been confiscated under Cuban law.
- This law provided that no US court shall recognize or enforce any assertion of such rights.
- Section 211 US Omnibus Appropriations Act was not in conformity with the US' obligations under the TRIPS Agreement, notably its Article 2 in conjunction with the Paris Convention, Article 3, Article 4, Articles 15 to 21, Article 41, Article 42 and Article 62.

Further to the request of the EC and its member States, the DSB established a panel at its meeting on 26 September 2000. Canada, Japan and Nicaragua reserved their third-party rights. On 17 October 2000, the EC and its member States requested the Director-General to determine the composition of the Panel. On 26 October 2000, the Panel was composed.

The Panel circulated its Report on 6 August 2001. The Panel rejected most of the claims by the EC and their Member States except that relating to the inconsistency of Section 211(a)(2) of the Omnibus Appropriations Act with Article 42 of the TRIPS Agreement. In this regard, the panel concluded that this Section is inconsistent with the relevant TRIPs Article on the grounds that it limits, under certain circumstances, right holders' effective access to and availability of civil judicial procedures.

On 4 October 2001, the EC and its member States notified their decision to appeal certain issues of law and legal interpretations developed by the panel report.

COMPLIANCE PANEL REPORTS (ARTICLE 21.5)

WT/DS103/RW and WT/DS113/RW – Canada - Measures Affecting the Importation of Milk and the Exportation of Dairy Products

(See WT/DS103 for precedents). On 16 February 2001, the US and New Zealand requested the DSB to refer the problems with the implementation of the original report to the original panel pursuant to Article 21.5 DSU. At its meeting of 1 March 2001, the DSB referred the matter to the original panel. Australia, the EC and Mexico reserved their third party rights. On 12 April 2001, the Panel was composed.

The Article 21.5 Panel circulated its report on 11 July 2001. The Panel concluded that Canada, through the CEM scheme and the continued operation of Special Milk Class 5(d), has acted inconsistently with its obligations under Articles 3.3 and 8 of the Agreement on Agriculture, by providing export subsidies within the meaning of Article 9.1(c) of the Agreement on Agriculture in excess of its quantity commitment levels specified in its Schedule for exports of cheese, for the marketing year 2000/2001.

On 4 September 2001, Canada appealed the abovementioned Article 21.5 Panel before the Appellate Body. In particular, Canada appealed the Panel's finding that the Canadian measures in question constitute an export subsidy within the meaning of Article 9.1(c)of the Agreement on Agriculture. Canada considered that the Panel's finding that commercial export sales constitute payments that are financed by virtue of governmental action is based on erroneous findings on issues of law and on related legal interpretations with respect to the interpretation and application of the said Article 9.1(c).

WT/DS108/RW – United States – Tax Treatment for "Foreign Sales Corporations"

(See WT/DS108 for precedents) On 7 December 2000, the EC notified the DSB that consultations had failed to settle the dispute and that it was requesting the establishment of a panel pursuant to Article 21.5 of the DSU. At its meeting of 20 December 2000, the DSB agreed to refer the matter to the original panel. Australia, Canada, India, Jamaica and Japan reserved their third party rights. On 5 January 2001, the Panel was composed. On 21 December 2000, pursuant to an agreement between the parties, the US and the EC jointly requested the Article 22.6 DSU arbitrator to suspend the arbitration proceeding until adoption of the panel report or, if there is an appeal, adoption of the Appellate Body report. The arbitration was accordingly suspended.

On 20 August 2001, the compliance panel report was circulated to the Members. The Panel concluded that the amended FSC legislation was still inconsistent with Articles 3.1(a) and 3.2 of the SCM Agreement, with 10.1 and 8 of the Agreement on Agriculture and with Article III:4 of the GATT 1994.

On 15 October 2001, the US notified its decision to appeal certain issues of law and legal interpretations developed by the panel report.

Completed PANEL AND APPELLATE BODY REVIEW

APPELLATE BODY AND PANEL REPORTS ADOPTED

WT/DS2 and WT/DS4 – United States - Standards for Reformulated and Conventional Gasoline

Complaints by Venezuela and Brazil. Venezuela requested consultations on 24 January 1995 and Brazil on 10 April 1995. Complainants alleged that a US gasoline regulation discriminated against complainants' gasoline in violation of GATT Articles I and III and Article 2 of the Agreement on Technical Barriers to Trade (TBT).

Further to Venezuela's request, the DSB established a Panel at its meeting on 10 April 1995. On 26 April 1995 the Panel was composed. Further to Brazil's request, the DSB established a Panel at its meeting on 19 June 1995. On 31 May 1995, in accordance with Article 9 of the DSU, it was agreed that a single panel would consider the complaints of Venezuela and Brazil. The report of the panel was circulated to Members on 29 January 1996. The report of the panel found the regulation to be inconsistent with GATT Article III:4 and not to benefit from an Article XX exception.

The US appealed on 21 February 1996. On 22 April, the Appellate Body issued its report, modifying the panel report on the interpretation of GATT Article XX(g), but concluding that Article XX(g) was not applicable in this case. The Appellate Report, together with the panel report as modified by the Appellate Report, was adopted by the DSB on 20 May 1996.

WT/DS8, WT/DS10 and WT/DS11 – Japan - Taxes on Alcoholic Beverages

Complaints by the European Communities, Canada and the United States. The EC requested consultations on 21 June 1995, and Canada and the US on 7 July 1995. The complainants claimed that spirits exported to Japan were discriminated against under the Japanese liquor tax system which, in their view, levies a substantially lower tax on "shochu" than on whisky, cognac and white spirits.

A joint panel was established at the DSB meeting on 27 September 1995. On 30 October 1995, the Panel was composed. The report of the panel, which found the Japanese tax system to be inconsistent with GATT Article III:2, was circulated to Members on 11 July 1996.

On 8 August 1996 Japan filed an appeal. The report of the Appellate Body was circulated to Members on 4 October 1996. The Appellate Body's Report affirmed the Panel's conclusion that the Japanese Liquor Tax Law is inconsistent with GATT Article III:2, but pointed out several areas where the Panel had erred in its legal reasoning. The Appellate Report, together with the panel report as modified by the Appellate Report, was adopted on 1 November 1996.

WT/DS18 – Australia - Measures Affecting the Importation of Salmon

Complaint by Canada. On 5 October 1995, Canada requested consultations with Australia in respect of Australia's prohibition of imports of salmon from Canada based on a quarantine regulation. Canada alleged that the prohibition is inconsistent with GATT Articles XI and XIII, and also inconsistent with the SPS Agreement.

On 7 march 1997, Canada requested the establishment of a panel. At its meeting on 20 March 1997, the DSB deferred the establishment of a panel. Further to a second request to establish a panel by Canada, the DSB established a panel at its meeting on 10 April 1997. The EC, India, Norway and the US reserved their third-party rights. On 28 May 1997, the Panel was composed. The report of the Panel was circulated to Members on 12 June 1998. The Panel found that Australia's measures complained against were inconsistent with Articles 2.2, 2.3, 5.1, 5.5, and 5.6 of the SPS Agreement, and also nullified or impaired benefits accruing to Canada under the SPS Agreement.

On 22 July 1998, Australia notified its intention to appeal certain issues of law and legal interpretations developed by the Panel. The report of the Appellate Body was circulated to Members on 20 October 1998. The Appellate Body reversed the Panel's reasoning with respect to Articles 5.1 and 2.2 of the SPS Agreement but nevertheless found that:

- Australia had acted inconsistently with Articles 5.1 and 2.2 of the SPS Agreement;
- broadened the Panel's finding that Australia had acted inconsistently with Articles 5.5 and 2.3 of the SPS Agreement;
- reversed the Panel's finding that Australia had acted inconsistently with Article 5.6 of the SPS Agreement but was unable to come to a conclusion whether or not Australia's measure was consistent with Article 5.6 due to insufficient factual findings by the Panel.

The DSB adopted the Appellate Body Report and the Panel Report, as modified by the Appellate Body Report, on 6 November 1998.

WT/DS22 – Brazil - Measures Affecting Desiccated Coconut

Complaint by the Philippines. On 27 November 1995, the Philippines requested consultations with Brazil in respect of a countervailing duty imposed by Brazil on the Philippine's exports of desiccated coconut. The Philippines claimed that this duty was inconsistent with WTO and GATT rules.

On 5 February 1996, the Philippines requested the establishment of a panel. At its meeting on 21 February 1996, the DSB deferred the establishment of a panel. Further to a second request to establish a panel by the Philippines, the DSB established a panel at its meeting on 5 March 1996. Canada, the EC, Indonesia, Malaysia, Sri Lanka and the US reserved their third-party rights. On 16 April 1996, the Panel was composed. The report was circulated to Members on 17 October 1996. The report of the Panel concluded that the provisions of the agreements relied on by the claimant were inapplicable to the dispute.

On 16 December 1996, the Philippines notified its decision to appeal against certain issues of law and legal interpretations developed by the panel. The report of the Appellate Body was circulated to Members on 21 February 1997. The Appellate Body upheld the findings and legal interpretations of the Panel.

The Appellate Body report and the Panel report, as modified by the Appellate Body report, were adopted by the DSB on 20 March 1997.

WT/DS24 – United States - Restrictions on Imports of Cotton and Man-Made Fibre Underwear

Complaint by Costa Rica. On 22 December 1995, Costa Rica requested consultations with the United States concerning US restrictions on textile imports from Costa Rica. Costa Rica alleged that these restrictions were in violation of the ATC agreement.

Further to Costa Rica's request, the DSB established a panel at its meeting on 5 March 1996. India reserved its third-party rights. On 4 April 1996, the Panel was composed. The report of the panel was circulated to members on 8 November 1996. The Panel found that the US restraints were not valid.

On 11 November 1996, Costa Rica notified its decision to appeal against one aspect of the Panel report. The report of the Appellate Body was circulated to Members on 10 February 1997. The Appellate Body upheld the appeal by Costa Rica on that particular point. The Appellate Body report and the Panel report as modified by the Appellate Body report, were adopted by the DSB on 25 February 1997.

WT/DS26 – European Communities - Measures Affecting Meat and Meat Products (Hormones)

Complaint by the United States. On 26 January 1996, the United States requested consultations with the European Communities claiming that measures taken by the EC under the Council Directive Prohibiting the Use in Livestock Farming of Certain Substances Having a Hormonal Action restrict or prohibit imports of meat and meat products from the United States, and are apparently inconsistent with GATT Articles III or XI, SPS Agreement Articles 2, 3 and 5, TBT Agreement Article 2 and the Agreement on Agriculture Article 4.

On 25 April 1996, the US requested the establishment of a panel. At its meetings on 8 May 1996, the DSB deferred the establishment of a panel. Further to a second request to establish a panel by the US, a panel was established at the DSB meeting on 20 May 1996. On 2 July 1996, the Panel was composed. The report of the Panel was circulated to Members on 18 August 1997. The Panel found that the EC ban on imports of meat and meat products from cattle treated with any of six specific hormones for growth promotion purposes was inconsistent with Articles 3.1, 5.1 and 5.5 of the SPS Agreement.

On 24 September 1997, the EC notified its intention to appeal certain issues of law and legal interpretations developed by the Panel. The Appellate Body examined this appeal with that of WT/DS48. The report of the Appellate Body was circulated to Members on 16 January 1998. The Appellate Body upheld the Panel's finding that the EC import prohibition was inconsistent with Articles 3.3 and 5.1 of the SPS Agreement, but reversed the

Panel's finding that the EC import prohibition was inconsistent with Articles 3.1 and 5.5 of the SPS Agreement. On the general and procedural issues, the Appellate Body upheld most of the findings and conclusions of the Panel, except with respect to the burden of proof in proceedings under the SPS Agreement.

The Appellate Body report and the Panel report, as modified by the Appellate Body, were adopted by the DSB on 13 February 1998.

WT/DS27 – European Communities - Regime for the Importation, Sale and Distribution of Bananas

Complaints by Ecuador, Guatemala, Honduras, Mexico and the United States. The complainants in this case other than Ecuador had requested consultations with the EC on the same issue on 28 September 1995 (WT/DS16). After Ecuador's accession to the WTO, the current complainants again requested consultations with the EC on 5 February 1996. The complainants alleged that the EC's regime for importation, sale and distribution of bananas is inconsistent with GATT Articles I, II, III, X, XI and XIII as well as provisions of the Import Licensing Agreement, the Agreement on Agriculture, the TRIMs Agreement and the GATS.

On 11 April 1996, the five complainants requested the establishment of a panel. At its meeting on 24 April 1996, the DSB deferred the establishment of a panel. Further to a second request by the five complainants, a panel was established at the DSB meeting on 8 May 1996. On 29 May 1996, the five complainants requested the Director-General to determine the composition of the Panel. On 7 June 1996, the Panel was composed. The report of the Panel was circulated to Members on 22 May 1997. The Panel found that the EC's banana import regime, and the licensing procedures for the importation of bananas in this regime, are inconsistent with the GATT. The Panel further found that the Lomé waiver waives the inconsistency with GATT Article XIII, but not inconsistencies arising from the licensing system.

On 11 June 1997, the European Communities notified its intention to appeal certain issues of law and legal interpretations developed by the Panel. The report of the Appellate Body was circulated to Members on 9 September 1997. The Appellate Body mostly upheld the Panel's findings, but reversed the Panel's findings that the inconsistency with GATT Article XIII is waived by the Lomé waiver, and that certain aspects of the licensing regime violated Article X of GATT and the Import Licensing Agreement.

At its meeting on 25 September 1997, the Appellate Body report and the Panel report, as modified by the Appellate Body, were adopted by the DSB.

WT/DS31 – Canada - Certain Measures Concerning Periodicals

Complaint by the United States. On 11 March 1996, the United States requested consultations with Canada concerning certain measures prohibiting or restricting the importation into Canada of certain periodicals. The US claimed that the measures are in contravention of GATT Article XI. The US further alleged that the tax treatment of so-called "split-run" periodicals and the application of favourable postage rates to certain Canadian periodicals are inconsistent with GATT Article III.

On 24 May 1996, the US requested the establishment of a panel. At its meeting on 6 June 1996, the DSB deferred the establishment of a panel. Further to a second request to establish a panel by the US, the DSB established a panel on 19 June 1996. On 25 July 1996, the Panel was composed. The report of the Panel was circulated to Members on 14 March 1997. The Panel found the measures applied by Canada to be in violation of GATT rules.

On 29 April 1997, Canada notified its intention to appeal certain issues of law and legal interpretations developed by the Panel. The report of the Appellate Body was circulated to Members on 30 June 1997. The Appellate Body upheld the Panel's findings and conclusions on the applicability of GATT 1994 to Part V.1 of Canada's Excise Tax Act, but reversed the Panel's finding that Part V.1 of the Excise Act is inconsistent with the first sentence of Article III:2 of GATT 1994. The Appellate Body further concluded that Part V.1 of the Excise Act is inconsistent with the second sentence of Article III:2 of GATT 1994. The Appellate Body also reversed the Panel's conclusion that Canada's "funded" postal rate scheme is justified by Article III:8(b) of GATT 1994.

At its meeting on 30 July 1997, the DSB adopted the Appellate Body report and the Panel report, as modified by the Appellate Body.

WT/DS33 – United States - Measure Affecting Imports of Woven Wool Shirts and Blouses

Complaint by India. On 30 December 1994, India requested consultations with the United States concerning the transitional safeguard measure imposed by the United States. India claimed that the safeguard measure is inconsistent with Articles 2, 6 and 8 of the ATC.

On 14 March 1996, India requested the establishment of a panel. At its meeting on 27 March 1996, the DSB deferred the establishment of a panel. Further to a second request to establish a panel by India, the DSB meeting established a panel at its meeting on 17 April 1996. Canada, the EC, Norway, Pakistan and Turkey reserved their third party rights. On 24 June 1996, the Panel was composed. The report of the Panel was circulated to Members on 6 January 1997. The Panel found that the safeguard measure imposed by the United States violated the provisions of the ATC.

On 24 February 1997, India notified its intention to appeal certain issues of law and legal interpretations developed by the Panel. The report of the Appellate Body was circulated to Members on 25 April 1997. The Appellate Body upheld the Panel's decisions on those issues of law and legal interpretations that were appealed against.

The Appellate Body report and the Panel report, as upheld by the Appellate Body, were adopted by the DSB on 23 May 1997.

WT/DS34 – Turkey - Restrictions on Imports of Textile and Clothing Products

Complaint by India. On 21 March 1996, India requested consultations with Turkey concerning Turkey's imposition of quantitative restrictions on imports of a broad range of textile and clothing products. India claimed that those measures are inconsistent with Articles XI and XIII of GATT 1994, as well as ATC Article 2. Earlier, India had requested to be joined in the consultations between Hong Kong and Turkey on the same subject matter (WT/DS29).

On 2 February 1998, India requested the establishment of a panel. At its meeting on 13 February 1998, the DSB deferred the establishment of a panel. Further to a second request to establish a panel by India, the DSB established a panel at its meeting on 13 March 1998. Japan, the Philippines, Thailand, the US and Hong Kong, China reserved their third-party rights. On 11 June 1998, the Panel was composed. The report of the Panel was circulated to Members on 31 May 1999. The Panel found that Turkey's measures are inconsistent with Articles XI and XIII of GATT 1994, and consequently inconsistent also with Article 2.4 of the ATC. The Panel also rejected Turkey's assertion that its measures are justified by Article XXIV of GATT 1994.

On 26 July 1999, Turkey notified its intention to appeal certain issues of law and legal interpretations developed by the Panel. The report of the Appellate Body was circulated on 21 October 1999. The Appellate Body upheld the Panel's conclusion that Article XXIV of GATT 1994 does not allow Turkey to adopt, upon the formation of a customs union with the EC, quantitative restrictions which were found to be inconsistent with Articles XI and XIII of GATT 1994 and Article 2.4 of the ATC. However, the Appellate Body concluded that the Panel erred in its legal reasoning in interpreting Article XXIV of GATT 1994.

At its meeting on 19 November 1999, the DSB adopted the Appellate Body report and the Panel report, as modified by the Appellate Body report.

WT/DS44 – Japan - Measures Affecting Consumer Photographic Film and Paper

Complaint by the United States. On 13 June 1996, the United States requested consultations with Japan concerning Japan's laws, regulations and requirements affecting the distribution, offering for sale and internal sale of imported consumer photographic film and paper. The US alleged that:

- the Japanese Government treated imported film and paper less favourably through these measures, in violation of GATT Articles III and X.
- these measures nullify or impair benefits accruing to the US (a non-violation claim).

On 20 September 1996, the US requested the establishment of a panel. At its meeting on 3 October 1996, the DSB deferred the establishment of a panel. Further to a second request to establish a panel by the US, the DSB established a panel at its meeting on 16 October 1996. The EC and Mexico reserved their third party rights. On 12 December 1996, the US requested the Director-General to determine the composition of the Panel. On 17 December 1996, the Panel was composed. The report of the Panel was circulated to Members on 31 March 1998. The Panel found:

- that the US had not demonstrated that the Japanese 'measures' cited by the US nullified or impaired, either individually or collectively, benefits accruing to the US within the meaning of GATT Article XXIII:1(b);
- that the US had not demonstrated that the Japanese distribution 'measures' cited by the US accord less favourable treatment to imported photographic film and paper within the meaning of GATT Article III:4; and
- that the US did not demonstrate that Japan failed to publish administrative rulings of general application in violation of GATT Article X:1.

The Panel report was adopted by the DSB on 22 April 1998.

WT/DS46 – Brazil - Export Financing Programme for Aircraft

Complaint by Canada. On 19 June 1996, Canada requested consultations with Brazil based on Article 4 of the Subsidies Agreement, which provides for special procedures for export subsidies. Canada claimed that export subsidies granted under the Brazilian *Programa de Financiamento às Exportações (PROEX)*, to foreign purchasers of Brazil's Embraer aircraft are inconsistent with the Subsidies Agreement Articles 3, 27.4 and 27.5.

Canada requested the establishment of a panel on 16 September 1996, alleging violations of both the Subsidies Agreement and GATT 1994. The DSB considered this request at its meeting on 27 September 1996. Due to Brazil's objection to the establishment of a panel, Canada agreed to modify its request, limiting the scope of the request to the Subsidies Agreement. The modified request was submitted by Canada on 3 October 1996 but was subsequently withdrawn prior to a DSB meeting at which it was to be considered.

On 10 July 1998, Canada again requested the establishment of a panel. At its meeting on 23 July 1998, the DSB established a Panel. The EC and the US reserved their third-party rights. On 16 October 1998, Canada requested the Director-General to determine the composition of the Panel. On 22 October 1998, the Panel was composed. The report of the Panel was circulated to Members on 14 April 1999. The Panel found that Brazil's measures were inconsistent with Articles 3.1(a) and 27.4 of the Subsidies Agreement.

On 3 May 1999, Brazil notified its intention to appeal certain issues of law and legal interpretations developed by the Panel. The report of the Appellate Body was circulated to Members on 2 August 1999. The Appellate Body upheld all the findings of the panel, but reversed and modified the panel's interpretation of the "material advantage" clause in item (k) of the Illustrative List of Export Subsidies in Annex I of the SCM Agreement.

The DSB adopted the Appellate Body Report and the Panel Report, as modified by the Appellate Body Report, on 20 August 1999.

WT/DS48 – European Communities - Measures Affecting Livestock and Meat (Hormones)

Complaint by Canada. On 28 June 1996, Canada requested consultations with the EC regarding the importation of livestock and meat from livestock that have been treated with certain substances having a hormonal action under GATT Article XXII and the corresponding provisions in the SPS, TBT and Agriculture Agreements. Violations SPS Articles 2, 3 and 5; GATT Article III or XI; TBT Article 2; and Agriculture Article 4 are alleged. The Canadian claim was essentially the same as the US claim (WT/DS26), for which a panel was established earlier.

On 16 September 1996, Canada requested the establishment of a panel. At its meeting on 27 September 1996, the DSB deferred the establishment of a panel. Further to a second request to establish a panel by Canada, the DSB established a panel at its meeting on 16 October 1996. On 4 November 1996, the Panel was composed. The report of the Panel was circulated to Members on 18 August 1997. The Panel found that the EC ban on imports of meat and meat products from cattle treated with any of six specific hormones for growth promotion purposes was inconsistent with Articles 3.1, 5.1 and 5.5 of the SPS Agreement.

On 24 September 1997, the EC notified its intention to appeal certain issues of law and legal interpretations developed by the Panel. The Appellate Body examined this appeal with that of WT/DS26. The report of the Appellate Body was circulated to Members on 16 January 1998. The Appellate Body upheld the Panel's finding that the EC import prohibition was inconsistent with Articles 3.3 and 5.1 of the SPS Agreement, but reversed the Panel's finding that the EC import prohibition was inconsistent with Articles 3.1 and 5.5 of the SPS Agreement. On the general and procedural issues, the Appellate Body upheld most of the findings and conclusions of the Panel, except with respect to the burden of proof in proceedings under the SPS Agreement.

The Appellate Body report and the Panel report, as modified by the Appellate Body, were adopted by the DSB on 13 February 1998.

WT/DS50 – India - Patent Protection for Pharmaceutical and Agricultural Chemical Products

Complaint by the United States. On 2 July 1996, the US requested consultations with India concerning the alleged absence of patent protection for pharmaceutical and agricultural chemical products in India. Violations of the TRIPS Agreement Articles 27, 65 and 70 are claimed.

The DSB established a panel at its meeting on 20 November 1996. The EC reserved their third party rights. On 29 January 1997, the Panel was composed. The report of the Panel was circulated on 5 September 1997. The Panel found that India has not complied with its obligations under Article 70.8(a) or Article 63(1) and (2) of the TRIPS Agreement by failing to establish a mechanism that adequately preserves novelty and priority in respect of applications for product patents for pharmaceutical and agricultural chemical inventions, and was also not in compliance with Article 70.9 of the TRIPS Agreement by failing to establish a system for the grant of exclusive marketing rights.

On 15 October 1997, India notified its intention to appeal certain issues of law and legal interpretations developed by the Panel. The report of the Appellate Body was circulated to Members on 19 December 1997. The Appellate Body upheld, with modifications, the Panel's findings on Articles 70.8 and 70.9, but ruled that Article 63(1) was not within the Panel's terms of reference.

The Appellate Body report and the Panel report, as modified by the Appellate Body, were adopted by the DSB on 16 January 1998.

WT/DS54, WT/DS55, WT/DS59 and WT/DS64 – Indonesia - Certain Measures Affecting the Automobile Industry

Complaints by the European Communities (WT/DS54), Japan (WT/DS55 and WT/DS64), and the United States (WT/DS59). On 3 October 1996, the EC requested consultations with Indonesia, on 4 October 1996 and 29 November 1996, Japan requested consultations with Indonesia, and on 8 October 1996, the US requested consultations with Indonesia concerning Indonesia's National Car Programme. The EC alleged that the exemption from customs duties and luxury taxes on imports of "national vehicles" and components thereof, and related measures were in violation of Indonesia's obligations under Articles I and III of GATT 1994, Article 2 of the TRIMs Agreement and Article 3 of the SCM Agreement. Japan contended that these measures were in violation of Indonesia's obligations under Articles I:1, III:2, III:4 and X:3(a) of GATT 1994, as well as Articles 2 and 5.4 of the TRIMs Agreement. The US contended that the measures were in violation of Indonesia's obligations under Article I and III of GATT 1994, Article 2 of the TRIMs Agreement, Article 3, 6 and 28 of the SCM Agreement and Articles 3, 20 and 65 of the TRIPS Agreement.

On 17 April 1997, Japan requested the establishment of a panel with respect to complaints WT/DS55 and WT/DS64. At its meeting on 30 April 1997, the DSB deferred the establishment of a panel. On 12 May 1997, the EC requested the establishment of a panel with respect to WT/DS54. At its meeting on 23 May 1997, the DSB deferred the establishment of a panel. Further to the EC's and Japan's second requests, the DSB established a panel at its meeting on 12 June 1997. In accordance with Article 9.1 of the DSU, the DSB decided that a single panel will examine the disputes WT/DS54, WT/DS55 and WT/DS64. India, Korea and the US reserved their third party rights.

On 12 June 1997, the US requested the establishment of a panel. At its meeting on 25 June 1997, the DSB deferred the establishment of a panel. Further to a second request to establish a panel by the US, the DSB established a Panel at its meeting on 30 July 1997. In accordance with Article 9.1 of the DSU, the DSB decided that a single panel will examine this dispute together with WT/DS54, WT/DS55 and WT/DS64. India and Korea reserved their third party rights.

On 25 July 1997, the EC and Japan requested the Director-General to determine the composition of the Panel. On 29 July 1997, the Panel was composed.

The report of the Panel was circulated to Members on 2 July 1998. The Panel found that Indonesia was in violation of Articles I and II:2 of GATT 1994, Article 2 of the TRIMs Agreement, Article 5(c) of the SCM

Agreement, but was not in violation of Article 28.2 of the SCM Agreement. The Panel however, found that the complainants had not demonstrated that Indonesia was in violation of Articles 3 and 65.5 of the TRIPS Agreement. At its meeting on 23 July 1998, the DSB adopted the Panel report.

WT/DS56 – Argentina - Certain Measures Affecting Imports of Footwear, Textiles, Apparel and Other Items

Complaint by the United States. On 4 October 1996, the US requested consultations with Argentina concerning the imposition of specific duties on these items in excess of the bound rate and other measures by Argentina. The US contended that these measures violate Articles II, VII, VIII and X of GATT 1994, Article 2 of the TBT Agreement, Article 1 to 8 of the Agreement on the Implementation of Article VII of GATT 1994, and Article 7 of the Agreement on Textiles and Clothing.

On 9 January 1997, the US requested the establishment of a panel. At its meeting on 22 January 1997, the DSB deferred the establishment of a panel. Further to a second request to establish a panel by the US, the DSB established a panel at its meeting on 25 February 1997. The EC and India reserved their third-party rights. On 4 April 1997, the Panel was composed. The report of the Panel was circulated on 25 November 1997. The Panel found that the minimum specific duties imposed by Argentina on textiles and apparel are inconsistent with the requirements of Article II of GATT, and that the statistical tax of three per cent *ad valorem* imposed by Argentina on imports is inconsistent with the requirements of Article VIII of GATT.

On 21 January 1998, Argentina notified its intention to appeal certain issues of law and legal interpretations developed by the Panel. The report of the Appellate Body was circulated to Members on 27 March 1998. The Appellate Body upheld, with some modification, the Panel's findings and conclusions.

The Appellate Body report and the Panel report, as modified by the Appellate Body, were adopted by the DSB on 22 April 1998.

WT/DS58 – United States - Import Prohibition of Certain Shrimp and Shrimp Products

Complaint by India, Malaysia, Pakistan and Thailand. On 8 October 1996, India, Malaysia, Pakistan and Thailand requested consultations with the US concerning a ban on importation of shrimp and shrimp products from these complainants imposed by the US under Section 609 of US Public Law 101-162. Violations of Articles I, XI and XIII of GATT 1994, as well nullification and impairment of benefits, were alleged.

On 9 January 1997, Malaysia and Thailand requested the establishment of a panel. At its meeting on 22 January 1997, the DSB deferred the establishment of a panel. On 30 January 1997, Pakistan also requested the establishment of a panel. Further to Malaysia's, Pakistan's and Thailand's requests, the DSB established a panel at its meeting on 25 February 1997. Australia, Colombia, Costa Rica, Ecuador, the EC, Guatemala, Hong Kong, India, Japan, Mexico, Nigeria, the Philippines, Senegal, Singapore and Sri Lanka reserved their third-party rights.

On 25 February 1997, India also requested the establishment of a panel on the same matter. At its meeting on 20 March 1997, the DSB deferred the establishment of a panel. Further to a second request to establish a panel by India, the DSB agreed to establish a panel at its meeting on 10 April 1997. It was also agreed to incorporate this panel with that already established in respect of the other complainants. El Salvador and Venezuela reserved their third party rights, in addition to those delegations who had reserved their third-party rights to the panel established at the requests of Malaysia, Pakistan and Thailand.

On 15 April 1997, the Panel was composed.

The report of the Panel was circulated to Members on 15 May 1998. The Panel found that the import ban in shrimp and shrimp products as applied by the United States is inconsistent with Article XI:1 of GATT 1994, and cannot be justified under Article XX of GATT 1994.

On 13 July 1998, the US notified its intention to appeal certain issues of law and legal interpretations developed by the Panel. The report of the Appellate Body was circulated to Members on 12 October 1998. The Appellate Body reversed the Panel's finding that the US measure at issue is not within the scope of measures permitted under the chapeau of Article XX of GATT 1994, but concluded that the US measure, while qualifying for provisional justification under Article XX(g), fails to meet the requirements of the chapeau of Article XX.

The DSB adopted the Appellate Body Report and the Panel Report, as modified by the Appellate Body Report, on 6 November 1998.

WT/DS60 – Guatemala - Anti-Dumping Investigation Regarding Imports of Portland Cement from Mexico

Complaint by Mexico. On 15 October 1996, Mexico requested consultations with Guatemala in respect of an anti-dumping investigation commenced by Guatemala with regard to imports of portland cement from Mexico. Mexico alleged that this investigation was in violation of Guatemala's obligations under Articles 2, 3, 5 and 7.1 of the Anti-Dumping Agreement.

On 4 February 1997, Mexico requested the establishment of a panel. At its meeting on 25 February 1997, the DSB deferred the establishment of a panel. Further to a second request to establish a panel by Mexico, the DSB established a panel at its meeting on 20 March 1997. The US, Canada, Honduras and El Salvador reserved their third-party rights. On 21 April 1997, Mexico requested the Director-General to determine the composition of the Panel. On 1 May 1997, the Panel was composed. The report of the Panel was circulated to Members on 19 June 1998. The Panel found that Guatemala had failed to comply with the requirements of Article 5.3 of the Anti-Dumping Agreement by initiating the investigation on the basis of evidence of dumping, injury and casual link that was not "sufficient" as a justification for initiation.

On 4 August 1998, Guatemala notified its intention to appeal certain issues of law and legal interpretations developed by the Panel. The report of the Appellate Body was circulated to Members on 2 November 1998. The Appellate Body reversed the Panel's finding that the dispute was properly before the Panel, on the ground that Mexico did not comply with Article 6.2 of the DSU in its request for a panel since it did not identify the measure

it was complaining against. Having found that the dispute was not properly before the Panel, the Appellate Body could not make any conclusions on the findings by the Panel on the substantive issues that were also the subject of the appeal. The Appellate Body stressed that its decision was without prejudice to Mexico's right to pursue new dispute settlement proceedings on this matter.

At the DSB meeting on 25 November 1998, the DSB adopted the Appellate Body Report and the Panel Report, as reversed by the Appellate Body Report.

WT/DS62, WT/DS67 and WT/DS68 – European Communities - Customs Classification of Certain Computer Equipment

Complaints by the United States. These are in respect of the alleged reclassification by the European Communities, for tariff purposes, of certain Local Area Network (LAN) adapter equipment and personal computers with multimedia capability. The US alleged that these measures violate Article II of GATT 1994.

At its meeting on 25 February 1997, the DSB established a panel in respect of the complaint WT/DS62. Japan, Korea, India and Singapore reserved their third-party rights. At its meeting on 20 March 1997, the DSB established a panel in respect of the complaints WT/DS67 and WT/DS68. In accordance with Article 9.1 of the DSU, the DSB agreed to establish a single panel to examine the complaints WT/DS62, WT/DS67 and WT/DS68.

The report of the Panel was circulated to Members on 5 February 1998. The Panel found that the EC failed to accord imports of LAN equipment from the US treatment no less favourable than that provided for in the EC Schedule of commitments, thereby acting inconsistently with Article II:1 of GATT 1994.

On 24 March 1998, the EC notified its intention to appeal certain issues of law and legal interpretations developed by the Panel. The report of the Appellate Body was circulated to Members on 5 June 1998. The Appellate Body reversed the Panel's conclusion that the EC tariff treatment of LAN equipment is inconsistent with Article II:1 of GATT 1994.

At its meeting on 22 June 1998, the DSB adopted the Appellate Body report and the Panel report, as modified by the Appellate Body report.

WT/DS69 – European Communities - Measures Affecting Importation of Certain Poultry Products

Complaint by Brazil. On 24 February 1997, Brazil requested consultations with the EC in respect of the EC regime for the importation of certain poultry products and the implementation by the EC of the Tariff Rate Quota for these products. Brazil contended that the EC measures are inconsistent with Articles X and XXVII of GATT 1994 and Articles 1 and 3 of the Agreement on Import Licensing Procedures. Brazil also contended that the measures nullify or impair benefits accruing to it directly or indirectly under GATT 1994.

On 12 June 1997, Brazil requested the establishment of a panel. At its meeting on 25 June 1997, the DSB deferred the establishment of a panel. Further to a second request to establish a panel by Brazil, the DSB established a panel at its meeting on 30 July 1997. Thailand and the US reserved their third-party rights. On 11 August 1997, the Panel was composed. The report of the Panel was circulated to Members on 12 March 1998. The panel found that Brazil had not demonstrated that the EC had failed to implement and administer the tariff rate quota for poultry in line with its obligations under the cited agreements.

On 29 April 1998, Brazil notified its intention to appeal certain issues of law and legal interpretations developed by the Panel. The report of the Appellate Body was circulated to Members on 13 July 1998. The Appellate Body upheld most of the Panel's findings and conclusions, but reversed the Panel's finding that the EC had acted inconsistently with Article 5.1(b) of the Agreement on Agriculture. The Appellate Body, however, concluded that the EC had acted inconsistently with Article 5.5 of the Agreement on Agriculture.

At its meeting on 23 July 1998, the DSB adopted the Appellate Body report and the Panel report, as modified by the Appellate Body report.

WT/DS70 – Canada - Measures Affecting the Export of Civilian Aircraft

Complaint by Brazil. On 10 March 1997, Brazil requested consultations with Canada in respect of certain subsidies granted by the Government of Canada or its provinces intended to support the export of civilian aircraft. The request was made pursuant to Article 4 of the Subsidies Agreement. Brazil contended that these measures are inconsistent with Article 3 of the Subsidies Agreement.

At its meeting on 23 July 1998, the DSB established a panel. The US reserved its third party rights. On 16 October 1998, Brazil requested the Director-General to determine the composition of the Panel. On 22 October 1998, the Panel was composed. The report of the panel was circulated to Members on 14 April 1999. The Panel found that certain of Canada's measures were inconsistent with Articles 3.1(a) and 3.2 of the Subsidies Agreement, but rejected Brazil's claim that EDC assistance to the Canadian regional aircraft industry constitutes export subsidies.

On 3 May 1999, Canada notified its intention to appeal certain issues of law and legal interpretations developed by the Panel. The report of the Appellate Body was circulated to Members on 2 August 1999. The Appellate Body upheld the findings of the panel.

The DSB adopted the Appellate Body and Panel Reports on 20 August 1999.

WT/DS75 and WT/DS84 – Korea - Taxes on Alcoholic Beverages

Complaints by the European Communities and the United States. On 4 April 1997, the EC requested consultations with Korea in respect of internal taxes imposed by Korea on certain alcoholic beverages pursuant to its Liquor Tax Law and Education Tax Law. The EC contended that the Korean Liquor Tax Law and Education

Tax Law appear to be inconsistent with Korea's obligations under Article III:2 of GATT 1994. On 23 May 1997, the US requested consultations with Korea in respect of the same measures complained of by the EC. The US also alleged violations of Article III:2.

On 10 September 1997, the EC and the US requested the establishment of a panel. At its meeting on 25 September 1997, the DSB deferred the establishment of a panel. Further to a second request to establish a panel by the EC and the US, the DSB established a panel at its meeting on 16 October 1997. Canada and Mexico reserved their third-party rights. On 26 November 1997, the EC and the US requested the Director-General to determine the composition of the Panel. On 5 December 1997, the Panel was composed. The report of the Panel was circulated to Members on 17 September 1998. The Panel found that:

- soju (both diluted and distilled), is directly competitive and substitutable with the imported distilled alcoholic beverages that were in issue, namely, whisky, brandy, rum, gin, vodka, tequila, liqueurs and ad-mixtures.
- Korea has taxed the imported products in a dissimilar manner and that the tax differential was more than *de minimis*, and is applied so as to afford protection to domestic production.
- The Panel therefore concluded that Korea had violated Article III:2 of GATT 1994.

On 20 October 1998, Korea notified its intention to appeal certain issues of law and legal interpretations developed by the Panel. The report of the Appellate Body was circulated to Members on 18 January 1999. The Appellate Body upheld the panel's findings on all points.

The DSB adopted the Panel and Appellate Body Reports on 17 February 1999.

WT/DS76 – Japan - Measures Affecting Agricultural Products

Complaint by the United States. On 7 April 1997, the US requested consultations with Japan in respect of the latter's prohibition, under quarantine measures, of imports of certain agricultural products. The US alleged that Japan prohibits the importation of each variety of a product requiring quarantine treatment until the quarantine treatment has been tested for that variety, even if the treatment has proved to be effective for other varieties of the same product. The US alleged violations of Articles 2, 5 and 8 of the SPS Agreement, Article XI of GATT 1994, and Article 4 of the Agreement on Agriculture. In addition, the US made a claim for nullification and impairment of benefits.

On 3 October 1997, the US requested the establishment of a panel. At its meeting on 16 October 1997, the DSB deferred the establishment of a panel. Further to a second request to establish a panel by the US, the DSB established a panel at its meeting on 18 November 1997. The EC, Hungary and Brazil reserved their third-party rights. The report of the Panel was circulated to Members on 27 October 1998. The Panel found that Japan acted inconsistently with Articles 2.2 and 5.6 of the SPS Agreement, and Annex B and, consequently, Article 7 of the SPS Agreement.

On 24 November 1998, Japan notified its intention to appeal certain issues of law and legal interpretations developed by the Panel. The report of the Appellate Body was circulated to Members on 22 February 1999. The Appellate Body upheld the basic finding that Japan's varietal testing of apples, cherries, nectarines and walnuts is inconsistent with the requirements of the SPS Agreement.

The DSB adopted the Appellate Body Report and the Panel Report, as modified by the Appellate Body Report, on 19 March 1999.

WT/DS79 – India - Patent Protection for Pharmaceutical and Agricultural Chemical Products

Complaint by the European Communities. On 28 April 1997, the EC requested consultations with India in respect of the alleged absence in India of patent protection for pharmaceutical and agricultural chemical products, and the absence of formal systems that permit the filing of patent applications of and provide exclusive marketing rights for such products. The EC contended that this is inconsistent with India's obligations under Article 70, paragraphs 8 and 9, of the TRIPS Agreement (see similar US complaint in WT/DS50, where the Panel and Appellate Body reports were adopted on 16 January 1998).

On 9 September 1997, the EC requested the establishment of a panel. At its meeting on 25 September 1997, the DSB deferred the establishment of a panel. Further to a second request to establish a panel by the EC, the DSB established a panel at its meeting on 16 October 1997. The US reserved its third-party rights. The report of the Panel was circulated to Members on 24 August 1998. The Panel found that India has not complied with its obligations under Article 70.8(a) of the TRIPS Agreement by failing to establish a legal basis that adequately preserves novelty and priority in respect of applications for product patents for pharmaceutical and agricultural chemical inventions, and was also not in compliance with Article 70.9 of the TRIPS Agreement by failing to establish a system for the grant of exclusive marketing rights. At its meeting on 2 September 1998, the DSB adopted the Panel Report.

WT/DS87 and WT/DS110 – Chile - Taxes on Alcoholic Beverages

Complaints by the European Communities. On 4 June 1997 and 15 December 1997, the EC requested consultations with Chile in respect of Chile's Special Sales Tax on spirits, which allegedly imposes a higher tax on imported spirits than on *Pisco*, a locally brewed spirit. The EC's second request (WT/DS110), takes issue with the modification to the law on taxation on alcoholic beverages passed by Chile to address the concerns of the EC in WT/DS87. The EC contended that this differential treatment of imported spirits violates Article III:2 of GATT 1994.

On 3 October 1997, the EC requested the establishment of a panel in respect of the complaint WT/DS87. At its meeting on 16 October 1997, the DSB deferred the establishment of a panel. Further to a second request to establish a panel by the EC, the DSB established a panel at its meeting on 18 November 1997. Canada, Mexico, Peru and the US reserved their third-party rights.

Further to the EC's complaint with respect to WT/DS110, the DSB established a panel at its meeting on 25 March 1998. The DSB also agreed that a single panel be established to examine the two complaints. Peru, Canada and the US reserved their third-party rights. On 10 and 11 June 1998, the EC and Chile, respectively, requested the Director-General to determine the composition of the Panel. On 1 July 1998, the Panel was composed. The report of the panel was circulated to Members on 15 June 1999. The panel found that Chile's Transitional System and its New System for taxation of distilled alcoholic beverages was inconsistent with Article III:2 of GATT 1994.

On 13 September 1999, Chile notified its intention to appeal certain issues of law and legal interpretations developed by the Panel. The report of the Appellate Body was circulated to Members on 13 December 1999. The Appellate Body upheld the panel's interpretation and application of Article III:2 of GATT 1994, subject to exclusion of certain considerations relied upon by the panel.

The DSB adopted the Appellate Body Report and the Panel Report, as modified by the Appellate Body Report, on 12 January 2000.

WT/DS90 – India - Quantitative Restrictions on Imports of Agricultural, Textile and Industrial Products

Complaint by the United States. On 15 July 1997, the US requested consultations with India in respect of quantitative restrictions maintained by India on importation of a large number of agricultural, textile and industrial products. The US contended that these quantitative restrictions, including the more than 2,700 agricultural and industrial product tariff lines notified to the WTO, are inconsistent with India's obligations under Articles XI:1 and XVIII:11 of GATT 1994, Article 4.2 of the Agreement on Agriculture, and Article 3 of the Agreement on Import Licensing Procedures.

On 3 October 1997, the US requested the establishment of a panel. At its meeting on 16 October 1997, the DSB deferred the establishment of a panel. Further to a second request to establish a panel, the DSB established a panel at its meeting on 18 November 1997. On 10 February 1998, the US requested the Director-General to determine the composition of the Panel. On 20 February 1998, the Panel was composed. The report of the Panel was circulated to Members on 6 April 1999. The panel found that the measures at issue were inconsistent with India's obligations under Articles XI and XVIII11 of GATT 1994, and to the extent that the measures apply to products subject to the Agreement on Agriculture, are inconsistent with Article 4.2 of the Agreement on Agriculture. The panel also found the measures to be nullifying or impairing benefits accruing to the United States under GATT 1994, and the Agreement on Agriculture.

On 26 May 1999, India notified its intention to appeal certain issues of law and legal interpretations developed by the Panel. The report of the Appellate Body was circulated to Members on 23 August 1999. The Appellate Body upheld all of the findings of the panel that were appealed from.

The DSB adopted the Panel and Appellate Body reports at its meeting on 22 September 1999.

WT/DS98 – Korea - Definitive Safeguard Measure on Imports of Certain Dairy Products

Complaint by the European Communities. On 12 August 1997, the EC requested consultations with Korea in respect of a definitive safeguard measure imposed by Korea on imports of certain dairy products. The EC contended that under the provisions of different governmental measures, Korea has imposed a safeguard measure in the form of an import quota on imports of certain dairy products. The EC considered that this measure is in violation of Articles 2, 4, 5 and 12 of the Agreement on Safeguard Measures, as well as a violation of Article XIX of GATT 1994.

On 9 January 1998, the EC requested the establishment of a panel. At the DSB meeting on 22 January 1998, the EC informed the DSB that it was, for the time being, not pursuing the panel request. On 10 June 1998, the EC made a another request to establish a panel. At its meeting on 22 June 1998, the DSB deferred the establishment of a panel. Further to another request to establish a panel by the EC, the DSB established a panel at its meeting on 23 July 1998. The US reserved its third party rights. On 20 August 1998, the Panel was composed. The report of the panel was circulated to Members on 21 June 1999. The panel found that Korea's measure is inconsistent with Articles 4.2(a), and 5 of the Agreement on Safeguards, but rejected the EC claims under Article XIX of GATT 1994, Articles 2.1, 12.1 (although it found that Korea's notifications to the Committee on Safeguards were not timely, and to that extent were inconsistent with Article 12.1), 12.2 and 12.3 of the Agreement on Safeguards.

On 15 September 1999, Korea notified its intention to appeal certain issues of law and legal interpretations developed by the Panel. The report of the Appellate Body was circulated to Members on 14 December 1999. The Appellate Body reversed one of the panel's conclusions on the interpretation of Article XIX of GATT 1994 and its relationship with the Agreement on Safeguards; upheld one, but reversed another of the panel's interpretations of Article 5.1 of the Agreement on Safeguards; and concluded that Korea violated Article 12.2 of the Agreement on Safeguards, thereby reversing in part the panel's finding.

The DSB adopted the Appellate Body Report and the Panel Report, as modified by the Appellate Body Report, on 12 January 2000.

WT/DS99 – United States - Anti-Dumping Duty on Dynamic Random Access Memory Semiconductors (DRAMS) of One Megabit or Above from Korea

Complaint by Korea. On 14 August 1997, Korea requested consultations with the US in respect of a decision of the US Department of Commerce (DoC) not to revoke the anti-dumping duty on dynamic random access memory semi-conductors (DRAMS) of one megabyte or above originating from Korea. Korea contended that the DoC's decision was made despite the finding that the Korean DRAM producers have not dumped their products for a period of more than three and a half consecutive years, and despite the existence of evidence demonstrating conclusively that Korean DRAM producers will not engage in dumping DRAMS in the future. Korea considered that these measures are in violation of Articles 6 and 11 of the Anti-Dumping Agreement.

On 6 November 1997, Korea requested the establishment of a panel. At its meeting on 18 November 1997, the DSB deferred the establishment of a panel. Further to a second request to establish a panel by Korea, the DSB

established a panel at its meeting on 16 January 1998. On 10 March 1998, Korea requested the Director-General to determine the composition of the Panel. On 19 March 1998, the Panel was composed. The report of the Panel was circulated on 29 January 1999. The Panel found the measures complained of to be in violation of Article 11.2 of the Anti-Dumping Agreement. At its meeting on 19 March 1999, the DSB adopted the Panel Report.

WT/DS103 and WT/DS113 – Canada - Measures Affecting the Importation of Milk and the Exportation of Dairy Products

Complaints by the United States and New Zealand.

On 8 October 1997, the US requested consultations with Canada in respect of export subsidies allegedly granted by Canada on dairy products and the administration by Canada of the tariff-rate quota on milk. The US contended that these export subsidies by Canada distort markets for dairy products and adversely affect US sales of dairy products. The US alleged violations of Article II, X and X1 of GATT 1994, Articles 3, 4, 8, 9 and 10 of the Agreement on Agriculture, Article 3 of the Subsidies Agreement, and Articles 1, 2 and 3 of the Import Licensing Agreement.

On 29 December 1997, New Zealand requested consultations with Canada in respect of an alleged dairy export subsidy scheme commonly referred to as the "special milk classes" scheme. New Zealand contended that the Canadian "special milk classes" scheme is inconsistent with Article XI of GATT, and Articles 3, 8, 9 and 10 of the Agreement on Agriculture.

On 2 February 1998, the US requested the establishment of a panel in respect of WT/DS103. At its meeting on 13 February 1998, the DSB deferred the establishment of a panel. On 25 March 1998, further to requests from the US and New Zealand, the DSB established, pursuant to Article 9.1 of the DSU, a single panel to examine the disputes WT/DS103 and WT/DS113. Australia and Japan reserved their third-party rights. On 12 August 1998, the Panel was composed. The report of the Panel was circulated to Members on 17 May 1999. The Panel found that the measures complained against were inconsistent with Canada's obligations under Article II:1(b) of GATT 1994, and Articles 3.3 and 8 of the Agreement on Agriculture by providing export subsidies as listed in Article 9.1(a) and 9.1(c) of the Agreement on Agriculture.

On 15 July 1999, Canada notified its intention to appeal certain issues of law and legal interpretations developed by the Panel. The report of the Appellate Body was circulated on 13 October 1999. The Appellate Body ruled as follows:

- it reversed the Panel's interpretation of Article 9.1(a) and, in consequence, reversed the Panel's finding that Canada acted inconsistently with its obligations under Article 3.3 and 8 of the Agreement on Agriculture.
- it upheld the Panel's finding that Canada was in violation of Article 3.3 and 8 of the Agreement on Agriculture in respect of export subsidies listed in Article 9.1(c) of the Agreement on Agriculture.
- it partly reversed the Panel's finding that Canada acted inconsistently with its obligations under Article II:1(b) of GATT 1994.

At its meeting on 27 October 1999, the DSB adopted the Appellate Body report and the Panel report, as modified by the Appellate Body report.

WT/DS108 – United States - Tax Treatment for "Foreign Sales Corporations"

Complaint by the European Communities. On 18 November 1997, the EC requested consultations with the US in respect of Sections 921-927 of the US Internal Revenue Code and related measures, establishing special tax treatment for "Foreign Sales Corporations" (FSC). The EC contended that these provisions were inconsistent with US obligations under Articles III:4 and XVI of the GATT 1994, Articles 3.1(a) and (b) of the Subsidies Agreement, and Articles 3 and 8 of the Agreement on Agriculture.

On 1 July 1998, the EC requested the establishment of a Panel. In the request for a panel, the EC invoked Article 3.1(a) and (b) of the Subsidies Agreement, and Articles 3 and 8, 9 and 10 of the Agreement on Agriculture, and did not pursue the claims under the GATT 1994. At its meeting on 23 July 1998, the DSB deferred the establishment of a panel. Further to a second request to establish a panel by the EC, the DSB established a panel at its meeting on 22 September 1998. Barbados, Canada and Japan reserved their third-parties rights. On 9 November 1998, the Panel was composed. The report of the panel was circulated to Members on 8 October 1999. The panel found that, through the FSC scheme, the United States had acted inconsistently with its obligations under Article 3.1(a) of the Subsidies Agreement as well as with its obligations under Article 3.3 of the Agreement on Agriculture (and consequently with its obligations under Article 8 of that Agreement).

On 28 October 1999, the US notified its intention to appeal certain issues of law and legal interpretations developed by the panel. On 2 November 1999, the US withdrew its notice of appeal pursuant to Rule 30 of the Working Procedures for Appellate Review, stating that the withdrawal was conditional on its right to file a new notice of appeal pursuant to Rule 20 of the Working Procedures. On 26 November 1999, the US notified its intention to appeal certain issues of law and legal interpretations developed by the panel. The report of the Appellate Body was circulated to Members on 24 February 2000. The Appellate Body ruled as follows:

- it upheld the panel's finding that the FSC measure constituted a prohibited subsidy under Article 3.1(a) of the SCM Agreement.
- it reversed the panel's finding that the FSC measure involved "the provision of subsidies to reduce the costs of marketing exports" of agricultural products under Article 9.1(d) of the Agriculture Agreement and, in consequence, reversed the panel's findings that the US had acted inconsistently with its obligations under Article 3.3 of the Agriculture Agreement.
- it found that the US acted inconsistently with its obligations under Articles 10.1 and 8 of the Agriculture Agreement by applying export subsidies, through the FSC measure, in a manner which results in, or threatens to lead to, circumvention of its export subsidy commitments with respect to agricultural products.
- it also emphasized that it was not ruling that a Member must choose one kind of tax system over another so as to be consistent with that Member's WTO obligations.

The DSB adopted the Appellate Body report and the panel report, as modified by the Appellate Body report, at its meeting on 20 March 2000.

WT/DS114 – Canada - Patent Protection of Pharmaceutical Products

Complaint by the European Communities and their member States. On 19 December 1997, the EC requested consultations with Canada in respect of the alleged lack of protection of inventions by Canada in the area of pharmaceuticals under the relevant provisions of the Canadian implementing legislation, in particular the Patent Act. The EC alleged that Canada's legislation is not compatible with its obligations under the TRIPS Agreement, because it does not provide for the full protection of patented pharmaceutical inventions for the entire duration of the term of protection envisaged by Articles 27.1, 28 and 33 of the TRIPS Agreement.

On 11 November 1998, the EC requested the establishment of a panel. At its meeting on 25 November 1998, the DSB deferred the establishment of a panel. Further to a second request to establish a panel by the EC, the DSB established a panel at its meeting on 1 February 1999. Australia, Brazil, Colombia, Cuba, India, Israel, Japan, Poland, Switzerland, Thailand and the United States reserved their third-party rights. On 15 March 1999, the EC and their member States requested the Director-General to determine the composition of the Panel. On 25 March 1999, the Panel was composed. The report of the panel was circulated to Members on 17 March 2000. The panel found that:

- the so-called regulatory review exception provided for in Canada's Patent Act (Section 55.2(1)) – the first aspect of the Patent Act challenged by the EC - was not inconsistent with Article 27.1 of the TRIPS Agreement and was covered by the exception in Article 30 of the TRIPS Agreement and therefore not inconsistent with Article 28.1 of the TRIPS Agreement. Under the regulatory review exception, potential competitors of a patent owner are permitted to use the patented invention, without the authorization of the patent owner during the term of the patent, for the purposes of obtaining government marketing approval, so that they will have regulatory permission to sell in competition with the patent owner by the date on which the patent expires.
- the so-called stockpiling exception (Section 55.2(2)) –the second aspect of the Patent Act challenged by the EC, was inconsistent with Article 28.1 of the TRIPS Agreement and was not covered by the exception in Article 30 of the TRIPS Agreement. Under the stockpiling exception, competitors are allowed to manufacture and stockpile patented goods during a certain period before the patent expires, but the goods cannot be sold until after the patent expires. The panel considered that, unlike the regulatory review exception, the stockpiling exception constituted a substantial curtailment of the exclusionary rights required to be granted to patent owners under Article 28.1 to such an extent that it could not be considered to be a limited exception within the meaning of Article 30 of the TRIPS Agreement.

The DSB adopted the panel report at its meeting on 7 April 2000.

WT/DS121 - Argentina - Safeguard Measures on Imports of Footwear

Complaint by the European Communities. On 3 April 1998, the EC requested consultations with Argentina in respect of provisional and definitive safeguard measures imposed by Argentina on imports of footwear. The EC asserted that by Resolution 226/97 of 24 February 1997, Argentina imposed a provisional safeguard measure in the form of specific duties on imports of footwear effective from 25 February 1997, which was followed by Resolution 987/97, which imposed a definitive safeguard measure on these imports effective from 13 September 1997. The EC alleged that the above measures violate Articles 2, 4, 5, 6 and 12 of the Agreement on Safeguards, and Article XIX of GATT 1994.

On 10 June 1998, the EC requested the establishment of a panel. At its meeting on 22 June 1998, the DSB deferred the establishment of a panel. Further to a second request to establish a panel, the DSB established a panel at its meeting on 23 July 1998. Brazil, Indonesia, Paraguay, the US and Uruguay reserved their third-parties rights. On 15 September 1998, the Panel was composed. The report of the panel was circulated on 25 June 1999. The panel found that Argentina's measure is inconsistent with Articles 2 and 4 of the Agreement on Safeguards.

On 15 September 1999, Argentina notified its intention to appeal certain issues of law and legal interpretations developed by the Panel. The report of the Appellate Body was circulated to Members on 14 December 1999. The Appellate Body upheld the panel's finding that Argentina's measure is inconsistent with Articles 2 and 4 of the Agreement on Safeguards, but reversed certain findings and conclusions of the panel in respect of the relationship between the Agreement on Safeguards and Article XIX of GATT 1994 and the justification of imposing safeguard measures only on non-MERCOSUR third country sources of supply.

The DSB adopted the Appellate Body Report and the Panel Report, as modified by the Appellate Body Report, on 12 January 2000.

WT/DS122 – Thailand - Anti-Dumping Duties on Angles, Shapes and Sections of Iron or Non-Alloy Steel and H-Beams from Poland

Complaint by Poland. On 6 April 1998, Poland requested consultations with Thailand concerning the imposition of final anti-dumping duties on imports of angles, shapes and sections of iron or non-alloy steel and H-beams. Poland asserted that provisional anti-dumping duties were imposed by Thailand on 27 December 1996, and a final anti-dumping duty of 27.78% of CIF value for these products, produced or exported by any Polish producer or exporter, was imposed on 26 May 1997. Poland further asserted that Thailand refused two requests by Poland for disclosure of findings. Poland contended that these actions by Thailand violate Articles 2, 3, 5 and 6 of the Anti-Dumping Agreement.

On 13 October 1999, Poland requested the establishment of a panel. At its meeting on 27 October 1999, the DSB deferred the establishment of a panel. Further to a second request to establish a panel by Poland, the DSB established a panel at its meeting on 19 November 1999. The EC, Japan and the US reserved their third-

party rights. On 20 December 1999, the Panel was composed. The report was circulated to Members on 28 September 2000. The Panel concluded that:

> (i) Poland failed to establish that Thailand had acted inconsistently with its obligations under Article 2 of the Anti-Dumping Agreement or Article VI of the GATT 1994 in the calculation of the amount for profit in constructing normal value.
>
> (ii) Thailand's imposition of the definitive anti-dumping measure on imports of H-beams from Poland was inconsistent with the requirements of Article 3 of the Anti-Dumping Agreement in that:
>
> - inconsistently with the second sentence of Article 3.2 and Article 3.1, the Thai authorities did not consider, on the basis of an "objective examination" of "positive evidence" in the disclosed factual basis, the price effects of dumped imports;
> - inconsistently with Articles 3.4 and 3.1, the Thai investigating authorities failed to consider certain factors listed in Article 3.4, and failed to provide an adequate explanation of how the determination of injury could be reached on the basis of an "unbiased or objective evaluation" or an "objective examination" of "positive evidence" in the disclosed factual basis; and
> - inconsistently with Articles 3.5 and 3.1, the Thai authorities made a determination of a causal relationship between dumped imports and any possible injury on the basis of (a) their findings concerning the price effects of dumped imports, which the Panel had already found to be inconsistent with the second sentence of Article 3.2 and Article 3.1; and (b) their findings concerning injury, which the Panel had already found to be inconsistent with Article 3.4 and 3.1.
>
> (iii) under Article 3.8 of the DSU, in cases where there is infringement of the obligations assumed under a covered agreement, the action is considered *prima facie* to constitute a case of nullification or impairment of benefits under that agreement, and that, accordingly, to the extent Thailand has acted inconsistently with the provisions of the AD Agreement, it has nullified or impaired benefits accruing to Poland under that Agreement.

On 23 October 2000, Thailand notified the DSB of its decision to appeal certain issues of law covered in the Panel Report and legal interpretations developed by the Panel. The Appellate Body circulated its report on 12 March 2001. The Appellate Body:

- upheld the Panel's finding that the panel request submitted by Poland with respect to claims relating to Articles 2, 3 and 5 of the Anti-Dumping Agreement was sufficient to meet the requirements of Article 6.2 of the DSU;
- reversed the Panel's interpretation that Article 3.1 of the Anti-Dumping Agreement requires that "the reasoning supporting the determination be 'formally or explicitly stated' in documents in the record of the AD investigation to which interested parties (and/or their legal counsel) have access at least from the time of the final determination", and that "the factual basis relied upon by the authorities must be discernible from those documents";

- reversed the Panel's interpretation that Article 17.6(i) requires a Panel reviewing an injury determination under Article 3.1, in its assessment of whether the establishment of the facts is proper, to ascertain whether the "factual basis" of the determination is "discernible" from the documents that were available to the interested parties and/or their legal counsel in the course of the investigation and at the time of the final determination; and, in its assessment of whether the evaluation of the facts is unbiased and objective, to examine the analysis and reasoning in only those documents to ascertain the connection between the "disclosed factual basis" and the findings;
- upheld the Panel's interpretation that Article 3.4 requires a mandatory evaluation of all of the factors listed in that provision, and that, therefore, the Panel did not err in its application of the standard of review under Article 17.6(ii) of the Anti-Dumping Agreement;
- left undisturbed the Panel's findings of violation under Articles 3.1, 3.2, 3.4 and 3.5 of the Anti-Dumping Agreement; and
- concluded that the Panel did not err in its application of the burden of proof, and in the application of the standard of review under Article 17.6(i) of the Anti-Dumping Agreement.

At its meeting of 5 April 2001, the DSB adopted the Appellate Body report and the panel report, as modified by the Appellate Body report.

WT/DS126 – Australia - Subsidies Provided to Producers and Exporters of Automotive Leather

Complaint by the United States. On 4 May 1998, the US requested consultations with Australia in respect of prohibited subsidies allegedly provided to Australian producers and exporters of automotive leather, including subsidies provided to Howe and Company Proprietary Ltd. (or any of its affiliated and/or parent companies), which allegedly involve preferential government loans of about A$25 million and non-commercial terms and grants of about A$30 million. The US contended that these measures violate the obligations of Australia under Article 3 of the Subsidies Agreement.

Further to the US's request, the DSB established a panel at its meeting on 22 June 1998 (see also WT/DS106). On 27 October 1998, the US requested the Director-General to determine the composition of the Panel. On 2 November 1998, the Panel was composed. The report of the Panel was circulated to Members on 25 May 1999. The Panel found that the loan from the Australian Government to Howe/ALH is not a subsidy contingent upon export performance within the meaning of Article 3.1(a) of the SCM Agreement, but that the payments under the grant contract are subsidies within the meaning of Article 1 of the SCM Agreement, which are contingent upon export performance within the meaning of Article 3.1(a) of that Agreement. At its meeting on 16 June 1999, the DSB adopted the Panel report.

WT/DS132 – Mexico - Anti-Dumping Investigation of High-Fructose Corn Syrup (HFCS) from the United States

Complaint by the United States. On 8 May 1998, the US requested consultations with Mexico in respect of an anti-dumping investigation of high-fructose corn syrup (HFCS) grades 42 and 55 from the US, conducted by

Mexico. The US alleged that on 27 February 1997, the Government of Mexico published a notice initiating this anti-dumping investigation on the basis of an application dated 14 January 1997 from the Mexican National Chamber of Sugar and Alcohol Producers. The US further alleged that on 23 January 1998, Mexico issued a notice of final determination of dumping and injury in that investigation, and consequently imposed definitive anti-dumping measures on these imports from the United States. The US contended that the manner in which the application for an anti-dumping investigation was made, as well as the manner in which a determination of threat of injury was made, is inconsistent with Articles 2, 3, 4, 5, 6, 7, 9, 10 and 12 of the Anti-Dumping Agreement.

On 8 October 1998, the US requested the establishment of a panel. At its meeting on 21 October 1998, the DSB deferred the establishment of a panel. Further to a second request to establish a panel by the US, the DSB established a panel at its meeting on 25 November 1998. Jamaica and Mauritius reserved their third-party rights. On 13 January 1999, the Panel was composed. The report of the panel was circulated to Members on 28 January 2000. The Panel found that:

- Mexico's initiation of the anti-dumping investigation on imports of HFCS from the US was consistent with the requirements of Articles 5.2, 5.3, 5.8, 12.1 and 12.1.1(iv) of the Anti-Dumping Agreement.
- Mexico's imposition of the definitive anti-dumping measure on imports of HFCS from the US was inconsistent with the following provisions of the Anti-Dumping Agreement: Articles 3.1, 3.2, 3.4, 3.7 and 3.7(i); Article 7.4; Article 10.2; Article 10.4; and Articles 12.2 and 12.2.2.

The DSB adopted the panel report at its meeting on 24 February 2000.

WT/DS135 – European Communities - Measures Affecting the Prohibition of Asbestos and Asbestos Products

Complaint by Canada. On 28 May 1998, Canada requested consultations with the EC in respect of measures imposed by France, in particular Decree of 24 December 1996, with respect to the prohibition of asbestos and products containing asbestos, including a ban on imports of such goods. Canada alleged that these measures violate Articles 2, 3 and 5 of the SPS Agreement, Article 2 of the TBT Agreement, and Articles III, XI and XIII of GATT 1994. Canada also alleged nullification and impairment of benefits accruing to it under the various agreements cited.

On 8 October 1998, Canada requested the establishment of a panel. At its meetings on 21 October 1998, the DSB deferred the establishment of a panel. Further to a second request to establish a panel by Canada, the DSB established a panel at its meeting on 25 November 1998. The US reserved its third-party rights. The report of the panel was circulated to Members on 18 September 2000. The Panel found that:

- the "prohibition" part of the Decree of 24 December 1996 does not fall within the scope of the TBT Agreement.
- the part of the Decree relating to "exceptions" does fall within the scope of the TBT Agreement. However, as Canada had not made any claim concerning the compatibility with the TBT Agreement of

the part of the Decree relating to exceptions, the Panel refrained from reaching any conclusion with regard to the latter.

- chrysotile asbestos fibres as such and fibres that can be substituted for them as such are like products within the meaning of Article III:4 of the GATT 1994.
- the asbestos-cement products and the fibro-cement products for which sufficient information had been submitted to the Panel are like products within the meaning of Article III:4 of the GATT 1994.
- with respect to the products found to be like, the Decree violates Article III:4 of the GATT 1994.
- insofar as it introduces a treatment of these products that is discriminatory under Article III:4, the Decree is justified as such and in its implementation by the provisions of paragraph (b) and the introductory clause of Article XX of the GATT 1994.
- Canada has not established that it suffered non-violation nullification or impairment of a benefit within the meaning of Article XXIII:1(b) of the GATT 1994.

On 23 October 2000, Canada notified the Dispute Settlement Body of its decision to appeal certain issues of law covered in the Panel Report and legal interpretations developed by the Panel. The Appellate Body circulated its report on 12 March 2001. The Appellate Body:

- reversed the Panel's finding that the TBT Agreement "does not apply to the part of the Decree relating to the ban on imports of asbestos and asbestos-containing products because that part does not constitute a 'technical regulation' within the meaning of Annex 1.1 to the TBT Agreement", and found that the measure, viewed as an integrated whole, does constitute a "technical regulation" under the TBT Agreement;
- reversed the Panel's findings that "it is not appropriate" to take into consideration the health risks associated with chrysotile asbestos fibres in examining the "likeness", under Article III:4 of the GATT 1994, of those fibres and PCG fibres, and, also, in examining the "likeness", under that provision, of cement-based products containing chrysotile asbestos fibres or PCG fibres;
- reversed the Panel's finding that chrysotile asbestos fibres and PCG fibres are "like products" under Article III:4 of the GATT 1994; and found that Canada has not satisfied its burden of proving that these fibres are "like products" under that provision;
- reversed the Panel's finding that cement-based products containing chrysotile asbestos fibres and cement-based products containing PCG fibres are "like products" under Article III:4 of the GATT 1994; and found that Canada has not satisfied its burden of proving that these cement-based products are "like products" under Article III:4 of the GATT 1994;
- reversed, in consequence, the Panel's finding that the measure is inconsistent with Article III:4 of the GATT 1994;
- upheld the Panel's finding that the measure at issue is "necessary to protect human … life or health", within the meaning of Article XX(b) of the GATT 1994; and, found that the Panel acted consistently with Article 11 of the DSU in reaching this conclusion;
- upheld the Panel's finding that the measure may give rise to a cause of action under Article XXIII:1(b) of the GATT 1994.

At its meeting of 5 April 2001, the DSB adopted the Appellate Body report and the panel report, as modified by the Appellate Body report.

WT/DS136 – United States – Anti-Dumping Act of 1916

Complaint by the European Communities. On 9 June 1988, the EC requested consultations with the US in respect of the alleged failure of the US to repeal its Anti-Dumping Act of 1916. The EC contended that the US Anti-Dumping Act of 1916 is still in force and is applicable to the import and internal sale of any foreign product irrespective of its origin, including products originating in countries which are WTO Members. The EC also alleged that the 1916 Act exists in the US statute books in parallel with the Tariff Act of 1930, as amended, which includes the US implementing legislation of multilateral Anti-Dumping provisions. The EC alleged violations of Articles III:4, VI:1, and VI:2 of GATT 1994, Article XVI:4 of the WTO Agreement, and Articles 1, 2, 3, 4 and 5 of the Anti-Dumping Agreement.

On 1 November 1998, the EC requested the establishment of a panel. At its meeting on 25 November 1998, the DSB deferred the establishment of a panel. Further to a second request to establish a panel by the EC, the DSB established a panel at its meeting on 1 February 1999. India, Japan and Mexico reserved their third-party rights. On 1 April 1999, the Panel was composed. The report of the panel was circulated to Members on 31 March 2000. The panel considered that:

- Article VI:1 of GATT 1994 applies to any situation where a Member addresses the type of transnational price discrimination defined in that Article.
- on the basis of the terms of the 1916 Act, its legislative history and its interpretation by US courts, the transnational price discrimination test found in the 1916 Act met the definition of Article VI:1 of GATT 1994.
- by not providing exclusively for the injury test set out in Article VI, the 1916 Act violated Article VI:1 of the GATT 1994;
- by providing for the imposition of treble damages, fines or imprisonment, instead of anti-dumping duties, the 1916 Act violated Article VI:2 of the GATT 1994;
- by not providing for a number of procedural requirements found in the Anti-Dumping Agreement, the 1916 Act violated Articles 1, 4 and 5.5 of the Anti-Dumping Agreement; and
- by violating Articles VI:1 and VI:2 of the GATT 1994, the 1916 Act violated Article XVI:4 of the WTO Agreement.

On 29 May 2000, the US notified its intention to appeal certain issues of law and legal interpretations developed by the panel. The Appellate Body examined this appeal with that of WT/DS162. The Appellate Body report was circulated to Members on 28 May 2000. The Appellate Body upheld all of the findings and conclusions of the panel that were appealed.

The DSB adopted the Appellate Body report and the Panel report, as upheld by the Appellate Body report, on 26 September 2000.

WT/DS138 – United States – Imposition of Countervailing Duties on Certain Hot-Rolled Lead and Bismuth Carbon Steel Products Originating in the United Kingdom

Complaint by the European Communities. On 30 June 1998, the EC requested consultations with the US in respect of the alleged imposition of countervailing duties on certain hot-rolled lead and bismuth carbon steel (leaded bars) from the UK. The EC asserted that the US imposed countervailing duties of 1.69 per cent on United Engineering Steels Ltd (UES) for the review period 1 January 1994 to 31 December 1994, and of 2.4 per cent for the review period 1 January 1995 to 20 March 1995, on the basis of subsidies which had been granted to British Steel Corporation (BSC). The EC also contended that the US imposed countervailing duties on British Steel plc (BSplc) / British Steel Engineering Steels LTD (BSES) for the review period 1 January 1996 to 31 December 1996 on the basis of subsidies granted to BSC before its privatization in 1988. The EC alleged that these impositions of countervailing duties constitute a violation of Articles 1.1(b), 10, 14 and 19.4 of the Subsidies Agreement.

On 14 January 1999, the EC requested the establishment of a panel. At its meeting on 1 February 1999, the DSB deferred the establishment of a panel. Further to a second request to establish a panel by the EC, the DSB established a panel at its meeting on 17 February 1999. Brazil and Mexico reserved their third-party rights. On 16 March 1999, the Panel was composed. The report of the panel was circulated to Members on 23 December 1999. The panel found that by imposing countervailing duties on 1994, 1995 and 1996 imports of leaded bars produced by UES and BSES respectively, the US violated Article 10 of the Subsidies Agreement. In reaching this conclusion, the panel noted that the presumption of "benefit" flowing from untied, non-recurring "financial contributions" even after changes in ownership was rebutted in the circumstances surrounding the changes in ownership leading to the creation of UES and BSplc/BSES respectively, *inter alia*, because the change in ownership involved the payment of consideration for the productive assets etc. acquired by those entities from BSC. According to the panel, the US should therefore have examined whether the production of leaded bars by UES and BSplc/BSES respectively, and not BSC, was subsidised.

On 27 January 2000, the US notified its intention to appeal certain issues of law and legal interpretations developed by the panel. The report of the Appellate Body was circulated to Members on 10 May 2000. The Appellate Body upheld all of the findings of the panel that were appealed but on one point corrected the reasoning of the panel.

The DSB adopted the Appellate Body report and the panel report, as upheld by the Appellate Body report, on 7 June 2000.

WT/DS139 and WT/DS142 – Canada – Certain Measures Affecting the Automotive Industry

Complaints by Japan and the European Communities.

On 3 July 1998, Japan requested consultations with Canada in respect of measures being taken by Canada in the automotive industry. Japan contended that under Canadian legislation implementing an automotive products agreement (Auto Pact) between the US and Canada, only a limited number of motor vehicle manufacturers are

eligible to import vehicles into Canada duty free and to distribute the motor vehicles in Canada at the wholesale and retail distribution levels. Japan further contended that this duty-free treatment is contingent on two requirements:

(i) a Canadian value-added (CVA) content requirement that applies to both goods and services; and
(ii) a manufacturing and sales requirement. Japan alleges that these measures are inconsistent with Articles I:1, III:4 and XXIV of GATT 1994, Article 2 of the TRIMs Agreement, Article 3 of the SCM Agreement, and Articles II, VI and XVII of GATS.

On 17 August 1998, the EC requested consultations with Canada in respect of the same measures raised by Japan in WT/DS139 and cites the same provisions alleged to be in violation, except for Article XXIV of GATT 1994, which was cited by Japan but is not cited by the EC.

On 12 November 1998, Japan requested the establishment of a panel in respect of WT/DS139. At is meeting on 25 November 1998, the DSB deferred the establishment of a panel. Further to requests to establish a panel by Japan and the EC, at its meeting on 1 February 1999, the DSB established a single panel, pursuant to Article 9.1 of the DSU, to examine the complaints WT/DS139 and WT/DS142. India, Korea, and the US reserved their third-party rights. On 15 March 1999, the EC and Japan requested the Director-General to determine the composition of the Panel. On 25 March 1999, the Panel was composed. The report of the panel was circulated to Members on 11 February 2000. The panel found that:

- the conditions under which Canada granted its import duty exemption were inconsistent with Article I of GATT 1994 and not justified under Article XXIV of GATT 1994.
- the application of the CVA requirements to be inconsistent with Article III:4 of GATT 1994.
- the import duty exemption constitutes a prohibited export subsidy in violation of Article 3.1(a) of the SCM Agreement.
- the manner in which Canada conditioned access to the import duty exemption is inconsistent with Article II of GATS and could not justified under Article V of GATS.
- the application of the CVA requirements constitutes a violation of Article XVII of the GATS.

On 2 March 2000, Canada notified its intention to appeal certain issues of law and legal interpretations developed by the panel. The Appellate Body report was circulated to Members on 31 May 2000. The Appellate Body:

- reversed the panel's conclusion that Article 3.1(b) of the Subsidies Agreement did not extend to contingency "in fact".
- considered that the panel had failed to examine whether the measure at issue affected trade in services as required under Article I:1 of the GATS.
- reversed the panel's conclusion that the import duty exemption was inconsistent with the requirements of Article II:1 of the GATS as well as the panel's findings leading to that conclusion.

The DSB adopted the Appellate Body report and the Panel report, as modified by the Appellate Body report, on 19 June 2000.

WT/DS141 – European Communities – Anti-Dumping Duties on Imports of Cotton-Type Bed-Linen from India

Complaint by India. On 3 August 1998, India requested consultations with the EC in respect of Council Regulation (EC) No 2398/97 of 28 November 1997 on imports of cotton-type bed-linen from India. India asserted that the EC initiated anti-dumping proceedings against imports of cotton- type bed-linen from India by publishing a notice of initiation in September 1996. Provisional anti-dumping duties were imposed by EC Council Regulation No 1069/97 of 12 June 1997. This was followed by the imposition of definitive duties in accordance with the above-mentioned EC Council Regulation No 2398/97 of 28 November 1997. India contended that:

- the determination of standing, the initiation, the determination of dumping and injury as well as the explanations of the EC authorities' findings are inconsistent with WTO law.
- the EC authorities' establishment of the facts was not proper and that the EC's evaluation of facts was not unbiased and objective.
- the EC has not taken into account the special situation of India as a developing country.
- there were violations of Articles 2.2.2, 3.1, 3.2, 3.4, 3.5, 5.2, 5.3, 5.4, 5.8, 6, 12.2.2, and 15 of the Anti-Dumping Agreement, and Articles I and VI of the GATT 1994.

On 7 September 1999, India requested the establishment of a panel. At its meeting on 22 September 1999, the DSB deferred the establishment of a panel. Further to a second request to establish a panel by India, the DSB established a panel at its meeting on 27 October 1999. Egypt, Japan and the US reserved their third-party rights. On 12 January 2000, India requested the Director-General to determine the composition of the Panel. On 24 January 2000, the Panel was composed. The panel report was circulated on 30 October 2000. The panel concluded that:

(i) the EC did not act inconsistently with its obligations under Articles 2.2, 2.2.2, 3.1, 3.4, 3.5, 5.3, 5.4, and 12.2.2 of the AD Agreement in:

- calculating the amount for profit in constructing normal value;
- considering all imports from India (and Egypt and Pakistan) as dumped in the analysis of injury caused by dumped imports;
- considering information for producers comprising the domestic industry but not among the sampled producers in analyzing the state of the industry;
- examining the accuracy and adequacy of the evidence prior to initiation;
- establishing industry support for the application; and
- providing public notice of its final determination.

(ii) The panel, however, also concluded that the EC acted inconsistently with its obligations under Articles 2.4.2, 3.4, and 15 of the AD Agreement in:

- determining the existence of margins of dumping on the basis of a methodology incorporating the practice of zeroing;
- failing to evaluate all relevant factors having a bearing on the state of the domestic industry, and specifically all the factors set forth in Article 3.4;
- considering information for producers not part of the domestic industry as defined by the investigating authority in analyzing the state of the industry; and
- failing to explore possibilities of constructive remedies before applying anti-dumping duties.

On 1 December 2000, the EC notified the DSB of its intention to appeal certain issues of law covered in the Panel Report and legal interpretations developed by the Panel. The Appellate Body circulated its report on 1 March 2001. The Appellate Body:

(i) upheld the finding of the Panel that the practice of "zeroing" when establishing "the existence of margins of dumping", as applied by the EC in the anti-dumping investigation at issue in this dispute, is inconsistent with Article 2.4.2 of the Anti-Dumping Agreement;

(ii) reversed the findings of the Panel that:

- the method for calculating amounts for administrative, selling and general costs and profits provided for in Article 2.2.2(ii) of the Anti-Dumping Agreement may be applied where there is data on administrative, selling and general costs and profits for only one other exporter or producer; and
- in calculating the amount for profits under Article 2.2.2(ii) of the Anti-Dumping Agreement, a Member may exclude sales by other exporters or producers that are not made in the ordinary course of trade; and

(iii) as a consequence, concluded that the EC, in calculating amounts for administrative, selling and general costs and profits in the anti-dumping investigation at issue in this dispute, acted inconsistently with Article 2.2.2(ii) of the Anti-Dumping Agreement.

The DSB adopted the Appellate Body report and the Panel report, as modified by the Appellate Body report, on 12 March 2001.

WT/DS152 – United States – Sections 301-310 of the Trade Act of 1974

Complaint by the European Communities. On 25 November 1998, the EC requested consultations with the US in respect of Title III, chapter 1 (sections 301-310) of the US Trade Act of 1974 (the Trade Act), as amended, and in particular sections 306 and 305 of this Act. The EC alleged that:

- by imposing strict time limits within which unilateral determinations must be made and trade sanctions taken, sections 306 and 305 of the Trade Act do not allow the US to comply with the rules of the DSU in

situations where a prior multilateral ruling under the DSU on conformity of measures taken pursuant to implementation of DSB recommendations has not been adopted by the DSB.

- the DSU procedure resulting in a multilateral finding, even if initiated immediately after the end of the reasonable period of time for implementation, cannot be finalised, nor can subsequent DSU procedure for seeking compensation or suspension of concessions be complied with, within the time limits of sections 306 and 305.
- Title III, chapter 1(sections 301-310) of the Trade Act, as amended, and in particular sections 306 and 305 of the Act, are inconsistent with Articles 3, 21, 22 and 23 of the DSU; Article XVI:4 of the WTO Agreement; and Articles I, II, III, VIII and XI of GATT 1994.
- the Trade Act nullifies and impairs benefits accruing, directly or indirectly, to it under GATT 1994, and also impedes the objectives of GATT 1994 and of the WTO.

On 26 January 1999, the EC requested the establishment of a panel. At its meeting on 17 February 1999, the DSB deferred the establishment of a panel. Further to a second request to establish a panel by the EC, the DSB established a panel at its meeting on 2 March 1999. Brazil, Canada, Colombia, Costa Rica, Cuba, Dominica, Dominican Republic, Ecuador, Hong Kong, India, Israel, Jamaica, Japan, Korea, St. Lucia and Thailand reserved their third-party rights. On 24 March 1999, the EC requested the Director-General to determine the composition of the Panel. On 31 March 1999, the Panel was composed. The report of the panel was circulated to Members on 22 December 1999. The Panel found that Sections 304(a)(2)(A), 305(a) and 306(b) of the US Trade Act of 1974 were not inconsistent with Article 23.2(a) or (c) of the DSU or with any of the GATT 1994 provisions cited. The panel noted that its findings were based in full or in part on US undertakings articulated in the Statement of Administrative Action approved by the US Congress at the time it implemented the Uruguay Round agreements and confirmed in the statements by the US to the panel. The panel stated therefore that should those undertakings be repudiated or in any other way removed, its findings of conformity would no longer be warranted. The DSB adopted the panel report at its meeting on 27 January 2000.

WT/DS155 – Argentina - Measures on the Export of Bovine Hides and the Import of Finished Leather

Complaint by the European Communities. On 24 December 1998, the EC requested consultations with Argentina concerning certain measures taken by Argentina on the export of bovine hides and the import of finished leather. The EC alleged that the *de facto* export prohibition on raw and semi-tanned bovine hides (which is implemented in part through the authorization granted by the Argentinian authorities to the Argentinian tanning industry to participate in customs control procedures of hides before export) is in violation of GATT Articles; XI:1 (which outlaws *de jure* export prohibitions and measures of equivalent effect); and X:3(a) (which requires uniform and impartial administration of laws and regulations) to the extent that personnel of the Argentinian Chamber for the tanning industry are authorized to assist Argentinian customs authorities. The EC also claimed that the "additional value added tax" of 9 per cent on imports of products into Argentina and the "advance turnover tax" of 3 per cent based on the price of imported goods imposed on operators when importing goods into Argentina are in violation of GATT Article III:2 (which prohibits tax discrimination of foreign products which are like, directly competitive or substitutable to domestic products).

On 31 May 1999, the EC requested the establishment of a panel. At its meeting on 16 June 1999, the DSB deferred the establishment of a panel. Further to a second request to establish a panel by the EC, the DSB established a panel at its meeting on 26 July 1999. On 31 January 2000, the Panel was composed. The Panel circulated its report on 19 December 2000. The Panel concluded that:

- it has not been proved that Resolution (ANA) No. 2235/96 is inconsistent with Argentina's obligations under Article XI:1 of the GATT 1994;
- Resolution (ANA) No. 2235/96 is inconsistent with Argentina's obligations under Article X:3(a) of the GATT 1994;
- General Resolution (DGI) No. 3431/91 is inconsistent with Article III:2, first sentence, of the GATT 1994;
- General Resolution (DGI) No. 3543/92 is inconsistent with Article III:2, first sentence, of the GATT 1994;
- General Resolutions (DGI) No. 3431/91 and 3543/92, although they fall within the terms of paragraph (d) of Article XX of the GATT 1994, fail to meet the requirements of the chapeau of Article XX and are therefore not justified under Article XX as a whole;
- there is nullification or impairment of the benefits accruing to the European Communities under the GATT 1994.

The DSB adopted the Panel Report on 16 February 2001.

WT/DS156 – Guatemala - Definitive Anti-dumping Measure regarding Grey Portland Cement from Mexico

Complaint by Mexico. On 5 January 1999, Mexico requested consultations with Guatemala concerning definitive anti-dumping duties imposed by the authorities of Guatemala on imports of grey Portland cement from Mexico and the proceedings leading thereto. Mexico alleged that the definitive anti-dumping measure is inconsistent with Articles 1, 2, 3, 5, 6, 7, 12 and 18 of the Antidumping Agreement and its Annexes I and II, as well as with Article VI of GATT 1994. See also WT/DS60.

On 15 July 1999, Mexico requested the establishment of a panel. At its meeting on 26 July 1999, the DSB deferred the establishment of a panel. Further to a second request to establish a panel by Mexico, the DSB established a panel at its meeting on 22 September 1999. Ecuador, El Salvador, the EC, Honduras and the US reserved their third-party rights. On 12 October 1999, Mexico requested the Director-General to determine the composition of the panel. On 2 November 1999, the Panel was composed. The panel report was circulated on 24 October 2000. The panel concluded that Guatemala's initiation of an investigation, the conduct of the investigation and imposition of a definitive measure on imports of grey portland cement from Mexico's Cruz Azul is inconsistent with the requirements in the AD Agreement in that:

- Guatemala's determination that there was sufficient evidence of dumping and threat of injury to initiate an investigation, is inconsistent with Article 5.3 of the AD Agreement;
- Guatemala's determination that there was sufficient evidence of dumping and threat of injury to initiate an investigation and consequent failure to reject the application for anti-dumping duties by Cementos Progreso is inconsistent with Article 5.8 of the AD Agreement;

- Guatemala's failure to timely notify Mexico under Article 5.5 of the AD Agreement is inconsistent with that provision;
- Guatemala's failure to meet the requirements for a public notice of the initiation of an investigation is inconsistent with Article 12.1.1 of the AD Agreement;
- Guatemala's failure to timely provide the full text of the application to Mexico and Cruz Azul is inconsistent with Article 6.1.3 of the AD Agreement;
- Guatemala's failure to grant Mexico access to the file of the investigation is inconsistent with Articles 6.1.2 and 6.4 of the AD Agreement;
- Guatemala's failure to timely make Cementos Progreso's 19 December 1996 submission available to Cruz Azul until 8 January 1997 is inconsistent with Article 6.1.2 of the AD Agreement;
- Guatemala's failure to provide two copies of the file of the investigation as requested by Cruz Azul is inconsistent with Article 6.1.2 of the AD Agreement;
- Guatemala's extension of the period of investigation requested by Cementos Progreso without providing Cruz Azul with a full opportunity for the defence of its interest is inconsistent with Article 6.2 of the AD Agreement;
- Guatemala's failure to inform Mexico of the inclusion of non–governmental experts in the verification team is inconsistent with paragraph 2 of Annex I of the AD Agreement;
- Guatemala's failure to require Cementos Progreso's to provide a statement of the reasons why summarization of the information submitted during verification was not possible is inconsistent with Article 6.5.1 of the AD Agreement;
- Guatemala's decision to grant Cementos Progreso's 19 December submission confidential treatment on its own initiative is inconsistent with Article 6.5 of the AD Agreement;
- Guatemala's failure to "inform all interested parties of the essential facts under consideration which form the basis for the decision whether to apply definitive measures" is inconsistent with Article 6.9 of the AD Agreement;
- Guatemala's recourse to "best information available" for the purpose of making its final dumping determination is inconsistent with Article 6.8 of the AD Agreement;
- Guatemala's failure to take into account imports by MATINSA in its determination of injury and causality is inconsistent with Articles 3.1, 3.2 and 3.5 of the AD Agreement; and
- Guatemala's failure to evaluate all relevant factors for the examination of the impact of the allegedly dumped imports on the domestic industry is inconsistent with Article 3.4.

The DSB adopted the Panel Report on 17 November 2000.

WT/DS160 – United States – Section 110(5) of the US Copyright Act

Complaint by the European Communities and their member States. On 26 January 1999, the EC requested consultations with the US in respect of Section 110(5) of the US Copyright Act, as amended by the Fairness in Music Licensing Act, which was enacted on 27 October 1998. The EC contended that Section 110(5) of the US Copyright Act permits, under certain conditions, the playing of radio and television music in public places (bars, shops, restaurants, etc.) without the payment of a royalty fee. The EC considered that this statute is

inconsistent with US obligations under Article 9(1) of the TRIPS Agreement, which requires Members to comply with Articles 1-21 of the Berne Convention.

The dispute centered on the compatibility of two exemptions provided for in Section 110(5) of the US Copyright Act with Article 13 of the TRIPS Agreement, which allows certain limitations or exceptions to exclusive rights of copyright holders, subject to the condition that such limitations are confined to certain special cases, do not conflict with a normal exploitation of the work in question and do not unreasonably prejudice the legitimate interests of the right holder:

- The so-called "business" exemption, provided for in sub-paragraph (B) of Section 110(5), essentially allows the amplification of music broadcasts, without an authorization and a payment of a fee, by food service and drinking establishments and by retail establishments, provided that their size does not exceed a certain square footage limit. It also allows such amplification of music broadcasts by establishments above this square footage limit, provided that certain equipment limitations are met.
- The so-called "homestyle" exemption, provided for in sub-paragraph (A) of Section 110(5), allows small restaurants and retail outlets to amplify music broadcasts without an authorization of the right holders and without the payment of a fee, provided that they use only homestyle equipment (i.e. equipment of a kind commonly used in private homes).

On 15 April 1999, the EC requested the establishment of a panel. At its meeting on 28 April 1999, the DSB deferred the establishment of a panel. Further to a second request to establish a panel by the EC, the DSB established a panel at its meeting on 26 May 1999. Brazil, Australia, Canada, Japan and Switzerland reserved their third-party rights. On 27 July 1999, the EC made a request to the Director-in-Charge to determine the composition of the Panel. On 6 August 1999, the Panel was composed. The report of the panel was circulated to Members on 15 June 2000. The panel found that:

- the "business" exemption provided for in sub-paragraph (B) of Section 110(5) of the US Copyright Act did not meet the requirements of Article 13 of the TRIPS Agreement and was thus inconsistent with Articles 11*bis*(1)(iii) and 11(1)(ii) of the Berne Convention (1971) as incorporated into the TRIPS Agreement by Article 9.1 of that Agreement. The panel noted, *inter alia*, that a substantial majority of eating and drinking establishments and close to half of retail establishments were covered by the business exemption.
- the "homestyle" exemption provided for in sub-paragraph (A) of Section 110(5) of the US Copyright Act met the requirements of Article 13 of the TRIPS Agreement and was thus consistent with Articles 11*bis*(1)(iii) and 11(1)(ii) of the Berne Convention (1971) as incorporated into the TRIPS Agreement by Article 9.1 of that Agreement. Here, the panel noted certain limits imposed on the beneficiaries of the exemption, permissible equipment and categories of works as well as the practice by US courts.

The DSB adopted the Panel Report at its meeting on 27 July 2000.

WT/DS161 and WT/DS169 – Korea – Measures Affecting Imports of Fresh, Chilled, and Frozen Beef

Complaints by the United States and Australia.

On 1 February 1999, the US requested consultations with Korea in respect of a Korean regulatory scheme that allegedly discriminates against imported beef by *inter alia*, confining sales of imported beef to specialised stores (dual retail system), limiting the manner of its display, and otherwise constraining the opportunities for the sale of imported beef. The US alleged that Korea imposes a markup on sales of imported beef, limits import authority to certain so-called "super-groups" and the Livestock Producers Marketing Organization ("LPMO"), and provides domestic support to the cattle industry in Korea in amounts which cause Korea to exceed its aggregate measure of support as reflected in Korea's schedule. The US contended that these restrictions apply only to imported beef, thereby denying national treatment to beef imports, and that the support to the domestic industry amounts to domestic subsidies that contravene the Agreement on Agriculture. The US alleged violations of Articles II, III, XI, and XVII of GATT 1994; Articles 3, 4, 6, and 7 of the Agreement on Agriculture; and Articles 1 and 3 of the Import Licensing Agreement.

On 13 April 1999, Australia requested consultations with Korea on the same basis as the US request.

On 15 April 1999, the US requested the establishment of a panel in respect of WT/DS161. At its meeting on 28 April 1999, the DSB deferred the establishment of a panel. Further to a second request to establish a panel by the US, the DSB established a panel at its meeting on 26 May 1999. Australia, Canada and New Zealand reserved their third-party rights. Further to Australia's request to establish a panel in respect of WT/DS169, the DSB established a panel at its meeting on 26 July 1999. . Canada, New Zealand and the US reserved their third-party rights. At the request of Korea, the DSB agreed that, pursuant to DSU Article 9.1, this complaint would be examined by the same panel established in respect of WT/DS161. On 4 August 1999, the Panel was composed. The report of the panel was circulated to Members on 31 July 2000. The panel found that:

- a number of the contested Korean measures benefited, by virtue of a Note in Korea's Schedule of Concessions, from a transitional period until 1 January 2001, by which date they had to be eliminated or otherwise brought into conformity with the WTO Agreement.
- the requirement that the supply of beef from the LPMO's wholesale market be limited to specialised imported beef stores and that those stores bear a special sign "Specialized Imported Beef Store" was in violation of Article III:4 of the GATT 1994, which violation could not be justified under Article XX(d) of the GATT 1994.
- the more stringent record-keeping requirements imposed on purchasers of imported beef were also inconsistent with Article III:4. Certain other regulations dealing with the importation and distribution of imported beef were likewise found to violate Article III:4.
- the LPMO's lack of and delays in calling for tenders and its discharge practices between November 1997 and the end of May 1998 constituted import restrictions contrary to Article XI:1 of the GATT 1994 and Article 4.2 of the Agreement on Agriculture. Moreover, the LPMO's calls for tenders that were made subject to distinctions between grass-fed and grain-fed cattle, constituted, in the view of the panel, a restriction inconsistent with Article XI:1. They also treated imports of beef from grass-fed cattle less

favourably than provided for in Korea's Schedule, which was in breach of Article II:1(a) of the GATT 1994.

- in addition, Korea's domestic support for beef for 1997 and 1998 was not correctly calculated and exceeded the *de minimis* level, contrary to Article 6 of the Agreement on Agriculture, and was not included in Korea's Current Total AMS, contrary to Article 7.2(a) of the Agreement on Agriculture.
- Korea's total domestic support (Current Total AMS) for 1997 and 1998 exceeded Korea's commitment levels, as specified in Section 1, Part IV of its Schedule, contrary to Article 3.2 of the Agreement on Agriculture.

On 11 September 2000, Korea notified its intention to appeal certain issues of law and legal interpretations developed by the panel. On 11 December 2000, the report of the Appellate Body was circulated. The Appellate Body reversed the Panel's finding on recalculated amounts of Korea's domestic support for beef in 1997 and 1998, as the Panel used, for these recalculations, a methodology inconsistent with Article 1(a)(ii) and Annex 3 of the Agreement on Agriculture; and reversed, therefore, the Panel's following conclusions, based on these recalculated amounts:

- that Korea's domestic support for beef in 1997 and 1998 exceeded the *de minimis* level contrary to Article 6 of the Agreement on Agriculture;
- that Korea's failure to include Current AMS for beef in Korea's Current Total AMS was contrary to Article 7.2(a) of that Agreement; and
- that Korea's total domestic support for 1997 and 1998 exceeded Korea's commitment levels contrary to Article 3.2 of the Agreement on Agriculture.

The Appellate Body was unable, in view of the insufficient factual findings made by the Panel, to complete the legal analysis of:

- whether Korea's domestic support for beef exceeds the *de minimis* level contrary to Article 6 of the Agreement on Agriculture;
- whether the failure to include Current AMS for beef in Korea's Current Total AMS was contrary to Article 7.2(a) of that Agreement; and
- whether Korea's total domestic support for 1997 and 1998 exceeded Korea's commitment levels contrary to Article 3.2 of the Agreement on Agriculture.

At its meeting of 10 January 2001, the DSB adopted the Appellate Body report and the Panel report, as modified by the Appellate Body report.

WT/DS162 – United States – Anti-Dumping Act of 1916

Complaint by Japan. On 10 February 1999, Japan requested consultations with the US in respect of the US Anti-Dumping Act of 1916, 15 USC. 72 (1994), ("US 1916 Act"). Japan alleged that the US 1916 Act stipulates that the importation or sale of imported goods within the US market in certain circumstances is

unlawful, constituting a criminal offence and inviting civil liability. Japan further alleged that judicial decisions under the US 1916 Act are made without the procedural safeguards provided for in the Anti-Dumping Agreement. Japan stated that a court action had been brought under the US 1916 Act against affiliates of Japanese companies. Japan contended that the US 1916 Act is inconsistent with Articles III, VI and XI of GATT 1994, and the Anti-Dumping Agreement.

On 3 June 1999, Japan requested the establishment of a panel. At its meeting on 16 June 1999, the DSB deferred the establishment of a panel. Further to a second request to establish a panel by Japan, the DSB established a panel at its meeting on 26 July 1999. The EC and India reserved their third-party rights. On 11 August 1999, the Panel was composed. The report of the panel was circulated to Members on 29 May 2000. The panel considered that Article VI:1 of GATT 1994 applies to any situation where a Member addresses the type of transnational price discrimination defined in that Article. The panel then found that, on the basis of the terms of the 1916 Act, its legislative history and its interpretation by US courts, the transnational price discrimination test found in the 1916 Act met the definition of Article VI:1 of GATT 1994. The panel next went on to find that

- by providing for the imposition of treble damages, fines or imprisonment, instead of anti-dumping duties, the 1916 Act violated Article VI:2 of the GATT 1994 and Article 18.1 of the Anti-Dumping Agreement;
- by not providing for a number of procedural requirements found in Article VI:1 of the GATT 1994 and the Anti-Dumping Agreement, the 1916 Act violated Articles VI:1 of the GATT 1994 and Articles 1, 4.1, 5.1, 5.2, 5.4 and 18.1 of the Anti-Dumping Agreement; and
- by violating Articles VI:1 and VI:2 of the GATT 1994, and Articles 1, 4.1, 5.1, 5.2, 5.4 and 18.1 of the Anti-Dumping Agreement, the 1916 Act violated Article XVI:4 of the WTO Agreement and Article 18.4 of the Anti-Dumping Agreement.

On 29 May 2000, the US notified its intention to appeal certain issues of law and legal interpretations developed by the panel. The Appellate Body examined this appeal with that of WT/DS136. The Appellate Body report was circulated to Members on 28 May 2000. The Appellate Body upheld all of the findings and conclusions of the panel that were appealed.

The DSB adopted the Appellate Body report and the Panel report, as upheld by the Appellate Body report, on 26 September 2000.

WT/DS163 – Korea – Measures Affecting Government Procurement

Complaint by the United States. On 16 February 1999, the US requested consultations with Korea in respect of certain procurement practices of the Korean Airport Construction Authority (KOACA), and other entities concerned with the procurement of airport construction in Korea. The US claimed that such practices were inconsistent with Korea's obligations under the Agreement on Government Procurement (GPA). These include practices relating to qualification for bidding as a prime contractor, domestic partnering, and the absence of access to challenge procedures that are in breach of the GPA. The US contended that KOACA and the other entities are within the scope of Korea's list of central government entities as specified in Annex 1 of Korea's

obligations in Appendix I of the GPA, and pursuant to Article I(1) of the GPA, apply to the procurement of airport construction.

On 11 May 1999, the US requested the establishment of a panel. At its meeting on 26 May 1999, the DSB deferred the establishment of a panel. Further to a second request to establish a panel by the US, the DSB established a panel at its meeting on 16 June 1999. The EC and Japan reserved their third party rights. On 30 August 1999, the Panel was composed. The report of the panel was circulated to Members on 1 May 2000. The panel found that:

- the entities conducting procurement for the project at issue were not covered entities under Korea's Appendix I of the GPA and were not otherwise covered by Korea's obligations under the GPA.
- based on less than complete Korean answers to certain US questions during negotiations for Korea's accession to the GPA, there had initially been an error on the part of the US as to which Korean authority was in charge of the project at issue. However, in light of all the facts the panel considered that there was notice of the error and the US should at least have conducted further inquiries in this regard before the negotiations were ended.
- the US had not demonstrated that benefits reasonably expected to accrue under the GPA, or in the negotiations resulting in Korea's accession to the GPA, were nullified or impaired by measures taken by Korea (whether or not in conflict with the provisions of the GPA), within the meaning of Article XXII:2 of the GPA.

The DSB adopted the Panel Report at its meeting on 19 June 2000.

WT/DS165 – United States – Import Measures on Certain Products from the European Communities

Complaint by the European Communities. On 4 March 1999, the EC requested consultations with the US in respect of the US decision, effective as of 3 March 1999, to withhold liquidation on imports from the EC of a series of products together valued at over $500 million on an annual basis, and to impose a contingent liability for 100% duties on each individual importation of affected products. On 2 March 1999, the arbitrators charged with determining the level of suspension of concessions, requested by the United States in response to the failure by the EC to implement the recommendations of the DSB in respect of the EC's banana regime (WT/DS27), had asked for additional data from the parties and informed the parties that they were unable to issue their report within the 60-day period envisaged by the DSU. The EC contends that the measure made effective by the US as of 3 March 1999 deprives EC imports into the United States, of the products in question, of the right to a duty not in excess of the rate bound in the US Schedule. The EC further contended that, by requiring the deposit of a bond to cover the contingent liability for 100% duties, US Customs effectively impose 100% duties on each individual importation. The EC alleged violations of Articles 3, 21, 22 and 23 of the DSU, and Articles I, II, VIII and XI of GATT 1994. The EC also alleged nullification and impairment of benefits under GATT 1994, as well as the impediment of the objectives of the DSU and GATT 1994. The EC had requested urgent consultations pursuant to Article 4.8 of the DSU.

On 11 May 1999, the EC requested the establishment of a panel. At its meeting on 26 May 1999, the DSB deferred the establishment of a panel. Further to a second request to establish a panel by the EC, the DSB established a panel at its meeting on 16 June 1999. The Dominican Republic, Ecuador, India, Jamaica, Japan and St. Lucia reserved their third party rights. On 29 September 1999, the EC requested the Director-General to determine the composition of the Panel. On 8 October 1999, the Panel was composed. The report of the panel was circulated to Members on 17 July 2000. The panel found that:

- the US measure of 3 March 1999 was seeking to redress a WTO violation and was thus covered by Article 23.1 of the DSU.
- by putting into place that measure prior to the time authorized by the DSB, the US made a unilateral determination that the revised EC bananas regime in respect of its bananas import, sales and distribution regime violated WTO rules, contrary to Articles 23.2(a) and 21.5, first sentence, of the DSU. In doing so, the United States did not abide by the DSU and thus also violated Article 23.1 together with Article 23.2(a) and 21.5 of the DSU.
- the increased bonding requirements of the measure of 3 March 1999 as such led to violations of Articles II:1(a) and II:1(b), first sentence (one panelist dissented, considering that those requirements rather violated Article XI:1 of the GATT 1994);
- the increased interest charges, costs and fees resulting from the 3 March Measure violated Article II:1(b), last sentence.
- The measure in question also violated Article I of the GATT 1994.
- In light of these conclusions, the measure of 3 March 1999 constituted a suspension of concessions or other obligations within the meaning of Articles 3.7, 22.6 and 23.2(c) of the DSU imposed without DSB authorization and during the ongoing Article 22.6 arbitration process.
- In suspending concessions in those circumstances, the US did not abide by the DSU and thus violated Article 23.1 together with Articles 3.7, 22.6 and 23.2(c) of the DSU.

On 12 September 2000, the EC notified its intention to appeal certain issues of law and legal interpretations developed by the panel. The report of the Appellate Body was circulated on 11 December 2000. The Appellate Body:

- concluded that the Panel erred by stating that the WTO-consistency of a measure taken by a Member to comply with recommendations and rulings of the DSB can be determined by arbitrators appointed under Article 22.6 of the DSU, and, thus, concluded that the Panel's statements on this issue have no legal effect.
- concluded that the Panel erred by stating that "[o]nce a Member imposes DSB authorised suspensions of concessions or obligations, that Member's measure is WTO compatible (it was explicitly authorised by the DSB)", and, thus, concluded that this statement has no legal effect.
- reversed the Panel's findings that the increased bonding requirements are inconsistent with Articles II:1(a) and II:2(b), first sentence, of the GATT 1994, and
- reversed the Panel's finding that, by adopting the 3 March Measure, the US acted inconsistently with Article 23.2(a) of the DSU.

As it upheld the Panel's finding that the 3 March Measure, the measure at issue in this dispute, is no longer in existence, the Appellate Body did not make any recommendation to the DSB pursuant to Article 19.1 of the DSU.

At its meeting of 10 January 2001, the DSB adopted the Appellate Body report and the Panel report, as modified by the Appellate Body report.

WT/DS166 – United States – Definitive Safeguard Measure on Imports of Wheat Gluten from the European Communities

Complaint by the European Communities. On 17 March 1999, the EC requested consultations with the US in respect of definitive safeguard measures imposed by the United States on imports of wheat gluten from the European Communities. The EC contended that by a Proclamation of 30 May 1998, and a Memorandum of the same date, by the US President, under which the US imposed definitive safeguard measures in the form of a quantitative limitation on imports of wheat gluten from the EC, effective as of 1 June 1998. The EC considered these measures to be in violation of Articles 2, 4, 5 and 12 of the Agreement on Safeguards; Article 4.2 of the Agreement on Agriculture; and Articles I and XIX of GATT 1994.

On 3 June 1999, the EC requested the establishment of a panel. At its meeting on 16 June 1999, the DSB deferred the establishment of a panel. Further to a second request to establish a panel, the DSB established a panel at its meeting on 26 July 1999. Australia, Canada and New Zealand reserved their third-party rights. On 11 October 1999, the Panel was composed. The report of the panel was circulated to Members on 31 July 2000. The panel found that:

(i) the United States had not acted inconsistently with Articles 2.1 and 4 of the Safeguards Agreement or with Article XIX:1(a) of the GATT 1994 in

- redacting certain confidential information from the published USITC Report or
- determining the existence of imports in "increased quantities" and serious injury.

(ii) the definitive safeguard measure imposed by the US on certain imports of wheat gluten based on the US investigation and determination was inconsistent with Articles 2.1 and 4 of the Safeguards Agreement in that

- the causation analysis applied by the USITC did not ensure that injury caused by other factors was not attributed to imports and
- imports from Canada (a NAFTA partner) were excluded from the application of the measure after imports from all sources were included in the investigation for the purposes of determining serious injury caused by increased imports (following a separate inquiry concerning whether imports from Canada accounted for a "substantial share" of total imports and whether they "contributed importantly" to the "serious injury" caused by total imports).

(iii) The panel further concluded that the US failed to notify immediately the initiation of the investigation under Article 12.1(a) and the finding of serious injury under Article 12.1(b) of the Safeguards Agreement.

(iv) in notifying its decision to take the measure only after the measure was implemented, the US did not make timely notification under Article 12.1(c). For the same reason, the US violated the obligation of Article 12.3 to provide adequate opportunity for prior consultations on the measure.

(v) the US therefore also violated its obligation under Article 8.1 of the Safeguards Agreement to endeavour to maintain a substantially equivalent level of concessions and other obligations to that existing under the GATT 1994 between it and the exporting Members which would be affected by such measures, in accordance with Article 12.3 of the Safeguards Agreement.

On 26 September 2000, the US notified its decision to appeal to the Appellate Body certain issues of law and legal interpretation covered in the Panel Report and certain legal interpretations developed by the Panel. The Appellate Body circulated its report on 22 December 2000. The Appellate Body:

- upheld the Panel's conclusion that the US had not acted inconsistently with its obligations under Articles 4.2(a) and 4.2(b) of the Safeguards Agreement, but, in so doing, reversed the Panel's interpretation of Article 4.2(a) of the Safeguards Agreement that the competent authorities are required to evaluate only the "relevant factors" listed in Article 4.2(a) of that Agreement as well as any other "factors" which were clearly raised before the competent authorities as relevant by the interested parties in the domestic investigation;
- reversed the Panel's interpretation of Article 4.2(b) of the Safeguards Agreement that increased imports "alone", "in and of themselves", or "*per se*", must be capable of causing "serious injury", as well as the Panel's conclusions on the issue of causation;
- found, nonetheless, that the US had acted inconsistently with its obligations under Article 4.2(b) of the Safeguards Agreement;
- upheld the Panel's finding that the US had acted inconsistently with its obligations under Articles 2.1 and 4.2 of the Safeguards Agreement;
- upheld the Panel's findings that the US had acted inconsistently with its obligations under Articles 12.1(a) and 12.1(b) of the Safeguards Agreement;
- reversed the Panel's finding that the US had acted inconsistently with its obligations under Article 12.1(c) of the Safeguards Agreement; found that the US had acted consistently with its obligations under Article 12.1(c) of that Agreement to notify "immediately" its decision to apply a safeguard measure;
- upheld the Panel's finding that the US had acted inconsistently with its obligations under Article 12.3 of the Safeguards Agreement, and, in consequence, upheld the Panel's finding that the US had acted inconsistently with its obligations under Article 8.1 of the Safeguards Agreement;
- the Panel did not act inconsistently with Article 11 of the DSU in concluding that the USITC had "considered industry productivity as required by Article 4.2(a)" of the Safeguards Agreement;

- the Panel did not act inconsistently in finding that the USITC was not required to evaluate the overall relationship between the protein content of wheat and the price of wheat gluten as a "relevant factor", under Article 4.2(a) of the Safeguards Agreement, during the post-1994 period of investigation; and,
- the Panel did not act inconsistently in declining to draw "adverse" inferences from the refusal of the US to provide certain allegedly confidential information requested from it by the Panel under Article 13.1 of the DSU;
- the Panel acted inconsistently with Article 11 of the DSU in finding that "the USITC Report provides an adequate, reasoned and reasonable explanation with respect to 'profits and losses'" and, therefore, reversed this finding; and found no error in the Panel's exercise of judicial economy in not examining the claims of the EC under Article XIX:1(a) of the GATT 1994, and also under Article 5 of the Safeguards Agreement and Article I of the GATT 1994.

At its meeting of 19 January 2001, the DSB adopted the Appellate Body report and the Panel report, as modified by the Appellate Body report.

WT/DS170 – Canada – Patent Protection Term

Complaint by the United States. On 6 May 1999, the US requested consultations with Canada in respect of the term of protection granted to patents that were filed in Canada before 1 October 1989. The US contended that the TRIPS Agreement obligates Members to grant a term of protection for patents that runs at least until twenty years after the filing date of the underlying protection, and requires each Member to grant this minimum term to all patents existing as of the date of the application of the Agreement to that Member. The US alleged that under the Canadian Patent Act, the term granted to patents issued on the basis of applications filed before 1 October 1989 is 17 years from the date on which the patent is issued. The US contended that this situation is inconsistent with Articles 33, 65 and 70 of the TRIPS Agreement.

On 15 July 1999, the US requested the establishment of a panel. At its meeting on 26 July 1999, the DSB deferred the establishment of a panel. Further to a second request to establish a panel by the US, the DSB established a panel at its meeting on 22 September 1999. On 13 October 1999, the US requested the Director-General to determine the composition of the Panel. On 22 October 1999, the Panel was composed. The report of the panel was circulated to Members on 5 May 2000. The panel found that:

- pursuant to Article 70.2 of the TRIPS Agreement, Canada was required to apply the relevant obligations of the TRIPS Agreement to inventions protected by patents that were in force on 1 January 1996, i.e. the date of entry into force for Canada of the TRIPS Agreement.
- Section 45 of Canada's Patent Act does not make available a term of protection that does not end before 20 years from the date of filing as mandated by Article 33 of the TRIPS Agreement, thus rejecting, *inter alia*, Canada's argument that the 17-year statutory protection under its Patent Act was effectively equivalent to the 20-year term prescribed by the TRIPS Agreement because of average pendency periods for patents, informal and statutory delays etc.

On 19 June 2000, Canada notified its intention to appeal certain issues of law and legal interpretations developed by the panel. The Appellate Body report was circulated to Members on 18 September 2000. The Appellate Body upheld all of the findings and conclusions of the panel that were appealed.

The DSB adopted the Appellate Body report and the Panel report, as upheld by the Appellate Body report, on 12 October 2000.

WT/DS177 and WT/DS178 – United States – Safeguard Measure on Imports of Fresh, Chilled or Frozen Lamb from New Zealand

Complaints by New Zealand and Australia.

On 16 July 1999, New Zealand requested consultations with the US in respect of a safeguard measure imposed by the US on imports of lamb meat from New Zealand (WT/DS177). New Zealand alleged that by Presidential Proclamation under Section 203 of the US Trade Act 1974, the US imposed a definitive safeguard measure in the form of a tariff-rate quota on imports fresh, chilled, or frozen lamb meat effective from 22 July 1999. New Zealand contended that this measure is inconsistent with Articles 2, 4, 5, 11 and 12 of the Agreement on Safeguards, and Articles I and XIX of GATT 1994.

On 23 July 1999, Australia requested consultations with the US in respect of a definitive safeguard measure imposed by the US on imports of lamb (WT/DS178). Australia alleged that by Presidential Proclamation under Section 203 of the US Trade Act 1974, the US imposed a definitive safeguard measure in the form of a tariff-rate quota on imports of fresh, chilled, or frozen lamb meat from Australia effective from 22 July 1999. Australia contended that this measure is inconsistent with Articles 2, 3, 4, 5, 8, 11 and 12 of the Agreement on Safeguards, and Articles I, II and XIX of GATT 1994.

On 14 October 1999, New Zealand and Australia requested the establishment of a panel. At its meeting on 27 October 1999, the DSB deferred the establishment of the panels. Further to the second requests to establish a panel by New Zealand and Australia, at its meeting on 19 November 1999, the DSB established, pursuant to Article 9.1 of the DSU, a single panel to examine the complaints WT/DS177 and WT/DS178. Canada, the EC, Iceland and Japan reserved their third-party rights. Australia reserved its third-party rights in relation to the complaint by New Zealand, while New Zealand reserved its third-party rights in relation to the complaint by Australia. On 21 March 2000, the Panel was composed. The Panel circulated its report on 21 December 2000. The Panel concluded that:

- the US has acted inconsistently with Article XIX:1(a) of GATT 1994 by failing to demonstrate as a matter of fact the existence of "unforeseen developments";
- the US has acted inconsistently with Article 4.1(c) of the Agreement on Safeguards because the USITC, in the lamb meat investigation, defined the domestic industry as including input producers as producers of the like product at issue (i.e. lamb meat);

- the complainants failed to establish that the USITC's analytical approach to determining the existence of a threat of serious injury, in particular with respect to the prospective analysis and the time-period used, is inconsistent with Article 4.1(b) of the Agreement on Safeguards;
- the complainants failed to establish that the USITC's analytical approach to evaluating all of the factors listed in Article 4.2(a) of the Agreement on Safeguards when determining whether increased imports threatened to cause serious injury with respect to the domestic industry as defined in the investigation is inconsistent with that provision;
- the US has acted inconsistently with Article 4.1(c) of the Agreement on Safeguards because the USITC failed to obtain data in respect of producers representing a major proportion of the total domestic production by the domestic industry as defined in the investigation;
- the US has acted inconsistently with Article 4.2(b) of the Agreement on Safeguards because the USITC's determination in the lamb meat investigation in respect of causation did not demonstrate the required causal link between increased imports and threat of serious injury, in that the determination did not establish that increased imports were by themselves a necessary and sufficient cause of threat of serious injury, and in that the determination did not ensure that threat of serious injury caused by "other factors" was not attributed to increased imports;
- by virtue of the above violations of Article 4 of the Agreement on Safeguards, the US also has acted inconsistently with Article 2.1 of the Agreement on Safeguards.

On 31 January 2001, the US notified the DSB of its intention to appeal certain issues of law covered in the Panel Report and legal interpretations developed by the Panel. The Appellate Body circulated its report on 1 May 2001. The Appellate Body:

- upheld the Panel's finding that the US acted inconsistently with Article XIX:1(a) of the GATT 1994 by failing to demonstrate, as a matter of fact, the existence of "unforeseen developments";
- upheld the Panel's finding that the United States acted inconsistently with Articles 2.1 and 4.1(c) of the *Agreement on Safeguards* because the USITC defined the relevant "domestic industry" to include growers and feeders of live lambs;
- upheld the Panel's finding that the USITC made a determination regarding the "domestic industry" on the basis of data that was not sufficiently representative of that industry; but modified the Panel's ultimate finding that the US thereby acted inconsistently with Articles 2.1 and 4.1(c) of the *Agreement on Safeguards* by finding, instead, that the United States thereby acted inconsistently with Articles 2.1 and 4.2(a) of that Agreement;
- found that the Panel correctly interpreted the standard of review, set forth in Article 11 of the DSU, which is appropriate to its examination of claims made under Article 4.2 of the *Agreement on Safeguards*; but concluded that the Panel erred in applying that standard in examining the claims made concerning the USITC's determination that there existed a threat of serious injury; and found, moreover, that the US acted inconsistently with Articles 2.1 and 4.2(a) of the *Agreement on Safeguards* because the USITC Report did not explain adequately the determination that there existed a threat of serious injury to the domestic industry;
- reversed the Panel's interpretation of the causation requirements in the *Agreement on Safeguards* but, for different reasons, upheld the Panel's ultimate finding that the US acted inconsistently with Articles 2.1 and 4.2(b) of the Agreement because the USITC's determination that there existed a causal link between increased imports and a

threat of serious injury did not ensure that injury caused to the domestic industry, by factors other than increased imports, was not attributed to those imports;

- upheld the Panel's exercise of judicial economy in declining to rule on the claim of New Zealand under Article 5.1 of the *Agreement on Safeguards*; and
- declined to rule on the respective conditional appeals of Australia and New Zealand relating to Articles I, II and XIX:1(a) of the GATT 1994, and to Articles 2.2, 3.1, 5.1, 8.1, 11.1(a) and 12.3 of the *Agreement on Safeguards*.

The DSB adopted the Appellate Body Report and the Panel Report, as modified by the Appellate Body Report, on 16 May 2001.

WT/DS179 – United States – Anti-Dumping Measures on Stainless Steel Plate in Coils and Stainless Steel Sheet and Strip from Korea

Complaint by Korea. On 30 July 1999, Korea requested consultations with the US in respect of Preliminary and Final Determinations of the US's Department of Commerce (DOC) on Stainless Steel Plate in Coils from Korea dated 4 November 1998 and 31 March 1999 respectively, and Stainless Steel Sheet and Strip from Korea dated 20 January 1999 and 8 June 1999 respectively. Korea considered that several errors were made by the US in those determinations which resulted in erroneous findings and deficient conclusions as well as the imposition, calculation and collection of anti-dumping margins which are incompatible with the obligation of the US under the provisions of the Anti-Dumping Agreement and Article VI of GATT 1994 and in particular, but not necessarily exclusively, Article 2, Article 6 and Article 12 of the Anti-Dumping Agreement. Korea believed that the US did not act in conformity with the cited provisions, among others, in its treatment of the following: certain US sales made to a bankrupt company; the calculation of two distinct exchange rate periods for export sales; and currency conversion for certain normal value sales made in US dollars.

On 14 October 1999, Korea requested the establishment of a panel. At its meeting on 27 October 1999, the DSB deferred the establishment of a panel. Further to a second request to establish a panel by Korea, the DSB established a panel at its meeting on 19 November 1999. The EC and Japan reserved their third-party rights. On 24 March 2000, the Panel was composed. The panel circulated its report on 22 December 2000. The panel concluded that:

(i) with respect to "local sales":

- the US in the *Plate* investigation did not act inconsistently with its obligations under Article 2.4.1, Article 2.4 chapeau ("fair comparison"), and Article 12.2 of the AD Agreement nor with its obligations under Article X:3(a) of GATT 1994;
- the US in the *Sheet* investigation acted inconsistently with Article 2.4.1 of the AD Agreement by performing a currency conversion that was not required.

(ii) with respect to the treatment of unpaid sales, the US:

- acted inconsistently with its obligations under Article 2.4 chapeau of the AD Agreement in both the *Plate* and *Sheet* investigations by making allowances in respect of sales through unaffiliated importers which were not permissible allowances for differences affecting price comparability;
- acted inconsistently with its obligations under Article 2.4 chapeau of the AD Agreement in both the *Plate and Sheet* investigations by making allowances in respect of sales through an affiliated importer which were not permissible allowances in the construction of the export price for costs incurred between importation and resale.

(iii) with respect to multiple averaging, the panel concluded that:

- the US's use of multiple averaging periods in the *Plate* and *Sheet* investigations was inconsistent with the requirement of Article 2.4.2 to compare "a weighted average normal value with a weighted average of all comparable export transactions";
- the US's use of multiple averaging periods in the *Plate* and *Sheet* investigations was not inconsistent with Article 2.4.1 of the AD Agreement*;*
- the US's use of multiple averaging periods in the *Plate* and *Sheet* investigations was not inconsistent with the first sentence of the chapeau of Article 2.4 of the AD Agreement ("fair comparison").

(iv) to the extent that the US has acted inconsistently with the provisions of the AD Agreement, it has nullified or impaired benefits accruing to Korea under that Agreement.

At its meeting of 1 February 2001, the DSB adopted the panel report.

WT/DS184 – United States – Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan

Complaint by Japan. On 18 November 1999, Japan requested consultations with the US in respect of the preliminary and final determinations of the US Department of Commerce and the US International Trade Commission on the anti-dumping investigation of Certain Hot Rolled Steel Products from Japan issued on 25 and 30 November 1998, 12 February 1999, 28 April 1999 and 23 June 1999. Japan considered that these determinations are erroneous and based on deficient procedures under the US Tariff Act of 1930 and related regulations. The Japanese complaint also concerned certain provisions of the Tariff Act of 1930 and related regulations. Japan claimed violations of Articles VI and X of the GATT 1994 and Articles 2, 3, 6 (including Annex II), 9 and 10 of the Anti-Dumping Agreement.

On 11 February 2000, Japan requested the establishment of a panel. At its meeting on 24 February 2000, the DSB deferred the establishment of a panel. Further to a second request to establish a panel by Japan, the DSB established a panel at its meeting on 20 March 2000. Brazil, Canada, Chile, the EC and Korea reserved their third-party rights. On 9 May 2000, Japan requested the Director-General to determine the composition of the Panel. On 24 May 2000, the Panel was composed. The Panel circulated its report on 28 February 2001. The Panel concluded as follows:

- The US acted inconsistently with Articles 6.8 and Annex II of the AD Agreement in its application of "facts available" to Kawasaki Steel Corporation (KSC), Nippon Steel Corporation (NSC) and NKK Corporation;
- Section 735(c)(5)(A) of the Tariff Act of 1930, as amended, which mandates that USDOC exclude only margins based entirely on facts available in determining an all others rate, is inconsistent with Article 9.4 of the AD Agreement, and that therefore the US has acted inconsistently with its obligations under Article 18.4 of the AD Agreement and Article XVI:4 of the Marrakesh Agreement by failing to bring that provision into conformity with its obligations under the AD Agreement; and
- The US acted inconsistently with Article 2.1 of the AD Agreement in excluding certain home-market sales to affiliated parties from the calculation of normal value on the basis of the "arm's length" test. In addition, in light of the findings above, the panel concluded that the replacement of those sales with sales to unaffiliated downstream purchasers was inconsistent with Article 2.1 of the AD Agreement.
- With respect to those of Japan's claims not addressed above the panel concluded: (1) that the claim was not within its terms of reference ("general practice" concerning adverse facts available; "general practice" of excluding certain home-market sales from the calculation of normal value), or (2) that, in light of considerations of judicial economy, it is neither necessary nor appropriate to make findings.

On 25 April 2001, the US notified its decision to appeal to the Appellate Body certain issues of law covered in the Panel Report and certain legal interpretations developed by the Panel. The Appellate Body circulated its Report on 24 July 2001. In this regard, the Appellate Body upheld the Panel's findings except for the following:

- It reversed the Panel's finding regarding the inconsistency with Article 2.1 of the Anti-dumping Agreement of the US's methodology for calculating the normal value as regards the using of certain downstream sales made by an investigated exporters' affiliates to dependent purchasers;
- It found that there was insufficient factual record to allow completion of the analysis of Japan's claim under Article 2.4 of the Anti-dumping Agreement that the US did not make a fair comparison in its use of downstream sales when calculating normal value;
- It reversed the Panel's finding that the US did not act inconsistently with the Anti-dumping Agreement in its application of the captive production provision in its determination of injury sustained by the US hot-rolled steel industry;
- It reversed the Panel's finding that the USITC demonstrated the existence of a causal relationship, under Article 3.5 of the said agreement, between dumped imports and material injury to that industry; but found that there was insufficient factual record to allow completion of the analysis of Japan's claim on causation;

The DSB adopted the Appellate Body Report and the Panel Report, as modified by the Appellate Body Report, on 23 August 2001.

WT/DS189 – Argentina – Definitive Anti-Dumping Measures on Imports of Ceramic Floor Tiles from Italy

Complaint by the European Communities. On 26 January 2000, the EC requested consultations with Argentina in respect of Argentina's definitive anti-dumping measures on imports of carton-board from Germany imposed on 26 February 1999 as well as Argentina's definitive anti-dumping measures on imports of ceramic floor tiles from Italy imposed on 12 November 1999. The EC claimed that the Argentinian investigating authority rejected without justification a request by EC exporters for confidential treatment with respect to highly sensitive business information, disregarded without explanation most of the information presented by the EC exporters and failed to disclose the essential facts under consideration which formed the basis of the decision to impose anti-dumping measures. The EC considered that these measures are inconsistent with the Anti-Dumping Agreement, and in particular, Articles 2; 6.5; 6.9; 6.10; and 6.8 in conjunction with paragraphs 3, 5, 6, and 7 of Annex II of the Anti-Dumping Agreement.

On 14 September 2000, the EC requested the establishment of a panel. At its meeting on 26 September 2000, the DSB deferred the establishment of a panel. Further to a second request to establish a panel by the EC, the DSB established a panel at its meeting on 17 November 2000 on the basis of the EC's reduced complaint which relates only to definitive anti-dumping measures on imports of ceramic floor tiles from Italy. Japan, Turkey and the US reserved their third-party rights. On 12 January 2001, the Panel was composed.

The Panel circulated its report to Members on 28 September 2001. The Panel found that:

- Argentina acted inconsistently with Article 6.8 of Annex II of the Anti-Dumping Agreement by disregarding in large part the information provided by the exporter for the determination of the normal value and export price, and this without informing the exporters of the reasons for such a rejection;
- Argentina acted inconsistently with Article 6.10 of the Anti-Dumping Agreement by not determining an individual dumping margin for each sampled exporter;
- Argentina acted inconsistently with Article 2.4 of the Anti-Dumping Agreement by failing to make due allowance for difference in physical characteristics affecting price comparability;
- Argentina acted inconsistently with Article 6.9 of the Anti-Dumping Agreement by not disclosing to the exporters the essential facts under consideration which form the basis for the decision whether to apply definitive measures.

On 5 November 2001, the DSB adopted the Panel Report.

WT/DS192 – United States – Transitional Safeguard Measure on Combed Cotton Yarn from Pakistan

Complaint by Pakistan. On 3 April 2000, Pakistan requested consultations with the US in respect of a transitional safeguard measure applied by the United States, as of 17 March 1999, on combed cotton yarn (United States category 301) from Pakistan (see US Federal Register of 12 March 1999, document 99-6098). In accordance with Article 6.10 of the Agreement on Textiles and Clothing (ATC), the United States had notified the TMB on 5 March 1999 that it had decided to unilaterally impose a restraint, after consultations as to whether the situation called for a restraint had failed to produce a mutually satisfactory solution. In April

1999, the TMB examined the US restraint pursuant to Article 6.10 of the ATC and recommended that the US restraint should be rescinded. On 28 May 1999, in accordance with Article 8.10 of the ATC, the United States notified the TMB that it considered itself unable to conform to the recommendations issued by the TMB. Despite a further recommendation of the TMB pursuant to Article 8.10 of the ATC that the United States reconsider its position, the United States continued to maintain its unilateral restraint and thus the matter remained unresolved.

Pakistan claimed as follows:

- the transitional safeguards applied by the United States are inconsistent with the United States' obligations under Articles 2.4 of the ATC and not justified by Article 6 of the ATC.
- the US restraint does not meet the requirements for transitional safeguards set out in paragraphs 2, 3, 4 and 7 of Article 6 of the ATC.

On 3 April 2000, Pakistan requested the establishment of a panel. At its meeting on 18 May 2000, the DSB deferred the establishment of a panel. Further to a second request to establish a panel by Pakistan, the DSB established a panel at its meeting on 19 June 2000. India and the EC reserved their third-party rights. On 30 August 2000, the Panel was composed.

The panel circulated its report on 31 May 2001. The Panel concluded that the transitional safeguard measure (quantitative restriction) imposed by the US on imports of combed cotton yarn from Pakistan as of 17 March 1999, and extended as of 17 March 2000 for a further year is inconsistent with the provisions of Article 6 of the ATC. Specifically, the Panel found that:

- Inconsistently with its obligations under 6.2, the US excluded the production of combed cotton yarn by vertically integrated producers for their own use from the scope of the "domestic industry producing like and/or directly competitive products" with imported combed cotton yarn;
- Inconsistently with its obligations under Article 6.4, the US did not examine the effect of imports from Mexico (and possibly other appropriate Members) individually; Inconsistently with its obligations under Articles 6.2 and 6.4, the US did not demonstrate that the subject imports caused an "actual threat" of serious damage to the domestic industry.
- With respect to the other claims, the Panel found that Pakistan did not establish that the measure at issue was inconsistent with the US obligations under Article 6 of the ATC. Specifically, the Panel found that: (a) Pakistan did not establish that the US determination of serious damage was not justified based on the data used by the US investigating authority; (b) Pakistan did not establish that the US determination of serious damage was not justified regarding the evaluation by the US investigating authority of establishments that ceased producing combed cotton yarn; (c) Pakistan did not establish that the US determinations of serious damage and causation thereof were not justified based upon an inappropriately chosen period of investigation and period of incidence of serious damage and causation thereof.
- The Panel recommended that the Dispute Settlement Body request that the United States bring the measure at issue into conformity with its obligations under the ATC, and suggested that this can best be achieved by prompt removal of the import restriction.

On 9 July 2001, the US notified its decision to appeal to the Appellate Body certain issues of law covered in the Panel Report and certain legal interpretations developed by the Panel. On 5 September 2001, the Appellate Body informed the DSB that it would not be able to circulate its report within the 7 September deadline. The Report was circulated to Members on 8 October 2001. The Appellate Body:

- found that the Panel exceeded its mandate under Article 11 of the DSU by considering United States Census data for the calendar year 1998;
- upheld the Panel's finding, in paragraph 8.1(a) of its Report, that the United States acted inconsistently with Article 6.2 of the *ATC*, by excluding from the scope of the domestic industry the production of combed cotton yarn by vertically integrated producers for their own internal use;
- upheld the Panel's finding, in paragraph 8.1(b) of its Report, that the United States acted inconsistently with Article 6.4 of the *ATC*, by not examining the effect of imports from Mexico (and possibly other appropriate Members) individually when attributing serious damage to Pakistan; and
- declined to rule on the issue of whether Article 6.4 of the *ATC* requires attribution to all Members the imports from whom cause serious damage or actual threat thereof and concludes that the Panel's interpretation on this issue is of no legal effect.
- recommended that the DSB request the United States to bring its measure into conformity with its obligations under that Agreement on Textiles and Clothing.

The DSB adopted the Appellate Body Report and the Panel Report, as modified by the Appellate Body Report, on 5 November 2001.

WT/DS194 – United States – Measures Treating Export Restraints As Subsidies

Request by Canada. On 19 May 2000, Canada requested consultations with the US regarding certain US measures that treat a restraint on exports of a product as a subsidy to other products made using or incorporating the restricted product if the domestic price of the restricted product is affected by the restraint. The measures at issue included provisions of the Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act (URAA) (H.R. 5110, H.R. Doc. 316, Vol. 1, 103d Cong., 2d Sess., 656, in particular at 925-926 (1994)) and the Explanation of the Final Rules, US Department of Commerce, Countervailing Duties, Final Rule (63 Federal Register 65,348 at 65,349-51 (Nov. 25, 1998)) interpreting section 771(5) of the Tariff Act of 1930 (19 USC. § 1677(5)), as amended by the URAA. Canada's claims were as follows:

- Canada considered that these measures were inconsistent with US obligations under Articles 1.1, 10, (as well as Articles 11, 17 and 19, as they relate to the requirements of Article 10), and 32.1 of the SCM Agreement because these measures provide that the US will impose countervailing duties against practices that are not subsidies within the meaning of Article 1.1 of the SCM Agreement.
- Canada also considered that the US has failed to ensure that its laws, regulations and administrative procedures are in conformity with its WTO obligations as required by Article 32.5 of the SCM Agreement and Article XVI:4 of the WTO Agreement.

On 24 July 2000, Canada requested the establishment of a panel. At its meeting on 4 August 2000, the DSB deferred the establishment of a panel. Further to a second request to establish a panel by Canada, the DSB established a panel at its meeting on 11 September 2000. Australia, the EC and India reserved their third-party rights. On 23 October 2000, the Panel was composed. The Panel circulated its report on 29 June 2001. The Panel concluded that:

- an export restraint as defined in this dispute cannot constitute government-entrusted or government-directed provision of goods in the sense of subparagraph (iv) and hence does not constitute a financial contribution in the sense of Article 1.1(a) of the SCM Agreement; and
- Section 771(5)(B)(iii) read in light of the SAA and the Preamble to the US CVD Regulations is not inconsistent with Article 1.1 of the SCM Agreement by "requir[ing] the imposition of countervailing duties against practices that are not subsidies within the meaning of Article 1.1".
- with respect to those of Canada's claims not addressed above, the Panel concluded that in light of considerations of judicial economy, it was neither necessary nor appropriate to make findings thereon. The Panel therefore made no recommendations with respect to the US' obligations under the SCM and WTO Agreements.

The DSB adopted the Panel Report on 23 August 2001.

APPELLATE BODY AND PANEL COMPLIANCE REPORTS (ARTICLE 21.5) ADOPTED

WT/DS18/RW – Australia - Measures Affecting the Importation of Salmon

(See WT/DS18 for precedents) Canada made a request, pursuant to DSU Article 21.5, for determination by the original panel of whether the measures taken by Australia in implementing the recommendations of the DSB were WTO-consistent.. At its meeting of 28 July 1999, the DSB agreed to Canada's request and referred the matter for determination of the WTO-consistency of the implementing measures to the original panel. The EC, Norway and the US reserved their third-party rights. The DSB also referred the Canadian request for suspension of concessions to arbitration in view of Australia's challenge of the level of nullification suffered by Canada. On 7 September 1999, the Compliance Panel and Arbitrator were composed.

On 18 February 2000, the report of the DSU Article 21.5 panel was circulated to Members. The panel found that:

- due to delays in the entry into force of several implementing measures which extended beyond the reasonable period of time within which Australia had to implement the DSB recommendations, no measures to comply existed in the sense of Article 21.5 of the DSU in respect of a number of covered products and during specific periods of time. As a result, during those periods, Australia failed to bring its measure into conformity with the SPS Agreement in the sense referred to in Article 22.6 of the DSU.
- Australia, by requiring that only salmon product that is "consumer-ready" as specifically defined can be imported into Australia and released from quarantine, was maintaining sanitary measures that were not "based on" a risk assessment, which was contrary to Articles 5.1 and 2.2 of the SPS Agreement. The panel also considered the same requirement to be in violation of Article 5.6 of the SPS Agreement.
- Finally, the panel found that Australia violated Articles 5.1 and 2.2 of the SPS Agreement as a result of a measure enacted by the Government of Tasmania that effectively prohibits the importation of certain Canadian salmon product into most parts of Tasmania without being based on a risk assessment and without sufficient scientific evidence.

At its meeting on 20 March 2000, the DSB adopted the report of the compliance panel.

WT/DS27/RW – European Communities - Regime for the Importation, Sale and Distribution of Bananas

(See WT/DS27 for precedents) On 15 December 1998, the EC requested the establishment of a panel under Article 21.5 to determine that the implementing measures of the EC must be presumed to conform to WTO rules unless challenged in accordance with DSU procedures. On 18 December 1998, Ecuador requested the re-establishment of the original panel to examine whether the EC measures to implement the recommendations of the DSB are WTO-consistent. At its meeting on 12 January 1999, the DSB agreed to reconvene the original panel, pursuant to Article 21.5 of the DSU, to examine both Ecuador's and the EC's requests. Jamaica, Nicaragua, Colombia, Costa Rica, Côte d'Ivoire, Dominican Republic, Dominica, St. Lucia, Mauritius, St. Vincent, indicated their interest to join as third parties in both requests, while Ecuador and India indicated their

third-party interest only in the EC request. On 18 January 1999, the Compliance Panels were composed. The two Compliance Panel Reports were circulated on 12 April 1999. They were adopted by the DSB at its meeting on 6 May 1999.

In the panel requested by the EC, pursuant to Article 21.5 of the DSU, the panel found that, because a challenge had actually been made by Ecuador regarding the WTO-consistency of the EC measures taken in implementation of the DSB recommendations, it was unable to agree with the EC that the EC must be presumed to be in compliance with the recommendations of the DSB.

In the panel requested by Ecuador, pursuant to Article 21.5 of the DSU, the panel found that the implementation measures taken by the EC in compliance with the recommendations of the DSB were not fully compatible with the EC's WTO obligations. The report of the compliance panel requested by Ecuador, under Article 21.5 of the DSU, was adopted by the DSB on 6 May 1999.

WT/DS46/RW and WT/DS46/RW/2 – Brazil - Export Financing Programme for Aircraft

(See WT/DS46 for precedents) On 23 November 1999, Canada requested the establishment of a panel under Article 21.5 of the DSU, requesting that the panel find that Brazil had not taken measures to comply fully with the rulings and recommendations of the DSB. Canada and Brazil reached an agreement concerning the procedures to be applicable pursuant to Articles 21 and 22 of the DSU and Article 4 of the Subsidies Agreement. At its meeting on 9 December 1999, the DSB agreed to reconvene the original panel pursuant to Article 21.5 of the DSU. Australia, the EC and the US reserved their third-party rights. On 17 December 1999, the compliance panel was composed.

The report of the compliance panel was circulated to Members on 9 May 2000. The panel found that Brazil's measures to comply with the recommendations and rulings of the DSB either did not exist or were not consistent with the Subsidies Agreement. In reaching this conclusion, the panel notably rejected Brazil's defence that PROEX payments were permitted under item (k) of Annex I of the Subsidies Agreement, adding that, if a WTO Member encountered an export credit that had been provided on terms that it could not meet consistent with the SCM Agreement, the proper response was to challenge that export credit in WTO dispute settlement.

On 22 May 2000, Brazil notified its intention to appeal certain issues of law and legal interpretations developed by the review panel. The report of the Appellate Body was circulated to Members on 9 May 2000. The Appellate Body upheld the review panel's conclusion that Brazil has failed to implement the recommendation of the DSB because of the continued issuance by Brazil of NTN-I bonds, after 18 November 1999, pursuant to letters of commitment issued before 18 November 1999. The Appellate Body also upheld the review panel's findings that payments made under the revised PROEX are prohibited by Article 3 of the Subsidies Agreement and are not justified under item (k) of the Illustrative List of the same Agreement. The Appellate Body therefore upheld the review panel's conclusion that Brazil has failed to implement the recommendations of the DSB. The DSB adopted the Appellate Body report and the panel report, as modified by the Appellate Body report, at its meeting on 4 August 2000.

On 22 January 2001, Canada requested the DSB to refer the matter again to the original panel, pursuant to Article 21.5 of the DSU. At its meeting of 16 February 2001, the DSB referred the matter to the original panel. Australia, the EC and Korea reserved their third-party rights. The Panel circulated its report on 26 July 2001. The Panel concluded as follows:

- It has not been established that PROEX III as such was inconsistent with Article 3.1(a) of the SCM Agreement;
- PROEX III as such is justified under the second paragraph of item (k) of the Illustrative List of Export Subsidies of Annex I of the SCM Agreement;
- PROEX III cannot be justified under paragraph 1 of the above-mentioned item.

At its meeting on 23 August 2001, the DSB adopted the Panel Report on this second recourse to Article 21.5 of the DSU.

WT/DS70/RW – Canada - Measures Affecting the Export of Civilian Aircraft

(See WT/DS70 for precedents) On 23 November 1999, Brazil requested the establishment of a panel under Article 21.5 because it believed that Canada had not taken measures to comply fully with the rulings and recommendations of the DSB. Brazil and Canada reached an agreement concerning the procedures to be applicable pursuant to Articles 21 and 22 of the DSU and Article 4 of the Subsidies Agreement. At its meeting on 9 December 1999, the DSB agreed to reconvene the original panel pursuant to Article 21.5 of the DSU. Australia, the EC and the US reserved their third-party rights. On 17 December 1999, the Compliance Panel was composed.

The report of the compliance panel was circulated to Members on 9 May 2000. The panel found:

(i) that Canada had implemented the recommendation of the DSB that Canada withdraw Technology Partnership Canada (TPC) assistance to the Canadian regional aircraft industry within 90 days,

(ii) but that Canada had failed to implement the recommendation that it withdraw the Canada Account assistance to the Canadian regional aircraft industry within 90 days.

With regard to the latter finding, the panel considered that the measures taken by Canada were not sufficient to ensure that future Canada Account transactions in the Canadian regional aircraft sector would be in conformity with the interest rate provisions of the OECD Arrangement and would thereby qualify for the safe haven in item (k) of Annex I of the Subsidies Agreement. The panel therefore concluded that Canada's measures did not ensure that such Canada Account transactions would not be prohibited export subsidies.

On 22 May 2000, Brazil notified its intention to appeal certain issues of law and legal interpretations developed by the review panel. The report of the Appellate Body was circulated to Members on 9 May 2000. The Appellate Body found that the review panel erred in declining to examine one of Brazil's arguments to the effect that the revised TPC programme is inconsistent with Article 3.1(a) of the Subsidies Agreement. The Appellate Body also found, however, that Brazil had failed to establish that the revised TPC programme is inconsistent with

Article 3.1(a) of the Subsidies Agreement and, accordingly, that Brazil had failed to establish that Canada has not implemented the recommendations of the DSB. The DSB adopted the Appellate Body report and the panel report, as modified by the Appellate Body report, at its meeting on 4 August 2000. Canada stated its intention to implement the recommendations of the DSB in respect of the Canada Account Programme.

WT/DS99/RW – United States – Anti-Dumping Duty on Dynamic Random Access Memory Semiconductors (DRAMS) of One Megabit or Above from Korea

(See WT/DS99 for precedents) On 9 March 2000, Korea informed the DSB that it believed that the measures taken by the United States to comply with the rulings and recommendations of the DSB were not consistent with the Anti-Dumping Agreement and Article X:1 of GATT 1994. Korea therefore requested that this matter be referred to the original panel pursuant to Article 21.5 of the DSU. On 6 April 2000, Korea submitted a new request to the effect that the matter be referred to the original panel pursuant to Article 21.5 of the DSU. At its meeting on 25 April 2000, the DSB agreed to reconvene the original panel pursuant to Article 21.5 of the DSU. The EC reserved its reserved its third-party rights. On 11 May 2000, the Compliance Panel was composed.

On 19 September 2000, Korea requested the Panel to suspend its work, including the issuance of the interim report, "until further notification" pursuant to Article 12.12 of the DSU. The Panel, in a letter sent to the parties on 21 September 2000, agreed to this request. On 20 October 2000, the parties notified the DSB of a mutually satisfactory solution to the matter, involving the revocation of the antidumping order at issue as the result of a five-year "sunset" review by the US Department of Commerce.

WT/DS126/RW – Australia – Subsidies Provided to Producers and Exporters of Automotive Leather

(See WT/DS126 for precedents) On 4 October 1999, the United States informed the DSB that it believed that the measures taken by Australia to comply with the rulings and recommendations of the DSB were not consistent with the Subsidies Agreement and the DSU, and therefore requested that the original panel be reconvened pursuant to Article 21.5 of the DSU. At its meeting on 14 October 1999, the DSB agreed to reconvene the original panel pursuant to Article 21.5 of the DSU. The EC and Mexico reserved their third-party rights. On 1 November 1999, the Compliance Panel was composed.

The report of the panel was circulated to Members on 21 January 2000. The panel determined that Australia had failed to comply with the DSB's recommendations within 90 days. The DSB adopted the review panel's report on 11 February 2000. On 24 July 2000, the parties notified the DSB that they had reached a mutually satisfactory solution in regard to implementation of the findings of the review panel.

Implementation Status of Adopted Reports

For descriptions of the reports see Section V: Completed Panel and Appellate Body Review.

WT/DS2 and WT/DS4 – United States - Standards for Reformulated and Conventional Gasoline

Complaints by Venezuela and Brazil. The US announced implementation of the recommendations of the DSB as of 19 August 1997, at the end of the 15 month reasonable period of time.

WT/DS8, WT/DS10 and WT/DS11 – Japan - Taxes on Alcoholic Beverages

Complaints by the European Communities, Canada and the United States. On 24 December 1996, the US, pursuant to Article 21(3)(c) of the DSU applied for binding arbitration to determine the reasonable period of time for implementation by Japan of the recommendations of the Appellate Body.

The Arbitrator's report was circulated to members on 14 February 1997. The Arbitrator found the reasonable period for implementation of the recommendations to be 15 months from the date of adoption of the reports i.e. it expired on 1 February 1998. Japan presented modalities for implementation which were accepted by the complainants.

WT/DS18 – Australia - Measures Affecting the Importation of Salmon

Complaint by Canada. At the DSB meeting on 25 November 1998, Australia informed the DSB that it was committed to implementing the recommendations of the DSB and was looking forward to discussing with the complainants the question of implementation.

On 24 December 1998, Canada requested arbitration, pursuant to Article 21.3(c) of the DSU, to determine the reasonable period of time for implementation of the recommendations of the DSB. The Arbitrator decided that the reasonable period of time for implementation was 8 months i.e. it expired on 6 July 1999. The report of the Arbitrator was circulated to Members on 23 February 1999. On 28 July 1999, Canada made a request to the DSB, pursuant to Article 22.2 of the DSU, for authorization to suspend concessions to Australia for its non-compliance with the recommendations of the DSB in this matter. Canada simultaneously made a request, pursuant to DSU Article 21.5, for determination by the original panel of whether the measures taken by Australia in implementing the recommendations of the DSB were WTO-consistent. Australia informed the DSB that in the event that the DSB approved Canada's request under 22.2, it wished to request, pursuant to DSU 22.6, for arbitration on the level of nullification suffered by Canada. The DSB agreed to Canada's request and referred the matter for determination of the WTO-consistency of the implementing measures to the original panel. The EC, Norway and the US reserved their third-party rights. The DSB also referred the Canadian request for suspension of concessions to arbitration in view of Australia's challenge of the level of nullification suffered by Canada. On 7 September 1999, the Compliance Panel and Arbitrator were composed. On 18 February 2000, the report of the

DSU Article 21.5 panel was circulated to Members. At its meeting on 20 March 2000, the DSB adopted the report of the compliance panel.

WT/DS24 – United States - Restrictions on Imports of Cotton and Man-Made Fibre Underwear

Complaint by Costa Rica. At the meeting of the DSB on 10 April 1997, the US informed the meeting that the measure which had been the subject of this dispute had expired on 27 March 1997 and had not been renewed, effectively meaning that the US had immediately complied with the recommendations of the DSB.

WT/DS26 and WT/DS48 – European Communities - Measures Affecting Meat and Meat Products (Hormones)

Complaints by the United States and Canada. On 8 April 1998, the respondent requested that the "reasonable period of time" for implementation of the recommendations and rulings of the DSB be determined by binding arbitration, pursuant to Article 21.3(c) of the DSU. The Arbitrator found the reasonable period of time for implementation to be 15 months from the date of adoption (i.e. 15 months from 13 February 1998). The report of the Arbitrator was circulated to Members on 29 May 1998.

The period for implementation was set by arbitration at 15 months from the date of the adoption of the reports i.e. it expired on 13 May 1999. The EC undertook to comply with the recommendations of the DSB within the implementation period. At the DSB meeting on 28 April 1999, the EC informed the DSB that it would consider offering compensation in view of the likelihood that it may not be able to comply with the recommendations and rulings of the DSB by the deadline of 13 May 1999.

On 3 June 1999, the United States and Canada, pursuant to Article 22.2 of the DSU, requested authorization from the DSB for the suspension of concessions to the EC in the amount of US$202 million and Can.$75 million, respectively. The EC, pursuant to Article 22.6 of the DSU, requested arbitration on the level of suspension of concessions requested by the United States and Canada. The DSB referred the issue of the level of suspension to the original panel for arbitration.

The arbitrators determined the level of nullification suffered by the United States to be equal to US$116.8 million, and the level of nullification suffered by Canada to be equal to CDN$11.3 million. The report of the arbitrators was circulated to Members on 12 July 1999. At its meeting on 26 July 1999, the DSB authorized the suspension of concessions to the EC by the United States and Canada in the respective amounts determined by the arbitrators as being equivalent to the level of nullification suffered by them.

WT/DS27 – European Communities - Regime for the Importation, Sale and Distribution of Bananas

Complaints by Ecuador, Guatemala, Honduras, Mexico and the United States.

On 17 November 1997, the complainants requested that the "reasonable period of time" for implementation of the recommendations and rulings of the DSB be determined by binding arbitration, pursuant to Article 21.3(c) of the DSU. The Arbitrator found the reasonable period of time for implementation to be 15 months and 1 week from the date of the adoption of the reports i.e. it expired on 1 January 1999. The report of the Arbitrator was circulated to Members on 7 January 1998.

On 18 August 1998, further the EC's revision of their legislation, the complainants requested consultations with the EC (without prejudice to their rights under Article 21.5), for the resolution of the disagreement between them over the WTO-consistency of measures introduced by the EC in purported compliance with the recommendations and rulings of the Panel and Appellate Body. At the DSB meeting on 25 November 1998, the EC announced that it had adopted the second Regulation to implement the recommendations of the DSB, and that the new system will be fully operational from 1 January 1999. On 15 December 1998, the EC requested the establishment of a panel under Article 21.5 to determine that the implementing measures of the EC must be presumed to conform to WTO rules unless challenged in accordance with DSU procedures. On 18 December 1998, Ecuador requested the re-establishment of the original panel, under Article 21.5, to examine whether the EC measures to implement the recommendations of the DSB are WTO-consistent. At its meeting on 12 January 1999, the DSB agreed to reconvene the original panel, pursuant to Article 21.5 of the DSU, to examine both Ecuador's and the EC's requests.

On 14 January 1999, the United States, pursuant to Article 22.2 of the DSU, requested authorization from the DSB for suspension of concessions to the EC in an amount of US$520 million. At the DSB meeting on 29 January 1999, the EC, pursuant to Article 22.6 of the DSU, requested arbitration on the level of suspension of concessions requested by the United States. The DSB referred the issue of the level of suspension to the original panel for arbitration. Pursuant to Article 22.6 of the DSU, the request for the suspension of concessions by the United States was deferred by the DSB until the determination, through the arbitration, of the appropriate level for the suspension of concessions.

In the arbitration under Article 22.6 of the DSU, necessitated by the EC's challenge to the level of suspension sought by the United States (US$520 million), the arbitrators found that the level of suspension sought by the United States was not equivalent to the level of nullification and impairment suffered as a result of the EC's new banana regime not being fully compatible with the WTO. The arbitrators accordingly determined the level of nullification suffered by the United States to be equal to US$191.4 million. The arbitrator's report and the reports of the panels were issued to the parties on 6 April 1999, and circulated to Members on 9 and 12 April 1999 respectively. On 9 April 1999, the United States, pursuant to Article 22.7 of the DSU, requested that the DSB authorize suspension of concessions to the EC equivalent to the level of nullification and impairment, i.e. US$191.4 million. On 19 April 1999, the DSB authorized the United States to suspend concessions to the EC as requested.

The report of the compliance panel requested by Ecuador, under Article 21.5 of the DSU, was adopted by the DSB on 6 May 1999. On 8 November 1999, Ecuador requested authorization from the DSB to suspend the application to the EC of concessions or other related obligations under the TRIPS Agreement, GATS and GATT 1994, pursuant to Article 22.2 of the DSU, in an amount of US$450 million. At the DSB meeting on 19

November 1999, the EC, pursuant to Article 22.6 of the DSU, requested arbitration on the level of suspension of concessions requested by Ecuador. The DSB referred the issue of the level of suspension to the original panel for arbitration. Pursuant to Article 22.6 of the DSU, the request for the suspension of concessions by Ecuador was deferred by the DSB until the determination, through the arbitration, of the appropriate level for the suspension of concessions.

Also at the DSB meeting on 19 November 1999, the EC informed the DSB of its proposal for reform of the banana regime, which envisages a two-stage process, comprising a tariff rate quota system for several years. This system should then be replaced by a tariff only system no later than 1 January 2006. The proposal includes a decision to continue discussions with interested parties on the possible systems for distribution of licences for the tariff rate quota regime. If no feasible system can be found, the proposal for a transitional tariff rate quota regime would not be maintained and negotiations under Article XXVIII of GATT 1994 would be envisaged to replace the current system with a tariff only regime. At the DSB meeting on 24 February 2000, the EC explained that there continued to be divergent views expressed by the main parties concerned and that, as a result, no agreed conclusions could be reached.

The arbitrator's report (on the Ecuadorian request for suspension of concessions) was circulated to Members on 24 March 2000. The arbitrators found that the level of nullification and impairment suffered by Ecuador amounted to US$201.6 million per year. The arbitrators found that Ecuador may request authorization by the DSB to suspend concessions or other obligations under GATT 1994 (not including investment goods or primary goods used as inputs in manufacturing and processing industries); under GATS with respect to "wholesale trade services" (CPC 622) in the principal distribution services; and, to the extent that suspension requested under GATT 1994 and GATS was insufficient to reach the level of nullification and impairment determined by the arbitrators, under TRIPS in the following sectors of that Agreement: Section 1 (copyright and related rights); Article 14 on protection of performers, producers of phonograms and broadcasting organisations), Section 3 (geographical indications), Section 4 (industrial designs). The arbitrators also noted that, pursuant to Article 22.3 of the DSU, Ecuador should first seek to suspend concessions or other obligations with respect to the same sectors as those in which the panel reconvened at the request of Ecuador pursuant to Article 21.5 of the DSU had found violations, i.e. GATT 1994 and the sector of distribution services under GATS. On 8 May 2000, Ecuador requested, pursuant to Article 22.7 of the DSU, that the DSB authorize the suspension of concessions to the EC equivalent to the level of nullification and impairment, i.e. US$201.6 million. On 18 May 2000, the DSB authorized Ecuador to suspend concessions to the European Communities as requested.

At the DSB meeting of 27 July 2000, the European Communities stated with respect to implementation of the recommendations of the DSB that it had begun examining the possibility of managing the proposed tariff rate quotas on a first come, first served basis because negotiations with interested parties on tariff rate quota allocation on the basis of traditional trade flows had reached an impasse. The European Communities also said that its examination would include a tariff only system and its implications. At the DSB meeting of 23 October 2000, the EC stated that it was finalizing its internal decision-making process with a view to implementing the new banana regime. To this effect, the EC considered that, during a transitional period of time, its new banana regime should be regulated by the establishment of tariff-rate quotas and managed on the basis of a "first-

come, first-served" (FCFS) system. Before the end of transitional period of time, the EC would initiate Article XXVIII negotiations with a view to establishing a tariff-only system. On 1 March 2001, the EC reported to the DSB that on 29 January 2001, the Council of the European Union adopted Regulation (EC) No 216/2001 amending Regulation (EEC) No 404/93 on the common organisation of the market in bananas. The modifications made in Council Regulation 216/2001 provide for three tariff quotas open to all imports irrespective of their origin: (1) a first tariff quota of 2.200.000 tonnes at a rate of 75€/tonnes, bound under the WTO; (2) a second autonomous quota of 353.000 tonnes at a rate of 75€/tonnes; (3) a third autonomous quota of 850.000 tonnes at a rate of 300€/tonnes. Imports from ACP countries will enter duty-free. In view of contractual obligations towards these countries and the need to guarantee proper conditions of competition, they will benefit from a tariff preference limited to a maximum of 300€/tonnes. The tariff quotas are a transitional measure leading ultimately to a tariff-only regime. According to the EC, substantial progress has been achieved with respect to the implementing measures necessary to manage the three tariff rate quotas on the basis of the First-come, First-served method.

On 3 May 2001, the EC reported to the DSB that intensive discussions with the US and Ecuador, as well as the other banana supplying countries, including the other co-complainants, have led to the common identification of the means by which the long-standing dispute over the EC's bananas import regime will be resolved. In accordance with Article 16(1) of Regulation No (EC) 404/93 (as amended by Council Regulation No (EC) 216/2001), the EC will introduce a Tariff Only regime for imports of bananas no later than 1 January 2006. GATT Article XXVIII negotiations will be initiated in good time to that effect. In the interim period, starting on 1 July 2001, the EC will implement an import regime based on three tariff rate quotas, to be allocated on the basis of historical licensing.

On 22 June 2001, the EC notified an "Understanding on Bananas between the EC and the US" of 11 April 2001, and an "Understanding on Bananas between the EC and Ecuador" of 30 April 2001. Pursuant to these Understandings with the US and Ecuador, the EC will implement an import regime on the basis of historical licensing as follows:

(1) effective 1 July 2001, the EC will implement an import regime on the basis of historical licensing as set out in annex to each of the Understandings;
(2) effective as soon as possible thereafter, subject to Council and European Parliament approval and to adoption of an Article XIII waiver, the EC will implement an import regime on the basis of historical licensing as set out in annex to each of the Understandings.

The Commission will seek to obtain the implementation of such an import regime as soon as possible. Pursuant to its Understanding with the EC, the US,

(i) upon implementation of the new import regime described under (1) above, would provisionally suspend its imposition of the increased duties;
(ii) upon implementation of the new import regime described under (2) above, would terminate its imposition of the increased duties;

(iii) may reimpose the increased duties if the import regime described under (2) does not enter into force by 1 January 2002; and

(iv) would lift its reserve concerning the waiver of Article I of the GATT 1994 that the EC has requested for preferential access to the EC of goods originating in ACP states signatory to the Cotonou Agreement; and will actively work towards promoting the acceptance of an EC request for a waiver of Article XIII of the GATT 1994 needed for the management of quota C under the import regime described under (2) above until 31 December 2005.

Pursuant to its Understanding with the EC, Ecuador

(i) took note that the European Commission will examine the trade in organic bananas and report accordingly by 31 December 2004;

(ii) upon implementation of the new import regime, Ecuador's right to suspend concessions or other obligations of a level not exceeding US$201.6 million per year vis-à-vis the EC would be terminated;

(iii) Ecuador would lift its reserve concerning the waiver of Article I of the GATT 1994 that the EC has requested for preferential access to the EC of goods originating in ACP states signatory to the Cotonou Agreement; and would actively work towards promoting the acceptance of an EC request for a waiver of Article XIII of the GATT 1994 needed for the management of quota C under the import regime described in paragraph C(2) until 31 December 2005.

The EC notified the Understandings as mutually satisfactory solutions within the meaning of Article 3.6 DSU. Both Ecuador and the US communicated that the Understandings did not constitute mutually satisfactory solutions within the meaning of Article 3.6 DSU and that it would be premature to take the item off the DSB agenda. At the DSB meeting on 25 September 2001, Ecuador made an oral statement whereby it criticised the Commission proposal aimed at reforming the EC common organisation for bananas in order to honour the above Understandings.

On 4 October 2001, the EC circulated a status report on the implementation where it indicated that it was continuing to work actively on the legal instruments required for the management of the three tariff quotas after 1 January 2002. In addition, the EC's report indicated that no progress had been made since the previous DSB meeting regarding the waiver request submitted by the EC and the ACP States. The EC further indicated that in the event that no progress was made at the meeting of the Council of Trade in Goods scheduled for 5 October 2001, the EC and the ACP States would be forced to reassess the situation in all respects. At the DSB meeting on 15 October 2001, the EC recalled that the procedure for the examination of the waiver request had been unblocked at the meeting of the Council for Trade in Goods on 5 October 2001, and expressed its readiness to work and discuss with all interested parties in the course of this examination. Ecuador said that if the waiver was limited to what was required during the transitional import regime then it could be granted quickly. Guatemala said that it would carefully follow the outcome of EC's actions and requested that the item should remain on the DSB agenda. Honduras noted that the EC had an obligation to describe the measures to be put in place after 2005. It also reiterated its concerns that the rights of developing countries were not being respected. Panama supported the statement by Honduras and urged the EC to take into account the concerns of Latin American banana exporters. The US expressed satisfaction that the examination procedure of the waiver

request had started and hoped that the process would be expeditious. Saint Lucia said that the statement by Honduras that the EC disregarded the rights of some developing countries was inaccurate. It welcomed the start of the examination procedure and hoped that any current differences would soon be resolved. At the DSB meeting on 5 November 2001, the EC informed that the Working Party to examine the waiver requests submitted by the EC and ACP had made some progress. Ecuador said that tariff preferences to be applied by the EC would reproduce the same inconsistencies in the banana import regime. Honduras indicated that it was necessary to ensure that the scope of the waiver did not go beyond what was required for the implementation of the new regime. Panama said that even if the waiver was granted, the dispute would not be settled.

WT/DS31 – Canada - Certain Measures Concerning Periodicals

Complaint by the United States. The implementation period was agreed by the parties to be 15 months from the date of adoption of the reports i.e. it expired on 30 October 1998. Canada has withdrawn the contested measure.

WT/DS33 – United States - Measure Affecting Imports of Woven Wool Shirts and Blouses

Complaint by India. The US announced that the measure was withdrawn as at 22 November 1996, before the Panel had concluded its work. Therefore, no implementation issue arose.

WT/DS34 – Turkey – Restrictions on Imports of Textile and Clothing Products

Complaint by India. At the DSB meeting of 19 November 1999, Turkey stated its intention to comply with the recommendations and rulings of the DSB. On 7 January 2000, the parties informed the DSB that they had agreed that the reasonable period of time for Turkey to implement the DSB's recommendations and rulings would expire on 19 February 2001. Pursuant to the agreement reached, Turkey also was to refrain from making more restrictive restrictions affecting imports of specified textile and clothing products from India, to increase the size of the quotas of India on certain specified textile and clothing products and to treat India no less favourably than any other Member with respect to the elimination of or modification of quantitative restrictions affecting any product covered by the agreement.

On 6 July 2001, the parties to the dispute notified the DSB that they have reached a mutually acceptable solution regarding implementation by Turkey of the conclusions and recommendations adopted by the DSB on the matter. Pursuant to the Agreement, Turkey agreed to

(1) remove the quantitative restrictions it applies on textile categories 24 and 27 in respect of imports from India, by 30 June 2001 or the date of signature of the Agreement;
(2) carry out tariff reductions on the applied rate basis as described in annex to the Agreement, by 30 September 2001;
(3) strive towards early compliance with the recommendations and rulings of the DSB.

Pursuant to the Agreement, the compensation would remain effective until Turkey removes all quantitative restrictions applied as of 1 January 1996 in respect of imports from India for the 19 categories of textile and clothing products.

WT/DS46 – Brazil - Export Financing Programme for Aircraft

Complaint by Canada.

At the DSB meeting of 19 November 1999, Brazil announced that it had withdrawn the measures at issue within 90 days and had thus implemented the recommendations and rulings of the DSB.

On 23 November 1999, Canada requested the establishment of a panel under Article 21.5 of the DSU, requesting that the panel find that Brazil had not taken measures to comply fully with the rulings and recommendations of the DSB. Canada and Brazil reached an agreement concerning the procedures to be applicable pursuant to Articles 21 and 22 of the DSU and Article 4 of the Subsidies Agreement. At its meeting on 9 December 1999, the DSB agreed to reconvene the original panel pursuant to Article 21.5. The report of the Panel was circulated to the Members on 9 May 2000.

On 10 May, Canada requested authorization from the DSB to suspend the application to Brazil of concessions or other related obligations under the GATT, the Textiles Agreement and the Import Licensing Agreement, pursuant to Article 4.10 of the Subsidies Agreement and Article 22.2 of the DSU, in an amount of Can$700 million per year.

On 22 May 2000, Brazil notified its intention to appeal certain issues of law and legal interpretations developed by the review panel. At the DSB meeting on 22 May 2000, Brazil also requested arbitration, pursuant to Article 22.6 of the DSU and Article 4.11 of the Subsidies Agreement, to determine whether the countermeasures requested by Canada were appropriate. The DSB referred the matter to the original panel for arbitration, it being understood that no countermeasures would be sought pending the report of the Appellate Body and until after the arbitration report.

The report of the Appellate Body was circulated to Members on 9 May 2000. The Appellate Body upheld the review panel's conclusion that Brazil had failed to implement the recommendation of the DSB because of the continued issuance by Brazil of NTN-I bonds, after 18 November 1999, pursuant to letters of commitment issued before 18 November 1999. The Appellate Body also upheld the review panel's findings that payments made under the revised PROEX are prohibited by Article 3 of the Subsidies Agreement and are not justified under item (k) of the Illustrative List of the same Agreement. The Appellate Body therefore upheld the review panel's conclusion that Brazil has failed to implement the recommendations of the DSB. The DSB adopted the Appellate Body report and the panel report, as modified by the Appellate Body report, at its meeting on 4 August 2000.

Brazil stated its intention to bring future PROEX operations in line with the recommendations of the DSB. The arbitrator's report was circulated to Members on 28 August 2000. The arbitrators found that the appropriate

countermeasures in this case amounted to C$344.2 million per year. The arbitrators found that Canada may request authorization by the DSB to suspend tariff concessions or other obligations under GATT 1994, the Agreement on Textiles and Clothing and the Agreement on Import Licensing Procedures. At the DSB meeting of 12 December 2000, Canada received, pursuant to Article 22.7 of the DSU and Article 4.10 of the SCM Agreement, authorization from the DSB to suspend the application to Brazil of tariff concessions or other obligations under GATT 1994, the Agreement on Textiles and Clothing and the Agreement on Import Licensing Procedures covering trade in a maximum amount of C$ 344.2 million per year. On 12 December 2000, Brazil advised the DSB of changes that it had made to the measures at issue in this case and claimed that PROEX had been brought into compliance with Brazil's obligations under the SCM Agreement. Canada is of the view that Brazil continues to violate its SCM Agreement obligations. According to Canada, there is therefore a disagreement between Canada and Brazil as to whether the measures taken by Brazil to comply with the 20 August 1999 and 4 August 2000 rulings and recommendations of the DSB bring Brazil into conformity with the provisions of the SCM Agreement and result in the withdrawal of the export subsidies to regional aircraft under PROEX.

On 22 January 2001, Canada requested the DSB to refer the matter again to the original panel, pursuant to Article 21.5 of the DSU. At its meeting of 16 February 2001, the DSB referred the matter to the original panel. Australia, the EC and Korea reserved their third-party rights. The Panel circulated its report on 26 July 2001. At its meeting on 23 August 2001, the DSB adopted the Panel Report on this second recourse to Article 21.5 of the DSU.

WT/DS50 – India - Patent Protection for Pharmaceutical and Agricultural Chemical Products

Complaint by the United States. At the DSB meeting of 22 April 1998, the parties announced that they had agreed on an implementation period of 15 months from the date of the adoption of the reports i.e. it expired on 16 April 1999. India undertook to comply with the recommendations of the DSB within the implementation period. At the DSB meeting on 28 April 1999, India presented its final status report on implementation of this matter which disclosed the enactment of the relevant legislation to implement the recommendations and rulings of the DSB.

WT/DS54, WT/DS55, WT/DS59 and WT/DS64 – Indonesia - Certain Measures Affecting the Automobile Industry

Complaints by the United States, the European Communities and Japan. Indonesia indicated its intention to comply with the recommendations of the DSB within the time permissible under Article 21 of the DSU. On 8 October 1998, the EC, pursuant to Article 21.3 of the DSU, requested that the reasonable period of implementation be determined by binding arbitration. The Arbitrator determined that the reasonable period of time for Indonesia to implement the recommendations and rulings of the DSB was 12 months from the date of adoption of the Panel Report i.e. it expired on 23 July 1999. The report of the Arbitrator was circulated to Members on 7 December 1998. By a communication dated 15 July 1999, Indonesia informed the DSB that it had

issued a new automotive policy on 24 June 1999 (the 1999 Automotive Policy), which effectively implemented the recommendations and rulings of the DSB in this matter.

WT/DS56 – Argentina - Certain Measures Affecting Imports of Footwear, Textiles, Apparel and Other Items

Complaint by the United States. At the DSB meeting on 22 June 1998, Argentina announced that it had reached an agreement on implementation with the US, whereby Argentina would reduce the statistical tax to 0.5% by 1 January 1999, and cap specific duties on textiles and apparel at 35% by 19 October 1998. At the DSB meeting on 26 May 1999, Argentina announced that Decree 108/99, pursuant to which no import transactions covered by the statistical tax shall be taxed in excess of the amounts agreed between it and the United States, would enter into force on 30 May 1999.

WT/DS58 – United States - Import Prohibition of Certain Shrimp and Shrimp Products

Complaint by India, Malaysia, Pakistan and Thailand. On 25 November 1998, the US informed the DSB that it was committed to implementing the recommendations of the DSB and was looking forward to discussing with the complainants the question of implementation. The parties to the dispute announced that they had agreed on an implementation period of 13 months from the date of adoption of the Appellate Body and Panel Reports, i.e. it expired on 6 December 1999. On 22 December 1999, Malaysia and the United States informed the DSB that they had reached an understanding regarding possible proceedings under Articles 21 and 22 of the DSU.

At the DSB meeting on 27 January 2000, the US stated that it had implemented the DSB's rulings and recommendations. The US noted that it had issued revised guidelines implementing its Shrimp/Turtle law which were intended to (i) introduce greater flexibility in considering the comparability of foreign programmes and the US programme and (ii) elaborate a timetable and procedures for certification decisions. The US also noted that it had undertaken and continued to undertake efforts to initiate negotiations with the governments of the Indian Ocean region on the protection of sea turtles in that region. Finally, the US stated that it offered and continued to offer technical training in the design, construction, installation and operation of TEDs to any government that requested it. See also Section VI.B.

On 12 October 2000, Malaysia requested that the matter be referred to the original panel pursuant to Article 21.5 of the DSU, considering that by not lifting the import prohibition and not taking the necessary measures to allow the importation of certain shrimp and shrimp products in an unrestrictive manner, the United States had failed to comply with the recommendations and rulings of the DSB. At its meeting of 23 October 2000, the DSB referred the matter to the original panel pursuant to Article 21.5 DSU.

On 9 July 2001, the US notified its decision to appeal to the Appellate Body certain issues of law covered in the Panel Report and certain legal interpretations developed by the Panel. On 5 September 2001, the Appellate Body informed the DSB that it would not be able to circulate its report within the 7 September deadline. Accordingly, the Report is expected to be circulated no later than 8 October 2001.

WT/DS69 – European Communities - Measures Affecting Importation of Certain Poultry Products

Complaint by Brazil. The EC and Brazil announced at the DSB meeting on 21 October 1998, that they had reached a mutual agreement on a reasonable period of time for implementation, which was to be the period up to 31 March 1999.

WT/DS70 – Canada - Measures Affecting the Export of Civilian Aircraft

Complaint by Brazil. At the DSB meeting of 19 November 1999, Canada announced that it had withdrawn the measures at issue within 90 days and thus had implemented the recommendations and rulings of the DSB. On 23 November 1999, Brazil requested the establishment of a panel under Article 21.5 because it believed that Canada had not taken measures to comply fully with the rulings and recommendations of the DSB. Brazil and Canada reached an agreement concerning the procedures to be applicable pursuant to Articles 21 and 22 of the DSU and Article 4 of the Subsidies Agreement. At its meeting on 9 December 1999, the DSB agreed to reconvene the original panel pursuant to Article 21.5 of the DSU. Australia, the EC and the US reserved their third-party rights.

The compliance panel report was circulated to Members on 9 May 2000. The panel concluded that Canada's measures did not ensure that such Canada Account transactions would not be prohibited export subsidies.

On 22 May 2000, Brazil notified its intention to appeal certain issues of law and legal interpretations developed by the review panel. The report of the Appellate Body was circulated to Members on 9 May 2000. The Appellate Body found that Brazil had failed to establish that Canada has not implemented the recommendations of the DSB. The DSB adopted the Appellate Body report and the panel report, as modified by the Appellate Body report, at its meeting on 4 August 2000. Canada stated its intention to implement the recommendations of the DSB in respect of the Canada Account Programme.

WT/DS75 and WT/DS84 - Korea – Taxes on Alcoholic Beverages

Complaints by the European Communities and the United States. At the DSB meeting on 19 March 1999, Korea informed the DSB that it was considering options for implementation of the DSB's recommendations. On 9 April 1999, the two complainants separately requested, pursuant to Article 21.3(c) of the DSU, that the reasonable period of time for Korea to implement the recommendations of the DSB be determined by arbitration. On 23 April 1999, the three parties to the dispute jointly informed the DSB that they had agreed on the appointment of an arbitrator for the determination of the reasonable period of time for implementation, and also that they had agreed that the arbitrator issue his arbitration award no later than 7 June 1999. On 4 June 1999, the arbitrator determined the reasonable period of time to be 11 months and two weeks. i.e. until 31 January 2000. At the DSB meeting on 27 January 2000, Korea stated that it considered to have fully implemented the DSB's rulings and recommendations by amending its Liquor Tax Law and the Education Tax Law to impose flat rates of 72% liquor tax and 30% education tax on all distilled alcoholic beverages on a non-discriminatory basis.

WT/DS76 – Japan - Measures Affecting Agricultural Products

Complaint by the United States. Pursuant to Article 21.3 of the DSU, Japan informed the DSB on 13 April 1999 that it was studying ways in which to implement the recommendations of the DSB. In a joint communication, the two parties informed the DSB on 15 June 1999, that they had agreed on an implementation period of 9 months and 12 days from the date of adoption of the reports, i.e. from 19 March to 31 December 1999.

On 31 December 1999, Japan abolished the varietal testing requirement as well as the "Experimental Guide" in accordance with the DSB's rulings. At the DSB meeting on 14 January 2000, Japan also stated that it was conducting consultations with the US regarding a new quarantine methodology for those products subject to import prohibitions because they were hosts of codling moth. At the DSB meeting on 24 February 2000, Japan noted that it expected to reach a mutually satisfactory solution with the US regarding a new quarantine methodology.

On 23 August 2001, Japan and the US notified to the DSB that they had reached a mutually satisfactory solution with respect to conditions for lifting import prohibitions on the fruits and nuts at issue in the dispute.

WT/DS79 – India - Patent Protection for Pharmaceutical and Agricultural Chemical Products

Complaint by the European Communities. India indicated at the DSB meeting of 21 October 1998, that it needed a reasonable period of time to comply with the DSB recommendations and that it intended to have bilateral consultations with the EC to agree on a mutually acceptable period of time. At the DSB meeting on 25 November 1998, India read out a joint statement done with the EC, in which it was agreed that the implementation period in this dispute would correspond to the implementation period in a similar dispute brought by the US (DS50). At the DSB meeting on 28 April 1999, India presented its final status report on implementation of DS50, which also applies to implementation in this dispute. The report disclosed the enactment of the relevant legislation to implement the recommendations and rulings of the DSB.

WT/DS87 and WT/DS110– Chile – Taxes on Alcoholic Beverages

Complaints by the European Communities. On 11 February 2000, Chile informed the DSB that it was studying ways in which to implement the recommendations of the DSB, noting that any changes to its tax laws required the approval of the National Congress and that it would therefore require a reasonable period of time to implement the recommendations of the DSB. On 15 March 2000, Chile requested, pursuant to Article 21.3(c) of the DSU, that the reasonable period of time be determined by arbitration.

The report of the arbitrator was circulated to Members on 23 May 2000. The arbitrator determined, pursuant to Article 21.3 of the DSU, that the reasonable period of time for Chile to implement the recommendations and rulings of the DSB is not more than 14 months and 9 days from 12 January 2000, i.e. Chile had until 21 March 2001 to enact and put into effect a law appropriately amending the relevant tax legislation.

At the DSB meeting of 1 February 2001, Chile announced that implementing legislation was adopted by a clear majority in both the Chamber of Deputies and the Senate, and that its full entry into force awaits only on its promulgation by the President of the Republic and its publication in the Official Journal. Under this legislative reform, the existing rate of 27 per cent would be maintained for Pisco, while that same rate would be applied to other alcoholic beverages as from 21 March 2003. In the meantime, the tax applied to those spirits will be progressively reduced to 27 per cent.

WT/DS90 – India - Quantitative Restrictions on Imports of Agricultural, Textile and Industrial Products

Complaint by the United States. At the DSB meeting of 14 October 1999, India stated its intention to comply with the recommendations and rulings of the DSB, at the same time drawing attention to the Panel's suggestion that the reasonable period of time for implementation in this case could be longer than 15 months in view of the practice of the IMF, the BOP Committee and GATT and WTO panels of granting longer phase-out periods for the elimination of BOP restrictions, and in view of India's status as a developing country Member.

On 28 December 1999, the parties informed the DSB that they had reached an agreement on the reasonable period of time for India to comply with the recommendations and rulings of the DSB. The reasonable period of time was to expire on 1 April 2000, except for some tariff items to be notified by India to the US for which the reasonable period of time was to expire on 1 April 2001. Pursuant to the agreement reached, India had to treat the US no less favourably than any other Member with respect to the elimination of or modification of quantitative restrictions affecting any product covered by the agreement. At the DSB meeting of 27 July 2000, India stated that it had notified to the United States those tariff items for which the reasonable period is to expire on 1 April 2001 and that for all other items India had implemented the recommendation of the DSB by 1 April 2000. At the DSB meeting of 5 April 2001, India announced that, with effect from 1 April 2001, it had removed the quantitative restrictions on imports in respect of the remaining 715 items and had thus implemented the DSB's recommendations in this case. The United States welcomed India's action and said that it had some specific questions to ask India in the next few days.

WT/DS98 – Korea - Definitive Safeguard Measure on Imports of Certain Dairy Products

Complaint by the European Communities. On 11 February 2000, Korea informed the DSB that it was studying ways in which to implement the recommendations of the DSB. On 21 March 2000, the parties notified the DSB that they had agreed on a reasonable period of time for Korea's implementation of the recommendations of the DSB. Pursuant to that agreement, the reasonable period expired on 20 May 2000. At the DSB meeting of 26 September 2000, Korea informed the DSB that it had lifted its safeguard measure on 20 May 2000 and stated that it thereby had completed the implementation of the DSB's recommendations in this case.

WT/DS99 – United States - Anti-Dumping Duty on Dynamic Random Access Memory Semiconductors (DRAMS) of One Megabit or Above from Korea

Complaint by Korea. On 13 April 1999, the United States informed the DSB it was studying ways in which to implement the recommendations of the DSB. At the DSB meeting on 26 July 1999, the two parties notified the DSB that they had agreed on an implementation period of 8 months effective from the date of adoption of the report, i.e. from 19 March 1999. The reasonable period of time expired on 19 November 1999.

At the DSB meeting on 27 January 2000, the US stated that it considered to have implemented the recommendations and rulings by the DSB. The US recalled that the Commerce Department had amended section 351.222(b) by deleting the "not likely" standard and incorporating the "necessary" standard of the Anti-Dumping Agreement. The Commerce Department then issued a revised Final Results of Redetermination in the Third Administrative Review on 4 November 1999, concluding that, because a resumption of dumping was likely, it was necessary to leave the anti-dumping order in place.

On 9 March 2000, Korea informed the DSB that it believed that the measures taken by the United States to comply with the rulings and recommendations of the DSB were not consistent with the Anti-Dumping Agreement and Article X:1 of GATT 1994. Korea therefore requested that this matter be referred to the original panel pursuant to Article 21.5 of the DSU. On 6 April 2000, Korea submitted a new request to the effect that the matter be referred to the original panel pursuant to Article 21.5 of the DSU. At its meeting on 25 April 2000, the DSB agreed to reconvene the original panel pursuant to Article 21.5 of the DSU. The EC reserved its reserved its third-party rights.

On 19 September 2000, Korea requested the Panel to suspend its work, including the issuance of the interim report, "until further notification" pursuant to Article 12.12 of the DSU. The Panel, in a letter sent to the parties on 21 September 2000, agreed to this request. On 20 October 2000, the parties notified the DSB of a mutually satisfactory solution to the matter, involving the revocation of the antidumping order at issue as the result of a five-year "sunset" review by the US Department of Commerce.

WT/DS103 and WT/DS113 – Canada - Measures Affecting the Importation of Milk and the Exportation of Dairy Products

Complaints by the United States and New Zealand. At the DSB meeting of 19 November 1999, Canada stated its intention to comply with the recommendations and rulings of the DSB. On 23 December 1999, Canada informed the DSB that, pursuant to Article 21.3 of the DSU and after having agreed to extend the time periods set forth in Article 21.3(b) of the DSU, it has reached an understanding with the US and New Zealand on four discrete periods of time to be accorded a staged implementation process. According to the implementation agreement, Canada must complete the last stage of the implementation process no later than 31 December 2000. On 11 December 2000, Canada, the US and New Zealand informed the DSB that they had agreed to extend the reasonable period of time until 31 January 2001.

On 16 February 2001, both the US and New Zealand requested the DSB to refer the matter to the original panel pursuant to Article 21.5 DSU. At its meeting of 1 March 2001, the DSB referred the matter to the original panel, if possible. Australia, the EC and Mexico reserved their third party rights. Also on 16 February 2001, both the US and New Zealand requested authorization from the DSB, pursuant to Article 22.2 DSU, to suspend the application to Canada of tariff concessions and related obligations under the GATT 1994, each covering trade in the amount of US$ 35 million on an annual basis. On 28 February 2001, Canada objected to the level of suspension and requested that the matter be referred to arbitration pursuant to Article 22.6 DSU. At its meeting of 1 March 2001, the DSB referred the matter to arbitration.

WT/DS108 – United States - Tax Treatment for "Foreign Sales Corporations"

Complaint by the European Communities. Pursuant to Article 21.3 of the DSU, the US informed the DSB on 7 April 2000 of its intention to implement the recommendations of the DSB in a manner consistent with its WTO obligations. At the request of the United States, at its meeting of 12 October 2000, the DSB modified the time-period for implementation so as to expire on 1 November 2000. On 17 November 2000, the US stated that, with the adoption on 15 November 2000 of the FSC Repeal and Extraterritorial Income Exclusion Act, it had implemented the recommendations and rulings of the DSB. On the same date, the EC stated that, in its view, the US had failed to comply with the DSB recommendations and rulings, and requested the US to enter into consultations with the EC pursuant to Articles 4 and 21.5 of the DSU, Article 4 of the SCM Agreement, Article 19 of the Agreement on Agriculture and Article XXIII:1 of GATT 1994. Also on 17 November 2000, the EC requested authorisation from the DSB to take appropriate countermeasures and suspend concessions pursuant to Article 4.10 of the SCM Agreement and Article 22.2 of the DSU.

Pursuant to an agreement between the parties to the dispute, the US would request arbitration with respect to the EC's request and the arbitration would be suspended until the reconstituted panel has decided the conformity of the new US legislation with the panel and Appellate Body reports. On 27 November 2000, the US requested that the matter be referred to arbitration pursuant to Article 22.6 of the DSU. On 7 December 2000, the EC notified the DSB that consultations had failed to settle the dispute and that it was requesting the establishment of a panel pursuant to Article 21.5 of the DSU. At its meeting of 20 December, the DSB agreed to refer the matter to the original panel. On 21 December 2000, pursuant to an agreement between the parties, the US and the EC jointly requested the Article 22.6 DSU arbitrator to suspend the arbitration proceeding until adoption of the panel report or, if there is an appeal, adoption of the Appellate Body report. The arbitration was accordingly suspended.

On 7 December 2000, the EC notified the DSB that consultations had failed to settle the dispute and that it was requesting the establishment of a panel pursuant to Article 21.5 of the DSU. At its meeting of 20 December, the DSB agreed to refer the matter to the original panel. On 21 December 2000, pursuant to an agreement between the parties, the US and the EC jointly requested the Article 22.6 DSU arbitrator to suspend the arbitration proceeding until adoption of the panel report or, if there is an appeal, adoption of the Appellate Body report. The arbitration was accordingly suspended.

On 20 August 2001, the compliance panel report was circulated to the Members. The Panel concluded that the amended FSC legislation was still inconsistent with Articles 3.1(a) and 3.2 of the SCM Agreement, with 10.1 and 8 of the Agreement on Agriculture and with Article III:4 of the GATT 1994.

WT/DS114 – Canada - Patent Protection of Pharmaceutical Products

Complaint by the European Communities and their member States. Pursuant to Article 21.3 of the DSU, Canada informed the DSB on 25 April 2000 that it would require a reasonable period of time in order to implement the recommendations of the DSB. Since the parties failed to reach a mutually satisfactory solution as to the "reasonable period of time" for implementation of the recommendations of the DSB, despite a mutually agreed extension of the period of time foreseen in Article 21.3(b) of the DSU, on 9 June 2000, the European Communities and their member States requested that the reasonable period of time be determined by arbitration pursuant to Article 21.3(c) of the DSU. The arbitrator determined, pursuant to Article 21.3 of the DSU, that the reasonable period of time for Canada to implement the recommendations and rulings of the DSB is six months from the date of adoption of the panel report and that the reasonable period would thus end on 7 October 2000. At the DSB meeting of 23 October 2000, Canada informed Members that, effective from 7 October 2000, it had implemented the DSB's recommendations.

WT/DS121 – Argentina - Safeguard Measures on Imports of Footwear

Complaint by the European Communities. Pursuant to Article 21.3 of the DSU, Argentina informed the DSB on 11 February 2000 that the safeguard measure would remain in force until 25 February 2000 and, by that date, the measures aimed at complying with the DSB's recommendations and ruling would be adopted.

WT/DS122 – Thailand - Anti-Dumping Duties on Angles, Shapes and Sections of Iron or Non-Alloy Steel and H-Beams from Poland

Complaint by Poland. Thailand informed the DSB that it was in the process of identifying the most suitable way to comply with the DSB's recommendations in this case and that it would need a reasonable period of time for implementation. Poland reiterated its position that in order to implement the DSB's recommendations in this case Thailand would have to revoke the duties currently in place. If not, Poland would seek recourse to Article 21.5 of the DSU. Poland was ready to enter into consultations with Thailand on a reasonable period of time for implementation. On 25 May 2001, the parties to the dispute informed the DSB that they had agreed that the reasonable period of time shall be 6 months and 15 days and therefore expired on 20 October 2001.

WT/DS126 – Australia - Subsidies Provided to Producers and Exporters of Automotive Leather

Complaint by the United States. On 17 September 1999, Australia informed the DSB that it had implemented the recommendations and rulings of the DSB. On 4 October 1999, the United States informed the DSB that it believed that the measures taken by Australia to comply with the rulings and recommendations of the DSB were

not consistent with the Subsidies Agreement and the DSU, and therefore requested that the original panel be reconvened pursuant to Article 21.5 of the DSU. The EC and Mexico reserved their third-party rights. The United States and Australia reached an agreement concerning certain procedures to be applicable in this case under Articles 21 and 22. That agreement provided, *inter alia*, that Australia will not raise any procedural objection to the establishment of a panel in accordance with Article 21.5 of the DSU, while the United States will not request authorization to suspend concessions pursuant to Article 22.2 of the DSU until after the review panel has circulated its report. Also, it has been agreed that neither party will appeal the review panel's report.

At its meeting on 14 October 1999, the DSB agreed to reconvene the original panel pursuant to Article 21.5 of the DSU. The EC and Mexico reserved their third-party rights. On 1 November 1999, the Compliance Panel was composed. The compliance panel report was circulated to Members on 21 January 2000. The compliance panel determined that Australia had failed to comply with the DSB's recommendations within 90 days, and thus had not taken measures to comply with the recommendation of the DSB in this dispute. The DSB adopted the review panel's report on 11 February 2000. On 24 July 2000, the parties notified the DSB that they had reached a mutually satisfactory solution in regard to implementation of the findings of the review panel.

WT/DS132 – Mexico - Anti-Dumping Investigation of High-Fructose Corn Syrup (HFCS) from the United States

Complaint by the United States. Pursuant to Article 21.3 of the DSU, Mexico informed the DSB on 20 March 2000 that it was studying ways in which to implement the recommendations of the DSB. Mexico also indicated that it would need a reasonable period of time in order to implement the DSB recommendations. On 19 April 2000, the parties informed the DSB that they had agreed, pursuant to Article 21.3(b) of the DSU, on a reasonable period of time to be granted to Mexico to implement the recommendations of the DSB. That period expired on 22 September 2000. At the DSB meeting of 26 September 2000, Mexico stated that it had published on 20 September 2000 the final determination on anti-dumping investigation of high-fructose corn syrup from the US and thereby complied with the DSB's recommendation. US stated that it would examine Mexico's final determination.

On 12 October 2000, the US requested that the DSB refer the matter to the original panel, pursuant to Article 21.5 of the DSU, in order to establish whether Mexico had correctly implemented the DSB's recommendations. At its meeting of 23 October 2000, the DSB referred the matter to the original panel pursuant to Article 21.5 of the DSU. The EC, Jamaica and Mauritius reserved their third-party rights to participate in the Panel's proceedings. The US and Mexico informed the DSB that they were discussing mutually agreeable procedures under Articles 21 and 22 of the DSU in relation to this matter.

The Article 21.5 Panel circulated its report on 22 June 2001. The Panel considered that Mexico has failed to implement the recommendation of the original Panel and the DSU to bring its measure into conformity with its obligations under the AD Agreement.

On 24 July 2001, Mexico appealed the above Panel report. On 20 September 2001, the Appellate Body informed that the issuance of the report would be delayed. It is now expected to be issued no later than Monday, 22 October 2001.

WT/DS136 and WT/DS162 – United States - Anti-Dumping Act of 1916

Complaints by the European Communities and Japan. At the DSB meeting of 23 October 2000, the US stated that it was its intention to implement the DSB's recommendations and rulings. The US also stated that it would require a reasonable period of time for implementation and that it would consult with the EC and Japan on this matter. On 17 November 2000, the EC and Japan requested that the reasonable period of time be determined by arbitration pursuant to Article 21.3(c) of the DSU. The arbitrator circulated his report on 28 February 2001. He decided that the reasonable period of time in this case was 10 months and would thus expire on 26 July 2001. At its meeting of 24 July 2001, the DSB agreed to the US proposal to extend the reasonable period of time until 31 December 2001 or the end of the current session of the US Congress, whichever earlier. This extension had been agreed with the parties.

WT/DS138 – United States – Imposition of Countervailing Duties on Certain Hot-Rolled Lead and Bismuth Carbon Steel Products Originating in the United Kingdom

Complaint by the European Communities. At the DSB meeting on 5 July 2000, the United States announced that it considered to have implemented the recommendations of the DSB with regard to the case concerning its countervailing duty order on certain hot-rolled lead and bismuth carbon steel products originating in the United Kingdom. As a follow-up to this case, the EC has filed a new complaint against the US continued application of countervailing duties based on the "change of ownership" methodology. For further information, see WT/DS212.

WT/DS139 and WT/DS142 – Canada – Certain Measures Affecting the Automotive Industry

Complaints by Japan and the European Communities. Pursuant to Article 21.3 of the DSU, Canada informed the DSB on 19 July 2000 that it would comply with the recommendations of the DSB. One of the recommendations made by the DSB was that Canada withdraw within 90 days the export subsidy found to be inconsistent with Article 3.1(a) of the Subsidies Agreement. On 4 August 2000, Japan and the European Communities requested, pursuant to Article 21.3(c) of the DSU, that the reasonable period of time be determined by arbitration. The arbitrator determined that the "reasonable period of time" was 8 months from the date of adoption of the Appellate Body and Panel Reports, as modified by the Appellate Body Report. The "reasonable period of time" was thus to expire on 19 February 2001. At the DSB meeting of 12 March 2001, Canada stated that, as of 18 February 2001, it had complied with the DSB's recommendations.

WT/DS141 – European Communities – Anti-Dumping Duties on Imports of Cotton-Type Bed-Linen from India

Complaint by India. At the DSB meeting of 5 April 2001, the EC announced its intention to implement the DSB's recommendations in this case and said that it would need a reasonable period of time to do so. India said that the EC could complete its implementation process within a very short period of time. On 26 April 2001, the parties to the dispute notified the DSB that they had mutually agreed that the reasonable period of time shall be five months and two days, that is from 12 March 2001 until 14 August 2001.

The EC amended its Anti-dumping Regulation by the deadline. However, India, at the 23 August meeting of the DSB, made a statement whereby it expressed the view that the new EC Regulation did not bring the EC legislation into full compliance with the DSB's recommendations.

On 13 September 2001, India and the EC informed the DSB that they had reached an understanding regarding the procedures under Articles 21 and 22 of the DSU. This understanding foresees that if on the basis of the results of proceedings under Article 21.5 that might be initiated by India, India decides to initiate proceedings under Article 22, the EC would not assert that India is precluded from doing so because its request was made outside the 30 day time-period.

WT/DS155 – Argentina - Measures on the Export of Bovine Hides and the Import of Finished Leather

Complaint by the European Communities. At the DSB meeting of 12 March 2001, Argentina stated its intention to implement the DSB's recommendations and indicated that it would need a reasonable period of time to do so. On 14 May 2001, the EC requested that the reasonable period of time be determined through binding arbitration pursuant to Article 21.3(c). On 31 August 2001, the Arbitrator circulated its award whereby the reasonable period of time was fixed at 12 months and 12 days from 16 February 2001. This period will therefore expire on 28 February 2002.

WT/DS156 – Guatemala - Definitive Anti-dumping Measure regarding Grey Portland Cement from Mexico

Complaint by Mexico. At the DSB meeting of 12 December 2000, in accordance with Article 21.3 of the DSU, Guatemala informed the DSB that in October 2000 it had removed its anti-dumping measure and had thus complied with the DSB's recommendations. Mexico welcomed Guatemala's implementation in this case.

WT/DS160 – United States – Section 110(5) of the US Copyright Act

Complaint by the European Communities. Pursuant to Article 21.3 of the DSU, the US informed the DSB on 24 August 2000 that it would implement the recommendations of the DSB. The US proposed 15 months as a reasonable period of time within which to implement those recommendations. On 23 October 2000, the EC requested that the reasonable period of time for implementation be determined by means of binding arbitration as provided for in Article 21.3 (c) DSU. The Arbitrator circulated his Award on 15 January 2001. The

Arbitrator determined that the reasonable period of time for the US to implement the recommendations and rulings of the DSB in this case is 12 months from the date of the adoption of the panel report. At its meeting of 24 July 2001, the DSB agreed to the US proposal to extend the reasonable period of time until 31 December 2001 or the end of the current session of the US Congress, whichever earlier. This extension had been agreed with the EC.

On 23 July 2001, the US and the EC notified the DSB of their agreement to pursue arbitration pursuant to Article 25.2 of the DSU in order to determine the level of nullification or impairment of benefits to the EC as result of Section 110(5)(B) of the US Copyright Act.

WT/DS161 and WT/DS169 Korea – Measures Affecting Imports of Fresh, Chilled, and Frozen Beef

Complaints by the United States and Australia. At the DSB meeting of 2 February 2001, Korea announced that it had already implemented some elements of the DSB's recommendations and that in order to complete the process it would need a reasonable period of time. On 19 April 2001, the parties to the dispute notified the DSB that they had mutually agreed that the reasonable period of time shall be 8 months, and was thus to expire on 10 September 2001.

At the DSB meeting on 25 September 2001, Korea announced that it had implemented the DSB's recommendation by the deadline, i.e. 10 September. The US indicated that it will continue to work with Korea to ensure that the replacement measures resulted in full market access for US beef.

WT/DS166 – United States – Definitive Safeguard Measure on Imports of Wheat Gluten from the European Communities

Complaint by the European Communities. At the DSB meeting of 16 February 2001, the US announced that it intended to implement the recommendations and rulings contained in the panel and Appellate Body reports. On 20 March 2001, the EC requested that the reasonable period of time for implementation be determined by binding arbitration pursuant to Article 21.3(c) DSU. On 10 April 2001, the parties to the dispute notified the DSB that they had mutually agreed that the reasonable period of time shall be four months and 14 days, that is from 19 January 2001 to 2 June 2001.

WT/DS170 – Canada – Patent Protection Term

Complaint by the United States. At the DSB meeting of 23 October 2000, Canada stated that it was its intention to implement the DSB's recommendations and rulings. Canada said that it would require a reasonable period of time for implementation and that it would consult with the United States on this matter. On 15 December 2000, the US requested that the reasonable period of time for implementation by Canada be determined by binding arbitration pursuant to Article 21.3(c) of the DSU. The arbitrator circulated his report on 28 February 2001. He decided that the reasonable period of time in this case was 10 months and was thus to expire on 12 August 2001.

WT/DS177 and WT/DS178 – United States – Safeguard Measure on Imports of Fresh, Chilled or Frozen Lamb from New Zealand

Complaints by New Zealand and Australia. At the DSB meeting of 20 June 2001, the US recalled that on 14 June 2001 it had submitted in writing to the DSB its intentions with respect to the implementation in this case and said that it intended to implement the DSB's recommendations in a manner that would respect its WTO obligations. The US further stated that it would need a reasonable period of time for implementation and, for that reason, it would enter into discussions with the complaining parties. On 27 September 2001, the US informed the DSB of its decision to implement the recommendations of the DSB by ending the safeguard measure effective on 15 November 2001. On 28 September 2001, Australia and New Zealand agreed that the reasonable period of time for implementation would expire on 15 November 2001.

WT/DS179 – United States – Anti-Dumping Measures on Stainless Steel Plate in Coils and Stainless Steel Sheet and Strip from Korea

Complaint by Korea At the DSB meeting of 1 March 2001, the US stated its intention to implement the DSB's recommendations and indicated that it would need a reasonable period of time to do so. on 26 April 2001, the parties to the dispute notified the DSB that they had mutually agreed that the reasonable period of time shall be 7 months and shall thus expire on 1 September 2001.

At the DSB's meeting of 10 September 2001, the US announced that it had implemented the DSB's recommendation on 1 September 2001. At that meeting, Korea acknowledged the implementation.

SETTLED OR INACTIVE CASES

MUTUALLY AGREED SOLUTIONS

WT/DS5 – Korea - Measures Concerning the Shelf-life of Products

Complaint by the United States. On 3 May 1995, the US requested consultations with Korea in respect of requirements imposed by Korea on imports from the US which had the effect of restricting imports. The US alleged violations of Articles III and XI of GATT, Articles 2 and 5 of the SPS Agreement, Article 2 of the TBT Agreement, and Article 4 of the Agreement on Agriculture. The parties notified a mutually acceptable solution to this dispute on 31 July 1995.

WT/DS6 – United States - Imposition of Import Duties on Automobiles from Japan under Sections 301 and 304 of the Trade Act of 1974

Complaint by Japan. On 19 July 1995, the parties notified settlement of this dispute. Japan had alleged that the import surcharges violated GATT Articles I and II.

WT/DS7, WT/DS12 and WT/DS14 – European Communities - Trade Description of Scallops

Complaints by Canada, Peru and Chile. The complaint concerned a French Government Order laying down the official name and trade description of scallops. Complainants claimed that this Order will reduce competitiveness on the French market as their product will no longer be able to be sold as "Coquille Saint-Jacques" although there is no difference between their scallops and French scallops in terms of colour, size, texture, appearance and use, i.e. it is claimed they are "like products". Violations of GATT Articles I and III and TBT Article 2 were alleged.

A panel was established at the request of Canada on 19 July 1995. A joint panel was established on 11 October 1995 at the request of Peru and Chile on the same subject. The two panels concluded their substantive work, but suspended the proceedings pursuant to Article 12.12 of the DSU in May 1996 in view of the consultations held among the parties concerned towards a mutually agreed solution. The parties notified a mutually agreed solution to the DSB on 5 July 1996. Brief panel reports noting the settlement were circulated to Members on 5 August 1996 in accordance with the provisions of Article 12.7 of the DSU.

WT/DS19 – Poland - Import Regime for Automobiles

Complaint by India. This request for consultations, dated 28 September 1995, concerns Poland's preferential treatment of the EC in its tariff scheme on automobiles. On 16 July 1996, both parties notified a mutually agreed solution to the DSB.

WT/DS20 – Korea - Measures Concerning Bottled Water

Complaint by Canada. In this request for consultations dated 8 November 1995, Canada claimed that Korean regulations on the shelf-life and physical treatment (disinfection) of bottled water were inconsistent with GATT Articles III and XI, SPS Articles 2 and 5 and TBT Article 2. At the DSB meeting on 24 April 1996, the parties to the dispute announced that they reached a settlement.

WT/DS21 – Australia - Measures Affecting the Importation of Salmonids

Complaint by the United States. This request for consultations, dated 17 November 1995, concerns the same regulation alleged to be in violation of the WTO Agreements in WT/DS18, in respect of which the reports of the panel and Appellate Body have already been adopted and are awaiting implementation. On 11 May 1999, the United States requested the establishment of a panel. At its meeting on 16 June 1999, the DSB established a panel. Canada, the EC, Hong Kong/China, India and Norway reserved their third party rights. At the request of the complainants, the Panel agreed on 8 November 1999 to suspend its work, pursuant to Article 12.12 of the DSU, until such time as the panelists have completed their work in the ongoing proceeding requested by Canada pursuant to Article 21.5 of the DSU (WT/DS18) or for eleven months, whichever is the earlier. On 29 March 2000, the panel agreed to a request by the US, pursuant to Article 12.12 of the DSU, to suspend its work for a period of one month, i.e. until 29 April 2000. On 12 May 2000, the panel agreed to a request by the US to suspend its work for an additional period of time, which will expire on 17 July 2000. On 27 October 2000, the parties to the dispute notified a mutually satisfactory solution on the matter to the DSB.

WT/DS28 – Japan - Measures Concerning Sound Recordings

Complaint by the United States. This request, dated 9 February 1996, is the first WTO dispute settlement case involving the TRIPS Agreement. The United States claims that Japan's copyright regime for the protection of intellectual property in sound recordings is inconsistent with, inter alia, the TRIPS Agreement Article 14 (protection of performers, producers of phonograms and broadcasting organizations). On January 24 1997, both parties informed the DSB that they had reached a mutually satisfactory solution to the dispute.

WT/DS35 – Hungary - Export Subsidies in Respect of Agricultural Products

Complaint by Argentina, Australia, Canada, New Zealand, Thailand and the United States. This request, dated 27 March 1996, claims that Hungary violated the Agreement on Agriculture (Article 3.3 and Part V) by providing export subsidies in respect of agricultural products not specified in its Schedule, as well as by providing agricultural export subsidies in excess of its commitment levels. On 9 January 1997, Argentina, Australia, New Zealand and the United States requested the establishment of a panel. At its meeting on 25 February 1997 the DSB established a panel. Canada, Japan, Thailand and Uruguay reserved their third-party rights to the dispute. At the DSB meeting on 30 July 1997, Australia, on behalf of all the complainants, notified the DSB that the parties to the dispute had reached a mutually agreed solution, which required Hungary to seek a waiver of certain of its WTO obligations. Pending adoption of the waiver, the complaint was not formally withdrawn.

WT/DS36 – Pakistan - Patent Protection for Pharmaceutical and Agricultural Chemical Products

Complaint by the United States. In its request for consultations dated 30 April 1996, the United States claimed that the absence in Pakistan of (i) either patent protection for pharmaceutical and agricultural chemical products or a system to permit the filing of applications for patents on these products and (ii) a system to grant exclusive marketing rights in such products, violates TRIPS Agreement Articles 27, 65 and 70. On 4 July 1996, the United States requested the establishment of a panel. The DSB considered the request at its meeting on 16 July 1996, but did not establish a panel due to Pakistan's objection. At the DSB meeting on 25 February 1997, both parties informed the DSB that they had reached a mutually agreed solution to the dispute and that the terms of the agreement were being drawn up, and would be communicated to the DSB once finalized. On 28 February 1997, the terms of the agreement were communicated to the Secretariat.

WT/DS37 – Portugal - Patent Protection under the Industrial Property Act

Complaint by the United States. This request for consultations dated 30 April 1996, concerned Portugal's term of patent protection under its Industrial Property Act. The US claimed that the provisions in that Act with respect to existing patents were inconsistent with Portugal's obligations under the TRIPS Agreement. Violations under Articles 33, 65 and 70 were alleged. On 3 October 1996, both parties notified a mutually agreed solution to the DSB.

WT/DS40 – Korea - Laws, Regulations and Practices in the Telecommunications Sector

Complaint by the European Communities. This request for consultations, dated 9 May 1996, concerns the laws, regulations and practices in the telecommunications sector. The EC claims that the procurement practices of the Korean telecommunications sector (Korea Telecom and Dacom) discriminate against foreign suppliers. The EC also claims that the Korean government has favoured US suppliers under two bilateral telecommunications agreements between Korea and the US. Violations of GATT Articles I, III and XVII are alleged. On 22 October 1997, the parties notified the Secretariat of a mutually agreed solution.

WT/DS42 – Japan - Measures Concerning Sound Recordings

Complaint by the European Communities. This request for consultations, dated 24 May 1996, concerns the intellectual property protection of sound recordings under GATT Article XXII:1. Violations of Articles 14.6 and 70.2 of the TRIPS Agreement are alleged. Earlier, the United States requested consultations with Japan on the same issue (WT/DS28), in which the EC joined. On 7 November 1997, both parties notified a mutually agreed solution.

WT/DS43 – Turkey - Taxation of Foreign Film Revenues

Complaint by the United States. This request for consultations, dated 12 June 1996, concerns Turkey's taxation of revenues generated from the showing of foreign films. Violation of GATT Article III is alleged. On 9 January 1997, the United States requested the establishment of a panel. At its meeting on 25 February 1997, the DSB established a panel. Canada reserved its third-party rights to the dispute. On 14 July 1997, both parties notified the DSB of a mutually agreed solution.

WT/DS72 – European Communities - Measures Affecting Butter Products

Complaint by New Zealand. This request, dated 24 March 1997, is in respect of decisions by the EC and the United Kingdom's Customs and Excise Department, to the effect that New Zealand butter manufactured by the ANMIX butter-making process and the spreadable butter-making process be classified so as to be excluded from eligibility for New Zealand's country-specific tariff quota established by the European Communities' WTO Schedule. New Zealand alleges violations of Articles II, X and XI of GATT, Article 2 of the TBT Agreement, and Article 3 of the Agreement on Import Licensing Procedures. On 6 November 1997, New Zealand requested the establishment of a panel. The DSB established a panel on 18 November 1997. The US reserved its third-party rights. At the request of the complainants, dated 24 February 1999, the Panel agreed, pursuant to Article 12.12 of the DSU, to suspend the panel proceedings. In a communication dated 11 November 1999, the parties notified a mutually agreed solution to this dispute.

WT/DS73 – Japan - Procurement of a Navigation Satellite

Complaint by the European Communities. This request, dated 26 March 1997, is in respect of a procurement tender published by the Ministry of Transport (MoT) of Japan to purchase a multi-functional satellite for Air Traffic Management. The EC contends that the specifications in the tender were not neutral but referred explicitly to US specifications. This meant, the EC contends, that European bidders could effectively not participate in the tender. The EC alleges inconsistency of this tender with Annex I of Appendix I of Japan's commitments under the Government Procurement Agreement (GPA). The EC also alleges violations of Articles VI(3) and XII(2) of the GPA. On 31 July 1997, the EC notified the Secretariat that a mutually agreed solution had been reached with Japan in this dispute. On 19 February 1998, the two parties communicated the text of their agreement to the DSB.

WT/DS74 – Philippines - Measures Affecting Pork and Poultry

Complaint by the United States. This request, dated 1 April 1997, is in respect of the implementation by the Philippines of its tariff-rate quotas for pork and poultry. The US contends that the Philippines' implementation of these tariff-rate quotas, in particular the delays in permitting access to the in-quota quantities and the licensing system used to administer access to the in-quota quantities, appears to be inconsistent with the obligations of the Philippines under Articles III, X, and XI of GATT 1994, Article 4 of the Agreement on Agriculture, Articles 1 and 3 of the Agreement on Import Licensing Procedures, and Articles 2 and 5 of TRIMs. The US further

contends that theses measures appear to nullify or impair benefits accruing to it directly or indirectly under cited agreements. On 12 March 1998, the parties communicated a mutually agreed solution to their dispute.

WT/DS83 – Denmark - Measures Affecting the Enforcement of Intellectual Property Rights

Complaint by the United States. This request, dated 14 May 1997, is in respect of Denmark's alleged failure to make provisional measures available in the context of civil proceedings involving intellectual property rights. The US contends that this failure violates Denmark's obligations under Articles 50, 63 and 65 of the TRIPS Agreement. On 7 June 2001, the parties to the dispute notified to the DSB a mutually satisfactory solution on the matter.

WT/DS85 – United States - Measures Affecting Textiles and Apparel Products

Complaint by the European Communities. This request, dated 23 May 1997, is in respect of changes to US rules of origin for textiles and apparel products. The EC alleges that the US has introduced changes to its rules of origin for textile and apparel products, which affect exports of EC fabrics, scarves and other flat textile products to the US. As a result, the EC alleges that EC products are no longer recognised in the US as being of EC origin and lose the free access to the US market that they had hitherto enjoyed. The EC contends that these changes in US rules of origin are in violation of the obligations of the US under Articles 2.4, 4.2 and 4.4 of the ATC, Article 4.2 of the Agreement on Rules of Origin, Article III of GATT 1994, and Article 2 of the TBT Agreement. On 11 February 1998, the two parties notified their mutually agreed solution.

WT/DS86 – Sweden - Measures Affecting the Enforcement of Intellectual Property Rights

Complaint by the United States. This request, dated 28 May 1997, is in respect of Sweden's alleged failure to make provisional measures available in the context of civil proceedings involving intellectual property rights. The US contends that this failure violates Sweden's obligations under Articles 50, 63 and 65 of the TRIPS Agreement. In a communication dated 2 December 1998, the two parties notified a mutually agreed solution to this dispute.

WT/DS91 – India - Quantitative Restrictions on Imports of Agricultural, Textile and Industrial Products

Complaint by Australia. This request, dated 16 July 1997, raises the same issues in respect of India's quantitative restrictions on imports of agricultural, textile and industrial products as in the request by the US in DS90. On 23 March 1998, the two parties notified a mutually agreed solution.

WT/DS92 – India - Quantitative Restrictions on Imports of Agricultural, Textile and Industrial Products

Complaint by Canada. This request, dated 16 July 1997, raises the same issues in respect of India's quantitative restrictions on imports of agricultural, textile and industrial products as in the requests by the US (DS90) and Australia (DS91). On 25 March 1998, the two parties notified a mutually agreed solution.

WT/DS93 – India - Quantitative Restrictions on Imports of Agricultural, Textile and Industrial Products

Complaint by New Zealand. This request, dated 16 July 1997, raises the same issues in respect of India's quantitative restrictions on imports of agricultural, textile and industrial products as in the requests by the US (DS90), Australia (DS91) and Canada (DS92). However, New Zealand makes an additional claim for nullification and impairment of benefits accruing to it under GATT 1994. In a letter dated 14 September 1998, but communicated to the Secretariat on 1 December 1998, the two parties notified a mutually agreed solution to this dispute.

WT/DS94 – India - Quantitative Restrictions on Imports of Agricultural, Textile and Industrial Products

Complaint by Switzerland. This request, dated 18 July 1997, raises the same issues in respect of India's quantitative restrictions on imports of agricultural, textile and industrial products as in the requests by the US (DS90), Australia (DS91), Canada (DS92), and New Zealand (DS93). However, Switzerland does not invoke the Agreement on Agriculture. On 23 February 1998, the two parties notified a mutually agreed solution.

WT/DS96 – India - Quantitative Restrictions on Imports of Agricultural, Textile and Industrial Products

Complaint by the European Communities. This request, dated 18 July 1997, raises the same issues in respect of India's quantitative restrictions on imports of agricultural, textile and industrial products as in the requests by the US (DS90), Australia (DS91), Canada (DS92), New Zealand (DS93), and Switzerland (DS94). In addition, the EC is also alleging violations of Articles 2, 3 and 5 of the SPS Agreement. On 7 April 1998, the two parties notified a mutually agreed solution.

WT/DS99 – United States - Anti-Dumping Duty on Dynamic Random Access Memory Semiconductors (DRAMS) of One Megabit or Above from Korea

Complaint by Korea. This request, dated 14 August 1997, is in respect of a decision of the US Department of Commerce (DoC) not to revoke the anti-dumping duty on dynamic random access memory semi-conductors (DRAMS) of one megabyte or above originating from Korea. Korea contends that the DoC's decision was made despite the finding that the Korean DRAM producers have not dumped their products for a period of more than three and a half consecutive years, and despite the existence of evidence demonstrating conclusively that Korean DRAM producers will not engage in dumping DRAMS in the future. Korea considered that these measures are in violation of Articles 6 and 11 of the Anti-Dumping Agreement.

At its meeting on 16 January 1998, the DSB established a panel. The Panel found the measures complained of to be in violation of Article 11.2 of the Anti-Dumping Agreement. The report of the Panel was circulated on 29 January 1999. Korea requested that this matter be referred to the original panel pursuant to Article 21.5 of the DSU. Following adoption of the panel report by the DSB, Korea submitted a request to the effect that the matter be referred to the original panel pursuant to Article 21.5 of the DSU. At its meeting on 25 April 2000, the DSB agreed to reconvene the original panel pursuant to Article 21.5 of the DSU. The EC reserved its reserved its third-party rights. 19 September 2000, Korea has requested the Panel to suspend its work, including the issuance of the interim report, "until further notification" pursuant to Article 12.12 of the DSU. The Panel, in a letter sent to the parties on 21 September 2000, has agreed to this request. At its meeting on 19 March 1999, the DSB adopted the Panel Report. On 20 October 2000, the parties notified the DSB of a mutually satisfactory solution to the matter, involving the revocation of the antidumping order at issue as the result of a five-year "sunset" review by the US Department of Commerce.

WT/DS102 – Philippines - Measures Affecting Pork and Poultry

Complaint by the United States. This request, dated 7 October 1997, is in respect of the same measures complained of by the US in DS74, but also includes Administrative Order No. 8, Series of 1997, which purports to amend the original measure complained of in DS74. On 12 March 1998, the parties communicated a mutually agreed solution to their dispute.

WT/DS119 – Australia - Anti-dumping Measures on Imports of Coated Woodfree Paper Sheets

Complaint by Switzerland. This request, dated 20 February 1998, is in respect of the provisional anti-dumping measures applied on the imports of coated woodfree paper sheets from Switzerland. Switzerland contends that the investigation is not in conformity with Australia's commitments under Articles 3 and 5 of the Anti-Dumping Agreement. On 13 May 1998, the two parties notified a mutually agreed solution.

WT/DS124 – European Communities - Enforcement of Intellectual Property Rights for Motion Pictures and Television Programs

Complaint by the United States. This request, dated 30 April 1998, is in respect of the lack of enforcement of intellectual property rights in Greece. The US claims that a significant number of TV stations in Greece regularly broadcast copyrighted motion pictures and television programs without the authorization of copyright owners. The US contends that effective remedies against copyright infringement do not appear to be provided or enforced in Greece in respect of these broadcasts. The US alleges a violation of Articles 41 and 61 of the TRIPS Agreement. On 20 March 2001, the parties to the dispute notified a mutually satisfactory solution on the matter to the DSB.

WT/DS125 – Greece - Enforcement of Intellectual Property Rights for Motion Pictures and Television Programs

Complaint by the United States. This request, dated 30 April 1998, is in respect of the same measures raised against the EC above (DS124). On 20 March 2001, the parties to the dispute notified a mutually satisfactory solution on the matter to the DSB.

WT/DS151 – United States - Measures Affecting Textiles and Apparel Products

Complaint by the European Communities. This dispute, dated 19 November 1998, is in respect of alleged changes to US rules of origin for textiles and apparel products. The EC discloses that this issue was the subject of an earlier request for consultations (WT/DS85), in respect of which a mutually agreed solution was notified to the DSB, pursuant to Article 3.1 of the DSU. However, the EC contends that the US has not implemented its commitments as contained in that agreement with the result that, in the EC view, the US is still acting in a manner inconsistent with its obligations under the WTO. The dispute concerns changes allegedly introduced by the US to its rules of origin for textiles and apparel products, which entered into force on 1 July 1996, which changes adversely affect exports of EC textile products to the US, in that as a result of these changes EC products are allegedly no longer recognised in the US as being of EC origin. The EC alleges violations of Articles 2.4, 4.2 and 4.4 of the ATC, Article 2 of the Agreement on Rules of Origin, Article III of GATT 1994, and Article 2 of the TBT Agreement. In a communication dated 21 July 2000, the parties notified a mutually agreed solution to this dispute.

WT/DS190 – Argentina – Transitional Safeguard Measures on Certain Imports of Woven Fabrics of Cotton and Cotton Mixtures Originating in Brazil

Complaint by Brazil. This request for a panel, dated 11 February 2000, concerns transitional safeguard measures applied by Argentina, as of 31 July 1999, against certain imports of woven fabrics of cotton and cotton mixtures originating in Brazil. The measures at issue were applied through Resolution MEyOSP 861/99 of the Ministry of the Economy and Public Works and Services of Argentina. In accordance with Article 6.11 of the Agreement on Textiles and Clothing, Brazil had referred the matter to the Textiles Monitoring Body (TMB) for review and recommendations, after consultations requested earlier by Argentina had failed to produce a mutually satisfactory solution. At its meeting of 18-22 October 1999, the TMB conducted a review of the measures implemented by Argentina, having recommended that Argentina rescind the safeguard measures applied against imports from Brazil. On 29 November 1999, in accordance with Article 8.10 of the Agreement on Textiles and Clothing, Argentina notified the TMB that it considered itself unable to conform with the recommendations issued by the TMB. At its meeting of 13-14 December 1999, the TMB conducted a review of the reasons given by Argentina and recommended that Argentina reconsider its position. The TMB's recommendations notwithstanding, the matter remained unresolved. Brazil is of the view that the transitional safeguards applied by Argentina are inconsistent with Argentina's obligations under Articles 2.4, 6.1, 6.2, 6.3, 6.4, 6.7, 6.8, 6.11, 8.9 and 8.10 of the Agreement on Textiles and Clothing and should, therefore, be rescinded forthwith.

At its meeting on 20 March 2000, the DSB established a panel. The EC, Pakistan, Paraguay and the US reserved their third-party rights. In a communication dated June 2000, the parties notified a mutually agreed solution to this dispute. Pursuant to the agreement reached, Brazil retains the right to resume the procedures for the composition of the panel from the point where they stood at the time the agreement was reached.

WT/DS198 – Romania – Measures on Minimum Import Prices

Complaint by the United States. On 30 May 2000, the US requested consultations with Romania in respect of Romania's use of minimum import prices for customs valuation purposes. The measures at issue were the Customs Code of 1997 (L141/1997), the Ministry of Finance General Customs Directive (Ordinance No. 5, 4 August 1998), and other related statutes and regulations. The United States asserted that, pursuant to these measures, Romania has established arbitrary minimum and maximum import prices for such products as meat, eggs, fruits and vegetables, clothing, footwear, and certain distilled spirits. The United States further asserted that Romania has instituted burdensome procedures for investigating import prices when the c.i.f. value falls below the minimum import price. The United States considered that Romania's measures are inconsistent with its obligations under Articles 1 through 7, and 12 of the Customs Valuation Agreement; general notes 1, 2 and 4 of Annex 1 of the Customs Valuation Agreement; Articles II, X, and XI of the GATT 1994; Article 4.2 of the Agreement on Agriculture; and Articles 2 and 7 of the Agreement on Textiles and Clothing.

On 26 September 2001, the US and Romania informed the DSB that they had reached a mutually satisfactory solution pursuant to Article 3.6 of the DSU.

WT/DS199 – Brazil – Measures Affecting Patent Protection

Complaint by the United States. On 30 May 2000, the US requested consultations with Brazil in respect of those provisions of Brazil's 1996 industrial property law (Law No. 9,279 of 14 May 1996; effective May 1997) and other related measures, which establish a "local working" requirement for the enjoyability of exclusive patent rights. The US asserts that the "local working" requirement can only be satisfied by the local production – and not the importation – of the patented subject-matter. More specifically, the US noted that Brazil's "local working" requirement stipulates that a patent shall be subject to compulsory licensing if the subject-matter of the patent is not "worked" in the territory of Brazil. The US further noted that Brazil explicitly defines "failure to be worked" as "failure to manufacture or incomplete manufacture of the product" or "failure to make full use of the patented process". The US considered that such a requirement is inconsistent with Brazil's obligations under Articles 27 and 28 of the TRIPS Agreement, and Article III of the GATT 1994.

At its meeting of 1 February 2001, the DSB established a panel. Cuba, the Dominican Republic, Honduras, India and Japan reserved their third party rights. On 5 July 2001, the parties to the dispute notified to the DSB a mutually satisfactory solution on the matter.

OTHERS

WT/DS1 – Malaysia - Prohibition of Imports of Polyethylene and Polypropylene

Complaint by Singapore. This, the first dispute under the WTO's dispute settlement procedures, was settled on 19 July 1995, with Singapore's withdrawal of the panel request.

WT/DS9 – European Communities - Duties on Imports of Cereals

Complaint by Canada. Canada requested consultations with the EC on 10 July 1995 concerning EC regulations implementing some of the EC's Uruguay Round concessions on agriculture, specifically, regulations which impose a duty on wheat imports based on reference prices rather than transaction values, with the result that the duty-paid import price for Canadian wheat will be greater than the effective intervention price increased by 55% whenever the transaction value is greater than the representative price. A panel was established at the DSB meeting on 11 October 1995, but no panelists have been selected until now.

WT/DS13 – European Communities - Duties on Imports of Grains

Complaint by the United States. This request for consultations, dated 19 July 1995, has potentially broader product coverage than the case brought by Canada (WT/DS9, item 7(5)(a) below) but otherwise concerns much the same issues. On 28 September 1995, the US requested the establishment of a panel to be considered at the meeting of the DSB on 11 October 1995, but the EC objected to it. The US again requested the establishment of a panel to be considered at the meeting of the DSB on 3 December 1996, but later dropped the request at the meeting. On 13 February 1997 the US made a renewed request for the establishment of a panel. At the DSB meeting on 20 March 1997, the US withdrew its request for a panel in this matter. On 26 March 1997, the US made a fresh request for the establishment of a panel. On 30 April 1997, the US informed the Secretariat that it was withdrawing its request for a panel in view of the fact that the EC had adopted regulations implementing an agreement reached on this matter.

WT/DS15 – Japan - Measures Affecting the Purchase of Telecommunications Equipment

Complaint by the European Communities. This request for consultations, dated 18 August 1995, claims that a 1994 agreement reached between the United States and Japan concerning telecommunications equipment is inconsistent with GATT Articles I:1, III:4 and XVII:1(c), and nullifies or impairs benefits accruing to the EC. The United States has joined in the consultations. Although there has been no official notification, the case appears to have been settled bilaterally.

WT/DS17 – European Communities - Duties on Imports of Rice

Complaint by Thailand. This request for consultations, dated 3 October 1995, covers more or less the same grounds as Canadian (WT/DS9) and the US (WT/DS13) complaints over the EC duties on grains ((5)(a) and 5(3) above). In addition, Thailand seems to have alleged that the EC has violated the most-favoured-nation requirement under GATT Article I in their preferential treatment of *basmati* rice from India and Pakistan. See also the Uruguayan complaint (WT/DS25).

WT/DS23 – Venezuela - Anti-Dumping Investigation in Respect of Imports of Certain Oil Country Tubular Goods (OCTG)

Complaint by Mexico dated 5 December 1995. By a letter dated 6 May 1997, Mexico informed the Secretariat that Venezuela had terminated the anti-dumping investigation in this matter.

WT/DS25 – European Communities - Implementation of the Uruguay Round Commitments Concerning Rice

Complaint by Uruguay. This request for consultations, dated 18 December 1995, seems similar to the claim by Thailand (WT/DS17).

WT/DS32 – United States - Measures Affecting Imports of Women's and Girls' Wool Coats

Complaint by India. In a communication dated 14 March 1996, India requested the establishment of a panel, claiming that the transitional safeguard measures on these textile products by the United States were inconsistent with ATC Articles 2, 6 and 8. A panel was established in the DSB meeting on 17 April 1996. However, on 25 April 1996, India requested "termination of further action in pursuance of the decision taken by the DSB on 17 April 1996 to establish a panel" in light of the US removal of the safeguard measures on these products, which came into effect from 24 April 1996.

WT/DS38 – United States - The Cuban Liberty and Democratic Solidarity Act

Complaint by the European Communities. On 3 May 1996 the European Communities requested consultations with the United States concerning the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 and other legislation enacted by the US Congress regarding trade sanctions against Cuba. The EC claims that US trade restrictions on goods of Cuban origin, as well as the possible refusal of visas and the exclusion of non-US nationals from US territory, are inconsistent with the US obligations under the WTO Agreement. Violations of GATT Articles I, III, V, XI and XIII, and GATS Articles I, III, VI, XVI and XVII are alleged. The EC also alleges that even if these measures by the US may not be in violation of specific provisions of GATT or GATS, they nevertheless nullify or impair its expected benefits under GATT 1994 and GATS and impede the attainment of the objectives of GATT 1994. The European Communities requested the establishment of a panel on 3 October

1996. The DSB established a panel at its meeting on 20 November 1996. At the request of the EC, dated 21 April 1997, the Panel suspended its work. The Panel's authority lapsed on 22 April 1998, pursuant to Article 12.12 of the DSU.

WT/DS39 – United States - Tariff Increases on Products from the European Communities

Complaint by the European Communities. In its request for consultations, dated 17 April 1996, the EC claimed that the measures taken under the Presidential Proclamation No. 5759 of 24 December 1987 (retaliation against the "hormones" directive), which resulted in tariff increases on products from the European Communities, are inconsistent with GATT Articles I, II and XXIII, as well as DSU Articles 3, 22 and 23. On 19 June 1996, the EC requested the establishment of a panel. In its request, the EC further claimed that the United States apparently failed to "ensure the conformity of its laws, regulations and administrative procedures with its obligations" under the WTO, with respect to the application of Section 301 of the 1974 Trade Act in this case (WTO Agreement Article XVI:4). The United States withdrew the measure on 15 July 1996, and the EC decided not to pursue its panel request, reserving its rights to reconvene, if necessary, a further meeting of the DSB at an early date.

WT/DS49 – United States - Anti-Dumping Investigation Regarding Imports of Fresh or Chilled Tomatoes from Mexico

Complaint by Mexico. On 1 July 1996, Mexico requested consultations with the United States regarding the anti-dumping investigation on fresh and chilled tomatoes imported from Mexico under Article 17.3 of the Anti-dumping Agreement. Violations of GATT Articles VI and X as well as Articles 2, 3, 5, 6 and 7.1 of the Anti-dumping Agreement are alleged. Mexico claims this to be a case of urgency, where the expedited procedures under Articles 4.8 and 4.9 of the DSU are applicable. US Commerce Department official releases indicate that the case has been settled.

WT/DS57 – Australia - Textiles, Clothing and Footwear Import Credit Scheme

Complaint by the United States. This request, dated 7 October 1996, concerns a complaint by the United States against subsidies being granted and maintained by Australia on leather products under the TCF scheme. A violation of Article 3 of the SCM Agreement is alleged. The US is also invoking Article 30 of the SCM Agreement to the extent that it incorporates by reference Article XXIII:1 of GATT 1994. An official release from the USTR in Washington on 25 November 1996 indicates that the case has been settled.

WT/DS77 – Argentina - Measures Affecting Textiles and Clothing

Complaint by the European Communities. This request dated 17 April 1997, is in respect of a range of specific duties on textiles and clothing which have allegedly resulted in increased duties and have led to applied tariffs that exceed the 35% binding made by Argentina. The EC contends that these measures are a violation of Argentina's commitments under Article II of GATT 1994, and also of Article 7 of the ATC. See similar US complaint in

DS56 pending before a panel. On 10 September 1997, the EC requested the establishment of a panel. At its meeting on 16 October 1997, the DSB established a panel. The US reserved its third-party rights. The Panel suspended its work at the request of the EC on 29 July 1998. Pursuant to DSU Article 12.12, the panel's authority lapsed on 29 July 1999, 12 months having passed since the suspension of the panel's work.

WT/DS88 – United States - Measure Affecting Government Procurement

Complaint by the European Communities. This request, dated 20 June 1997, is in respect of an Act enacted by the Commonwealth of Massachusetts on 25 June 1996, entitled Act regulating State Contracts with companies doing Business with Burma (Myanmar). The Act provides, in essence, that public authorities of the Commonwealth of Massachusetts are not allowed to procure goods or services from any persons who do business with Burma. The EC contends that, as Massachusetts is covered under the US schedule to the GPA, this violates Articles VIII(B), X and XIII of the GPA Agreement. The EC also contends that the measure also nullifies benefits accruing to it under the GPA, as well as impeding the attainment of the objectives of the GPA, including that of maintaining balance of rights and obligations. On 8 September 1998, the EC requested the establishment of a panel. At its meeting on 21 October 1998, the DSB established a panel. Japan reserved its third-party right. The DSB agreed that pursuant to Article 9.1 of the DSU, a single panel would examine this dispute together with DS95 below. At the request of the complainants, dated 10 February 1999, the Panel agreed, pursuant to Article 12.12 of the DSU, to suspend the panel proceedings (which also applies to DS95 below). Since the panel was not requested to resume its work, pursuant to Article 12.12 of the DSU, the authority for establishment of the panel lapsed as of 11 February 2000 (which also applies to DS95 below).

WT/DS89 – United States - Anti-Dumping Duties on Imports of Colour Television Receivers from Korea

Complaint by Korea. This request, dated 10 July 1997, is in respect of the imposition of anti-dumping duties by the US on imports of colour television receivers (CTVs) from Korea. Korea contends that the US has for the past twelve years maintained an anti-dumping order for Samsung's CTVs despite the absence of dumping and the cessation of exports from Korea, without examining the necessity of continuing to impose such duties. Korea contends that the US actions violate Articles VI.1 and VI.6(a) of GATT 1994, and Articles 1, 2, 3.1, 3.2, 3.6, 4.1, 5.4, 5.8, 5.10, 11.1 and 11.2 of the Anti-Dumping Agreement. On 6 November 1997, Korea requested the establishment of a panel. On 5 January 1998, Korea informed the DSB that it was withdrawing its request for a panel but reserving its right to reintroduce the request. At the DSB meeting on 22 September 1998, Korea announced that it was definitively withdrawing the request for a panel because the imposition of anti-dumping duties had now been revoked.

WT/DS95 – United States - Measure Affecting Government Procurement

Complaint by Japan. This request, dated 18 July 1997, is in respect of the same issued raised by the EC in DS88 above. On 8 September 1998, Japan requested the establishment of a panel. At its meeting on 21 October 1998, the DSB established a panel. The DSB agreed that pursuant to Article 9.1 of the DSU, a single panel would examine this dispute together with DS88 above.

WT/DS101 – Mexico - Anti-Dumping Investigation of High-Fructose Corn Syrup (HFCS) from the United States

Complaint by the United States. On 4 September 1997, the US requested consultations with Mexico in respect of an anti-dumping investigation of high-fructose corn syrup (HFCS) from the United States conducted by Mexico, resulting in a preliminary determination of dumping and injury, and the consequent imposition of provisional measures on imports of HCFS from the United States. The US alleged violations of Articles 5.5, 6.1.3, 6.2, 6.4 and 6.5 of the Anti-Dumping Agreement.

On 8 May 1998, the US requested consultations in respect of the same anti-dumping investigation which had resulted in the imposition of definitive anti-dumping measures on these imports from the United States. See WT/DS132 and WT/DS132/RW.

WT/DS106 – Australia - Subsidies Provided to Producers and Exporters of Automotive Leather

Complaint by the United States. This request, dated 10 November 1997, is in respect of Australia's alleged prohibited subsidies provided to its producers and exporters of automotive leather. The US contends that these measures by Australia violate Article 3 of the Subsidies Agreement. On 9 January 1998, the United States requested the establishment of a panel. At its meeting on 22 January 1998, the DSB established a panel in accordance with the accelerated procedure under the Subsidies Agreement. On 11 June 1998, the US withdrew its request for a panel. See also WT/DS126.

WT/DS181 – Colombia – Safeguard Measure on Imports of Plain Polyester Filaments from Thailand

Complaint by Thailand. This request for a panel, dated 7 September 1999 concerns a unilateral restraint allegedly imposed by Colombia against imports of plain polyester filaments from Thailand. Colombia's safeguard measure is alleged to be inconsistent with Article 2 of the Agreement on Textiles and Clothing (ATC) regarding the application of a transitional safeguard mechanism and with Article 2 of the ATC regarding the introduction and application of restrictions by Members. The safeguard measures imposed by Colombia on 26 October 1998 have been subject to the two-stage examination and review procedures by the Textiles Monitoring Body (TMB). The TMB recommended at its fiftieth meeting held on 16-19 November 1998 that Colombia rescind the measure. On 22 December 1998, Colombia notified the TMB of its inability to conform with this TMB recommendation and provided the TMB with reasons therefor. At its fifty-second meeting on 18-20 January 1999, the TMB reviewed the matter and repeated its recommendation to Colombia to rescind the safeguard measure forthwith. At the DSB meeting on 27 October 1999, Thailand announced that it was withdrawing its request for a panel because the Colombian safeguard measure had been terminated.

WT/DS193 - Chile – Measures Affecting the Transit and Importation of Swordfish

Complaint by the European Communities. On 19 April 2000, the EC requested consultations with Chile regarding the prohibition on unloading of swordfish in Chilean ports established on the basis of Article 165 of the Chilean Fishery Law (Ley General de Pesca y Acuicultura), as consolidated by the Supreme Decree 430 of 28 September 1991, and extended by Decree 598 of 15 October 1999.

The EC asserted that its fishing vessels operating in the South East Pacific are not allowed under Chilean legislation to unload their swordfish in Chilean ports either to land them for warehousing or to transship them onto other vessels. The EC considered that, as a result, Chile makes transit through its ports impossible for swordfish. The EC claimed that the above-mentioned measures are inconsistent with the GATT 1994, and in particular Articles V and XI thereof.

At its meeting of 12 December 2000, the DSB established a panel further to the request of the EC. Australia, Canada, Ecuador, India, New Zealand, Norway, Iceland and the US reserved their third-party rights. On 23 March 2001, the parties to the dispute informed the Director-General of the WTO that they agreed to suspend the process for the constitution of the panel.

WT/DS227 – Peru – Taxes on Cigarettes

Complaint by Chile. On 1 March 2001, Chile requested consultations with Peru concerning the Peruvian Supreme Decree No. 158-99-EF of 25 September 1999 modifying appendices III and IV of the General Sales Tax and Selective Consumption Tax Law, which identify the goods subject to the selective consumption tax. Article 1B of the said Supreme Decree amends the tax applied to cigarettes made of dark tobacco, standard cigarettes made of bright tobacco and premium cigarettes made of bright tobacco, setting a different specific tax for each one of these categories of cigarettes ranging from S/0.025 to S/0.100 per unit.

According to Chile, the difference in the amount of the tax appears to be contingent only on the number of countries in which the different commercial brands of cigarettes are marketed – more than three or less than three – a criterion which is a source of concern for Chile, since it could signify discrimination against imported cigarettes, from Chile for example, which, being marketed in more than three countries, are subject to a higher tax than local brand cigarettes. In Chile's view, this situation, which is damaging to Chilean cigarette exports to Peru, could constitute a violation of the GATT 1994 – in particular, but not necessarily exclusively, of Article III.2 of the GATT 1994 – and of a repeated Appellate Body jurisprudence in this area.

At its meeting of 24 June 2001, the DSB established a Panel further to Chile's request. None of the Members reserved their third-party rights.

On 12 July 2001, Chile announced its intention to withdraw the complaint on the grounds that the contested measure, i.e. the specific selective consumption tax system applied to cigarettes by Peru, had been amended on 30 June 2001 with the publication of Supreme Decree No. 128-2001 of the Ministry of the Economy and Finance of Peru, which entered into force on 1 July 2001. As from that date, cigarettes are subject to the

Peruvian common selective consumption tax system at a rate of 100 per cent, regardless of their origin, price, type or quality of tobacco and/or the number of sales markets. This amendment in the tax regime applicable to cigarettes was the result of a ruling of the Constitutional Court of Peru on 19 June 2001.

WT/DS228 – Chile – Safeguard Measures on Sugar

Complaint by Colombia. On 19 March 2001, Colombia requested consultations with Chile concerning definitive safeguard measures relating to sugar. This request was replaced by that in dispute WT/DS230 above.

ANNEX 2

UNDERSTANDING ON RULES AND PROCEDURES GOVERNING THE SETTLEMENT OF DISPUTES

Members hereby *agree* as follows:

Article 1

Coverage and Application

1. The rules and procedures of this Understanding shall apply to disputes brought pursuant to the consultation and dispute settlement provisions of the agreements listed in Appendix 1 to this Understanding (referred to in this Understanding as the "covered agreements"). The rules and procedures of this Understanding shall also apply to consultations and the settlement of disputes between Members concerning their rights and obligations under the provisions of the Agreement Establishing the World Trade Organization (referred to in this Understanding as the "WTO Agreement") and of this Understanding taken in isolation or in combination with any other covered agreement.

2. The rules and procedures of this Understanding shall apply subject to such special or additional rules and procedures on dispute settlement contained in the covered agreements as are identified in Appendix 2 to this Understanding. To the extent that there is a difference between the rules and procedures of this Understanding and the special or additional rules and procedures set forth in Appendix 2, the special or additional rules and procedures in Appendix 2 shall prevail. In disputes involving rules and procedures under more than one covered agreement, if there is a conflict between special or additional rules and procedures of such agreements under review, and where the parties to the dispute cannot agree on rules and procedures within 20 days of the establishment of the panel, the Chairman of the Dispute Settlement Body provided for in paragraph 1 of Article 2 (referred to in this Understanding as the "DSB"), in consultation with the parties to the dispute, shall determine the rules and procedures to be followed within 10 days after a request by either Member. The Chairman shall be guided by the principle that special or additional rules and procedures should be used where possible, and the rules and procedures set out in this Understanding should be used to the extent necessary to avoid conflict.

Article 2

Administration

1. The Dispute Settlement Body is hereby established to administer these rules and procedures and, except as otherwise provided in a covered agreement, the consultation and dispute settlement provisions of the covered agreements. Accordingly, the DSB shall have the authority to establish panels, adopt panel and Appellate Body reports, maintain surveillance of implementation of rulings and recommendations, and authorize suspension of concessions and other obligations under the covered agreements. With respect to disputes arising under a covered agreement which is a Plurilateral Trade Agreement, the term "Member" as used herein shall refer only to those Members that are parties to the relevant Plurilateral Trade Agreement. Where the DSB administers the dispute settlement provisions of a Plurilateral Trade Agreement, only those Members that are parties to that Agreement may participate in decisions or actions taken by the DSB with respect to that dispute.

2. The DSB shall inform the relevant WTO Councils and Committees of any developments in disputes related to provisions of the respective covered agreements.

3. The DSB shall meet as often as necessary to carry out its functions within the time-frames provided in this Understanding.

4. Where the rules and procedures of this Understanding provide for the DSB to take a decision, it shall do so by consensus.[4]

Article 3

General Provisions

1. Members affirm their adherence to the principles for the management of disputes heretofore applied under Articles XXII and XXIII of GATT 1947, and the rules and procedures as further elaborated and modified herein.

2. The dispute settlement system of the WTO is a central element in providing security and predictability to the multilateral trading system. The Members recognize that it serves to preserve the rights and obligations of Members under the covered agreements, and to clarify the existing provisions of those agreements in accordance with customary rules of interpretation of public international law. Recommendations and rulings of the DSB cannot add to or diminish the rights and obligations provided in the covered agreements.

3. The prompt settlement of situations in which a Member considers that any benefits accruing to it directly or indirectly under the covered agreements are being impaired by measures taken by another Member is essential to the effective functioning of the WTO and the maintenance of a proper balance between the rights and obligations of Members.

4. Recommendations or rulings made by the DSB shall be aimed at achieving a satisfactory settlement of the matter in accordance with the rights and obligations under this Understanding and under the covered agreements.

5. All solutions to matters formally raised under the consultation and dispute settlement provisions of the covered agreements, including arbitration awards, shall be consistent with those agreements and shall not nullify or impair benefits accruing to any Member under those agreements, nor impede the attainment of any objective of those agreements.

6. Mutually agreed solutions to matters formally raised under the consultation and dispute settlement provisions of the covered agreements shall be notified to the DSB and the relevant Councils and Committees, where any Member may raise any point relating thereto.

7. Before bringing a case, a Member shall exercise its judgement as to whether action under these procedures would be fruitful. The aim of the dispute settlement mechanism is to secure a positive solution to a dispute. A solution mutually acceptable to the parties to a dispute and consistent with the covered agreements is clearly to be preferred. In the absence of a mutually agreed solution, the first objective of the dispute settlement mechanism is usually to secure the withdrawal of the measures concerned if these are found to be inconsistent with the provisions of any of the covered agreements. The provision of compensation should be resorted to only if the immediate withdrawal of the measure is impracticable and as a temporary measure pending the withdrawal of the measure which is inconsistent with a covered agreement. The last resort which this Understanding provides to the Member invoking the dispute settlement procedures is the possibility of suspending the application of concessions or other obligations under the covered agreements on a discriminatory basis vis-à-vis the other Member, subject to authorization by the DSB of such measures.

8. In cases where there is an infringement of the obligations assumed under a covered agreement, the action is considered *prima facie* to constitute a case of nullification or impairment. This means that there is normally a presumption that a breach of the rules has an adverse impact on other Members parties to that covered agreement, and in such cases, it shall be up to the Member against whom the complaint has been brought to rebut the charge.

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[4] The DSB shall be deemed to have decided by consensus on a matter submitted for its consideration, if no Member, present at the meeting of the DSB when the decision is taken, formally objects to the proposed decision.

9. The provisions of this Understanding are without prejudice to the rights of Members to seek authoritative interpretation of provisions of a covered agreement through decision-making under the WTO Agreement or a covered agreement which is a Plurilateral Trade Agreement.

10. It is understood that requests for conciliation and the use of the dispute settlement procedures should not be intended or considered as contentious acts and that, if a dispute arises, all Members will engage in these procedures in good faith in an effort to resolve the dispute. It is also understood that complaints and counter-complaints in regard to distinct matters should not be linked.

11. This Understanding shall be applied only with respect to new requests for consultations under the consultation provisions of the covered agreements made on or after the date of entry into force of the WTO Agreement. With respect to disputes for which the request for consultations was made under GATT 1947 or under any other predecessor agreement to the covered agreements before the date of entry into force of the WTO Agreement, the relevant dispute settlement rules and procedures in effect immediately prior to the date of entry into force of the WTO Agreement shall continue to apply.[5]

12. Notwithstanding paragraph 11, if a complaint based on any of the covered agreements is brought by a developing country Member against a developed country Member, the complaining party shall have the right to invoke, as an alternative to the provisions contained in Articles 4, 5, 6 and 12 of this Understanding, the corresponding provisions of the Decision of 5 April 1966 (BISD 14S/18), except that where the Panel considers that the time-frame provided for in paragraph 7 of that Decision is insufficient to provide its report and with the agreement of the complaining party, that time-frame may be extended. To the extent that there is a difference between the rules and procedures of Articles 4, 5, 6 and 12 and the corresponding rules and procedures of the Decision, the latter shall prevail.

Article 4

Consultations

1. Members affirm their resolve to strengthen and improve the effectiveness of the consultation procedures employed by Members.

2. Each Member undertakes to accord sympathetic consideration to and afford adequate opportunity for consultation regarding any representations made by another Member concerning measures affecting the operation of any covered agreement taken within the territory of the former.[6]

3. If a request for consultations is made pursuant to a covered agreement, the Member to which the request is made shall, unless otherwise mutually agreed, reply to the request within 10 days after the date of its receipt and shall enter into consultations in good faith within a period of no more than 30 days after the date of receipt of the request, with a view to reaching a mutually satisfactory solution. If the Member does not respond within 10 days after the date of receipt of the request, or does not enter into consultations within a period of no more than 30 days, or a period otherwise mutually agreed, after the date of receipt of the request, then the Member that requested the holding of consultations may proceed directly to request the establishment of a panel.

4. All such requests for consultations shall be notified to the DSB and the relevant Councils and Committees by the Member which requests consultations. Any request for consultations shall be submitted in writing and shall give the

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[5] This paragraph shall also be applied to disputes on which panel reports have not been adopted or fully implemented.

[6] Where the provisions of any other covered agreement concerning measures taken by regional or local governments or authorities within the territory of a Member contain provisions different from the provisions of this paragraph, the provisions of such other covered agreement shall prevail.

reasons for the request, including identification of the measures at issue and an indication of the legal basis for the complaint.

5. In the course of consultations in accordance with the provisions of a covered agreement, before resorting to further action under this Understanding, Members should attempt to obtain satisfactory adjustment of the matter.

6. Consultations shall be confidential, and without prejudice to the rights of any Member in any further proceedings.

7. If the consultations fail to settle a dispute within 60 days after the date of receipt of the request for consultations, the complaining party may request the establishment of a panel. The complaining party may request a panel during the 60-day period if the consulting parties jointly consider that consultations have failed to settle the dispute.

8. In cases of urgency, including those which concern perishable goods, Members shall enter into consultations within a period of no more than 10 days after the date of receipt of the request. If the consultations have failed to settle the dispute within a period of 20 days after the date of receipt of the request, the complaining party may request the establishment of a panel.

9. In cases of urgency, including those which concern perishable goods, the parties to the dispute, panels and the Appellate Body shall make every effort to accelerate the proceedings to the greatest extent possible.

10. During consultations Members should give special attention to the particular problems and interests of developing country Members.

11. Whenever a Member other than the consulting Members considers that it has a substantial trade interest in consultations being held pursuant to paragraph 1 of Article XXII of GATT 1994, paragraph 1 of Article XXII of GATS, or the corresponding provisions in other covered agreements[7], such Member may notify the consulting Members and the DSB, within 10 days after the date of the circulation of the request for consultations under said Article, of its desire to be joined in the consultations. Such Member shall be joined in the consultations, provided that the Member to which the request for consultations was addressed agrees that the claim of substantial interest is well-founded. In that event they shall so inform the DSB. If the request to be joined in the consultations is not accepted, the applicant Member shall be free to request consultations under paragraph 1 of Article XXII or paragraph 1 of Article XXIII of GATT 1994, paragraph 1 of Article XXII or paragraph 1 of Article XXIII of GATS, or the corresponding provisions in other covered agreements.

Article 5

Good Offices, Conciliation and Mediation

1. Good offices, conciliation and mediation are procedures that are undertaken voluntarily if the parties to the dispute so agree.

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[7] The corresponding consultation provisions in the covered agreements are listed hereunder:

Agreement on Agriculture, Article 19: Agreement on the Application of Sanitary and Phytosanitary Measures, paragraph 1 of Article 11: Agreement on Textiles and Clothing, paragraph 4 of Article 8: Agreement on Technical Barriers to Trade, paragraph 1 of Article 14: Agreement on Trade-Related Investment Measures, Article 8: Agreement on Implementation of Article VI of GATT 1994, paragraph 2 of Article 17: Agreement on Implementation of Article VII of GATT 1994, paragraph 2 of Article 19: Agreement on Preshipment Inspection, Article 7: Agreement on Rules of Origin, Article 7: Agreement on Import Licensing Procedures, Article 6: Agreement on Subsidies and Countervailing Measures, Article 30: Agreement on Safeguards, Article 14: Agreement on Trade-Related Aspects of Intellectual Property Rights, Article 64.1; and any corresponding consultation provisions in Plurilateral Trade Agreements as determined by the competent bodies of each Agreement and as notified to the DSB.

2. Proceedings involving good offices, conciliation and mediation, and in particular positions taken by the parties to the dispute during these proceedings, shall be confidential, and without prejudice to the rights of either party in any further proceedings under these procedures.

3. Good offices, conciliation or mediation may be requested at any time by any party to a dispute. They may begin at any time and be terminated at any time. Once procedures for good offices, conciliation or mediation are terminated, a complaining party may then proceed with a request for the establishment of a panel.

4. When good offices, conciliation or mediation are entered into within 60 days after the date of receipt of a request for consultations, the complaining party must allow a period of 60 days after the date of receipt of the request for consultations before requesting the establishment of a panel. The complaining party may request the establishment of a panel during the 60-day period if the parties to the dispute jointly consider that the good offices, conciliation or mediation process has failed to settle the dispute.

5. If the parties to a dispute agree, procedures for good offices, conciliation or mediation may continue while the panel process proceeds.

6. The Director-General may, acting in an *ex officio* capacity, offer good offices, conciliation or mediation with the view to assisting Members to settle a dispute.

Article 6

Establishment of Panels

1. If the complaining party so requests, a panel shall be established at the latest at the DSB meeting following that at which the request first appears as an item on the DSB's agenda, unless at that meeting the DSB decides by consensus not to establish a panel.[8]

2. The request for the establishment of a panel shall be made in writing. It shall indicate whether consultations were held, identify the specific measures at issue and provide a brief summary of the legal basis of the complaint sufficient to present the problem clearly. In case the applicant requests the establishment of a panel with other than standard terms of reference, the written request shall include the proposed text of special terms of reference.

Article 7

Terms of Reference of Panels

1. Panels shall have the following terms of reference unless the parties to the dispute agree otherwise within 20 days from the establishment of the panel:

> "To examine, in the light of the relevant provisions in (name of the covered agreement(s) cited by the parties to the dispute), the matter referred to the DSB by (name of party) in document ... and to make such findings as will assist the DSB in making the recommendations or in giving the rulings provided for in that/those agreement(s)."

2. Panels shall address the relevant provisions in any covered agreement or agreements cited by the parties to the dispute.

3. In establishing a panel, the DSB may authorize its Chairman to draw up the terms of reference of the panel in consultation with the parties to the dispute, subject to the provisions of paragraph 1. The terms of reference thus drawn up shall be circulated to all Members. If other than standard terms of reference are agreed upon, any Member may raise any point relating thereto in the DSB.

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[8] If the complaining party so requests, a meeting of the DSB shall be convened for this purpose within 15 days of the request, provided that at least 10 days' advance notice of the meeting is given.

Article 8

Composition of Panels

1. Panels shall be composed of well-qualified governmental and/or non-governmental individuals, including persons who have served on or presented a case to a panel, served as a representative of a Member or of a contracting party to GATT 1947 or as a representative to the Council or Committee of any covered agreement or its predecessor agreement, or in the Secretariat, taught or published on international trade law or policy, or served as a senior trade policy official of a Member.

2. Panel members should be selected with a view to ensuring the independence of the members, a sufficiently diverse background and a wide spectrum of experience.

3. Citizens of Members whose governments[9] are parties to the dispute or third parties as defined in paragraph 2 of Article 10 shall not serve on a panel concerned with that dispute, unless the parties to the dispute agree otherwise.

4. To assist in the selection of panelists, the Secretariat shall maintain an indicative list of governmental and non-governmental individuals possessing the qualifications outlined in paragraph 1, from which panelists may be drawn as appropriate. That list shall include the roster of non-governmental panelists established on 30 November 1984 (BISD 31S/9), and other rosters and indicative lists established under any of the covered agreements, and shall retain the names of persons on those rosters and indicative lists at the time of entry into force of the WTO Agreement. Members may periodically suggest names of governmental and non-governmental individuals for inclusion on the indicative list, providing relevant information on their knowledge of international trade and of the sectors or subject matter of the covered agreements, and those names shall be added to the list upon approval by the DSB. For each of the individuals on the list, the list shall indicate specific areas of experience or expertise of the individuals in the sectors or subject matter of the covered agreements.

5. Panels shall be composed of three panelists unless the parties to the dispute agree, within 10 days from the establishment of the panel, to a panel composed of five panelists. Members shall be informed promptly of the composition of the panel.

6. The Secretariat shall propose nominations for the panel to the parties to the dispute. The parties to the dispute shall not oppose nominations except for compelling reasons.

7. If there is no agreement on the panelists within 20 days after the date of the establishment of a panel, at the request of either party, the Director-General, in consultation with the Chairman of the DSB and the Chairman of the relevant Council or Committee, shall determine the composition of the panel by appointing the panelists whom the Director-General considers most appropriate in accordance with any relevant special or additional rules or procedures of the covered agreement or covered agreements which are at issue in the dispute, after consulting with the parties to the dispute. The Chairman of the DSB shall inform the Members of the composition of the panel thus formed no later than 10 days after the date the Chairman receives such a request.

8. Members shall undertake, as a general rule, to permit their officials to serve as panelists.

9. Panelists shall serve in their individual capacities and not as government representatives, nor as representatives of any organization. Members shall therefore not give them instructions nor seek to influence them as individuals with regard to matters before a panel.

10. When a dispute is between a developing country Member and a developed country Member the panel shall, if the developing country Member so requests, include at least one panelist from a developing country Member.

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[9] In the case where customs unions or common markets are parties to a dispute, this provision applies to citizens of all member countries of the customs unions or common markets.

11. Panelists' expenses, including travel and subsistence allowance, shall be met from the WTO budget in accordance with criteria to be adopted by the General Council, based on recommendations of the Committee on Budget, Finance and Administration.

Article 9

Procedures for Multiple Complainants

1. Where more than one Member requests the establishment of a panel related to the same matter, a single panel may be established to examine these complaints taking into account the rights of all Members concerned. A single panel should be established to examine such complaints whenever feasible.

2. The single panel shall organize its examination and present its findings to the DSB in such a manner that the rights which the parties to the dispute would have enjoyed had separate panels examined the complaints are in no way impaired. If one of the parties to the dispute so requests, the panel shall submit separate reports on the dispute concerned. The written submissions by each of the complainants shall be made available to the other complainants, and each complainant shall have the right to be present when any one of the other complainants presents its views to the panel.

3. If more than one panel is established to examine the complaints related to the same matter, to the greatest extent possible the same persons shall serve as panelists on each of the separate panels and the timetable for the panel process in such disputes shall be harmonized.

Article 10

Third Parties

1. The interests of the parties to a dispute and those of other Members under a covered agreement at issue in the dispute shall be fully taken into account during the panel process.

2. Any Member having a substantial interest in a matter before a panel and having notified its interest to the DSB (referred to in this Understanding as a "third party") shall have an opportunity to be heard by the panel and to make written submissions to the panel. These submissions shall also be given to the parties to the dispute and shall be reflected in the panel report.

3. Third parties shall receive the submissions of the parties to the dispute to the first meeting of the panel.

4. If a third party considers that a measure already the subject of a panel proceeding nullifies or impairs benefits accruing to it under any covered agreement, that Member may have recourse to normal dispute settlement procedures under this Understanding. Such a dispute shall be referred to the original panel wherever possible.

Article 11

Function of Panels

The function of panels is to assist the DSB in discharging its responsibilities under this Understanding and the covered agreements. Accordingly, a panel should make an objective assessment of the matter before it, including an objective assessment of the facts of the case and the applicability of and conformity with the relevant covered agreements, and make such other findings as will assist the DSB in making the recommendations or in giving the rulings provided for in the covered agreements. Panels should consult regularly with the parties to the dispute and give them adequate opportunity to develop a mutually satisfactory solution.

Article 12

Panel Procedures

1. Panels shall follow the Working Procedures in Appendix 3 unless the panel decides otherwise after consulting the parties to the dispute.

2. Panel procedures should provide sufficient flexibility so as to ensure high-quality panel reports, while not unduly delaying the panel process.

3. After consulting the parties to the dispute, the panelists shall, as soon as practicable and whenever possible within one week after the composition and terms of reference of the panel have been agreed upon, fix the timetable for the panel process, taking into account the provisions of paragraph 9 of Article 4, if relevant.

4. In determining the timetable for the panel process, the panel shall provide sufficient time for the parties to the dispute to prepare their submissions.

5. Panels should set precise deadlines for written submissions by the parties and the parties should respect those deadlines.

6. Each party to the dispute shall deposit its written submissions with the Secretariat for immediate transmission to the panel and to the other party or parties to the dispute. The complaining party shall submit its first submission in advance of the responding party's first submission unless the panel decides, in fixing the timetable referred to in paragraph 3 and after consultations with the parties to the dispute, that the parties should submit their first submissions simultaneously. When there are sequential arrangements for the deposit of first submissions, the panel shall establish a firm time period for receipt of the responding party's submission. Any subsequent written submissions shall be submitted simultaneously.

7. Where the parties to the dispute have failed to develop a mutually satisfactory solution, the panel shall submit its findings in the form of a written report to the DSB. In such cases, the report of a panel shall set out the findings of fact, the applicability of relevant provisions and the basic rationale behind any findings and recommendations that it makes. Where a settlement of the matter among the parties to the dispute has been found, the report of the panel shall be confined to a brief description of the case and to reporting that a solution has been reached.

8. In order to make the procedures more efficient, the period in which the panel shall conduct its examination, from the date that the composition and terms of reference of the panel have been agreed upon until the date the final report is issued to the parties to the dispute, shall, as a general rule, not exceed six months. In cases of urgency, including those relating to perishable goods, the panel shall aim to issue its report to the parties to the dispute within three months.

9. When the panel considers that it cannot issue its report within six months, or within three months in cases of urgency, it shall inform the DSB in writing of the reasons for the delay together with an estimate of the period within which it will issue its report. In no case should the period from the establishment of the panel to the circulation of the report to the Members exceed nine months.

10. In the context of consultations involving a measure taken by a developing country Member, the parties may agree to extend the periods established in paragraphs 7 and 8 of Article 4. If, after the relevant period has elapsed, the consulting parties cannot agree that the consultations have concluded, the Chairman of the DSB shall decide, after consultation with the parties, whether to extend the relevant period and, if so, for how long. In addition, in examining a complaint against a developing country Member, the panel shall accord sufficient time for the developing country Member to prepare and present its argumentation. The provisions of paragraph 1 of Article 20 and paragraph 4 of Article 21 are not affected by any action pursuant to this paragraph.

11. Where one or more of the parties is a developing country Member, the panel's report shall explicitly indicate the form in which account has been taken of relevant provisions on differential and more-favourable treatment for develop-

ing country Members that form part of the covered agreements which have been raised by the developing country Member in the course of the dispute settlement procedures.

12. The panel may suspend its work at any time at the request of the complaining party for a period not to exceed 12 months. In the event of such a suspension, the time-frames set out in paragraphs 8 and 9 of this Article, paragraph 1 of Article 20, and paragraph 4 of Article 21 shall be extended by the amount of time that the work was suspended. If the work of the panel has been suspended for more than 12 months, the authority for establishment of the panel shall lapse.

Article 13

Right to Seek Information

1. Each panel shall have the right to seek information and technical advice from any individual or body which it deems appropriate. However, before a panel seeks such information or advice from any individual or body within the jurisdiction of a Member it shall inform the authorities of that Member. A Member should respond promptly and fully to any request by a panel for such information as the panel considers necessary and appropriate. Confidential information which is provided shall not be revealed without formal authorization from the individual, body, or authorities of the Member providing the information.

2. Panels may seek information from any relevant source and may consult experts to obtain their opinion on certain aspects of the matter. With respect to a factual issue concerning a scientific or other technical matter raised by a party to a dispute, a panel may request an advisory report in writing from an expert review group. Rules for the establishment of such a group and its procedures are set forth in Appendix 4.

Article 14

Confidentiality

1. Panel deliberations shall be confidential.

2. The reports of panels shall be drafted without the presence of the parties to the dispute in the light of the information provided and the statements made.

3. Opinions expressed in the panel report by individual panelists shall be anonymous.

Article 15

Interim Review Stage

1. Following the consideration of rebuttal submissions and oral arguments, the panel shall issue the descriptive (factual and argument) sections of its draft report to the parties to the dispute. Within a period of time set by the panel, the parties shall submit their comments in writing.

2. Following the expiration of the set period of time for receipt of comments from the parties to the dispute, the panel shall issue an interim report to the parties, including both the descriptive sections and the panel's findings and conclusions. Within a period of time set by the panel, a party may submit a written request for the panel to review precise aspects of the interim report prior to circulation of the final report to the Members. At the request of a party, the panel shall hold a further meeting with the parties on the issues identified in the written comments. If no comments are received from any party within the comment period, the interim report shall be considered the final panel report and circulated promptly to the Members.

3. The findings of the final panel report shall include a discussion of the arguments made at the interim review stage. The interim review stage shall be conducted within the time period set out in paragraph 8 of Article 12.

Article 16

Adoption of Panel Reports

1. In order to provide sufficient time for the Members to consider panel reports, the reports shall not be considered for adoption by the DSB until 20 days after the date they have been circulated to the Members.

2. Members having objections to a panel report shall give written reasons to explain their objections for circulation at least 10 days prior to the DSB meeting at which the panel report will be considered.

3. The parties to a dispute shall have the right to participate fully in the consideration of the panel report by the DSB, and their views shall be fully recorded.

4. Within 60 days after the date of circulation of a panel report to the Members, the report shall be adopted at a DSB meeting[10] unless a party to the dispute formally notifies the DSB of its decision to appeal or the DSB decides by consensus not to adopt the report. If a party has notified its decision to appeal, the report by the panel shall not be considered for adoption by the DSB until after completion of the appeal. This adoption procedure is without prejudice to the right of Members to express their views on a panel report.

Article 17

Appellate Review

Standing Appellate Body

1. A standing Appellate Body shall be established by the DSB. The Appellate Body shall hear appeals from panel cases. It shall be composed of seven persons, three of whom shall serve on any one case. Persons serving on the Appellate Body shall serve in rotation. Such rotation shall be determined in the working procedures of the Appellate Body.

2. The DSB shall appoint persons to serve on the Appellate Body for a four-year term, and each person may be reappointed once. However, the terms of three of the seven persons appointed immediately after the entry into force of the WTO Agreement shall expire at the end of two years, to be determined by lot. Vacancies shall be filled as they arise. A person appointed to replace a person whose term of office has not expired shall hold office for the remainder of the predecessor's term.

3. The Appellate Body shall comprise persons of recognized authority, with demonstrated expertise in law, international trade and the subject matter of the covered agreements generally. They shall be unaffiliated with any government. The Appellate Body membership shall be broadly representative of membership in the WTO. All persons serving on the Appellate Body shall be available at all times and on short notice, and shall stay abreast of dispute settlement activities and other relevant activities of the WTO. They shall not participate in the consideration of any disputes that would create a direct or indirect conflict of interest.

4. Only parties to the dispute, not third parties, may appeal a panel report. Third parties which have notified the DSB of a substantial interest in the matter pursuant to paragraph 2 of Article 10 may make written submissions to, and be given an opportunity to be heard by, the Appellate Body.

5. As a general rule, the proceedings shall not exceed 60 days from the date a party to the dispute formally notifies its decision to appeal to the date the Appellate Body circulates its report. In fixing its timetable the Appellate Body shall take into account the provisions of paragraph 9 of Article 4, if relevant. When the Appellate Body considers that it cannot provide its report within 60 days, it shall inform the DSB in writing of the reasons for the delay together with an estimate of the period within which it will submit its report. In no case shall the proceedings exceed 90 days.

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[10] If a meeting of the DSB is not scheduled within this period at a time that enables the requirements of paragraphs 1 and 4 of Article 16 to be met, a meeting of the DSB shall be held for this purpose.

6. An appeal shall be limited to issues of law covered in the panel report and legal interpretations developed by the panel.

7. The Appellate Body shall be provided with appropriate administrative and legal support as it requires.

8. The expenses of persons serving on the Appellate Body, including travel and subsistence allowance, shall be met from the WTO budget in accordance with criteria to be adopted by the General Council, based on recommendations of the Committee on Budget, Finance and Administration.

Procedures for Appellate Review

9. Working procedures shall be drawn up by the Appellate Body in consultation with the Chairman of the DSB and the Director-General, and communicated to the Members for their information.

10. The proceedings of the Appellate Body shall be confidential. The reports of the Appellate Body shall be drafted without the presence of the parties to the dispute and in the light of the information provided and the statements made.

11. Opinions expressed in the Appellate Body report by individuals serving on the Appellate Body shall be anonymous.

12. The Appellate Body shall address each of the issues raised in accordance with paragraph 6 during the appellate proceeding.

13. The Appellate Body may uphold, modify or reverse the legal findings and conclusions of the panel.

Adoption of Appellate Body Reports

14. An Appellate Body report shall be adopted by the DSB and unconditionally accepted by the parties to the dispute unless the DSB decides by consensus not to adopt the Appellate Body report within 30 days following its circulation to the Members.[11] This adoption procedure is without prejudice to the right of Members to express their views on an Appellate Body report.

Article 18

Communications with the Panel or Appellate Body

1. There shall be no *ex parte* communications with the panel or Appellate Body concerning matters under consideration by the panel or Appellate Body.

2. Written submissions to the panel or the Appellate Body shall be treated as confidential, but shall be made available to the parties to the dispute. Nothing in this Understanding shall preclude a party to a dispute from disclosing statements of its own positions to the public. Members shall treat as confidential information submitted by another Member to the panel or the Appellate Body which that Member has designated as confidential. A party to a dispute shall also, upon request of a Member, provide a non-confidential summary of the information contained in its written submissions that could be disclosed to the public.

Article 19

Panel and Appellate Body Recommendations

1. Where a panel or the Appellate Body concludes that a measure is inconsistent with a covered agreement, it shall recommend that the Member concerned[12] bring the measure into conformity with that agreement.[13] In addition to its recommendations, the panel or Appellate Body may suggest ways in which the Member concerned could implement the recommendations.

2. In accordance with paragraph 2 of Article 3, in their findings and recommendations, the panel and Appellate Body cannot add to or diminish the rights and obligations provided in the covered agreements.

Article 20

Time-frame for DSB Decisions

Unless otherwise agreed to by the parties to the dispute, the period from the date of establishment of the panel by the DSB until the date the DSB considers the panel or appellate report for adoption shall as a general rule not exceed nine months where the panel report is not appealed or 12 months where the report is appealed. Where either the panel or the Appellate Body has acted, pursuant to paragraph 9 of Article 12 or paragraph 5 of Article 17, to extend the time for providing its report, the additional time taken shall be added to the above periods.

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[11] If a meeting of the DSB is not scheduled during this period, such a meeting of the DSB shall be held for this purpose.

[12] The "Member concerned" is the party to the dispute to which the panel or Appellate Body recommendations are directed.

[13] With respect to recommendations in cases not involving a violation of GATT 1994 or any other covered agreement, see Article 26.

Article 21

Surveillance of Implementation of Recommendations and Rulings

1. Prompt compliance with recommendations or rulings of the DSB is essential in order to ensure effective resolution of disputes to the benefit of all Members.

2. Particular attention should be paid to matters affecting the interests of developing country Members with respect to measures which have been subject to dispute settlement.

3. At a DSB meeting held within 30 days[14] after the date of adoption of the panel or Appellate Body report, the Member concerned shall inform the DSB of its intentions in respect of implementation of the recommendations and rulings of the DSB. If it is impracticable to comply immediately with the recommendations and rulings, the Member concerned shall have a reasonable period of time in which to do so. The reasonable period of time shall be:

(a) the period of time proposed by the Member concerned, provided that such period is approved by the DSB: or, in the absence of such approval,

(b) a period of time mutually agreed by the parties to the dispute within 45 days after the date of adoption of the recommendations and rulings; or, in the absence of such agreement,

(c) a period of time determined through binding arbitration within 90 days after the date of adoption of the recommendations and rulings.[15] In such arbitration, a guideline for the arbitrator[16] should be that the reasonable period of time to implement panel or Appellate Body recommendations should not exceed 15 months from the date of adoption of a panel or Appellate Body report. However, that time may be shorter or longer, depending upon the particular circumstances.

4. Except where the panel or the Appellate Body has extended, pursuant to paragraph 9 of Article 12 or paragraph 5 of Article 17, the time of providing its report, the period from the date of establishment of the panel by the DSB until the date of determination of the reasonable period of time shall not exceed 15 months unless the parties to the dispute agree otherwise. Where either the panel or the Appellate Body has acted to extend the time of providing its report, the additional time taken shall be added to the 15-month period; provided that unless the parties to the dispute agree that there are exceptional circumstances, the total time shall not exceed 18 months.

5. Where there is disagreement as to the existence or consistency with a covered agreement of measures taken to comply with the recommendations and rulings such dispute shall be decided through recourse to these dispute settlement procedures, including wherever possible resort to the original panel. The panel shall circulate its report within 90 days after the date of referral of the matter to it. When the panel considers that it cannot provide its report within this time frame, it shall inform the DSB in writing of the reasons for the delay together with an estimate of the period within which it will submit its report.

6. The DSB shall keep under surveillance the implementation of adopted recommendations or rulings. The issue of implementation of the recommendations or rulings may be raised at the DSB by any Member at any time following their adoption. Unless the DSB decides otherwise, the issue of implementation of the recommendations or rulings shall be placed on the agenda of the DSB meeting after six months following the date of establishment of the reasonable period of time pursuant to paragraph 3 and shall remain on the DSB's agenda until the issue is resolved. At least 10 days prior to each such DSB meeting, the Member concerned shall provide the DSB with a status report in writing of its progress in the implementation of the recommendations or rulings.

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[14] If a meeting of the DSB is not scheduled during this period, such a meeting of the DSB shall be held for this purpose.

[15] If the parties cannot agree on an arbitrator within 10 days after referring the matter to arbitration, the arbitrator shall be appointed by the Director-General within 10 days, after consulting the parties.

[16] The expression "arbitrator" shall be interpreted as referring either to an individual or a group.

7. If the matter is one which has been raised by a developing country Member, the DSB shall consider what further action it might take which would be appropriate to the circumstances.

8. If the case is one brought by a developing country Member, in considering what appropriate action might be taken, the DSB shall take into account not only the trade coverage of measures complained of, but also their impact on the economy of developing country Members concerned.

Article 22

Compensation and the Suspension of Concessions

1. Compensation and the suspension of concessions or other obligations are temporary measures available in the event that the recommendations and rulings are not implemented within a reasonable period of time. However, neither compensation nor the suspension of concessions or other obligations is preferred to full implementation of a recommendation to bring a measure into conformity with the covered agreements. Compensation is voluntary and, if granted, shall be consistent with the covered agreements.

2. If the Member concerned fails to bring the measure found to be inconsistent with a covered agreement into compliance therewith or otherwise comply with the recommendations and rulings within the reasonable period of time determined pursuant to paragraph 3 of Article 21, such Member shall, if so requested, and no later than the expiry of the reasonable period of time, enter into negotiations with any party having invoked the dispute settlement procedures, with a view to developing mutually acceptable compensation. If no satisfactory compensation has been agreed within 20 days after the date of expiry of the reasonable period of time, any party having invoked the dispute settlement procedures may request authorization from the DSB to suspend the application to the Member concerned of concessions or other obligations under the covered agreements.

3. In considering what concessions or other obligations to suspend, the complaining party shall apply the following principles and procedures:

(a) the general principle is that the complaining party should first seek to suspend concessions or other obligations with respect to the same sector(s) as that in which the panel or Appellate Body has found a violation or other nullification or impairment;

(b) if that party considers that it is not practicable or effective to suspend concessions or other obligations with respect to the same sector(s), it may seek to suspend concessions or other obligations in other sectors under the same agreement;

(c) if that party considers that it is not practicable or effective to suspend concessions or other obligations with respect to other sectors under the same agreement, and that the circumstances are serious enough, it may seek to suspend concessions or other obligations under another covered agreement;

(d) in applying the above principles, that party shall take into account:

  (i) the trade in the sector or under the agreement under which the panel or Appellate Body has found a violation or other nullification or impairment, and the importance of such trade to that party;

  (ii) the broader economic elements related to the nullification or impairment and the broader economic consequences of the suspension of concessions or other obligations;

(e) if that party decides to request authorization to suspend concessions or other obligations pursuant to subparagraphs (b) or (c), it shall state the reasons therefor in its request. At the same time as the request is forwarded to the DSB, it also shall be forwarded to the relevant Councils and also, in the case of a request pursuant to subparagraph (b), the relevant sectoral bodies;

(f) for purposes of this paragraph, "sector" means:

  (i) with respect to goods, all goods;

  (ii) with respect to services, a principal sector as identified in the current "Services Sectoral Classification List" which identifies such sectors;[17]

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[17] The list in document MTN.GNS/W/120 identifies 11 sectors.

(iii) with respect to trade-related intellectual property rights, each of the categories of intellectual property rights covered in Section 1, or Section 2, or Section 3, or Section 4, or Section 5, or Section 6, or Section 7 of Part II, or the obligations under Part III, or Part IV of the Agreement on TRIPS;

(g) for purposes of this paragraph, "agreement" means:

(i) with respect to goods, the agreements listed in Annex 1A of the WTO Agreement, taken as a whole as well as the Plurilateral Trade Agreements in so far as the relevant parties to the dispute are parties to these agreements;

(ii) with respect to services, the GATS;

(iii) with respect to intellectual property rights, the Agreement on TRIPS.

4. The level of the suspension of concessions or other obligations authorized by the DSB shall be equivalent to the level of the nullification or impairment.

5. The DSB shall not authorize suspension of concessions or other obligations if a covered agreement prohibits such suspension.

6. When the situation described in paragraph 2 occurs, the DSB, upon request, shall grant authorization to suspend concessions or other obligations within 30 days of the expiry of the reasonable period of time unless the DSB decides by consensus to reject the request. However, if the Member concerned objects to the level of suspension proposed, or claims that the principles and procedures set forth in paragraph 3 have not been followed where a complaining party has requested authorization to suspend concessions or other obligations pursuant to paragraph 3(b) or (c), the matter shall be referred to arbitration. Such arbitration shall be carried out by the original panel, if members are available, or by an arbitrator[18] appointed by the Director-General and shall be completed within 60 days after the date of expiry of the reasonable period of time. Concessions or other obligations shall not be suspended during the course of the arbitration.

7. The arbitrator[19] acting pursuant to paragraph 6 shall not examine the nature of the concessions or other obligations to be suspended but shall determine whether the level of such suspension is equivalent to the level of nullification or impairment. The arbitrator may also determine if the proposed suspension of concessions or other obligations is allowed under the covered agreement. However, if the matter referred to arbitration includes a claim that the principles and procedures set forth in paragraph 3 have not been followed, the arbitrator shall examine that claim. In the event the arbitrator determines that those principles and procedures have not been followed, the complaining party shall apply them consistent with paragraph 3. The parties shall accept the arbitrator's decision as final and the parties concerned shall not seek a second arbitration. The DSB shall be informed promptly of the decision of the arbitrator and shall upon request, grant authorization to suspend concessions or other obligations where the request is consistent with the decision of the arbitrator, unless the DSB decides by consensus to reject the request.

8. The suspension of concessions or other obligations shall be temporary and shall only be applied until such time as the measure found to be inconsistent with a covered agreement has been removed, or the Member that must implement recommendations or rulings provides a solution to the nullification or impairment of benefits, or a mutually satisfactory solution is reached. In accordance with paragraph 6 of Article 21, the DSB shall continue to keep under surveillance the implementation of adopted recommendations or rulings, including those cases where compensation has been provided or concessions or other obligations have been suspended but the recommendations to bring a measure into conformity with the covered agreements have not been implemented.

9. The dispute settlement provisions of the covered agreements may be invoked in respect of measures affecting their observance taken by regional or local governments or authorities within the territory of a Member. When the DSB has

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[18] The expression"arbitrator" shall be interpreted as referring either to an individual or a group.

[19] The expression "arbitrator" shall be interpreted as referring either to an individual or a group or to the members of the original panel when serving in the capacity of arbitrator.

ruled that a provision of a covered agreement has not been observed, the responsible Member shall take such reasonable measures as may be available to it to ensure its observance. The provisions of the covered agreements and this Understanding relating to compensation and suspension of concessions or other obligations apply in cases where it has not been possible to secure such observance.[20]

Article 23

Strengthening of the Multilateral System

1. When Members seek the redress of a violation of obligations or other nullification or impairment of benefits under the covered agreements or an impediment to the attainment of any objective of the covered agreements, they shall have recourse to, and abide by, the rules and procedures of this Understanding.

2. In such cases, Members shall:

   (a) not make a determination to the effect that a violation has occurred, that benefits have been nullified or impaired or that the attainment of any objective of the covered agreements has been impeded, except through recourse to dispute settlement in accordance with the rules and procedures of this Understanding, and shall make any such determination consistent with the findings contained in the panel or Appellate Body report adopted by the DSB or an arbitration award rendered under this Understanding;

   (b) follow the procedures set forth in Article 21 to determine the reasonable period of time for the Member concerned to implement the recommendations and rulings; and

   (c) follow the procedures set forth in Article 22 to determine the level of suspension of concessions or other obligations and obtain DSB authorization in accordance with those procedures before suspending concessions or other obligations under the covered agreements in response to the failure of the Member concerned to implement the recommendations and rulings within that reasonable period of time.

Article 24

Special Procedures Involving Least-Developed Country Members

1. At all stages of the determination of the causes of a dispute and of dispute settlement procedures involving a least-developed country Member, particular consideration shall be given to the special situation of least-developed country Members. In this regard, Members shall exercise due restraint in raising matters under these procedures involving a least-developed country Member. If nullification or impairment is found to result from a measure taken by a least-developed country Member, complaining parties shall exercise due restraint in asking for compensation or seeking authorization to suspend the application of concessions or other obligations pursuant to these procedures.

2. In dispute settlement cases involving a least-developed country Member, where a satisfactory solution has not been found in the course of consultations the Director-General or the Chairman of the DSB shall, upon request by a least-developed country Member offer their good offices, conciliation and mediation with a view to assisting the parties to settle the dispute, before a request for a panel is made. The Director-General or the Chairman of the DSB, in providing the above assistance, may consult any source which either deems appropriate.

Article 25

Arbitration

1. Expeditious arbitration within the WTO as an alternative means of dispute settlement can facilitate the solution of certain disputes that concern issues that are clearly defined by both parties.

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[20] Where the provisions of any covered agreement concerning measures taken by regional or local governments or authorities within the territory of a Member contain provisions different from the provisions of this paragraph, the provisions of such covered agreement shall prevail.

2. Except as otherwise provided in this Understanding, resort to arbitration shall be subject to mutual agreement of the parties which shall agree on the procedures to be followed. Agreements to resort to arbitration shall be notified to all Members sufficiently in advance of the actual commencement of the arbitration process.

3. Other Members may become party to an arbitration proceeding only upon the agreement of the parties which have agreed to have recourse to arbitration. The parties to the proceeding shall agree to abide by the arbitration award. Arbitration awards shall be notified to the DSB and the Council or Committee of any relevant agreement where any Member may raise any point relating thereto.

4. Articles 21 and 22 of this Understanding shall apply *mutatis mutandis* to arbitration awards.

Article 26

1. Non-Violation Complaints of the Type Described in Paragraph 1(b) of Article XXIII of GATT 1994

Where the provisions of paragraph 1(b) of Article XXIII of GATT 1994 are applicable to a covered agreement, a panel or the Appellate Body may only make rulings and recommendations where a party to the dispute considers that any benefit accruing to it directly or indirectly under the relevant covered agreement is being nullified or impaired or the attainment of any objective of that Agreement is being impeded as a result of the application by a Member of any measure, whether or not it conflicts with the provisions of that Agreement. Where and to the extent that such party considers and a panel or the Appellate Body determines that a case concerns a measure that does not conflict with the provisions of a covered agreement to which the provisions of paragraph 1(b) of Article XXIII of GATT 1994 are applicable, the procedures in this Understanding shall apply, subject to the following:

(a) the complaining party shall present a detailed justification in support of any complaint relating to a measure which does not conflict with the relevant covered agreement;

(b) where a measure has been found to nullify or impair benefits under, or impede the attainment of objectives, of the relevant covered agreement without violation thereof, there is no obligation to withdraw the measure. However, in such cases, the panel or the Appellate Body shall recommend that the Member concerned make a mutually satisfactory adjustment;

(c) notwithstanding the provisions of Article 21, the arbitration provided for in paragraph 3 of Article 21, upon request of either party, may include a determination of the level of benefits which have been nullified or impaired, and may also suggest ways and means of reaching a mutually satisfactory adjustment: such suggestions shall not be binding upon the parties to the dispute;

(d) notwithstanding the provisions of paragraph 1 of Article 22, compensation may be part of a mutually satisfactory adjustment as final settlement of the dispute.

2. Complaints of the Type Described in Paragraph 1(c) of Article XXIII of GATT 1994

Where the provisions of paragraph 1(c) of Article XXIII of GATT 1994 are applicable to a covered agreement, a panel may only make rulings and recommendations where a party considers that any benefit accruing to it directly or indirectly under the relevant covered agreement is being nullified or impaired or the attainment of any objective of that Agreement is being impeded as a result of the existence of any situation other than those to which the provisions of paragraphs 1(a) and 1(b) of Article XXIII of GATT 1994 are applicable. Where and to the extent that such party considers and a panel determines that the matter is covered by this paragraph, the procedures of this Understanding shall apply only up to and including the point in the proceedings where the panel report has been circulated to the Members. The dispute settlement rules and procedures contained in the Decision of 12 April 1989 (BISD 36S/61-67) shall apply to consideration for adoption, and surveillance and implementation of recommendations and rulings. The following shall also apply:

(a) the complaining party shall present a detailed justification in support of any argument made with respect to issues covered under this paragraph;

(b) in cases involving matters covered by this paragraph, if a panel finds that cases also involve dispute settlement matters other than those covered by this paragraph, the panel shall circulate a report to the DSB addressing any such matters and a separate report on matters falling under this paragraph.

Article 27

Responsibilities of the Secretariat

1. The Secretariat shall have the responsibility of assisting panels, especially on the legal, historical and procedural aspects of the matters dealt with, and of providing secretarial and technical support.

2. While the Secretariat assists Members in respect of dispute settlement at their request, there may also be a need to provide additional legal advice and assistance in respect of dispute settlement to developing country Members. To this end, the Secretariat shall make available a qualified legal expert from the WTO technical cooperation services to any developing country Member which so requests. This expert shall assist the developing country Member in a manner ensuring the continued impartiality of the Secretariat.

3. The Secretariat shall conduct special training courses for interested Members concerning these dispute settlement procedures and practices so as to enable Members' experts to be better informed in this regard.

APPENDIX 1

AGREEMENTS COVERED BY THE UNDERSTANDING

(A) Agreement Establishing the World Trade Organization

(B) Multilateral Trade Agreements

Annex 1A: Multilateral Agreements on Trade in Goods

Annex 1B: General Agreement on Trade in Services

Annex 1C: Agreement on Trade-Related Aspects of Intellectual Property Rights

Annex 2: Understanding on Rules and Procedures Governing the Settlement of Disputes

(C) Plurilateral Trade Agreements

Annex 4: Agreement on Trade in Civil Aircraft

Agreement on Government Procurement

International Dairy Agreement

International Bovine Meat Agreement

The applicability of this Understanding to the Plurilateral Trade Agreements shall be subject to the adoption of a decision by the parties to each agreement setting out the terms for the application of the Understanding to the individual agreement, including any special or additional rules or procedures for inclusion in Appendix 2, as notified to the DSB.

APPENDIX 2

SPECIAL OR ADDITIONAL RULES AND PROCEDURES CONTAINED IN THE COVERED AGREEMENTS

Agreement	*Rules and Procedures*
Agreement on the Application of Sanitary and Phytosanitary Measures	11.2
Agreement on Textiles and Clothing	2.14, 2.21, 4.4, 5.2, 5.4, 5.6, 6.9, 6.10, 6.11, 8.1 through 8.12
Agreement on Technical Barriers to Trade	14.2 through 14.4, Annex 2
Agreement on Implementation of Article VI of GATT 1994	17.4 through 17.7
Agreement on Implementation of Article VII of GATT 1994	19.3 through 19.5, Annex II.2(f), 3, 9, 21
Agreement on Subsidies and Countervailing Measures	4.2 through 4.12, 6.6, 7.2 through 7.10, 8.5, footnote 35, 24.4, 27.7, Annex V
General Agreement on Trade in Services	XXII:3, XXIII:3
Annex on Financial Services	4
Annex on Air Transport Services	4
Decision on Certain Dispute Settlement Procedures for the GATS	1 through 5

The list of rules and procedures in this Appendix includes provisions where only a part of the provision may be relevant in this context.

Any special or additional rules or procedures in the Plurilateral Trade Agreements as determined by the competent bodies of each agreement and as notified to the DSB.

APPENDIX 3

WORKING PROCEDURES

l. In its proceedings the panel shall follow the relevant provisions of this Understanding. In addition, the following working procedures shall apply.

2. The panel shall meet in closed session. The parties to the dispute, and interested parties, shall be present at the meetings only when invited by the panel to appear before it.

3. The deliberations of the panel and the documents submitted to it shall be kept confidential. Nothing in this Understanding shall preclude a party to a dispute from disclosing statements of its own positions to the public. Members shall treat as confidential information submitted by another Member to the panel which that Member has designated as confidential. Where a party to a dispute submits a confidential version of its written submissions to the panel, it shall also, upon request of a Member, provide a non-confidential summary of the information contained in its submissions that could be disclosed to the public.

4. Before the first substantive meeting of the panel with the parties, the parties to the dispute shall transmit to the panel written submissions in which they present the facts of the case and their arguments.

5. At its first substantive meeting with the parties, the panel shall ask the party which has brought the complaint to present its case. Subsequently, and still at the same meeting, the party against which the complaint has been brought shall be asked to present its point of view.

6. All third parties which have notified their interest in the dispute to the DSB shall be invited in writing to present their views during a session of the first substantive meeting of the panel set aside for that purpose. All such third parties may be present during the entirety of this session.

7. Formal rebuttals shall be made at a second substantive meeting of the panel. The party complained against shall have the right to take the floor first to be followed by the complaining party. The parties shall submit, prior to that meeting, written rebuttals to the panel.

8. The panel may at any time put questions to the parties and ask them for explanations either in the course of a meeting with the parties or in writing.

9. The parties to the dispute and any third party invited to present its views in accordance with Article 10 shall make available to the panel a written version of their oral statements.

10. In the interest of full transparency, the presentations, rebuttals and statements referred to in paragraphs 5 to 9 shall be made in the presence of the parties. Moreover, each party's written submissions, including any comments on the descriptive part of the report and responses to questions put by the panel, shall be made available to the other party or parties.

11. Any additional procedures specific to the panel.

12. Proposed timetable for panel work:

(a) Receipt of first written submissions of the parties:

(1) complaining Party: _____ 3-6 weeks

(2) Party complained against: _____ 2-3 weeks

(b) Date, time and place of first substantive meeting with the parties:

third party session: _____ 1-2 weeks

(c) Receipt of written rebuttals of the parties: _____ 2-3 weeks

(d)	Date, time and place of second substantive meeting with the parties:	_____	1-2 weeks
(e)	Issuance of descriptive part of the report to the parties:	_____	2-4 weeks
(f)	Receipt of comments by the parties on the descriptive part of the report:"	_____	2 weeks
(g)	Issuance of the interim report, including the findings and conclusions, to the parties:	_____	2-4 weeks
(h)	Deadline for party to request review of part(s) of report:	_____	1 week
(i)	Period of review by panel, including possible additional meeting with parties:	_____	2 weeks
(j)	Issuance of final report to parties to dispute:	_____	2 weeks
(k)	Circulation of the final report to the Members:	_____	3 weeks

The above calendar may be changed in the light of unforeseen developments. Additional meetings with the parties shall be scheduled if required.

APPENDIX 4

EXPERT REVIEW GROUPS

The following rules and procedures shall apply to expert review groups established in accordance with the provisions of paragraph 2 of Article 13.

1. Expert review groups are under the panel's authority. Their terms of reference and detailed working procedures shall be decided by the panel, and they shall report to the panel.

2. Participation in expert review groups shall be restricted to persons of professional standing and experience in the field in question.

3. Citizens of parties to the dispute shall not serve on an expert review group without the joint agreement of the parties to the dispute, except in exceptional circumstances when the panel considers that the need for specialized scientific expertise cannot be fulfilled otherwise. Government officials of parties to the dispute shall not serve on an expert review group. Members of expert review groups shall serve in their individual capacities and not as government representatives, nor as representatives of any organization. Governments or organizations shall therefore not give them instructions with regard to matters before an expert review group.

4. Expert review groups may consult and seek information and technical advice from any source they deem appropriate. Before an expert review group seeks such information or advice from a source within the jurisdiction of a Member, it shall inform the government of that Member. Any Member shall respond promptly and fully to any request by an expert review group for such information as the expert review group considers necessary and appropriate.

5. The parties to a dispute shall have access to all relevant information provided to an expert review group, unless it is of a confidential nature. Confidential information provided to the expert review group shall not be released without formal authorization from the government, organization or person providing the information. Where such information is requested from the expert review group but release of such information by the expert review group is not authorized, a non-confidential summary of the information will be provided by the government, organization or person supplying the information.

6. The expert review group shall submit a draft report to the parties to the dispute with a view to obtaining their comments, and taking them into account, as appropriate, in the final report, which shall also be issued to the parties to the dispute when it is submitted to the panel. The final report of the expert review group shall be advisory only.