

WORLD TRADE ORGANIZATION

WT/DS/OV/19
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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 (FROM 19 DECEMBER 2003 UNTIL 2 FEBRUARY 2004)

WT/DS No.	Short Title	Action	Section
WT/DS306	India – Anti-Dumping Measure on Batteries	Request for consultations	I.1
WT/DS305	Egypt – Measures on Textile and Apparel Products	Request for consultations Request to join consultations Acceptance of request to join consultations	I.2
WT/DS304	India – Anti-Dumping Measures on Certain Products	Request to join consultations Acceptance of requests to join consultations	I.3
WT/DS302	Dominican Republic – Import and Sale of Cigarettes	Establishment of a panel	II.A.27
WT/DS299	EC – Countervailing Measures on DRAM Chips	Establishment of a panel	II.A.26
WT/DS296	US – Countervailing Duty Investigation on DRAMs	Establishment of a panel	II.A.25
WT/DS265 WT/DS266 WT/DS283	EC – Export Subsidies on Sugar	Constitution of the Panel	II.A.10
WT/DS261	Uruguay – Tax Treatment	Notification of mutually agreed solution	VII.A.43
WT/DS257	US – Softwood Lumber IV	Circulation of Appellate Body Report	III.C.1
WT/DS246	EC – Tariff Preferences	Notification of an appeal	IV.A.1
WT/DS245	Japan – Apples	Information on implementation	VI.59
WT/DS244	US – Corrosion-Resistant Steel Sunset Review	Adoption of Appellate Body report and Panel report	V.A.74
WT/DS238	Argentina – Preserved Peaches	Notification of withdrawal of the measure at issue	VI.58
WT/DS217 WT/DS234	US – Offset Act (Byrd Amendment)	Modification of the reasonable period of time Recourse to Art. 22.2 of the DSU Request for arbitration under Art. 22.6 of the DSU	VI.53
WT/DS207	Chile – Price Band System	Agreed procedures under Articles 21 and 22	VI.50
WT/DS176	US – Section 211 Appropriations Act	Modification of the reasonable period of time	VI.42

STATISTICAL OVERVIEW

	Complaints notified to the WTO¹	Active Panels²	Appellate Body and Panel Reports Adopted³	Mutually Agreed Solutions	Other Settled or Inactive⁴ Disputes
Reporting period/ date	since 1.1.1995	on reporting date	since 1.1.1995	since 1.1.1995	since 1.1.1995
Number	306	27	76	43	24

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 Compliance Panels¹	Adopted Appellate Body and Panel Compliance Reports²	Arbitrations on Level of Suspension of Concessions³	WTO Authorizations of Suspension of Concessions⁴
Reporting period/ date	on reporting date	since 1.1.1995	since 1.1.1995	since 1.1.1995
Number	—	12	7	7

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.

ANALYSIS OF COMPLAINTS BY DEVELOPED/DEVELOPING MEMBERS

COMPLAINTS BY DEVELOPED COUNTRY MEMBERS	
Respondents – Developed	117
Respondents – Developing	72
COMPLAINTS BY DEVELOPING COUNTRY MEMBERS	
Respondents – Developed	64
Respondents – Developing	47
COMPLAINTS BY BOTH DEVELOPED AND DEVELOPING COUNTRY MEMBERS	
Respondents – Developed	6
Respondents – Developing	0

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I. PENDING CONSULTATIONS (most recent listed first)**1. WT/DS306 – India - Anti-Dumping Measure on Batteries from Bangladesh**

Complaint by Bangladesh. This is the first dispute involving an LDC Member as a principal party to a dispute. On 28 January 2004, Bangladesh requested consultations with India concerning a certain anti-dumping measure imposed by India on imports of lead acid batteries from Bangladesh. Bangladesh is particularly concerned about the following aspects of the investigation by the Indian authority leading to the imposition of the definitive anti-dumping duties:

- Initiation of the investigation, notwithstanding the unsubstantiated claim of the applicants that the application was "by or on behalf of the domestic industry"; and failure to immediately terminate the investigation, notwithstanding the negligible volume of imports from Bangladesh;
- determination of margin (determination of normal value; apparent adoption of constructed value; determination of export price; and comparison between normal value and export price);
- determination of injury and causation (examination of import volume, the effect on prices, and the impact on domestic producers of like products; inclusion of imports from Bangladesh in the assessment of the effects of imports; evaluation and examination of relevant factors; and examination of the causal link between the imports and the alleged injury);
- treatment of evidence (failure to consider information submitted by the interested parties from Bangladesh; treatment of information submitted by the applicants as confidential; failure to disclose to the interested parties the "essential facts under consideration which form the basis for the decision to apply definitive measures" and other relevant information)
- failure to provide the parties and give public notice of "all relevant information on the matters of fact and law and reasons which have led to the imposition of final measures".

Bangladesh considers that the foregoing Indian measure is inconsistent with: Article VI of GATT 1994, including Articles VI:1, VI:2 and VI:6(a); Articles 1, 2.1, 2.2, 2.4, 3.1, 3.2, 3.3, 3.4, 3.5, 3.7, 5.4, 5.8, 6.2, 6.4, 6.5, 6.8 (including para. 3 of Annex II), 6.9 and 12.2 of the Anti-Dumping Agreement. Furthermore, Bangladesh considers that, as a result of the imposition of the anti-dumping duties, India may be acting inconsistently with its obligations under Articles I:1 and II:1 of GATT 1994. Bangladesh also considers that the benefits accruing to it directly or indirectly under the WTO Agreement are being nullified or impaired pursuant to Articles XXIII:1(a) and XXIII:1(b), respectively, of GATT 1994.

2. WT/DS305 – Egypt – Measures Affecting Imports of Textile and Apparel Products

Complaint by the United States. On 23 December 2003, the United States requested consultations with Egypt concerning the tariffs applied by Egypt to certain textile and apparel products and the Decree of the President of the Arab Republic of Egypt No. 469 of the year 2001 ("Decree No. 469") and any amendments, related regulations or other implementing measures.

The United States alleges that, in the Uruguay Round, Egypt agreed that: (a) it would remove a general prohibition on the importation of apparel and made-up textile products by January 1, 2002; (b) it would bind its duties under HS Chapters 61 (articles of apparel and clothing, knitted and crocheted) and 62 (articles of apparel and clothing, not knitted or crocheted) at an *ad valorem* rate of 46 percent in 2003, 43 percent in 2004 and 40 percent thereafter, and (c) it would bind its duties under HS Chapter 63 (other made up textile articles; sets; worn clothing) at an *ad valorem* rate of 41 percent in 2003, 38 percent in 2004, and 35 percent thereafter.

The United States alleges that, on December 31, 2001 Egypt issued Decree No. 469 which amended the customs duties applicable to a number of imported articles, including articles that enter under HS Chapters 61, 62 and 63, and imposed specific duties (*i.e.*, in Egyptian pounds per piece of clothing), rather than *ad valorem* duties. The United States alleges that these specific duties greatly exceed Egypt's bound rates of duty. According to the United States, the *ad valorem* equivalent of these duties ranges from 141 percent to 51,296 percent. The United States considers that these tariffs, Decree No. 469 and any related measures are inconsistent with the obligations of Egypt under Article II of the GATT 1994 and Article 7 of the Agreement on Textiles and Clothing.

On 15 January 2004, the European Communities requested to join the consultations. On 22 January 2004, Egypt accepted the request.

3. WT/DS304 – India – Anti-Dumping Measures on Imports of Certain Products from the European Communities

Complaint by the European Communities. On 8 December 2003, the EC requested consultations with India concerning certain antidumping measures on imports of 27 products originating in the EC or EC member states.

According to the request for consultations from the EC, India violates its WTO obligations, *inter alia*, in that:

- the determination of the effect of the dumped imports on prices does not seem to be based on positive evidence and on an objective examination;
- the Indian investigating authority did not demonstrate that dumped imports were causing the alleged injury, and failed to examine other known factors and ensure that injury caused by those other factors was not attributed to dumping;
- the Indian investigating authority did not properly inform interested parties of the relevant essential facts under consideration which formed the basis for the decision to apply the anti-dumping measures and in sufficient time for those parties to defend their interests;
- the Indian investigating authority did not properly inform interested parties of the reasons why it did not accept evidence or information they had submitted within the investigation procedure;
- the Indian investigating authority did not satisfy itself during the course of the investigation as to the accuracy of the information supplied by interested parties in particular by their domestic industry;
- the public notice of information concluding the investigation did not contain all relevant information on the matters of fact and law and reasons which led to the imposition of the anti-dumping measures.

The EC considers that these Indian measures are inconsistent with: Article VI:1 of GATT 1994; Articles 1, 3.1, 3.2, 3.5, 6.6, 6.8 (including Annex II), 6.9 and 12.2 of the Anti-Dumping Agreement.

On 19 December 2003, Turkey and Chinese Taipei requested to join the consultations. On 22 January 2004, India accepted both requests.

4. WT/DS303 – Ecuador – Definitive Safeguard Measure on Imports of Medium Density Fibreboard

Complaint by Chile. On 24 November 2003, Chile requested consultations with Ecuador in respect of a definitive safeguard measure applied by Ecuador on imports of medium density fibreboard.

Chile alleges that there were no "unforeseen developments", no increase in imports and no threat of serious injury. Chile alleges that the Ecuadorian authorities' investigation was flawed because it did not analyze all product sub-categories covered by the measure, and that their report was inadequate because it did not contain an adequate and reasoned explanation of all relevant factors having a bearing on the situation of the domestic industry, did not demonstrate a causal relationship between a supposed increase in imports and a supposed threat of serious injury, did not respect the principle of non-attribution of injury caused by other factors, did not determine the extent of application of the measure necessary to prevent serious injury and to facilitate adjustment and did not explain whether imports from countries excluded from the application of the measure were also excluded from the investigation.

Chile also alleges that Ecuador did not explain the method by which it will administer and allot quota shares among supplying countries, did not specify the critical circumstances which justified imposition of the prior provisional measure and was late in notifying the measure to the WTO.

Chile considers that the measure is inconsistent with substantive and procedural obligations in *inter alia* Article XIX:1(a) of GATT 1994 and Articles 2.1, 3.1, 4, 5, 6, 7 and 12 of the Agreement on Safeguards.

5. WT/DS301 – European Communities – Measures Affecting Commercial Vessels

Complaint by Korea. On 3 September 2003, Korea requested consultations with the European Communities concerning certain measures by the EC and its member States in favour of their shipbuilding industry which, according to Korea, are inconsistent with their WTO obligations. These measures are as follows:

- EC Regulation 1177/2002 ("TDM Regulation") and EC Regulation 1540/98, as well as the EC member States' implementing provisions. These measures provide for subsidies in favour of commercial vessels in various forms;
- The provision by the EC and the member States of subsidies in support of commercial vessels built in the EC, in form of (a) operational aid granted on a contractual basis in forms such as grants, export credits, guarantees or tax breaks, (b) restructuring aid, (c) regional or other investment aid, (d) research and development aid, (e) environmental protection aid and (f) insolvency and closure aid.

Korea considered that these measures are in breach of their obligations under the provisions of the WTO Agreements, *inter alia*:

- Articles 1, 2, 3.1, 5(a) and (c), 6.3(a), (b) or (c), 6.4 and 6.5 of the Agreement on Subsidies and Countervailing Measures ("SCM Agreement");
- Articles I:1 and III:4 of GATT 1994; and

- Article 23(1) and (2) of the DSU and Articles 4, 7 and 32(1) of the SCM Agreement.

Concerning the last point, the request states that the TDM Regulation and the member States' implementing measures "have been designed and implemented as unilateral measures seeking redress of a perceived violation of Korea's obligations under the SCM Agreement" and "constitute specific actions against perceived subsidies of another Member". This may refer to the ongoing dispute concerning Korea's own subsidies, on which a panel was established in July 2003 (WT/DS273).

Korea also considered that the above-described measures nullify or impair benefits accruing to Korea under the WTO Agreements, within the meaning of Articles XXIII:1(a) and (b) of GATT 1994 and Article 5(b) of the SCM Agreement.

On 12 September 2003, China requested to join the consultations.

6. WT/DS300 – Dominican Republic – Measures Affecting the Importation of Cigarettes

Complaint by Honduras. On 28 August 2003, Honduras requested consultations with the Dominican Republic concerning its measures which affect the importation of cigarettes.

Honduras' request concerns three types of measures:

- (a) The manner in which the tax base is assessed for purposes of collection of the Selective Tax on Consumption regarding cigarettes, which in Honduras' view creates a less favourable treatment for Honduran cigarettes than that received by like domestic products and by like products imported from third countries. This is inconsistent with the Dominican Republic's obligations under Articles III:2 and I:1 of GATT 1994;
- (b) The requirement that stamps must be affixed on the product inside the territory of the Dominican Republic and under supervision of its tax authorities, which in Honduras' view creates a less favourable treatment for Honduran cigarettes than that received by like domestic products. This is also inconsistent with the Dominican Republic's obligations under Article III:4 of GATT 1994; and,
- (c) The requirement that importers, including importers of cigarettes, post a bond as a pre-requisite for importation, which in Honduras' view creates a "charge" other than a custom duty, and is therefore inconsistent with the Dominican Republic's obligations under Article I:1(b) of GATT 1994. In another sense, it is also a "restriction" on the importation of cigarettes and therefore inconsistent with the Dominican Republic's obligations under Article XI:1 of GATT 1994.

Honduras claimed that such measures unduly restrict its exports to Dominican Republic and nullify or impair benefits accruing to Honduras under the WTO Agreement.

7. WT/DS298 – Mexico – Certain Pricing Measures for Customs Valuation and Other Purposes

Complaint by Guatemala. On 22 July 2003, Guatemala requested consultations with Mexico concerning certain Mexican customs rules, procedures and administrative practices which impose officially established prices for customs valuation and other purposes. Guatemala also contested the Mexican authorities' practice of requiring a deposit or bond to guarantee the observance of these officially established prices.

In Guatemala's view, Mexican customs rules, procedures and administrative practices at issue are inconsistent with Mexico's obligations under the following WTO provisions:

- (a) Articles I, II, VII and X of GATT 1994;
- (b) Articles 1, 2, 3, 4, 5, 6, 7, 8, 12, 13, 15, 16 and 22 of the Customs Valuation Agreement;
- (c) Article 4 of the Agriculture Agreement;
- (d) Article XVI:4 of the WTO Agreement.

8. WT/DS297 – Croatia – Measure Affecting Imports of Live Animals and Meat Products

Complaint by Hungary. On 9 July 2003, Hungary requested consultations with Croatia regarding certain measures taken by Croatia affecting imports of live animals and meat products.

According to Hungary, the import measure was introduced by Croatia on 5 June 2003 without notification to the SPS Committee. The measure is alleged to aim at the prevention of the spread of the BSE disease. Apart from ruminants, it applies to all other animals of any economic significance such as live pigs, poultry and fish and products thereof. The measure prohibits imports unless there is a prohibition in the exporting country on feeding animals with feed containing animal protein (fish meal is also not allowed to be used under all circumstances).

Hungary asserts that the measure introduced by Croatia is not based on any scientific principle linked to the prevention of the spread of BSE. Hungary considers that there is no scientific basis for applying such feeding requirements to animals other than ruminants. The Hungarian authorities are unaware of any case where BSE was proved to be spread through pigs, poultry or fish and meat thereof. Hungary notes that it is a BSE-free country. Hungary is also not aware of any international standard which would justify such feeding requirements. The Hungarian authorities were not informed of any risk assessment either conducted by the competent Croatian authorities.

In Hungary's view, the measure at issue appears to be inconsistent with Croatia's obligations under the following WTO provisions:

- (a) Articles XI and XX of the GATT 1994;
- (b) Articles 2.2, 2.3, 3.1, 5.1, 5.2, 5.3, 5.6, 6.1, 6.2, 7 and Annex B of the SPS Agreement.

9. WT/DS294 – United States – Laws, Regulations and Methodology for Calculating Dumping Margins ("Zeroing")

Complaint by the European Communities. On 12 June 2003, the European Communities requested consultations with the United States concerning a methodology used by the US, among others, in the calculation of dumping margins, known as "zeroing". The "zeroing" methodology, generally speaking, involves treating specific price comparisons which do not show dumping as zero values in the calculation of a weighted average dumping margin.

The request concerns specific provisions of the US Tariff Act of 1930 and the Department of Commerce implementing regulation as well as US Department of Commerce methodology and its determinations in specific cases involving products imported from the EC.

The EC has indicated specific aspects of the zeroing methodology that it will raise in the consultations, including the way in which it is applied in calculating dumping margins, its impact on determinations of injury, its impact in cases which would otherwise be *de minimis*, and the level of the dumping margins in 21 specific US anti-dumping cases.

The EC has attached to its request details of those specific cases, alleging that in each of them the US used zeroing methodology. Most of the products in these cases were steel. The EC asserts that in each case the dumping margin without zeroing would have been lower, *de minimis* or negative.

In the EC's view, the Act, regulation, methodology and these specific determinations appear to be inconsistent with the United States' obligations under the following WTO provisions:

- (a) Articles 1, 2.4, 3, 5.8, 9.3, 9.5, 11, 18.3 and 18.4 of the *Anti-Dumping Agreement*;
- (b) Articles VI:1 and VI:2 of the *GATT 1994*;
- (c) Article XVI:4 of the *WTO Agreement*.

On 27 June 2003, India and Korea requested to join the consultations. On 30 June 2003, Japan and Mexico requested to join the consultations.

On 8 September 2003, the European Communities requested further consultations with the United States. The EC wished to add ten more cases to the list of specific cases.

The EC indicated specific aspects of the zeroing methodology that it will raise in the additional consultations, including the way in which it is applied in calculating dumping margins, its impact on determinations of injury, its impact in cases which would otherwise be *de minimis*, and the level of the dumping margins in specific US anti-dumping cases.

In the EC's view, these additional specific determinations appear to be inconsistent with the US obligations under the same WTO provisions mentioned above.

On 25 September 2003, Mexico requested to join the consultations.

10. WT/DS289 – Czech Republic– Additional Duty on Imports of Pig Meat from Poland.

Complaint by Poland. On 14 April 2003, Poland requested consultations with the Czech Republic concerning the additional duty levied by the Czech Republic on imports of pig meat from Poland. According to Poland, the Czech Republic published on 25 March 2003 a Decree dated 12 March 2003 which provides that customs duties levied under tariff heading 0203 11 10 on pig meat imported from Poland shall be 50% above the Czech Republic's tariff binding for that tariff heading, or 23 CZK/kg, whichever is higher. Poland also claims that this measure appears to be subject to a minimum import price as the aforementioned duty rate does not apply to imports with declared customs value exceeding 36 CZK/kg. No other sources of imports have been mentioned in the Decree, which, in Poland's view, seems to imply that the restrictions introduced by this action apply exclusively to Poland and, as such, are discriminatory in their purpose, nature and effect.

Poland claims that this measure appears to be inconsistent with the obligations of the Czech Republic under Article 4 of the WTO Agreement on Agriculture and constitutes a

nullification and impairment of the rights and benefits, within the meaning of Article XXIII of GATT 1994, that Poland is entitled to enjoy, *inter alia*, under GATT Articles I and II.

Poland also claims that the institution and implementation of the said measure had not been preceded by any bilateral notice or consultations, with the Decree taking effect on the date of its publication.

11. WT/DS288 – South Africa – Definitive Anti-Dumping Measures on Blanketing from Turkey

Complaint by Turkey. On 10 April 2003, Turkey requested consultations with South Africa concerning its definitive anti-dumping measures on imports of blanketing in roll form from Turkey. These measures were imposed further to an investigation by the South African Board on Tariffs and Trade (BTT) into the alleged circumvention of anti-dumping duties on blankets originating in or imported from Turkey.

Turkey claims that: (i) the TBT failed to ensure proper notifications; (ii) the establishment of facts was not proper; and (iii) the TBT's evaluation of these facts was not unbiased and objective, particularly in relation to the initiation and the conduct of the investigation as well as the imposition of the anti-dumping duty.

Turkey claims that South Africa's measures are in violation of Articles 5.5, 6.1, 6.1.3, 6.2, 6.9, 6.10, 9.2, 9.3 and Article 12.1 of the Anti-Dumping Agreement; and Articles III and X of the GATT 1994.

12. WT/DS284 – Mexico – Certain Measures Preventing the Importation of Black Beans from Nicaragua

Complaint by Nicaragua. On 17 March 2003, Nicaragua requested consultations with Mexico regarding certain measures imposed by Mexico, which prevent the importation of black beans from Nicaragua. These measures include:

- The administration of the procedures set out in Official Standard 006-FITO-95 and Official Standard 028-FITO-95, including the refusal of the competent Mexican authorities to furnish importers with the document containing the phytosanitary requirements necessary for the importation of black beans from Nicaragua;
- The more favourable treatment that the competent Mexican authorities accord in the administration of the above procedures to like products originating in countries other than Nicaragua;
- The failure to publish the specific phytosanitary requirements for the importation of black beans from Nicaragua; and
- The failure to publish the rules, requirements and procedures concerning the tender for the quota allocation of black beans from Nicaragua.

In Nicaragua's view, the above measures are inconsistent with Mexico's obligations under Articles I:1, X:1, X:3(a), XI:1 and XIII:1 of the GATT 1994 and Articles 1.2, 1.3, 1.4(a) and 2.2(a) of the Licensing Agreement. In addition, Nicaragua claims that, if the above measures are sanitary or phytosanitary measures as defined in the SPS Agreement, they would also be inconsistent with Articles 2.1, 2.2, 2.3, 5.1, 7 and paragraph 1 of Annex B of the SPS Agreement.

On 27 March 2003, the United States requested to join the consultations. On 28 March 2003, Canada requested to join the consultations.

13. WT/DS283 – European Communities – Export Subsidies on Sugar

Complaint by Thailand. On 14 March 2003, Thailand requested consultations with the EC concerning EC subsidies for sugar and sugar-containing products accorded under Council Regulation (EC) No. 1260/2001 of 19 June 2001 on the European Communities' common organization of the markets in the sugar sector¹ and other EC related legislation and administrative policies ("EC sugar regime"). Australia and Brazil also filed complaints on the same matter (WT/DS265 and WT/DS266 respectively).

According to Thailand:

- The EC sugar regime accords imported sugar a less favourable treatment than that accorded to domestic sugar and provides for subsidies contingent upon the use of domestic over imported products;
- The EC sugar regime accords export subsidies above its reduction commitment levels specified in Section II of Part IV of the EC's Schedule to the sugar produced in excess of its production quotas (so-called C sugar);
- The EC provides export subsidies (known as "export refunds") that cover the difference between the world market price and the high prices in the EC for the products in question, thus enabling those products to be exported.

Thailand considers that the above subsidies are inconsistent with the EC's obligations under Article III:4 of GATT 1994, Articles 3.1(a), 3.1(b) and 3.2 of the SCM Agreement and Articles 3.3, 8, 9.1 and 10.1 of the Agreement on Agriculture. On 20 March 2003, Mauritius requested to join the consultations as third party.

On 9 July 2003, Thailand requested the establishment of a panel. At its meeting on 21 July 2003, the DSB deferred the establishment of a panel.

14. WT/DS279 – India – Import Restrictions Maintained under the Export and Import Policy 2002-2007

Complaint by the European Communities. On 23 December 2002, the European Communities requested consultations with India concerning import restrictions maintained by India under its Export and Import Policy 2002-2007 with respect to particular products of concern to the European Communities.

The European Communities considered that these import restrictions may constitute an infringement of, in particular but not necessarily exclusively, the following WTO provisions:

- Articles III, X and XI of GATT 1994;
- Article 4.2 of the Agreement on Agriculture;
- Articles 1, 2 and 3 of the Agreement on Import Licensing Procedures;
- Articles 2, 3, 5, 7 and 8 of the Agreement on Sanitary and Phytosanitary Measures;
- Article 2 of the Agreement on Technical Barriers to Trade.

According to the EC, the import restrictions at issue cannot be justified under Articles XX or XXI of GATT 1994.

On 17 January 2003, the US requested to join the consultations. On 31 January 2003, India accepted the request of the US.

¹ Published in the Official Journal of the European Communities on 30 June 2001 (L 178/1-45)

15. WT/DS278 – Chile – Definitive Safeguard Measure on Imports of Fructose

Complaint by Argentina. On 20 December 2002, Argentina requested consultations with Chile concerning a definitive safeguard measure on imports of certain kinds of fructose. Chile imposed the measure on 19 November 2002 for a period of one year backdated to 30 July 2002, at a rate of 14% *ad valorem*.

Argentina alleges that Chile's safeguard measure violates Article XIX:1(a) of GATT 1994 and Articles 2.1, 3.1, 3.2, 4.1(b), 4.1(c), 4.2(a), 4.2(b), 5.1, 7.1 and 7.5 of the Safeguards Agreement, for the following reasons:

- there were no unforeseen developments which justified the measure;
- the investigation was not based on a like or directly competitive product;
- there was no determination of an increase in imports;
- the injury factors did not justify the determination of a threat of serious injury;
- there was no objective determination of a causal link between the increase in imports and the threat of serious injury;
- the investigating authorities' report was not published and did not contain findings and reasoned conclusions on all pertinent issues of fact and law;
- the measure is applied beyond the permissible extent; and
- Chile reapplied the measure before the end of the minimum permitted non-application period.

16. WT/DS275 – Venezuela – Import Licensing Measures on Certain Agricultural Products

Complaint by the United States. On 7 November 2002 the United States requested consultations with Venezuela concerning Venezuelan import licensing systems and practices that restrict agricultural imports from the United States. According to the United States, Venezuela has established import licensing requirements for numerous agricultural products, including corn, sorghum, dairy products (for example, cheese, whey, whole milk powder, and non-fat dry milk), grapes, yellow grease, poultry, beef, pork, and soybean meal.

The United States claimed that Venezuela appears to have established a discretionary import licensing regime for the above products. It further claimed that, through its import licensing practices, Venezuela has failed to establish a transparent and predictable system for issuing import licenses and has severely restricted and distorted trade in these goods.

The United States alleges that Venezuela's import licensing systems and practices appear to be inconsistent with Article 4.2 of the Agreement on Agriculture; Articles III, X, XI, and XIII of GATT 1994; Article 2.1 of the TRIMs Agreement, and Articles 1.4, 3.2, 3.5, 5.1, 5.2, and 5.3 of the Import Licensing Agreement. Venezuela's measures also appear to nullify or impair the benefits accruing to the United States directly or indirectly under the cited agreements.

On 20 November 2002, the EC and Canada requested to join the consultations. On 21 November 2002, New Zealand and Chile requested to join the consultations. On 22 November 2002, Argentina and Colombia requested to join the consultations. On 25 November 2002, Venezuela informed the DSB that it had accepted the requests of Argentina, Canada, Chile, the EC and New Zealand to join the consultations.

17. WT/DS274 – United States – Definitive Safeguard Measures on Imports of Certain Steel Products

Complaint by Chinese Taipei. On 1 November 2002, Chinese Taipei requested consultations with the United States with regard to safeguard measures on steel imposed by the United States on imports of certain steel products. These measures are currently been reviewed by a Panel in the joint cases WT/DS248, WT/DS249, WT/DS251, WT/DS252, WT/DS253, WT/DS254, WT/DS258, WT/DS259. Chinese Taipei is a third party in these proceedings.

This dispute concerns the definitive safeguard measures imposed by the United States in the form of an increase in duties on imports of certain flat steel, hot-rolled bar, cold-finished bar, rebar, certain tubular products, carbon and alloy fittings and flanges, stainless steel bar, stainless steel rod, tin mill products and stainless steel wire, and in the form of a tariff rate quota on imports of slabs. These measures were published in the Proclamation 7529, dated 5 March 2002 (Federal Register Vol. 67, No 45 of 7 March 2002). Chinese Taipei considers that these measures are in violation of the United States obligations under Articles I:1 and XIX:1(a) of the GATT 1994 and Articles 2.1, 2.2, 3.1, 4.1(c), 4.2(a), 4.2(b) and 5.1 of the Agreement on Safeguards.

On 21 November 2002, Japan requested to join the consultations. The United States informed that DSB that it accepted the request of Japan to join the consultations.

18. WT/DS272 – Peru – Provisional Anti-Dumping Duties on Vegetable Oils from Argentina

Complaint by Argentina. On 21 October 2002, Argentina requested consultations with Peru on its anti-dumping investigation on imports of sunflower and soja vegetable oils and their mixtures originating in Argentina (Resolution No. 016-2002-CDS-INDECOPI); and its imposition of provisional anti-dumping duties on those imports as a result of the said investigation (Resolution No. 040-2002-CDS-INDECOPI). Argentina considered that both the on-going investigation and the provisional determination of the existence of dumping, injury and causal link which led to the imposition of provisional anti-dumping duties, are inconsistent with Peru's obligations under Articles 5.2, 5.3, 5.8, 4.1(ii), 6.8 and Annex II, 2.2, 2.4, 3.1, 3.2, 3.4, 3.5, 7, 12.2.1 of the Anti-Dumping Agreement and Article VI of the GATT 1994.

As regards the measure imposing provisional anti-dumping duties, Argentina considered that it is also inconsistent with Peru's obligations under Articles 5.2, 5.3, 5.8, 6.8 and Annex II, 2.2, 2.4, 3.1, 3.2, 3.4, 3.5, 7, 12.2.1 of the Anti-Dumping Agreement and Article VI of the GATT 1994.

19. WT/DS271 – Australia – Certain Measures Affecting the Importation of Fresh Pineapple

Complaint by the Philippines. On 18 October, the Philippines requested consultations with Australia on certain measures affecting the importation into Australia of fresh pineapple, which include, but are not limited to:

- Section 64 of the *Quarantine Proclamation 1998* promulgated under the *Quarantine Act 1908*;
- Regulations, requirements and procedures issued pursuant thereto, including Plant Biosecurity Policy Memorandum 2002/45 (requiring that fresh pineapple fruit from The Philippines, the Solomon Islands, Sri Lanka, and Thailand shall, among other

requirements, be de-crowned and subjected to pre-shipment methyl bromide fumigation as conditions for importation into Australia);

- Amendments to any of the foregoing; and
- Their application.

The Philippines considered that these measures are inconsistent with the obligations of Australia under the GATT 1994 and the SPS Agreement. The relevant provisions of these agreements include, but are not limited to Articles XI and XIII of the GATT 1994, and Articles 2, 3, 4, 5, 6 and 10 of the SPS Agreement.

On 1 November 2002, the EC and Thailand requested to join the consultations. On 7 November 2002, Australia informed the DSB that it had accepted the requests of the EC and Thailand to join the consultations.

20. WT/DS263 – European Communities – Measures Affecting Imports of Wine

Complaint by Argentina. On 4 September 2002, Argentina requested consultations with the EC regarding several EC regulations and other mandatory provisions on oenological practices and on trade in wine.

Argentina's complaint is in respect of Council Regulation (EC) No. 1493/1999 and Commission Regulation (EC) No. 883/2001, which relate to the administration and the common organisation of the market in wine, the establishment of authorized oenological practices and the regulation of trade between the countries of the EU and third countries.

Argentina considered that these measures are inconsistent with Articles 2 and 12 of the TBT Agreement, Articles I:1 and III:4 of GATT 1994 and Article XVI.4 of the WTO Agreement.

21. WT/DS262 – United States – Sunset Reviews of Anti-Dumping and Countervailing Duties on Certain Steel Products from France and Germany

Complaint by the European Communities. On 25 July 2002 the EC requested consultations with the US regarding anti-dumping and countervailing duties imposed by the US, further to sunset review proceedings, on imports of (1) corrosion-resistant carbon steel flat products ("corrosion resistant steel") from France (A-427-808 and C-427-810) and Germany (A-428-815 and C-428-817) and (2) cut-to-length carbon steel plate ("cut-to-length steel") from Germany (A-428-816 and C-428-817). The EC refers in particular to:

- the final results of the sunset reviews by the US Department of Commerce (the "DOC") of the anti-dumping duty orders on corrosion-resistant steel from France and from Germany and of the countervailing duty order on corrosion-resistant steel from France;
- the determinations of the US International Trade Commission (the "ITC") on the sunset reviews of the anti-dumping and countervailing duties on cut-to-length steel from Germany and on corrosion resistant steel from France and Germany; and
- certain provisions and procedures contained in Sections 751 (c) and 752 of the Tariff Act of 1930 (the "Act"), in the implementing regulations and in the Policy Bulletin issued by the DOC.

In its request for consultations, the EC considered that these determinations resulting in the continuation of the duties are erroneous and based on deficient rulings, procedures and provisions pertaining to the Act and related regulations. The EC considered that the above

determinations are not in conformity with the obligations of the US under Articles 1, 2, 3, 5, 6 (including annex II), 11.1, 11.3, 11.4, 18.3 and 18.4 of the Anti-Dumping Agreement; Articles 10, 11, 12, 15, 21.1, 21.3, 21.4, 32.3 and 32.5 of the SCM Agreement; Articles VI and X of the GATT 1994; and Article XVI:4 of the WTO Agreement.

On 7 and 8 August 2002 respectively Canada and Japan requested to join the consultations.

22. WT/DS256 – Turkey – Import Ban on Pet Food from Hungary

Complaint by Hungary. On 3 May 2002, Hungary requested consultations with Turkey. This request was in respect of Turkey's import ban on pet food from Hungary. Hungary claimed that this import ban, which applies to any European country from the beginning of 2001, is imposed with the declared intention to be protected against the spread of BSE (Bovine Spongiform Encephalopathy). Hungary submitted that, since Hungary is a BSE-free country, the danger of alleged cross-infection does not seem to have any scientific basis. Hungary also noted that its pet food is used exclusively for the feeding of cats and dogs. In addition, Hungary submitted that there was neither official publication of the Turkish regulation imposing the ban, nor notification of it to the relevant WTO Committee.

Hungary considered that the import ban appears to be inconsistent with Turkey's obligations under Article XI of the GATT 1994; Articles 2.2, 2.3, 5.1, 5.2, 5.6, 6.1, 6.2 and 7 and Annex B of the SPS Agreement; Article 14 of the Agreement on Agriculture.

Hungary also claimed that Turkey's measure appears to nullify and impair the benefits accruing to Hungary directly or indirectly under the said agreements.

23. WT/DS247 – United States – Provisional Anti-Dumping Measure on Imports of Certain Softwood Lumber from Canada

Complaint by Canada. On 6 March 2002, Canada requested consultations under Article 4.8 of the DSU (urgency procedure) with the United States regarding an anti-dumping measure applied by the US to imports of softwood lumber from Canada.

Specifically, Canada expressed concern about three aspects of the US anti-dumping measure. Canada considered that:

- the initiation of the investigation was, therefore, inconsistent with Articles 5.2 and 5.3 of the AD Agreement and, therefore, the application of provisional measures was inconsistent with Article 7.1 of the AD Agreement;
- the preliminary dumping determination was inconsistent with Articles 2.1 and 2.2 of the AD Agreement; and
- the "zeroing" methodology applied by the US in the preliminary investigation was inconsistent with Article 2.4.2 of the AD Agreement.

The US, although accepting the request for consultations, however did not accept that this was a case of urgency for the purpose of Article 4.8 of the DSU.

24. WT/DS242 – European Communities – Generalized System of Preferences

Complaint by Thailand. On 7 December 2001, Thailand requested consultations with the EC under Article XXIII of GATT 1994 in respect of measures under the EC's Generalized

System of Preferences ("GSP") scheme. The GSP scheme was at the time implemented through Council Regulation (EC) no. 2820/98 of 21 December 1998 applying a multiannual scheme of generalized tariff preferences for the period of 1 July 1999 to 31 December 2001, and was expected to continue to be implemented through the Amended Proposal for a Council Regulation applying a scheme of generalized tariff preferences for the period 1 January 2002 to 31 December 2004 dated 14 November 2001.

Thailand considered that certain measures under the EC's GSP adversely affect imports into the EC of goods originating in Thailand. In particular, Thailand claimed that, through its GSP scheme as implemented, the EC failed to carry out its obligations under Article I of GATT 1994 and the Enabling Clause, as incorporated into GATT 1994.

According to Thailand, the benefits accruing to it directly or indirectly under the WTO Agreement are being nullified or impaired as a result of this alleged failure by the EC to carry out its obligations under the WTO Agreement. Thailand also made a non-violation claim to the effect that the application by the EC of the above-mentioned measures nullifies or impairs the benefits accruing to Thailand directly or indirectly under the WTO Agreement pursuant to Article XXIII:1(b) of GATT 1994.

Costa Rica (on 17 December 2001), Guatemala (on 19 December 2001), Honduras and Nicaragua (on 20 December 2001), and Colombia (on 24 December 2001) requested to be joined in the consultations as third parties but not admitted because these are consultations under Article XXIII. Colombia raised the matter under "other business" in the DSB of 18 January 2002. It admitted that it was not *de jure* entitled to be joined in consultations under Article XXIII, but stated that this raised the issue of "co-defendants" under the DSU again.

25. 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 their original request for consultations be cancelled and replaced 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, 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 and in Section 771(35) of the Tariff Act of 1930.

According to Brazil, the above methodologies are inconsistent with Articles 2.4.2, 5.8, 9.3, 11.1, 11.2 and 18.3 of the AD Agreement.

On 28 September 2001, Thailand requested to join the consultations. On 19 November 2001, the EC requested to join the consultations.

26. 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.

27. 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 "*fósforos (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.

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

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

29. 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 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.

30. 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.

Argentina claimed that the 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.

31. 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.

The EC considered that the final results of the sunset review are in breach of Articles 5.8, 11.1 and 11.3 of the AD Agreement. The EC also considered that the initiation of the sunset review is inconsistent with Articles 11.1, 11.3, and 18.4 of the Anti-Dumping Agreement and with Article XVI.4 of the WTO Agreement.

32. 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 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".

33. 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. The TRQ was made applicable 5 days after the date of adoption by the DSB of the panel report on *US – Wheat Gluten* (WT/DS166) stating that the US safeguard measure on wheat gluten was incompatible with the WTO Agreements.

According to the US the TRQ does not satisfy the requirements of the Safeguards Agreement for a Member to suspend concessions or other obligations and, therefore, 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.

34. 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 vegetable 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 considered 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.

35. 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 US 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 US 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.

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 *US –Lead and Bismuth II*.

36. 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, with Articles 5.2, 5.3, 5.8, 6.8, 7.1(i), 7.1(ii) and Annex II of the AD Agreement.

37. 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.

38. 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 the so-called "graduation" mechanism, which progressively and selectively reduces or eliminates preferences granted to specific products and/or beneficiary countries under the GSP scheme; and 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.

According to Brazil, 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 Enabling Clause and under Article I of GATT 1994.

39. 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:

- the initiation of the investigation;

- the conduct of the investigation, including the evaluation, findings and determinations of dumping and injury;
- the evaluation, findings and determinations of the causal link between dumping and injury;
- the imposition of the anti-dumping duty.

Brazil considered that Turkey has acted inconsistently with Article VI of the GATT 1994 and Articles 2, 3, 5, 6, 12 and 15 of the Anti-Dumping Agreement.

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

Complaint by Thailand. On 22 September 2000, Thailand requested consultations with Egypt 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.

41. 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.

In the view of the US the measures are inconsistent with Mexico's obligations under Articles 2.2, 2.3, 3, 5.1, 5.6, 7 and 8 of the SPS Agreement; Article 4.2 of the Agriculture Agreement; Articles 2 and 5 of the TBT Agreement; and Articles III:4 and XI:1 of the GATT 1994.

42. 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.

43. 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; and
- 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.

44. 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.

45. 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.

46. 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.

47. 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.

48. 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

- 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",
- proceedings undertaken as part of a preliminary hearing prior to the initiation of the anti-dumping investigation, and
- 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.

49. 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.

50. 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.

51. 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.

52. 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;
- 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; and
- 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.

53. 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).

54. 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; and
- 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.

55. 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; and
- 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.

56. 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.

57. 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.

58. 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.

59. 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.

60. 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.

61. 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.

62. 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.

63. 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.

64. 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; and
- 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.

65. 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.

66. 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.

67. 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; and
- 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.

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

Complaint by India. On 3 August 1998, India requested consultations with the EC 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; and
- 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.

69. 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.

70. 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.

71. 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.

72. 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.

73. 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.

74. 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.

75. 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.

76. 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.

77. 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.

78. 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.

79. 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.

80. 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.

81. 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.

82. 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.

83. 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.

84. 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.

85. 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.

86. 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).

87. 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.

88. 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.

89. 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.

90. 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.

91. 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.

92. 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.

93. 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.

94. 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.

95. 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.

96. 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 these measures violate Articles 9 and 11 of the Anti-Dumping Agreement.

97. 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).

98. 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.

99. 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).

100. 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).

101. 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.

102. 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.

103. 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).

104. 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.

105. 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.

106. WT/DS16 – European Communities – Regime for the Importation, Sale and Distribution of Bananas

Complaint by Guatemala, Honduras, Mexico and the United States. On 28 September 1995, Guatemala, Honduras, Mexico and the United States requested consultations with the European Communities concerning the EC regime for the importation, sale and distribution of bananas. The EC measures are alleged to be inconsistent with Articles I, II, III, X and XIII of GATT 1994, Articles 1 and 3 of the Import Licensing Agreement, and Articles II, XVI and XVII of GATS.

On 3 October 1995, St. Lucia requested to join the consultations. On 11 October 1995, Costa Rica requested to join the consultations. On 12 October 1995, Colombia and the Dominican Republic requested to join the consultations. On 13 October 1995, Venezuela and Nicaragua requested to join the consultations.

107. 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).

II. ACTIVE PANELS

A. ACTIVE PANELS

1. WT/DS164 – Argentina – Measures Affecting Imports of Footwear

Complaint by the United States. On 1 March 1999, the US requested consultations with Argentina in respect of certain measures implemented by Argentina affecting imports of footwear. The US 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; and
- 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).

2. WT/DS174, WT/DS290 – European Communities – Protection of Trademarks and Geographical Indications for Agricultural Products and Foodstuffs

Complaints by the United States (WT/DS174) and Australia (WT/DS290).

On 1 June 1999, the US requested consultations with the EC in respect of the alleged lack of protection of trademarks and geographical indications (GIs) 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.

On 4 April 2003, the US sent an additional request for consultations concerning the protection of trademarks and GIs for agricultural products and foodstuffs in the EC. This request does not replace but rather supplements the 1999 request. The measures concerned are EC Regulation 2081/92, as amended, and its related implementing and enforcement measures (the "EC Regulation"). According to the US, the EC Regulation limits the GIs that the EC will protect and limits the access of nationals of other Members to the EC GI procedures and protections provided under the Regulation. The US claims that the EC Regulation appears to be inconsistent with Articles 2, 3, 4, 16, 22, 24, 63 and 65 of the TRIPS Agreement and Articles I and III:4 of the GATT 1994.

On 17 April 2003, Australia requested consultations with the EC concerning the protection of trademarks and to the registration and protection of geographical indications for foodstuffs and agricultural products in the EC. The measures at issue include Council Regulation (EEC) No 2081/92 of 14 July 1992 *on the protection of geographical indications and designations of origin for agricultural products and foodstuffs* and related measures ("the EC measure").

According to Australia:

- the EC measure seems not to accord immediately and unconditionally to the nationals and/or products of each WTO Member any advantage, favour, privilege of immunity granted to the nationals and/or like products of any other WTO Member,
- the EC measure seems not to accord to the nationals and/or products of each WTO Member treatment no less favourable than that it accords to its own nationals and/or like products of national origin,
- the EC measure may diminish the legal protection for trademarks,
- the EC measure may not be consistent with the EC's obligation to provide the legal means for interested parties to prevent misleading use of a geographical indication or any use which constitutes an act of unfair competition within the meaning of Article 10bis of the Paris Convention (1967),
- the EC may not have met its transparency obligations in respect of the measure, and
- the EC measure may be more trade-restrictive than necessary to fulfil a legitimate objective, taking account of the risks non-fulfilment would create.

Australia claims that the EC measure appears to be inconsistent with the EC's obligations pursuant to Articles 1, 2, 3, 4, 16, 20, 22, 24, 41, 42, 63 and 65 of the TRIPS Agreement, Articles I and III of GATT 1994, Article 2 of the TBT Agreement and Article XVI:4 of the WTO Agreement.

In dispute WT/DS174, Sri Lanka Australia, Hungary, India, Argentina, Bulgaria, Cyprus, the Czech Republic, Malta, Slovenia, Romania, the Slovak Republic and Turkey requested to join the additional consultations. The EC informed the DSB that it had accepted the requests of Argentina, Australia, Bulgaria, Cyprus, the Czech Republic, Hungary, India, Malta, Mexico, New Zealand, Romania, the Slovak Republic, Slovenia, Sri Lanka and Turkey to join the consultations.

In dispute WT/DS290, Bulgaria, Cyprus, the Czech Republic, Malta, the United States, Hungary and Slovenia, New Zealand, Romania, the Slovak Republic, Chinese Taipei and Turkey, Argentina, Colombia and Mexico requested to join the consultations. The EC informed the DSB that it has accepted the requests of Argentina, Bulgaria, Colombia, Cyprus, the Czech Republic, Hungary, Malta, Mexico, New Zealand, Romania, the Slovak Republic, Slovenia, Chinese Taipei, Turkey and the United States to join the consultations.

On 18 August 2003, the United States and Australia requested separately the establishment of a panel. At its meeting on 29 August 2003, the DSB deferred the establishment of the panels. Further to second requests to establish a panel from the US and Australia, the DSB established a single panel at its meeting on 2 October 2003. Australia, Colombia, Guatemala, India, Mexico, New Zealand, Norway, Chinese Taipei and Turkey reserved their third-party rights. On 6 October, China reserved its third-party right. On 10 October, Argentina and Canada reserved their third-party rights. On 13 October, Brazil reserved its third-party rights.

3. 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.

4. 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; and
- 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.

5. 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. The US claimed that Mexico had, 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. On 13 February 2002, the United States requested the establishment of a panel. In particular, the United States claimed that Mexico's measures had:

- failed to ensure that Telmex provides interconnection to US cross-border basic telecom suppliers on reasonable rates, terms and conditions;
- failed to ensure US basic telecom suppliers reasonable and non-discriminatory access to and use of public telecom networks and services;
- did not provide national treatment to US-owned commercial agencies; and
- did not prevent Telmex from engaging in anti-competitive practices.

At its meeting on 8 March 2002, the DSB deferred the establishment of a panel. Further to a second request by the US, the DSB established a panel at its meeting on 17 April 2002. Canada, Cuba, the EC, Guatemala, Japan and Nicaragua reserved their third-party rights to participate in the proceedings. On 18 April 2002, India joined as a third party to the dispute. On 19 April 2002, Honduras joined as a third party to the dispute. On 23 April 2002, Australia joined as a third party. On 24 April 2002, Brazil joined as a third party. On 16 August 2002, the US requested the Director General to determine the composition of the panel. On 26 August 2002, the panel was composed.

On 13 March 2003, the Chairman of the Panel informed the DSB that it would not be possible to complete its work in six months due to the time needed for translation into Spanish and English of all relevant documents and the complexity of the issues involved. The Panel expected to complete its work in August 2003. On 6 August 2003, the Chairman of the Panel informed the DSB that the Panel expected to complete its work in December 2003.

6. 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.

7. WT/DS250 – United States – Equalizing Excise Tax Imposed by Florida on Processed Orange and Grapefruit Products

Complaint by Brazil. On 20 March 2002, Brazil requested consultations with the US concerning the so-called "Equalizing Excise Tax" imposed by the State of Florida on processed orange and grapefruit products produced from citrus fruit grown outside the United States (Section 601.155 Florida Statutes). Brazil indicated that since 1970, the state of Florida had imposed, pursuant to section 601.155 of the Florida Statutes, an "equalizing excise tax" on processed orange and processed grapefruit products, in amounts determined by the Florida Department of Citrus. However, the statute by its terms - Section 601.155(5), Florida Statutes - exempted from the tax products "produced in whole or in part from citrus fruit grown within the United States." In the view of Brazil the incidence of this tax on imported processed citrus products and not on domestic products on its face constituted a violation of Articles II:1(a), III.1 and III:2 of GATT 1994.

Brazil contended that the impact of the Florida equalizing excise tax had been to provide protection and support to domestic processed citrus products and to restrain the importation of processed citrus products into Florida. Since processed citrus products, principally in the form of frozen concentrated orange juice were among Brazil's most significant exports to the United States, Brazil was of the view that the restraint on their importation by the State of Florida constituted a nullification and impairment of benefits accruing to Brazil under GATT 1994. Brazil reserved the right to raise additional factual or legal points related to the aforementioned measure during the course of consultations.

On 16 August 2002, Brazil requested the establishment of the panel. At its meeting on 30 August 2002, 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 1 October 2002. The EC, Mexico and Paraguay reserved their third party rights to participate in the panel proceedings. On 11 October 2002, Chile reserved its third party rights to participate in the panel proceedings.

8. WT/DS260 – European Communities – Provisional Safeguard Measures on Imports of Certain Steel Products

Complaint by the United States. On 30 May 2002, the US requested consultations with the EC with regard to the provisional safeguard measures imposed by the EC on imports of certain steel products, pursuant to Commission Regulation (EC) No 560/2002 of 27 March 2002 (OJ L 85/1, 28 March 2002) as well as any amendments thereto or extensions thereof, and any related measures.

The US contended that these measures appear to be inconsistent with the EC's obligations under the provisions of GATT 1994 and of the Agreement on Safeguards, in particular, Articles 2.1, 2.2, 3, 4.1, 4.2, 6 and 12.1 of the Agreement on Safeguards and Article XIX:1(a) of the GATT 1994.

On 7 June 2002, Japan requested to join the consultations.

On 19 August 2002, the US requested the establishment of a panel. In particular the US claimed that the EC safeguard measures are inconsistent with the provisions listed in the request for consultations. In addition, the US claimed that Article 12.4 of the Safeguards Agreement was also violated.

At its meeting on 30 August 2002, the DSB deferred the establishment of a panel. At its meeting on 16 September 2002, the DSB established a panel. Egypt, Japan and Korea reserved their third party rights. On 23 September 2002, Turkey reserved its third party rights.

9. WT/DS264 – United States – Final Dumping Determination on Softwood Lumber from Canada

Complaint by Canada. On 13 September 2002, Canada requested consultations under Article 4.8 of the DSU (urgency procedure) with the US concerning the final affirmative determination of sales at less than fair value (dumping) with respect to certain softwood lumber products from Canada (Inv. No. A-122-838) announced by the US Department of Commerce (DOC) on 21 March 2002 pursuant to section 735 of the *Tariff Act of 1930*, as amended on 22 May 2002 (Final Determination). The measures at issue include the initiation of the investigation, the conduct of the investigation and the Final Determination.

Canada considered these measures and, in particular, the determinations made and methodologies adopted therein by the DOC under authority of the United States *Tariff Act of 1930*, to violate Articles 1, 2.1, 2.2, 2.4, 2.6, 5.1, 5.2, 5.3, 5.4, 5.8, 6.1, 6.2, 6.4, 6.9 and 9.3 of the *Anti-Dumping Agreement* and Articles VI and X:3(a) of the GATT 1994.

On 6 December 2002, Canada requested the establishment of a panel. At its meeting of 19 December 2002, the DSB deferred the establishment of a panel. Further to a second request by Canada, a panel was established by the DSB at its meeting on 8 January 2003. The EC

and India reserved their third-party rights. On 15 January 2003, Japan reserved its third-party rights. On 25 February 2003, the Panel was composed.

On 25 August 2003, the Chairman of the Panel informed the DSB that due to the complexity of the matter, the Panel would not be able to complete its work in six months. The Panel expected to issue its final report to the parties in December 2003. On 2 December 2003, the Chairman of the Panel informed the DSB that the Panel expected to issue its final report to the parties in February 2004.

10. WT/DS265, WT/DS266, WT/DS283 – European Communities – Export Subsidies on Sugar

Complaints by Australia (WT/DS265), Brazil (WT/DS266) and Thailand (WT/DS283). On 27 September 2002, Australia and Brazil requested consultations with the European Communities concerning the export subsidies provided by the EC in the framework of its Common Organisation of the Market for the sugar sector. The requests concerned Council Regulation (EC) No. 1260/2001 of 19 June 2001 on the EC's common organization of the markets in the sugar sector, and all other legislation, regulations, administrative policies and other instruments relating to the EC regime for sugar and sugar containing products including the rules adopted pursuant to the procedure referred to in Article 42(2) of Council Regulation (EC) No. 1260/2001, and any other provision related thereto. On 14 March 2003, Thailand requested consultations with the European Communities on the same matter.

Australia contended that the EC provides under the above measures export subsidies in excess of the export subsidy commitments that it has specified in Section II of Part IV of its Schedule of Concessions, in relation to "C sugar" and an amount of 1.6 million tons of sugar per year and possibly also sugar in incorporated products. It further alleges that the EC may also be paying a higher per unit subsidy on incorporated products than on the primary product. In addition, under the EC sugar regime refiners are paid a subsidy, in the form of the intervention price, for refining EC sugar which is not available to imported sugar, thus affording less favourable treatment to imported products.

According to Australia, the regulation and related instruments and measures taken thereunder appear to be inconsistent with, at least:

- (a) Articles 3.3, 8, 9.1, 10.1 and 11 of the Agreement on Agriculture,
- (b) Articles 3.1 and 3.2 of the SCM Agreement; and
- (c) Articles III:4 and XVI of GATT 1994.

According to Brazil, the EC provides, under Council Regulation (EC) No. 1260/2001, export subsidies for sugar and sugar containing products above its reduction commitment levels specified in Section II of Part IV of its Schedule of Concessions. Brazil explained that the EC intervention price system for sugar guarantees a high price for the sugar that is produced within certain production quotas (A and B quotas). Sugar produced in excess of these quotas (so-called C sugar) cannot be sold internally in the year in which it is produced: it must be exported or carried over to fulfil the following year's production quotas. Under the EC's common organization of the sugar market and its regulatory framework, exporters of C sugar are able to export C sugar at prices below its total cost of production.

In addition, according to the EC's Schedule for sugar and the agricultural notifications submitted by the EC to the WTO for marketing years 1995/1996 through 2000/2001, the EC provides export subsidies in excess of its commitments to approximately 1.6 million tons of sugar per year. The export subsidies provided by the EC (referred to in the EC Council Regulation (EC) No. 1260/2001 as "export refunds") cover the difference between the world

market price and the high prices in the Community for the products in question, thus enabling those products to be exported.

Brazil also believed that the EC sugar regime accords less favourable treatment to imported sugar and is thus in violation of Article III:4 of the GATT 1994.

Brazil claimed that, by providing export subsidies for sugar in excess of its reduction commitment levels the EC is acting inconsistently with at least the requirements of:

- (a) Articles 3.3, 8, 9.1(a) and (c), and 10.1 of the Agreement on Agriculture;
- (b) Articles 3.1(a) and 3.2 of the SCM Agreement; and
- (c) Articles III:4 and XVI of GATT 1994.

According to Thailand:

- The EC sugar regime accords imported sugar a less favourable treatment than that accorded to domestic sugar and provides for subsidies contingent upon the use of domestic over imported products;
- The EC sugar regime accords export subsidies above its reduction commitment levels specified in Section II of Part IV of the EC's Schedule to the sugar produced in excess of its production quotas (so-called C sugar);
- The EC provides export subsidies (known as "export refunds") that cover the difference between the world market price and the high prices in the EC for the products in question, thus enabling those products to be exported.

Thailand considered that the above subsidies are inconsistent with the EC's obligations under:

- (a) Article III:4 of GATT 1994;
- (b) Articles 3.1(a), 3.1(b) and 3.2 of the SCM Agreement; and
- (c) Articles 3.3, 8, 9.1 and 10.1 of the Agreement on Agriculture.

In the dispute WT/DS265, Barbados, Belize, Brazil, Canada, Colombia, Congo, Côte d'Ivoire, Fiji, Guyana, India, Jamaica, Kenya, Madagascar, Malawi, Mauritius, St. Kitts and Nevis, Swaziland and Zimbabwe requested to join the consultations. On 24 October 2002, the EC informed the DSB that it had accepted the requests of Barbados, Belize, Brazil, Canada, Colombia, Congo, Côte d'Ivoire, Fiji, Guyana, India, Jamaica, Kenya, Madagascar, Malawi, Mauritius, St. Kitts and Nevis, Swaziland and Zimbabwe to join the consultations.

In the dispute WT/DS266, Australia, Barbados, Belize, Canada, Colombia, Congo, Côte d'Ivoire, Fiji, Guyana, India, Jamaica, Kenya, Madagascar, Malawi, Mauritius, St. Kitts and Nevis, Swaziland and Zimbabwe requested to join the consultations. On 24 October 2002, the EC informed the DSB that it had accepted the requests of Australia, Barbados, Belize, Canada, Colombia, Congo, Côte d'Ivoire, Fiji, Guyana, India, Jamaica, Kenya, Madagascar, Malawi, Mauritius, St. Kitts and Nevis, Swaziland and Zimbabwe to join the consultations.

On 9 July 2003, Australia, Brazil and Thailand each requested the establishment of a panel. At its meeting on 21 July 2003, the DSB deferred the establishment of the panels. Further to second requests to establish a panel from Australia, Brazil and Thailand, the DSB established a single panel at its meeting on 29 August 2003. Barbados, Canada, China, Colombia, Jamaica, Mauritius, New Zealand, Trinidad and Tobago and the US reserved their third-party rights. On 1 September 2003, Belize, Cuba, Fiji and Guyana reserved their third-party rights. On 2 September 2003, Paraguay and Swaziland reserved their third-party rights. On 5 September 2003, India, Madagascar and Malawi reserved their third-party rights. On 8

September 2003, Australia, Brazil, St. Kitts and Nevis, Tanzania and Thailand reserved their third-party rights. On 26 September 2003, Kenya reserved its third-party right. On 5 November 2003, Côte d'Ivoire reserved its third-party right.

On 15 December 2003, Australia, Brazil and Thailand requested the Director-General to determine the composition of the panel. On 23 December 2003, the Director-General composed the Panel.

11. WT/DS267 – United States – Subsidies on Upland Cotton

Complaint by Brazil. On 27 September 2002 Brazil requested consultations with the US regarding prohibited and actionable subsidies provided to US producers, users and/or exporters of upland cotton, as well as legislation, regulations, statutory instruments and amendments thereto providing such subsidies (including export credits), grants, and any other assistance to the US producers, users and exporters of upland cotton ("US upland cotton industry").

Brazil contended that these measures were inconsistent with the obligations of the US under the following provisions: Articles 5(c), 6.3(b), (c) and (d), 3.1(a) (including item (j) of the Illustrative List of Export Subsidies in Annex I), 3.1(b), and 3.2 of the SCM Agreement; Articles 3.3, 7.1, 8, 9.1 and 10.1 of the Agreement on Agriculture; and Article III:4 of GATT 1994. Brazil was of the view that the US statutes, regulations, and administrative procedures listed above were inconsistent with these provisions as such and as applied.

On 9 October and 11 October 2002, Zimbabwe and India, respectively, requested to join the consultations. On 14 October 2002, Argentina and Canada requested to join the consultations. The United States informed the DSB that it had accepted the requests of Argentina and India to join the consultations.

On 6 February 2003, Brazil requested the establishment of a panel. At its meeting on 19 February 2003, the DSB deferred the establishment of a panel. Further to a second request by Brazil, the DSB established a Panel at its meeting on 18 March 2003. Argentina, Canada, China, Chinese Taipei, the EC, India, Pakistan and Venezuela reserved their third-party rights to participate in the Panel's proceedings. At that meeting, the Chairman of the DSB announced that he continued to consult with Brazil and the US on the issue of appointing a DSB representative to facilitate the information-gathering process, pursuant to the Annex V procedures under the SCM Agreement, which had been invoked by Brazil in its panel request. On 24 March 2003, Benin reserved its third-party rights. On 25 March 2003, Australia reserved its third-party rights. On 26 March 2003, Paraguay reserved its third-party rights. On 28 March 2003, New Zealand reserved its third-party rights. On 4 April 2003, Chad reserved its third-party rights. On 9 May 2003, Brazil requested the Director-General to compose the panel. On 19 May 2003, the Director-General composed the panel.

On 17 November 2003, the Chairman of the Panel informed the DSB that it would not be able to complete its work in six months due to the complexity of the matter and that the Panel expected to issue its final report to the parties in May 2004.

12. WT/DS268 – United States – Sunset Reviews of Anti-Dumping Measures on Oil Country Tubular Goods from Argentina

Complaint by Argentina. On 7 October 2002, Argentina requested consultations with the US regarding the final determinations of the US Department of Commerce ("DOC") and the US International Trade Commission ("ITC") in the sunset reviews of the anti-dumping duty order on OCTG from Argentina, issued on 7 November 2000 (65 Federal Register 66701) and June

2001 (USITC Pub. No. 3434), respectively, and the DOC's determination to continue the anti-dumping duty order on OCTG from Argentina, issued on 25 July 2001 (66 Federal Register 38630).

Argentina considered that general US laws, regulations, policies and procedures related to the administration of sunset reviews and the application of anti-dumping measures were inconsistent either on their face or as applied with Articles 1, 2, 3, 5, 6, 11, 12, and 18 of the Anti-Dumping Agreement; Articles VI and X of the General Agreement on Tariffs and Trade (GATT) 1994; and Article XVI:4 of the WTO Agreement.

Furthermore, Argentina claimed that the sunset review conducted by the DOC is inconsistent with Articles 2, 5, 5.8, 11.3, 11.4, 12.1, and 12.3 of the Anti-Dumping Agreement. It also claimed that the sunset review conducted by the ITC was inconsistent with Articles 3 and 11.3 of the Anti-Dumping Agreement.

On 3 April 2003, Argentina requested the establishment of a panel. At its meeting on 15 April 2003, the DSB deferred the establishment of the panel. Further to a second request by Argentina, the DSB established a panel at its meeting on 19 May 2003. The EC, Japan, Korea, Mexico and Chinese Taipei reserved their third-party rights.

On 22 August 2003, Argentina requested the Director-General to compose the panel. On 4 September 2003, the Director-General composed the panel.

13. WT/DS269 and WT/DS286 – European Communities – Customs Classification of Frozen Boneless Chicken Cuts

Complaints by Brazil (WT/DS269) and Thailand (WT/DS286). On 11 October 2002, Brazil requested consultations with the European Communities concerning EC Commission Regulation No. 1223/2002 ("Regulation No. 1223/2002"), of 8 July 2002, which provides a new description of frozen boneless chicken cuts under the EC Combined Nomenclature ("CN") code 0207.14.10. According to Brazil, this new description includes a salt content to the product that did not exist before and subjects the imports of these products to a higher tariff than that applicable to salted meat (CN code 0210) in the EC's Schedules under the GATT 1994.

Brazil submits that Regulation No. 1223/2002 automatically forces products that were previously imported under CN code 0210.99.39, and subject to an *ad valorem* tariff rate of 15.4%, to be classified under CN code 0207.14.10, and subject to a higher tariff rate of 102.4 €/100kg/net. This tariff rate of 102.4 €/100kg/net is in excess of the tariff rate for salted meat (CN code 0210) provided for in the EC's Schedules under the GATT 1994.

As a result of this measure, Brazil considered that its commerce has been accorded treatment less favourable than that provided in the EC Schedules, in contravention of the obligations of the EC under Articles II and XXVIII of the GATT 1994. In addition, Brazil claimed that the application of this measure by the EC nullifies and impairs, within the meaning of Article XXIII:1, benefits accruing to Brazil directly or indirectly under the GATT 1994.

On 25 October 2002, the United States requested to join the consultations.

On 25 March 2003, Thailand requested consultations with the EC on the same matter. According to Thailand, the measure at issue is inconsistent with the EC's obligations under Articles II:1(a) and II:1(b) of the GATT 1994 and its Schedule of Concessions. On 3 and 10 April 2003 respectively, Brazil and the United States requested to join the consultations. The EC informed the DSB that it had accepted the request of Brazil to join the consultations.

On 19 September 2003, Brazil requested the establishment of a panel. At its meeting on 2 October 2003, 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 7 November 2003. Chile, China, Thailand and the United States reserved their third-party rights.

On 27 October 2003, Thailand requested the establishment of a panel. At its meeting on 7 November 2003, the DSB deferred the establishment of a panel. On 21 November 2003, further to a second request by Thailand for the establishment of a panel, the DSB established a single panel, pursuant to an agreement between the parties and in accordance with Article 9.1 of the DSU. The Members which had reserved their third party rights in the panel established at the request of Brazil were also considered as third parties in the single panel. In addition, Brazil, Columbia and Chile reserved their third-party rights in the single panel.

14. WT/DS270 – Australia – Certain Measures Affecting the Importation of Fresh Fruit and Vegetables

Complaint by the Philippines. On 18 October 2002, the Philippines requested consultations with Australia on certain measures affecting the importation into Australia of fresh fruit and vegetables, including bananas, which include, but are not limited to:

- Section 64 of *Quarantine Proclamation 1998* promulgated under the *Quarantine Act 1908*;
- regulations, requirements and procedures issued pursuant thereto;
- amendments to any of the foregoing; and
- their application.

The Philippines considered that these measures are inconsistent with the obligations of Australia under the GATT 1994, the SPS Agreement and the Agreement on Import Licensing Procedures. The relevant provisions of these agreements include, but are not limited to Articles XI and XIII of the GATT 1994; Articles 2, 3, 4, 5, 6 and 10 of the SPS Agreement; and Articles 1 and 3 of the Agreement on Import Licensing Procedures.

On 1 November 2002, the EC and Thailand requested to join the consultations. On 7 November 2002, Australia informed the DSB that it had accepted the request of the EC and Thailand to join the consultations.

On 7 July 2003, the Philippines requested the establishment of a panel. At its meeting on 21 July 2003, 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 29 August 2003. China, the EC, Ecuador, India, Thailand and the US reserved their third-party rights. On 4 September 2003, Chile reserved its third-party rights.

15. WT/DS273 – Korea – Measures Affecting Trade in Commercial Vessels

Complaint by the European Communities. On 21 October 2002, the European Communities requested consultations with Korea on certain measures establishing subsidies to its shipbuilding industry which, according to the European Communities, are inconsistent with Korea's obligations under the SCM Agreement. These measures are as follows:

- Corporate restructuring subsidies in the form of debt forgiveness, debt and interest relief and debt-to-equity swaps, provided through government-owned and government-controlled banks;

- Special taxation on in-kind contribution and the special taxation on spin-off scheme provided in the Special Tax Treatment Control Law which establishes two tax programmes limited to companies under corporate restructuring and provided tax concessions to Daewoo;
- Pre-shipment loans and advance payment refund guarantees provided by the state-owned Export-Import Bank of Korea ("KEXIM") to all Korean shipyards.

The EC indicated that the subsidies in question were granted with respect to the production of commercial vessels for international commerce, including: bulk carriers, container ships, oil tankers, product and chemical tankers, LNG/LPG carriers, passenger and RoRo ferries and other non-cargo vessels (including offshore units).

The EC considered that the Korean measures are in breach of Korea's obligations under the provisions of the SCM Agreement, in particular, but not necessarily exclusively of: Articles 1, 2, 3.1, 5(a), 5(c), 6.3 and 6.5 of the SCM Agreement.

On 12 June 2003, the EC requested the establishment of a panel. At its meeting on 24 June 2003, the DSB deferred the establishment of a panel. Further to a second request by the EC, the DSB established a panel at its meeting on 21 July 2003. China, Japan, Mexico, Norway, Chinese Taipei and the United States reserved their third-party rights. The DSB also agreed, following the request by the EC, to initiate the Annex V procedures pursuant to paragraph 2 of Annex V of the SCM Agreement with respect to developing information concerning serious prejudice under Annex V of the SCM Agreement.

On 11 August 2003, the EC requested the Director-General to compose the panel. On 20 August 2003, the panel was composed.

16. WT/DS276 – Canada – Measures Relating to Exports of Wheat and Treatment of Imported Grain

Complaint by the United States. On 17 December 2002, the United States requested consultations with Canada as regards matters concerning the export of wheat by the Canadian Wheat Board and the treatment accorded by Canada to grain imported into Canada.

According to the United States, the actions of the Government of Canada and the Canadian Wheat Board (entity enjoying exclusive rights to purchase and sell Western Canadian wheat for human consumption) related to export of wheat appear to be inconsistent with paragraphs 1(a) and 1(b) of Article XVII of GATT 1994.

As regards the treatment of grain imported into Canada, the United States maintains that the following Canadian measures are inconsistent with Article III of the GATT 1994 and Article 2 of TRIMs since they discriminate against imported grain:

- Under the Canadian Grain Act and Canadian regulations, imported wheat cannot be mixed with Canadian domestic grain being received into or discharged out of grain elevators, and
- Canadian Law caps the maximum revenues that railroads may receive on the shipment of domestic grain but not revenues received on the shipment of imported grain; and Canada provides a preference for domestic grain over imported grain when allocating government-owned railcars.

On 20 December 2002, the European Communities, Japan and Mexico requested to join the consultations. On 24 December 2002, Australia requested to join the consultations. On

6 March 2003, the US requested the establishment of a panel. At its meeting on 18 March 2003, the DSB deferred the establishment of a panel. Further to a second request by the US, the DSB established a Panel at its meeting on 31 March 2003. Chile, Chinese Taipei, the EC, Japan and Mexico reserved their third-party rights. On 9 and 10 April 2003 respectively, China and Australia reserved their third-party rights. On 2 May 2003, Canada requested the Director-General to compose the panel. On 12 May 2003, the Director-General composed the panel. On 30 June 2003, the United States submitted a new request for the establishment of a panel. On 1 July 2003, the Chair of the Panel informed the DSB that it had agreed to the United States' request to suspend the Panel for three weeks from 1-21 July 2003. The DSB established a second panel at its meeting on 11 July 2003. Australia, Chile, China, the EC, Japan and Chinese Taipei reserved their third-party rights. On 25 July 2003, Mexico reserved its third-party rights. On 11 July 2003, the second Panel was composed. Further to a request by the United States, acceded to by the Panel, the preliminary ruling by the Panel was circulated to Members for their information on 21 July 2003. On 30 October 2003, the Chairman of the Panel informed the DSB that the first Panel would not be able to complete its work within six months due to the three week suspension requested by the US following the issuance of a preliminary ruling by the Panel and the harmonization of this Panel's timetable with that of the second Panel and that the Panel expected to issue its final report to the parties in February 2004.

17. WT/DS277 – United States – Investigation of the International Trade Commission in Softwood Lumber from Canada

Complaint by Canada. On 20 December 2002, Canada requested consultations with the United States regarding the investigation of the USITC in *Softwood Lumber from Canada* (Invs. Nos. 701-TA-414 and 731-TA-928 (Final)) and the final definitive anti-dumping and countervailing duties applied as a result of the USITC's final determination made on 2 May 2002, notice of which was published in the United States Federal Register on 22 May 2002 (Volume 67, Number 99 at pp. 36022-36023) that an industry in the United States is threatened with material injury by reason of imports of softwood lumber from Canada that the Department of Commerce has determined are subsidized and sold in the United States at less than fair value.

Canada claimed that, through these measures, the United States has violated its obligations under Article VI:6(a) of the GATT 1994, Articles 1, 3.1, 3.2, 3.3, 3.4, 3.5, 3.7, 3.8, 12 and 18.1 of the Anti-Dumping Agreement and Articles 10, 15.1, 15.2, 15.3, 15.4, 15.5, 15.7, 15.8, 22 and 32.1 of the SCM Agreement.

On 3 April 2003, Canada requested the establishment of a panel. At its meeting on 15 April 2003, the DSB deferred the establishment of the panel. Further to a second request by Canada, the DSB established a panel at its meeting on 7 May 2003. The EC and Japan reserved their third party rights. On 16 May 2003, Korea reserved its third party rights. On 12 June 2003, Canada requested the Director-General to compose the panel. On 19 June 2003, the Director-General composed the panel. On 19 December 2003, the Chairman of the Panel informed the DSB that it would not be possible for the Panel to complete its work in six months in light of scheduling conflicts. The Panel expected to complete its work in February 2004.

18. WT/DS280 – United States – Countervailing Duties on Imports of Steel Plate from Mexico

Complaint by Mexico. On 21 January 2003, Mexico requested consultations with the US regarding the final determination in an administrative review of countervailing duties imposed by the US authorities on imports of carbon steel plates in sheets from Mexico (C-201-810) as

well as the basis on which they reached this determination and led to the imposition of countervailing duties on imports of the said products.

Mexico claims that the administrative review that led to the imposition of countervailing duties of 11.6% *ad valorem* by using the "same person" methodology is incompatible with Articles 10, 14, 19 and 21 of the SCM Agreement. In particular, Mexico claims that the US Department of Commerce did not make a determination of the existence of a benefit as required in Article 1.1(b) of the SCM Agreement.

On 4 August 2003, Mexico requested the establishment of a panel. At its meeting on 18 August 2003, 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 29 August 2003. China, the EC and Chinese Taipei reserved their third-party rights. On 5 September 2003, Canada reserved its third-party rights.

19. WT/DS281 - United States – Anti-Dumping Measures on Imports of Cement from Mexico

Complaint by Mexico. On 3 February 2003, Mexico requested consultations with the US concerning several antidumping measures imposed by the US on imports of Gray Portland cement and cement clinker from Mexico, including:

- the final determinations in several administrative and sunset reviews;
- the US authorities' determination regarding the continuation of the antidumping orders; and
- the US authorities' rejection of a request by Mexican producers to initiate an administrative review based on changed circumstances as well as.

In addition to the above measures, Mexico's request included a number of laws, regulations and administrative practices (such as "zeroing") used by the US authorities in the above determinations. Mexico considered that the above antidumping measures are incompatible with Articles 1, 2, 3, 4, 6, 8, 9, 10, 11, 12 and 18 of the Antidumping Agreement, Articles III, VI and X of the GATT 1994 and Article XVI:4 of the WTO Agreement.

On 29 July 2003, Mexico requested the establishment of a panel. At its meeting on 18 August 2003, 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 29 August 2003. China, the EC, Japan and Chinese Taipei reserved their third-party rights. On 5 September 2003, Canada reserved its third-party rights.

20. WT/DS282 – United States - Anti-Dumping Measures on Oil Country Tubular Goods (OCTG) from Mexico

Complaint by Mexico. On 18 February 2003, Mexico requested consultations with the US as regards several anti-dumping measures imposed by the US on imports of OCTG from Mexico, including the final determinations in some administrative and sunset reviews; and the US authorities' determination regarding the continuation of the anti-dumping orders. In addition to these measures, Mexico's request includes a number of laws, regulations and administrative practices (such as "zeroing") used by the US authorities in the above determinations. Mexico considers that the above anti-dumping measures are incompatible with Articles 1, 2, 3, 6, 11 and 18 of the Anti-Dumping Agreement, Articles VI and X of the GATT 1994 and Article XVI:4 of the WTO Agreement.

On 29 July 2003, Mexico requested the establishment of a panel. At its meeting on 18 August 2003, 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 29 August 2003. Argentina, China, the EC, Japan, Chinese Taipei and Venezuela reserved their third-party rights. On 5 September 2003, Canada reserved its third-party rights.

21. WT/DS285 – United States – Measures Affecting Cross-Border Supply of Gambling and Betting Services

Complaint by Antigua and Barbuda. On 21 March 2003, Antigua and Barbuda requested consultations with the US regarding measures applied by central, regional and local authorities in the US which affect the cross-border supply of gambling and betting services. Antigua and Barbuda considered that the cumulative impact of the US measures is to prevent the supply of gambling and betting services from another WTO Member to the United States on a cross-border basis.

According to Antigua and Barbuda, the measures at issue may be inconsistent with the US obligations under the GATS, and in particular Articles II, VI, VIII, XI, XVI and XVII thereof, and the US Schedule of Specific Commitments annexed to the GATS.

On 12 June 2003, Antigua and Barbuda requested the establishment of a panel. At its meeting on 24 June 2003, the DSB deferred the establishment of a panel. Further to a second request by Antigua and Barbuda, the DSB established a panel at its meeting on 21 July 2003. Canada, the EC, Mexico and Chinese Taipei reserved their third-party rights. On 23 July 2003, Japan reserved its third-party rights.

On 15 August 2003, Antigua and Barbuda requested the Director-General to compose the panel. On 25 August 2003, the Director-General composed the panel. On 29 January 2004, the Chairman of the Panel informed the DSB that it would not be possible for the Panel to complete its work in six months because various factors had had an impact on the Panel's timetable, such as a party's request for preliminary rulings, the intervention of the holiday season, the heavy agenda of the panelists as well as the complexity of the legal and factual questions which had been raised. The Panel hoped to complete its work by the end of April 2004.

22. WT/DS287 – Australia – Quarantine Regime for Imports

Complaint by the European Communities. On 3 April 2003, the EC requested consultations with Australia regarding the Australian quarantine regime for imports, both as such and as applied to certain specific cases. According to the EC, the Australian quarantine regime for imports appears to be governed both by legislation as well as by the exercise of discretion granted to a Director of Quarantine and by administrative guidance issued on the exercise of that discretion.

As regards the quarantine regime as such, the EC claims that the effect of this regime appears to be that the import of products is *a priori* prohibited, although there is no risk assessment. Risk assessments appear to be commenced, if at all, only once the import of a product has been specifically requested. In some cases, no risk assessment has been commenced despite such request. In other cases it has been commenced but not completed. As regards specific cases, the EC claims that:

- Australia permits the import of deboned pigmeat from Denmark for processing in Australia but refuses the import of processed deboned pigmeat from Denmark. It also claims that the processing requirements imposed in Australia may be more trade-

restrictive than necessary in the circumstances to protect Australia from PRRS (Porcine Reproductive and Respiratory Syndrome). It also appears that requests have been made for access to Australia for processed pigmeat or deboned pigmeat for processing from other EU Member States which have been refused.

- Australia permits the import of poultry meat which has been cooked to high temperature and for long periods to prevent the entry of IBD (infectious bursal disease). The EC claims that it appears that IBD may already be present in the Australian poultry flock and that no efforts are being made to eradicate it. The EC also claims that the processing requirements imposed in Australia may be more trade-restrictive than necessary in the circumstances to protect Australia from IBD.

The EC considers that the measures referred to above may be contrary to the SPS Agreement, and in particular, although not limited to, Articles 2.2, 2.3, 3.3, 4.1, 5.1, 5.6 and, if applicable, 5.7, 8 and Annex C. On 16 April 2003, Chile and the Philippines requested to join the consultations. On 22 April 2003, India and Canada requested to join the consultations. Australia informed the DSB that it had accepted the requests of Canada, Chile, India and the Philippines to join the consultations.

On 29 August 2003, the European Communities requested the establishment of a panel. At its meeting on 2 October 2003, the DSB deferred the establishment of a panel. On 14 October 2003, the EC submitted a revised request for the establishment of a panel to the DSB. The DSB established a panel at its meeting on 7 November 2003. Canada, Chile, China, India, Philippines, Thailand and the United States reserved their third-party rights.

23. WT/DS291, WT/DS292, WT/DS293 – Measures Affecting the Approval and Marketing of Biotech Products

Complaints by the United States (WT/DS291), Canada (WT/DS292) and Argentina (WT/DS293). On 13 May 2003, the United States and Canada requested consultations with the EC concerning certain measures taken by the EC and its member States affecting imports of agricultural and food imports from the United States and Canada. Regarding EC-level measures, the US and Canada asserted that the moratorium applied by the EC since October 1998 on the approval of biotech products has restricted imports of agricultural and food products from the US and Canada. Regarding member State-level measures, the US and Canada asserted that a number of EC member States maintain national marketing and import bans on biotech products even though those products have already been approved by the EC for import and marketing in the EC. On 14 May 2003, Argentina requested consultations with the EC on the same matter.

According to the US, the measures at issue appear to be inconsistent with the EC's obligations under:

- (a) Articles 2, 5, 7 and 8, and Annexes B and C of the SPS Agreement;
- (b) Articles I, III, X and XI of the GATT 1994;
- (c) Article 4 of the Agriculture Agreement; and
- (d) Articles 2 and 5 of the TBT Agreement.

According to Canada, the measures at issue appear to be inconsistent with the EC's obligations under:

- (a) Articles 2.2, 2.3, 5.1, 5.5, 5.6, 7 and 8, and Annexes B and C of the SPS Agreement;
- (b) Articles 2.1, 2.2, 2.8, 5.1 and 5.2 of the TBT Agreement;
- (c) Articles I:1, III:4, X:1 and XI:1 of the GATT 1994; and
- (d) Article 4.2 of the Agriculture Agreement.

Canada also considered that the measures at issue nullify or impair benefits accruing to Canada in the sense of Article XXIII:1(b) of the GATT 1994.

According to Argentina, the measures at issue appear to be inconsistent with the EC's obligations under:

- (a) Articles 2, 5, 7, 8 and 10, and Annexes B and C of the SPS Agreement;
- (b) Article 4 of the Agriculture Agreement;
- (c) Articles I, III, X and XI of the GATT 1994; and
- (d) Articles 2, 5 and 12 of the TBT Agreement.

In dispute WT/DS291, Australia, Argentina, Brazil, Canada, Chile, Colombia, India, Mexico, New Zealand and Peru requested to join the consultations. The EC informed the DSB that they had accepted the requests of Australia, Argentina, Brazil, Canada, Chile, Colombia, India, Mexico, New Zealand and Peru to join the consultations.

In dispute WT/DS292, Australia, Argentina, Brazil, India, Mexico, New Zealand and the United States requested to join the consultations. The EC informed the DSB that they had accepted the requests of Australia, Argentina, Brazil, India, Mexico, New Zealand and the United States to join the consultations.

In dispute WT/DS293, Australia, Brazil, Canada, India, Mexico, New Zealand and the United States requested to join the consultations. The EC informed the DSB that they had accepted the requests of Australia, Brazil, Canada, India, Mexico, New Zealand and the United States to join the consultations.

On 7 August 2003, the United States, Canada and Argentina each requested the establishment of a panel. At its meeting on 18 August 2003, the DSB deferred the establishment of the panels. Further to second requests to establish a panel from the US, Canada and Argentina, the DSB established a single panel at its meeting on 29 August 2003. Australia, Chile, China, Colombia, El Salvador, Honduras, New Zealand, Norway, Peru, Chinese Taipei, Thailand and Uruguay reserved their third-party rights. On 3 September 2003, Canada reserved its third-party rights. On 4 September 2003, Argentina and the US reserved their third-party rights. On 5 September 2003, Mexico reserved its third-party rights. On 8 September 2003, Brazil reserved its third-party rights. On 9 September, Paraguay reserved its third-party rights.

24. WT/DS295 – Mexico – Definitive Anti-Dumping Measures on Beef and Rice

Complaint by the United States. On 16 June 2003, the United States requested consultations with Mexico concerning its definitive anti-dumping measures on beef and long grain white rice as well as certain provisions of Mexico's Foreign Trade Act and its Federal Code of Civil Procedure.

The US claimed that these measures were inconsistent with Mexico's obligations under the provisions of GATT 1994, the Anti-Dumping Agreement and the SCM Agreement. In particular, the US claimed that:

Mexico's definitive anti-dumping measures on beef and long grain white rice were inconsistent with at least Articles 3, 5.8, 6, 9, 12, 11.1 and Annex II of the Anti-Dumping Agreement.

Certain provisions of Mexico's Foreign Trade Act and its Federal Code of Civil Procedure were inconsistent with Articles 5.8, 6, 6.1.1, 6.8, 7, 9, 9.5, 10.6, 11 and 11.1 of the

Anti-Dumping Agreement and Articles 11.9, 12.1.1, 12.7, 17, 19, 19.3, 20.6, 21 and 21.1 of the SCM Agreement.

The US also claimed that Mexico's measures appear to nullify or impair benefits accruing to the US directly or indirectly under the cited agreements.

On 19 September 2003, the US requested the establishment of a panel. At its meeting on 2 October 2003, 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 7 November 2003. China, the European Communities and Turkey reserved their third-party rights.

25. WT/DS296 – United States – Countervailing Duty Investigation on Dynamic Random Access Memory Semiconductors (DRAMs) from Korea

Complaint by Korea. On 30 June 2003, Korea requested consultations with the United States concerning the US authorities' affirmative preliminary and final countervailing duty determinations, the preliminary injury determination and any subsequent determinations that may be made during the injury investigation, on DRAMs and DRAM modules from Korea. Korea is also challenging all related laws and regulations, including Section 771 of the US Tariff Act of 1930 and 19 CFR 351 respectively.

Korea claimed that the above determinations are inconsistent, *inter alia*, with Articles VI:3 and X:3 of the GATT 1994 and Articles 1, 2, 10, 11, 12, 14, 17, 22, 32.1 of the SCM Agreement.

On 18 August 2003, Korea requested further consultations with regard to the US authorities' countervailing duty determinations on DRAMs and DRAM modules from Korea. This request concerns the USITC's affirmative final injury determination and the DOC's final countervailing duty order, both of which were published on 11 August 2003, that is, after the first request for consultations was made by Korea. Korea claimed that the determinations mentioned above are inconsistent, *inter alia*, with Articles 15.1, 15.2, 15.4, and 15.5 of the SCM Agreement.

On 19 November 2003, Korea requested the establishment of a panel. At its meeting on 1 December 2003, 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 23 January 2004. China, the EC, Japan and Chinese Taipei reserved their third-party rights.

26. WT/DS299 – European Communities – Countervailing Measures on Dynamic Random Access Memory Chips from Korea

Complaint by Korea. On 25 July 2003, Korea requested consultations with the European Communities concerning the EC's provisional countervailing measures and any final countervailing measures which may be finalized and implemented later this year against dynamic random access memory chips ("DRAMs") from Korea.

According to Korea, when considering the determinations with respect to the provisional measures against the DRAMs from Korea, which have already been implemented, and any final measures on the same products, which may be finalized and implemented later this year, the European Commission failed to comply with various WTO substantive and procedural requirements, including demonstration of the existence of a financial contribution and a benefit conferred, and demonstration of specificity of the subsidies concerned.

In Korea's view, these EC's measures at issue are inconsistent with the EC's obligations under the following WTO provisions:

- (a) Articles VI:3 and X.3 of GATT 1994;
- (b) Articles 1, 2, 10, 11, 12, 14, 15, 17, 22 and 32.1 of the Agreement on Subsidies and Countervailing Measures.

On 25 August 2003, Korea requested further consultations with the EC concerning the EC's final countervailing measures, which were adopted by the European Council on 11 August 2003 and published in the Official Journal of the EC on 22 August 2003.

Korea wished to consult on the same issues raised in its previous consultations request, but from the additional perspectives of the adopted final measures.

Korea further elaborated the EC's violation of Article 15 of the SCM Agreement. Korea claimed that the material injury finding by the EC is inconsistent, *inter alia*, with Articles 15.1, 15.2, 15.4, and 15.5 of the SCM Agreement.

On 19 November 2003, Korea requested the establishment of a panel. At its meeting on 1 December 2003, 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 23 January 2004. China, Japan, Chinese Taipei, and the United States reserved their third-party rights.

27. WT/DS302 – Dominican Republic – Measures Affecting the Importation and Internal Sale of Cigarettes

Complaint by Honduras. On 8 October 2003, Honduras requested consultations with the Dominican Republic concerning certain measures affecting the importation and internal sale of cigarettes. This request is a new and expanded version of a complaint filed by Honduras on 28 August 2003 (WT/DS300/1).

According to Honduras, the Dominican Republic:

- applies special rules, procedures and administrative practices to determine the value of imported cigarettes for the purpose of applying the Selective Consumption Tax (*inter alia*, in certain instances, considers the value of imported cigarettes to be equal to the value of the "nearest similar" product in the domestic market), and fails to establish and apply transparent and generally applicable criteria for determining the value of imported cigarettes (*inter alia*, fails to establish and apply such criteria for the identification of the "nearest similar" product);
- does not publish the surveys conducted by the Central Bank that are to be used to determine the value of cigarettes for the purpose of applying the Selective Consumption Tax;
- accords conditions of competition to imported cigarettes that are less favourable than those accorded to domestic cigarettes by requiring that stamps be affixed to cigarettes packages in the territory of the Dominican Republic;
- entails costs and administrative burdens hindering the importation of cigarettes by requiring importers of cigarettes to post a bond;

- levies a transitional surcharge for economic stabilization of 2% of the CIF value of the imported goods;
- levies a foreign exchange fee of 4.75% of the value of the imported merchandise.

Honduras considers that these Dominican Republic's measures are inconsistent with Articles II:1(b), III:2, III:4, X:1, X:3(a), XI:1, and XV:4 of GATT 1994.

On 23 October 2003, Guatemala and Nicaragua requested to join the consultations. On 28 October 2003, the Dominican Republic accepted both requests.

On 8 December 2003, Honduras requested the establishment of a panel. At its meeting on 19 December 2003, the DSB deferred the establishment of a panel. Further to a second request to establish a panel by Honduras, the DSB established a panel at its meeting on 9 January 2004. China, Chile, the European Communities and the United States reserved their third-party rights. On 19 January 2004, Guatemala, Nicaragua and El Salvador reserved their third-party rights.

B. ACTIVE COMPLIANCE PANELS

Nil.

III. REPORTS CIRCULATED

A. PANEL REPORTS

Nil.

B. COMPLIANCE PANEL REPORTS (ARTICLE 21.5)

Nil.

C. APPELLATE BODY REPORTS

1. WT/DS257 – United States – Final Countervailing Duty Determination with respect to Certain Softwood Lumber from Canada

Complaint by Canada. On 3 May 2002, Canada requested consultations with the US. The request concerned the final affirmative countervailing duty determination by the US Department of Commerce (File No. C-122839) issued on 25 March 2002, with respect to certain softwood lumber from Canada. The measures at issue include the initiation and conduct of the investigation, the final determination, provision of expedited reviews, and other matters related to these measures. Canada contended that these measures were inconsistent with, and violate US' obligations under Articles 1, 2, 10, 11, 12, 14, 15, 19, 22 and 32.1 of the SCM Agreement and Articles VI:3 and X:3 of GATT 1994.

On 18 July 2002, Canada requested the establishment of a panel. At its meeting on 29 July 2002, the DSB deferred the establishment of a panel. On 19 August 2002, Canada requested the withdrawal of its previous request for the establishment of a panel and submitted a new request. In particular, Canada claimed that in initiating the Lumber IV investigation, the United States had violated Articles 10, 11.4 and 32.1 of the SCM Agreement. In all the other claims, the new request corresponded to the previous one (18 July 2002). At its meeting on 30 August 2002, the DSB deferred the establishment of a panel. At its meeting on 1 October

2002, the DSB established a panel. The EC, India and Japan reserved their third-party rights to participate in the panel proceedings. On 8 November 2002, the panel was composed.

On 29 August 2003, the Panel report was circulated to Members. The Panel found that the USDOC Final Countervailing Duty Determination was inconsistent with Articles 10, 14, 14(d) and 32.1 SCM Agreement and Article VI:3 of GATT 1994. The Panel decided to apply judicial economy as regards Canada's claims under Article 19.4 SCM Agreement and Article VI:3 of GATT 1994 concerning the methodologies used to calculate the subsidy rate; and its claims of violation of the procedural rules of evidence set forth in Article 12 SCM Agreement. Further to Canada's statement at the first substantive meeting of the Panel with the parties that it did not consider it appropriate to press its claims under Articles 10, 11.4 and 32.1 of the SCM Agreement concerning the initiation of the investigation, the Panel also refrain from addressing and making a ruling on these claims. Accordingly, the Panel recommended that the DSB requests the United States to bring its measure into conformity with its obligations under the SCM Agreement and GATT 1994.

On 2 October 2003, the United States 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. However, on 3 October 2003, the United States withdrew its notice of appeal for scheduling reasons, although the withdrawal is conditional on the US right to file a new notice of appeal within the timeframe permitted by the DSU.

On 21 October 2003, the United States notified its decision to re-file its appeal to the Appellate Body of certain issues of law covered in the Panel Report and certain legal interpretations developed by the Panel.

On 17 December 2003, the Chairman of the Appellate Body informed the DSB that the Appellate Body would not be able to circulate its Report within the 60-day period due to the time required for completion and translation of the Report and it estimated that the Appellate Body Report would be circulate to WTO Members no later than 19 January 2004.

On 19 January 2004, the Appellate Body Report was circulated to Members. The Appellate Body:

- **upheld** the Panel's finding that the U.S. had correctly determined that harvesting rights granted by Canadian provincial governments in respect of standing timber constituted the provision of goods under Article 1.1 of the *SCM Agreement*;
- **reversed** the Panel's interpretation of Article 14(d) of the *SCM Agreement* and the Panel's finding that the U.S. had improperly determined the existence and amount of the "benefit" resulting from the financial contribution provided. Then the Appellate Body found that it was **unable to complete the legal analysis** of whether the U.S. had correctly determined benefit in this investigation, due to insufficient factual findings by the Panel and insufficient undisputed facts in the Panel record; and
- **upheld** the Panel's finding that the U.S. had acted inconsistently with provisions of the *SCM Agreement* and the GATT 1994 by failing to analyze whether subsidies were passed through in sales of *logs* by sawmill-owning harvesters to unrelated lumber producers. On the other hand, the Appellate Body **reversed** the Panel's findings that the U.S. acted inconsistently with its WTO obligations by failing to consider whether subsidies were passed through in sales of primary *lumber* by sawmills to unrelated lumber remanufacturers, because both primary and remanufactured lumbers were products subject to USDOC's aggregate investigation.

D. APPELLATE BODY COMPLIANCE REPORTS (ARTICLE 21.5)

Nil.

IV. REPORTS APPEALED

A. PANEL REPORTS

1. **WT/DS246 – European Communities – Conditions for the Granting of Tariff Preferences to Developing Countries**

Complaint by India. On 5 March 2002, India requested consultations with the EC concerning the conditions under which the EC accords tariff preferences to developing countries under its current scheme of generalized tariff preferences ("GSP scheme").

India presented this request pursuant to Article 4 of the DSU, Article XXIII:1 of the GATT 1994 and paragraph 4(b) of the so-called Enabling Clause.

India considered that the tariff preferences accorded by the EC under the special arrangements, (i) for combatting drug production and trafficking and (ii) for the protection of labour rights and the environment, create undue difficulties for India's exports to the EC, including for those under the general arrangements of the EC's GSP scheme, and nullify or impair the benefits accruing to India under the most favoured nation provisions of Article I:1 of the GATT 1994 and paragraphs 2(a), 3(a) and 3(c) of the Enabling Clause.

In India's view, the conditions under which the EC accorded tariff preferences under the special arrangements could not be reconciled with the requirements provided in paragraphs 2(a), 3(a) and 3(c) of the Enabling Clause.

On 20 March 2002, Venezuela requested to be joined in the consultations. On 21 March 2002, Colombia requested to be joined in the consultations.

On 6 December 2002, India requested the establishment of a panel. At its meeting of 19 December 2002, the DSB deferred the establishment of a panel. At its meeting on 27 January 2003, the DSB established a Panel. During the meeting, Brazil, Colombia, Costa Rica, Cuba, Ecuador, El Salvador, Guatemala, Honduras, Paraguay, Peru, Sri Lanka, Venezuela and the US reserved their third-party rights. On 28 January 2003, Nicaragua reserved its third-party rights. On 29 January 2003, Panama reserved its third-party rights. On 3 February, Mauritius and Pakistan reserved their third-party rights. On 6 February, Bolivia reserved its third party rights. On 24 February 2003, India requested the Director-General to compose the Panel. On 6 March 2003, the Director-General composed the Panel.

On 22 September 2003, the Chairman of the Panel informed the DSB that it would not be possible to complete its work in six months due to the complexity of the matter involved and that the Panel expected to complete its work at the end of October 2003.

On 1 December 2003, the Panel report was circulated to the Members. The Panel found that: (i) India has demonstrated that the tariff preferences under the Special Arrangements to Combat Drug Production and Trafficking (the "Drug Arrangements") provided in the EC's GSP scheme are inconsistent with Article I:1 of GATT 1994; (ii) the EC has failed to demonstrate that the Drug Arrangements are justified under paragraph 2(a) of the Enabling Clause, which requires that the GSP benefits be provided on a "non-discriminatory" basis; and (iii) the EC has failed to demonstrate that the Drug Arrangements are justified under

Article XX(b) of GATT 1994 since the measure is not "necessary" for the protection of human life or health in the EC, nor is it in conformity with the Chapeau of Article XX. (One panelist presented a dissenting opinion that the Enabling Clause is not an exception to Article I:1 and that India has not made a claim under the Enabling Clause.)

On 8 January 2004, the European Communities notified its decision to appeal to the Appellate Body certain issues of law covered in the Panel Report.

B. COMPLIANCE PANEL REPORTS (ARTICLE 21.5)

Nil

V. COMPLETED PANEL AND APPELLATE BODY REVIEW

A. APPELLATE BODY AND PANEL REPORTS ADOPTED

1. 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.

2. 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.

3. 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.

4. 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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 as 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.

18. 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 causal 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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 22 September 1998, the DSB adopted the Panel Report.

25. 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.

26. 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 XVIII:11 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.

27. 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.

28. 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.

29. 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 XI 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.

30. 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.

31. 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.

32. 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.

33. 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 conclusion that with respect to the claims under Articles 2, 3 and 5 of the AD Agreement, the request for the establishment of a panel submitted by Poland in this case was sufficient to meet the requirements of Article 6.2 of the DSU;
- reversed the finding of the Panel that the AD Agreement requires a panel reviewing the imposition of an anti-dumping duty to consider only the facts, evidence and reasoning that were disclosed to, or discernible by, Polish firms at the time of the final determination of dumping. The Appellate Body was of the view that there was no basis for the Panel's reasoning, either in Article 3.1 of the AD Agreement, which lays down the obligations of Members with respect to the determination of injury, or in Article 17.6 of the AD Agreement, which sets out the standard of review for panels.
- Although having reversed the reasoning of the Panel on this issue, it left undisturbed the Panel's main findings of violation;
- upheld the Panel's conclusion under Article 3.4 of the AD Agreement. The Appellate Body agreed with the Panel that Article 3.4 requires a mandatory evaluation of all the factors listed in that provision,
- concluded that the Panel did not err in its application of the burden of proof, or in the application of the standard of review under Article 17.6(i) of the AD 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.

34. 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.

35. 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.

36. 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:

- ruled that the French Decree, prohibiting asbestos and asbestos-containing products had not been shown to be inconsistent with the European Communities' obligations under the WTO agreements;
- reversed the Panel's finding that the TBT Agreement does not apply to the prohibitions in the measure concerning asbestos and asbestos-containing products and found that the TBT Agreement applies to the measure viewed as an integrated whole. The Appellate Body concluded that it was unable to examine Canada's claims that the measure was inconsistent with the TBT Agreement;
- reversed the Panel's findings with respect to "like products", under Article III:4 of the GATT 1994. The Appellate Body ruled, in particular, that the Panel erred in excluding the health risks associated with asbestos from its examination of "likeness".
- reversed the Panel's conclusion that the measure is inconsistent with Article III:4 of the GATT 1994. The Appellate Body itself examined Canada's claims under Article III:4 of the GATT 1994 and ruled that Canada has not satisfied its burden of proving the existence of "like products" under that provision; and
- upheld the Panel's conclusion, under Article XX(b) of the GATT 1994, that the French Decree is "necessary to protect human ... life or health".

In this appeal, the Appellate Body adopted an additional procedure "for the purposes of this appeal only" to deal with *amicus curiae* submissions. The Appellate Body received, and refused, 17 applications to file such a submission. The Appellate Body also refused to accept 14 unsolicited submissions from non-governmental organizations that were not submitted under the additional procedure.

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.

37. 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.

38. 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 (lead 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.

39. 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 its 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 be 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.

40. 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.

41. WT/DS146 and WT/DS175 – India - Measures Affecting the Automotive Sector

Complaint by the European Communities (WT/DS146). On 6 October 1998, the EC 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 were subject to a system of non-automatic import licenses.
- in accordance with Public Notice No. 60, import licenses might be granted only to local joint venture manufacturers that had signed an MoU with the Indian Government, whereby they undertook, *inter alia*, to comply with certain local content and export balancing requirements.
- The EC alleged violations of Articles III and XI of GATT 1994, and Article 2 of the TRIMs Agreement.

On 1 May 1999, the United States requested consultations (WT/DS175) 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 required 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 were 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.

On 12 October 2000, the EC also 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 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 abovementioned case WT/DS175, 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.

On 21 December 2001, the Panel circulated its report to the Members. The Panel concluded that:

- India had acted inconsistently with its obligations under Article III:4 of the GATT 1994 by imposing on automotive manufacturers an obligation to use a certain proportion of local parts and components in the manufacture of cars and automotive vehicles ("indigenization" condition);
- India had acted inconsistently with its obligations under Article XI of the GATT 1994 by imposing on automotive manufacturers an obligation to balance any importation of certain kits and components with exports of equivalent value ("trade balancing" condition); and,
- India had acted inconsistently with its obligations under Article III:4 of the GATT 1994 by imposing, in the context of the trade balancing condition, an obligation to offset the amount of any purchases of previously imported restricted kits and components on the Indian market, by exports of equivalent value.

The Panel recommended that the DSB requests India to bring its measures into conformity with its obligations under the WTO Agreements.

On 31 January 2002, India appealed the above Panel Report. In particular, India sought review of the following Panel's conclusion on the grounds that they are in error and based upon erroneous findings on issues of law and related legal instruments:

- Articles 11 and 19.1 of the DSU required it to address the question of whether the measures found to be inconsistent with Articles III:4 and XI:1 of the GATT had been brought into conformity with the GATT as a result of measures taken by India during the course of the proceedings, and
- the enforcement of the export obligations that automobile manufacturers incurred until 1 April 2001 under India's former import licensing scheme is inconsistent with Articles III:4 and XI:1 of the GATT.

On 14 March 2002, India withdrew its appeal. Further to India's withdrawal of its appeal, the Appellate Body issued a short Report outlining the procedural history of the case. At the DSB meeting on 5 April 2002, the US commended India's decision to withdraw its appeal and shared some of India's reservations with regard to Section VIII of the Panel Report. The EC considered that the Panel's findings were justified. Despite its decision to withdraw its appeal as a result of the introduction of its new auto policy, India indicated that the findings contained in Section VIII were outside of the Panel's terms of reference and were both factually and legally incorrect. India requested that the DSB adopt only a part of the Panel Report and consider the adoption of Section VIII only at its next meeting. The EC responded that the Reports should be adopted unconditionally by the parties, thus there was no justification for India's request. The DSB proceeded with the adoption in full of the Appellate Body and Panel reports.

42. 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.

43. 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.

44. 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.

45. 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.

46. 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.

47. 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.

48. 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.

49. 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. Dominica, 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; and
- 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.

50. 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 US 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.

51. 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.

52. 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. The Appellate Body report was circulated to Members on 12 January 2002. The Appellate Body:

- found, in respect of the protection of trademarks, that Sections 211(a)(2) and (b) of the Omnibus Appropriations Act violated the national treatment and most-favoured nation obligations under the TRIPS Agreement and the Paris Convention for the Protection of Industrial Property, thereby reversing the Panel's findings to the contrary;
- reversed the Panel's finding that Section 211(a)(2) is inconsistent with Article 42 of the TRIPS Agreement and concluded that Article 42 contains procedural obligations, while Section 211 affects substantive trademark rights;
- upheld the Panel's findings that Section 211 does not violate the US' obligations under Article 2.1 of the TRIPS Agreement in conjunction with Article 6quinquies A(1) of the Paris Convention, and Articles 15 and 16 of the TRIPS Agreement. It also upheld the Panel's finding under Article 42 of the TRIPS Agreement in respect of Section 211(b); and
- reversed the Panel's conclusion that trade names are not a category of intellectual property protected under the TRIPS Agreement and then completed the analysis reaching the same conclusions for trade names as with respect to trademarks. It also found that Sections 211(a)(2) and (b) are not inconsistent with Article 2.1 of the TRIPS Agreement in conjunction with Article 8 of the Paris Convention (1967).

At its meeting on 2 January 2002, the DSB adopted the Appellate Body report and the Panel report, as upheld by the Appellate Body report.

53. 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.

54. 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.

55. 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.

56. 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 ceramic floor tiles from Italy imposed on 12 November 1999. The EC claimed

that the Argentinian investigating authority without justification disregarded all the information on normal value and on export prices provided by the exporters included in the sample; failed to calculate an individual dumping margin for each of the exporters included in the sample; failed to make due allowance for the differences in physical characteristics between the models exported to Argentina and those sold in Italy; and failed to inform the Italian exporters of the essential facts concerning the existence of dumping which formed the basis for the decision whether to apply definitive measures. The EC considered that the anti-dumping measures in question were inconsistent with Articles 2.4, 6.8 in conjunction with Annex II, 6.9 and 6.10 of the Anti-Dumping Agreement.

On 7 November 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 and 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.

57. 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 DSB request that the US 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 upheld the Panel's overall conclusion that the transitional safeguard measure taken by the United States with respect to imports of combed cotton yarn from Pakistan was inconsistent with the ATC. In particular, the Appellate Body upheld the Panel's findings that, in taking safeguard action with respect to imports of yarn from Pakistan, the US: (a) failed to define properly the relevant "domestic industry" producing yarn; and (b) failed to examine the effect of imports of yarn from other major suppliers individually when attributing serious damage to imports from Pakistan. Furthermore, the Appellate Body concluded that the Panel should not have considered data which were not in existence at the time when the US determined that serious damage had

been caused to the domestic industry. It declined to rule on the broader issue of whether an importing Member must attribute serious damage to all Members whose exports contributed to that damage and concluded therefore that the Panel's interpretation of this broader issue was of no legal effect.

The DSB adopted the Appellate Body Report and the Panel Report, as modified by the Appellate Body Report, on 5 November 2001.

At the DSB meeting on 21 November 2001, the US stated that it had implemented the DSB's recommendations and rulings. Specifically, on 8 November 2001, the Committee for the Implementation of Textile Agreements, chaired by the Department of Commerce, had directed the US Customs Service to eliminate the limit on imports of combed cotton yarn from Pakistan. This action was effective from 9 November 2001.

58. 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.

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

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.

On 6 November 2001, the US notified its decision to appeal certain findings of law and legal interpretations contained in the Panel Report. However, on 13 November 2001, it withdrew its notice of appeal. Later, on 19 November 2001, the US notified its decision to re-file its appeal to the Appellate Body. On 18 January 2002, the Appellate Body informed the DSB that there would be a delay in the circulation of the report. Accordingly, the Appellate Body informed that the report would be circulated to the Members no later than 15 February 2002. On 15 February 2002, the Appellate Body circulated its report to the Members. The Appellate Body:

- upheld, albeit for different reasons, the Panel's finding, in paragraph 8.1(7) of the Panel Report, that the United States acted inconsistently with its obligation under Article 12.3 of the *Agreement on Safeguards* by failing to provide an adequate opportunity for prior consultations with Korea, a Member having a substantial interest in exports of line pipe;
- upheld the Panel's finding, in paragraph 8.1(8) of the Panel Report, that the United States acted inconsistently with its obligation under Article 8.1 of the *Agreement on Safeguards* to endeavour to maintain a substantially equivalent level of concessions and other obligations;
- upheld the Panel's finding, in paragraph 8.1(5) of the Panel Report, that the United States did not comply with its obligation under Article 9.1 of the *Agreement on Safeguards* that safeguard measures shall not be applied against a product originating in a developing country Member as long as its imports do not exceed the individual and collective thresholds in that provision;
- reversed the Panel's finding, in paragraph 8.1(3) of the Panel Report, that the United States acted inconsistently with its obligations under Articles 3.1 and 4.2(c) of the *Agreement on Safeguards* by failing to include in its published report a finding or reasoned conclusion either (1) that increased imports have caused serious injury, or (2) that increased imports are threatening to cause serious injury;
- reversed the Panel's finding, in paragraph 8.2(9) of the Panel Report, that the United States did not violate its obligations under Articles 2 and 4 of the *Agreement on Safeguards* by exempting Canada and Mexico from the line pipe measure;
- modified the Panel's finding, in paragraph 8.2(1)) of the Panel Report, that the United States did not violate its obligations under Articles I, XIII:1 and XIX of GATT 1994 by exempting Canada and Mexico from the line pipe measures, declaring it moot and as having no legal effect;
- upheld the Panel's finding, in paragraph 8.1(4) of the Panel Report, that the United States acted inconsistently with its obligation under Article 4.2(b) of the *Agreement on Safeguards* by failing to establish a causal link between the increased imports and the serious injury or threat thereof;
- upheld the Panel's finding, in paragraph 7.81 of the Panel Report, that the United States was not required by Article 5.1, first sentence, of the *Agreement on Safeguards* to demonstrate, at the time of imposition, that the line pipe measure was necessary to prevent or remedy serious injury and to facilitate adjustment;
- reversed the Panel's finding, in paragraph 8.2(2) of the Panel Report, that Korea failed to make a *prima facie* case that the United States violated its obligation under Article 5.1, first sentence, of the *Agreement on Safeguards*, by imposing a measure that exceeds what is "necessary to prevent or remedy serious injury and to facilitate adjustment", and finds that the United States applied the line pipe measure beyond the "extent necessary to prevent or remedy serious injury and to facilitate adjustment".

On 8 March 2002, the DSB adopted the Appellate Body Report and the Panel Report, as modified by the Appellate Body Report.

60. 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 Director-General composed the Panel. On 16 April 2002, the Chairman of the Panel informed the DSB that the Panel would not be able to complete its work in six months in light of scheduling conflicts. The Panel expected to complete its work in June 2002, depending on translation.

On 28 June 2002, the Panel circulated its report to Members. The Panel concluded that:

- (a) the United States statutory provisions governing the use of facts available, sections 776(a) and 782(d) and (e) of the Tariff Act of 1930, as amended, are not inconsistent with Articles 6.8 and paragraphs 3, 5, and 7 of Annex II of the AD Agreement.
- (b) the United States did not act inconsistently with Article 15 of the AD Agreement with respect to India in the anti-dumping investigation underlying this dispute.

The Panel also concluded that the "practice" of the USDOC concerning the application of "total facts available" was not a measure which can give rise to an independent claim of violation of the AD Agreement, and have therefore not ruled on India's claim in this regard.

With respect to India's claims not addressed above, the Panel concluded that:

- (a) it would not rule on India's abandoned claim; and
- (b) in light of considerations of judicial economy, it was neither necessary nor appropriate to make findings with respect to the remainder of India's claims.

The Panel therefore recommended that the DSB request the United States to bring its measure into conformity with its obligations under the AD Agreement.

At its meeting on 29 July 2002, the DSB adopted the Panel report.

61. 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.

On 23 November 2001, the Panel informed the DSB that it would not be able to complete its work in six months due to the scheduling requests of the parties. The Panel expected to complete its work by the end of March 2002. On 3 May 2002, the Panel circulated its report to Members. The Panel concluded that:

- (a) the Chilean PBS is inconsistent with Article 4.2 of the Agreement on Agriculture and Article II:1(b) of GATT 1994;
- (b) as regards the Chilean safeguard measures on wheat, wheat flour and edible vegetable oils:
 - (i) Chile has acted inconsistently with Article 3.1 of the Agreement on Safeguards by not making available the relevant minutes of the sessions of the CDC through an appropriate medium so as to constitute a "published" report;
 - (ii) Chile has acted inconsistently with Article XIX:1(a) of GATT 1994 because the CDC failed to demonstrate the existence of unforeseen developments, and Article 3.1 of the Agreement on Safeguards because the CDC's report did not set out findings and reasoned conclusions in this respect in its report;

- (iii) Chile has acted inconsistently with Article XIX:1(a) of GATT 1994 and Articles 2 and 4 of the Agreement on Safeguards because the CDC failed to demonstrate the likeness or direct competitiveness of the products produced by the domestic industry, and, consequently, failed to identify the domestic industry;
- (iv) Chile has acted inconsistently with Article XIX:1(a) of GATT 1994 and Articles 2.1 and 4.2(a) of the Agreement on Safeguards because the CDC failed to demonstrate the increase in imports of the products subject to the safeguard measures required by those provisions;
- (v) Chile has acted inconsistently with Article XIX:1(a) of the GATT 1994 and Article 4.1(a), 4.1(b) and 4.2(a) of the Agreement on Safeguards because the CDC did not demonstrate the existence of a threat of serious injury;
- (vi) Chile has acted inconsistently with Articles 2.1 and 4.2(b) of the Agreement on Safeguards because the CDC did not demonstrate a causal link;
- (vii) Chile has acted inconsistently with Article XIX:1(a) of GATT 1994 and Article 5.1 of the Agreement on Safeguards because the CDC did not ensure that the measures were limited to the extent necessary to prevent or remedy injury and facilitate adjustment;
- (viii) Argentina failed to establish that Chile has acted inconsistently with the requirement of Articles 3.1 and 3.2 of the Agreement on Safeguards to conduct an "appropriate investigation" because Argentina allegedly did not have a full opportunity to participate in the investigation and did not have access to any public summary of the confidential information on which the Chilean authorities may have based their determination.

On 24 June 2002, Chile 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 23 September 2002 the report of the Appellate Body was circulated. The Appellate Body:

- (a) found that the Panel acted inconsistently with Article 11 of the DSU by making its finding, in paragraph 7.108 of the Panel Report, that the duties resulting from Chile's price band system are inconsistent with Article II:1(b) of the GATT 1994, on the basis of the *second* sentence of that provision, which was not before the Panel, and, therefore, reverses this finding;
- (b) decided that the Panel did not err in choosing to examine Argentina's claim under Article 4.2 of the Agreement on Agriculture before examining Argentina's claim under Article II:1(b) of the GATT 1994;
- (c) with respect to Article 4.2 of the Agreement on Agriculture:
 - (i) upheld the Panel's finding, in paragraphs 7.47 and 7.65 of the Panel Report, that Chile's price band system is a border measure that is similar to variable import levies and minimum import prices;
 - (ii) reversed the Panel's finding, in paragraphs 7.52 and 7.60 of the Panel Report, that an "ordinary customs duty" is to be understood as "referring to a customs duty which is not applied on the basis of factors of an exogenous nature";
 - (iii) upheld the Panel's finding, in paragraphs 7.102 and 8.1(a) of the Panel Report, that Chile's price band system is inconsistent with Article 4.2 of the Agreement on Agriculture;

- (d) decided, in the light of these findings, that it was not necessary to rule on whether Chile's price band system is consistent with the *first* sentence of Article II:1(b) of the GATT 1994.

The Appellate Body recommended that the DSB request Chile to bring its price band system, as found, in its and in the Panel Report as modified by its Report, to be inconsistent with the Agreement on Agriculture, into conformity with its obligations under that Agreement.

At its meeting on 23 October 2002, the DSB adopted the Appellate Body Report and the Panel Report, as modified by the Appellate Body Report.

62. 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; and
- 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.

On 8 August 2002, the Panel Report was circulated to WTO Members. The Panel concluded that Egypt did not act inconsistently with its obligations under:

- (a) Article 3.4 of the AD Agreement, as Turkey has not established that the Egyptian Investigating Authority was required to examine and evaluate the particular factors identified by Turkey as "relevant factors and indices having a bearing on the state of the domestic industry";
- (b) Article 3.2 of the AD Agreement, as Turkey has not established that there was a legal obligation on the Egyptian Investigating Authority to perform the price undercutting analysis in the way asserted by Turkey;
- (c) Article 3.1 of the AD Agreement, as Turkey has not established that the Egyptian Investigating Authority's price undercutting finding was not based on positive evidence;
- (d) Articles 6.1 and 6.2 of the AD Agreement in respect of the alleged change in scope of the injury investigation from threat of material injury to present material injury and notice thereof to the Turkish exporters;
- (e) Articles 3.1 and 3.5 of the AD Agreement, as Turkey has not established that the Egyptian Investigating Authority violated the positive evidence requirement of

Article 3.1 by virtue of the Investigating Authority not developing certain specific kinds of evidence, nor has Turkey established that, as a consequence, Egypt violated the requirement of Article 3.5 to demonstrate a causal relationship between the dumped imports and the injury to the domestic industry;

- (f) Article 3.5 of the AD Agreement, as Turkey has not established that the Egyptian Investigating Authority's evaluation of the possible causation of injury by factors other than the dumped imports was inconsistent with Article 3.5;
- (g) Article 3.1 and 3.5 of the AD Agreement, as Turkey has not established that the Egyptian Investigating Authority was obligated by Articles 3.1 and 3.5 to perform an analysis and make a finding of the type asserted by Turkey in respect of whether the imports caused injury "through the effects of dumping";
- (h) Article 6.8 of the AD Agreement and paragraph 5 of Annex II thereto, with regard to three of the Turkish exporters, as an unbiased and objective investigating authority could have found that these three exporters failed to provide necessary information and that resort to facts available was therefore justified in calculating the cost of production in respect of these three exporters;
- (i) Article 6.1.1 of the AD Agreement, as the request for information at issue was not a "questionnaire" in the sense of this provision, and the minimum time-period provided for in Article 6.1.1 was therefore not applicable to this request for information;
- (j) Article 6.2 of the AD Agreement, or paragraph 6 of Annex II thereto, with regard to the 19 August 1999 request for information, as Turkey has not established that the time-period allowed by the Egyptian Investigating Authority for submission of the requested information was unreasonable or, as a consequence, that the Egyptian Investigating Authority failed to provide the Turkish exporters with a full opportunity for the defence of their interests;
- (k) Article 6.2 of the AD Agreement, or paragraph 6 of Annex II thereto, with regard to the 23 September 1999 request for information, as Turkey has not established that the time-period allowed by the Egyptian Investigating Authority for the submission of the requested information was unreasonable or, as a consequence, that the Egyptian Investigating Authority failed to provide the Turkish exporters with a full opportunity for the defence of their interests;
- (l) Paragraph 3 of Annex II to the AD Agreement, as this provision does not apply to the selection of particular information as "facts available";
- (m) Paragraph 7 of Annex II to the AD Agreement, as Turkey has not established that the Egyptian Investigating Authority failed to use "special circumspection" in estimating the prevailing inflation rate in Turkey, which was applied to the data reported by one respondent, at 5 per cent per month;
- (n) Article 6.7 of the AD Agreement, paragraph 7 of Annex I thereto, and paragraphs 1 and 6 of Annex II thereto, as Turkey has not established that these provisions contain the obligations asserted by Turkey, i.e., Turkey has not established that it is mandatory for investigating authorities to conduct "on-the-spot" verification of information submitted, that investigating authorities are precluded from requesting additional information during the course of the investigation, that the rights of the Turkish exporters were seriously prejudiced, or that the actions of the Egyptian Investigating Authority impaired their "opportunity to provide further explanations";
- (o) Article 2.4 of the AD Agreement, as Turkey has not established that the burden of proof requirement of that provision is applicable to the request for certain cost information by the Egyptian Investigating Authority in its letter of 19 August 1999, nor, even if that requirement were applicable, that the request imposed an unreasonable burden of proof on the Turkish respondents;
- (p) Article 6.2 of the AD Agreement and paragraph 6 of Annex II thereto, as Turkey has not established that the Egyptian Investigating Authority denied requests of Turkish exporters for meetings;

- (q) Article 2.4 of the AD Agreement, as Turkey has not made a *prima facie* case that the Egyptian Investigating Authority violated this provision in failing to make an adjustment to normal value for differences in terms of sale;
- (r) Articles 2.2.1.1 and 2.2.2 of the AD Agreement, as Turkey has not made a *prima facie* case that the Egyptian Investigating Authority violated these provisions in deciding not to make an interest income offset in calculating cost of production and constructed normal value; and
- (s) Article X:3 of GATT 1994 as Turkey has not established that Egypt administered its relevant laws, regulations, decisions or rulings in a non-uniform, non-impartial or unreasonable manner in deciding not to accept an offer of certain respondents to travel to Cairo for a meeting with the Investigating Authority.

The Panel concluded that Egypt acted inconsistently with its obligations under:

- (t) Article 3.4 of the AD Agreement, in that while it gathered data on all of the factors listed in Article 3.4, the Egyptian Investigating Authority failed to evaluate all of the factors listed in Article 3.4 as it did not evaluate productivity, actual and potential negative effects on cash flow, employment, wages, and ability to raise capital or investments; and
- (u) Article 6.8 of the AD Agreement, and paragraph 6 of Annex II thereto, with regard to two of the Turkish exporters, as the Egyptian Investigating Authority, having received the information that it had identified to these two respondents as being necessary, nevertheless found that they had failed to provide the necessary information, and further, did not inform these two exporters of this finding and did not give them the required opportunity to provide further explanations before resorting to facts available.

With respect to those of Turkey's claims not addressed above, the Panel concluded that:

- (v) the claim was not within its terms of reference (claim under AD Article 17.6(i), claim under Article X:3 of GATT 1994 in respect of selection of particular facts available), or was abandoned by Turkey (claim under Article X:3 in respect of resort to facts available); or
- (w) in the light of considerations of judicial economy, it was neither necessary nor appropriate to make findings.

The Panel recommended Egypt to bring its definitive anti-dumping measures on imports of steel rebar from Turkey into conformity with the relevant provisions of the AD Agreement.

On 1 October 2002, the DSB adopted the Panel Report.

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

Complaint 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 application of the "*same person*" methodology by the US, 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 included in this request for consultations 12 US countervailing duty orders² where this "*same person*" methodology was

² **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-

applied. All these cases involve alleged non-recurring subsidies granted to firms prior to a change of ownership;

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. 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. On 18 April 2002, the Chairman of the Panel informed the DSB that it would not be able to complete its work in six months due to the complexity of the matter. The Panel expected to complete its work by mid July 2002.

On 31 July 2002, the Panel Report was circulated to the Members. The Panel concluded that where a privatization is at arm's length and for fair market value, the benefit from a prior non-recurring financial contribution bestowed upon the state-owned producer no longer accrues to the privatized producer. Therefore, the Panel found that both the 12 countervailing duty determinations and Section 1677(5)(F) were inconsistent with WTO Law.

On 9 September 2002 the US notified its decision to appeal certain issues of law covered in the Panel Report and certain legal interpretations developed by the Panel. The United States sought review by the Appellate Body of the conclusions of the Panel set forth in paragraphs 8.1(a) –(d) and 8.2 of the Panel Report.

On 9 December 2002, the Appellate Body Report was circulated to Members. The Appellate Body:

- upheld the Panel's findings, in paragraphs 8.1 (a), (b) and (c) of the Panel Report, that the United States has acted inconsistently with Articles 10, 14, 19.1, 19.4, 21.1, 21.2 and 21.3 of the SCM Agreement, by imposing and maintaining countervailing duties without determining whether a "benefit" continues to exist in twelve countervailing duty determinations;
- reversed the Panel's finding, in paragraph 8.1(d), first sentence, of the Panel Report, that "[o]nce an importing Member has determined that a privatization has taken place at arm's-length and for fair market value, it must reach the conclusion that no "benefit" resulting from the prior financial contribution (or subsidization) continues to accrue to the privatized producer"; and
- reversed the Panel's conclusion, in paragraph 8.1(d), second sentence, of the Panel Report, that Section 771(5)(F) of the Tariff Act 1930, as amended, 19 U.S.C. § 1677(5)(F), is inconsistent with the SCM Agreement.
- upheld the Panel's conclusion, in paragraph 8.2 of the Panel Report, that, insofar as the United States has infringed its obligations under the SCM Agreement, as set out in paragraphs 8.1(a), (b), and (c) of the Panel Report, these actions of the United States constitute prima facie nullification or impairment of benefits accruing to the European Communities, pursuant to Article 3.8 of the DSU; and, because the United States has failed to rebut this presumption, the United States has in fact nullified or impaired benefits accruing to the European Communities under the SCM Agreement.

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 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

The Appellate Body recommended that the DSB request the United States to bring its measures and administrative practice (the "same person" methodology) into conformity with its obligations under that Agreement. On 8 January 2003, the DSB adopted the Appellate Body Report and the Panel Report, as modified by the Appellate Body Report.

64. 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 related, 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.

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. On 26 October 2001, the Director-General composed the Panel. On 12 April 2002, the Chairman of the Panel informed the DSB that the Panel would not be able to complete its work within six months due to the parties' wish to use the maximum time periods prescribed in Appendix 3 of the DSU. The Panel expected to complete its work by July 2002.

On 3 July 2002, the Panel circulated its report to Members. The Panel concluded that:

- (a) US CVD law and the accompanying regulations are consistent with Article 21, paragraphs 1 and 3, and Article 10 of the SCM Agreement in respect of the application of evidentiary standards to the self-initiation of sunset reviews;
- (b) US CVD law and the accompanying regulations are inconsistent with Article 21.3 of the SCM Agreement in respect of the application of a 0.5 per cent de minimis standard to sunset reviews, and therefore violate Article 32.5 of the SCM Agreement and, consequently, also Article XVI:4 of the WTO Agreement;
- (c) the United States, in applying a 0.5 per cent de minimis standard to the instant sunset review, acted in violation of Article 21.3 of the SCM Agreement;
- (d) US CVD law and the accompanying regulations and statement of policy practices are consistent with Article 21.3 of the SCM Agreement in respect of the obligation to determine the likelihood of continuation or recurrence of subsidisation in sunset reviews; and
- (e) the United States, in failing to determine properly the likelihood of continuation or recurrence of subsidisation in the sunset review on carbon steel, acted in violation of Article 21.3 of the SCM Agreement.

The Panel recommended that the DSB request the United States to bring its measures mentioned in paragraphs (b), (c) and (e) into conformity with its obligations under the WTO Agreement.

One member of the Panel dissociated himself from the Panel assessment relating to the US CVD law as such and as applied in the sunset review on carbon steel in respect of application of a *de minimis* standard to sunset reviews. This member did not share the view of the majority of the Panel that the silence in Article 21.3 of the SCM Agreement as to the applicability of a *de minimis* standard to sunset reviews means that this standard applies to sunset reviews. Accordingly, and contrary to the panel's above findings, this member concluded that:

- US CVD law and the accompanying regulations are consistent with Article 21.3 of the SCM Agreement in respect of the application of a 0.5 per cent *de minimis* standard to sunset reviews; and
- the United States, in applying a 0.5 per cent *de minimis* standard to the instant sunset review, did not act in violation of Article 21.3 of the SCM Agreement.

On 30 August 2002, the US notified its decision to appeal to the Appellate Body certain issues of law covered in the Panel report. The Report was circulated to Members on 28 November 2002. The Appellate Body:

- upheld Panel findings relating to the Panel's terms of reference; the consistency of United States law with obligations relating to the self-initiation of sunset reviews by domestic authorities; and the consistency of United States law with obligations relating to the determination to be made in a sunset review;
- reversed the Panel's interpretation of Article 21.3 of the Agreement on Subsidies and Countervailing Measures as regards *de minimis* subsidization in sunset reviews. Accordingly, the Appellate Body also reversed the related Panel findings that United States law, as such and as applied, were inconsistent with that provision.

On 19 December 2002, the DSB adopted the Appellate Body Report and the Panel Report, as modified by the Appellate Body Report.

65. WT/DS217, WT/DS234 – United States – Continued Dumping and Subsidy Offset Act of 2000

Joint complaint by Australia, Brazil, Chile, European Communities, India, Indonesia, Japan, Korea and Thailand (WT/DS217), and Canada and Mexico (WT/DS234). On 21 December 2000 and 21 May 2001 respectively, the 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 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. 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 Articles 4.10, 7.9 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.

On 12 July 2001, the complainants in dispute WT/DS217 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.

On 10 August 2001, Canada and Mexico requested the establishment of a panel. At its meeting on 23 August 2001, the DSB deferred the establishment of a panel. Further to a second request to establish a panel by Canada and Mexico, the DSB established a panel at its meeting on 10 September 2001. The DSB also agreed, in accordance with Article 9 of the DSU, that the panel established to examine the complaint by Australia, Brazil, Chile, EC, India, Indonesia, Japan, Korea and Thailand (WT/DS217) on 23 August 2001 would also examine the complaint by Canada and Mexico (WT/DS234).

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. On 17 April 2002, the Chairman of the Panel informed the DSB that the Panel would not be able to complete its work in six months since the parties were given the maximum amount of time for preparing submissions and oral statements. The Panel expected to complete its work by July 2002.

On 16 September 2002, the Panel Report was circulated to Members. The Panel concluded that the CDSOA was inconsistent with Articles 5.4, 18.1 and 18.4 of the Anti-Dumping Agreement, Articles 11.4, 32.1 and 32.5 of the Subsidies Agreement, Articles VI:2 and VI:3 of the GATT 1994, and Article XVI:4 of the WTO Agreement. The Panel rejected the complaining parties' claims that the CDSOA was inconsistent with Articles 8.3 and 15 of the Anti-Dumping Agreement, Articles 4.10, 7.9 and 18.3 of the Subsidies Agreement, and Article X:3(a) of the GATT 1994. They also rejected Mexico's claim that the CDSOA violated SCM Article 5(b). The CDSOA is a new and complex measure, applied in a complex legal environment. In concluding that the CDSOA was in violation of the abovementioned provisions, the Panel had been confronted by sensitive issues regarding the use of subsidies as trade remedies. If Members were of the view that subsidisation is a permitted response to unfair trade practices, the Panel suggested that they clarify this matter through negotiation. Pursuant to Article 3.8 of the DSU, the Panel concluded that to the extent that the CDSOA was inconsistent with the provisions of the Anti-Dumping Agreement, the SCM Agreement, and the GATT 1994, the CDSOA nullified or impaired benefits accruing to the complaining parties under those agreements. The Panel recommended that the DSB request the United States to bring the CDSOA into conformity with its obligations under the Anti-Dumping Agreement, the SCM Agreement, and the GATT of 1994 by repealing the CDSOA.

On 18 October 2002, the United States 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 13 December 2002, the Appellate Body informed the DSB that it was not able to circulate the Report within 60 days from the appeal and that the Report was to be circulated no later than 16 January 2003. On 16 January 2003, the Appellate Body circulated its Report. The Appellate Body:

- (a) upheld the finding of the Panel, in paragraphs 7.51 and 8.1 of the Panel Report, that the CDSOA is a non-permissible specific action against dumping or a subsidy, contrary to Article 18.1 of the *Anti-Dumping Agreement* and Article 32.1 of the *SCM Agreement*;
- (b) consequently upheld the Panel's finding, in paragraphs 7.93 and 8.1 of the Panel Report, that the CDSOA is inconsistent with certain provisions of the *Anti-Dumping Agreement* and the *SCM Agreement* and that, therefore, the United States has failed to comply with Article 18.4 of the *Anti-Dumping Agreement*, Article 32.5 of the *SCM Agreement* and Article XVI:4 of the *WTO Agreement*;

- (c) upheld the Panel's finding, in paragraph 8.4 of the Panel Report, that, pursuant to Article 3.8 of the DSU, to the extent that the CDSOA is inconsistent with provisions of the *Anti-Dumping Agreement* and the *SCM Agreement*, the CDSOA nullifies or impairs benefits accruing to the Complaining Parties under those Agreements;
- (d) reversed the Panel's findings, in paragraphs 7.66 and 8.1 of the Panel Report, that the CDSOA is inconsistent with Article 5.4 of the *Anti-Dumping Agreement* and Article 11.4 of the *SCM Agreement*;
- (e) rejected the Panel's conclusion, in paragraph 7.63 of the Panel Report, that the United States may be regarded as not having acted in good faith with respect to its obligations under Article 5.4 of the *Anti-Dumping Agreement* and Article 11.4 of the *SCM Agreement*; and
- (f) rejected the claim of the United States that the Panel acted inconsistently with Article 9.2 of the DSU by not issuing a separate panel report in the dispute brought by Mexico.

The Appellate Body recommended that the DSB request the United States bring the CDSOA into conformity with its obligations under the *Anti-Dumping Agreement*, the *SCM Agreement*, and the GATT 1994. Further to Canada's request, the DSB adopted the Appellate Body Report and the Panel Report, as modified by the Appellate Body, at its meeting on 27 January 2003.

66. 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) No. 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.

On 15 January 2002, both parties requested the Panel to suspend its work until 1 March 2002 with a view to reaching a mutually agreed solution. The Panel agreed to the request. On 28 February 2002, both parties requested the Panel to further suspend its work until 5 April 2002 with a view to reaching a mutually agreed solution. The Panel agreed to this request. On 22 April 2002, the Panel resumed its work, in accordance with Brazil's request. On 3 May 2002, the Chairman of the Panel notified the DSB that it would not be possible to complete its work in six months in light of, *inter alia*, scheduling conflicts. The Panel expects to complete its work in December 2002. On 7 March 2003, the Panel circulated its Report to the Members. The Panel concluded that the EC had acted inconsistently with its obligations under:

- Article 2.4.2 of the *Anti-Dumping Agreement* in “zeroing” negative dumping margins in its dumping determination; and
- Article 12.2 and 12.2.2 in that it is not directly discernible from the published Provisional or Definitive Determination that the European Communities addressed or explained the lack of significance of certain injury factors listed in Article 3.4.

The Panel ruled against Brazil on all other claims. On 23 April 2003, Brazil notified its decision to appeal certain issues of law as well as certain legal interpretations developed by the Panel.

On 22 July 2003, the Appellate Body Report was circulated to Members. Of the seven issues appealed by Brazil, the Appellate Body rejected Brazil's claims with respect to six issues. The Appellate Body upheld the Panel's findings that the European Communities did not act inconsistently with Article VI:2 of the GATT 1994 or with Articles 1, 2.2.2, 3.1, 3.2, 3.3, 3.4, or 3.5 of the *Anti-Dumping Agreement*. In the course of upholding these findings, the Appellate Body also rejected Brazil's claim that the Panel, contrary to its obligation under Article 17.6(i) of the *Anti-Dumping Agreement*, failed to assess properly the facts of the matter before it when admitting into evidence the document referred to as Exhibit EC-12. The Appellate Body reversed the Panel's finding with respect to one issue. The Appellate Body found, in contrast to the Panel, that the European Communities acted inconsistently with Articles 6.2 and 6.4 of the *Anti-Dumping Agreement* by failing to disclose to interested parties during the anti-dumping investigation certain information related to the evaluation of the state of the domestic industry, which was contained in document Exhibit EC-12.

On 18 August 2003, the DSB adopted the Appellate Body report and the Panel report, as modified by the Appellate Body Report.

67. 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. On 30 April 2002, the Chairman of the Panel informed the DSB that the

Panel would not be able to complete its work in six months due to the complexity of the matter and that the Panel expected to issue its final report to the parties by the end of June 2002. On 15 July 2002, the Panel circulated its report to Members. The Panel concluded that that Canada had failed to establish that section 129(c)(1) of the Uruguay Round Agreements Act was inconsistent with Articles VI:2, VI:3 and VI:6(a) of the GATT 1994; Articles 1, 9.3, 11.1 and 18.1 and 18.4 of the AD Agreement; Articles 10, 19.4, 21.1, 32.1 and 32.5 of the SCM Agreement; and Article XVI:4 of the WTO Agreement. In the light of its conclusion, the Panel made no recommendations to the DSB.

On 30 August 2002, the DSB adopted the Panel report.

68. 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 informed that it expected to complete its work by October 2001. On 28 January 2002, the Panel circulated its report to the Members. The Panel:

- rejected Brazil's claims that the EDC Corporate Account, Canada Account, the *IQ* programmes "as such" constitute prohibited export subsidies contrary to Article 3.1(a) of the SCM Agreement;
- rejected Brazil's claim that the EDC Corporate Account, Canada Account and the *IQ* programmes "as applied" constitute prohibited export subsidies contrary to Article 3.1(a) of the SCM Agreement;
- upheld Brazil's claim that the EDC Canada Account financing to Air Wisconsin, to Air Nostrum and to Comair constitutes a prohibited export subsidy contrary to Article 3.1(a) of the SCM Agreement;
- rejected Brazil's claim that the EDC Corporate Account financing to ASA, ACA, Kendell Air Nostrum and Comair in December 1996, March 1997 and March 1998 constitutes a prohibited export subsidy contrary to Article 3.1(a) of the SCM Agreement;

- rejected Brazil's claim that *IQ* equity guarantees to ACA, Air Littoral, Midway, Mesa Air group, Air Nostrum and Air Wisconsin constitute prohibited export subsidies contrary to Article 3.1(a) of the SCM Agreement; and
- rejected Brazil's claim that *IQ* loan guarantees to Mesa Air Group and Air Wisconsin constitute prohibited export subsidies contrary to Article 3.1(a) of the SCM Agreement.

The Panel also recommended that Canada withdraw the subsidies identified within 90 days.

At its meeting on 19 February 2002, the DSB adopted the panel report.

69. 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. On 11 March 2002, the Panel informed the DSB that it would not be able to issue its report within 6 months, due to the complexity of the matter and scheduling constraints. The Panel expects to complete its work by end of April 2002. On 3 May 2002, the parties to the dispute requested the Panel to suspend its proceedings, pursuant to Article 12.12 of the DSU, until 21 May 2002. On 6 May 2002, the Panel agreed to this request.

The Panel Report was circulated to Members on 29 May 2002. The Panel concluded that the EC Regulation was inconsistent with Article 2.4 of the TBT Agreement.

On 28 June 2002, the EC notified its decision to appeal to the Appellate Body certain issues of law covered in the in the Panel report and certain legal interpretations developed by the Panel.

On 26 September 2002 the report of the Appellate Body was circulated. The Appellate Body:

- (a) found that the condition attached to the withdrawal of the Notice of Appeal of 25 June 2002 was permissible, and that the appeal of the EC, commenced by the Notice of Appeal of 28 June 2002, was admissible;
- (b) found that the *amicus curiae* briefs submitted were admissible but their contents did not assist in deciding the appeal;
- (c) upheld the Panel's finding, in paragraph 7.35 of the Panel Report, that the EC Regulation is a "technical regulation" under the TBT Agreement;

- (d) upheld the Panel's findings, in paragraph 7.60 of the Panel Report, that Article 2.4 of the TBT Agreement applies to measures that were adopted before 1 January 1995 but which have not "ceased to exist", and, in paragraph 7.83 of the Panel Report, that Article 2.4 of the TBT Agreement applies to existing technical regulations, including the EC Regulation;
- (e) upheld the Panel's finding, in paragraph 7.70 of the Panel Report, that Codex Stan 94 is a "relevant international standard" under Article 2.4 of the TBT Agreement;
- (f) upheld the Panel's finding, in paragraph 7.112 of the Panel Report, that Codex Stan 94 was not used "as a basis for" the EC Regulation within the meaning of Article 2.4 of the TBT Agreement;
- (g) reversed the Panel's finding, in paragraph 7.52 of the Panel Report, that, under the second part of Article 2.4 of the TBT Agreement, the burden of proof rested with the EC to demonstrate that Codex Stan 94 is an "ineffective or inappropriate means for the fulfilment of the legitimate objectives pursued" by the EC through the EC Regulation, and found, instead, that the burden of proof rested with Peru to demonstrate that Codex Stan 94 is an effective and appropriate means to fulfil those "legitimate objectives", and, upheld the Panel's finding, in paragraph 7.138 of the Panel Report, that Peru has adduced sufficient evidence and legal arguments to demonstrate that Codex Stan 94 is not "ineffective or inappropriate" to fulfil the "legitimate objectives" of the EC Regulation;
- (h) rejected the claim of the EC that the Panel did not conduct "an objective assessment of the facts of the case", as required by Article 11 of the DSU;
- (i) rejected the claim of the EC that the Panel made a determination, in paragraph 7.127 of the Panel Report, that the EC Regulation is trade-restrictive, and, declared moot and without legal effect the two statements, in paragraph 6.11 and in footnote 35 of the Panel Report, on the trade-restrictive character of the EC Regulation; and
- (j) found it unnecessary to complete the analysis under Article 2.2 of the TBT Agreement, Article 2.1 of the TBT Agreement, or Article III:4 of the GATT 1994.

Therefore, the Appellate Body upheld the Panel's finding, in paragraph 8.1 of the Panel Report, that the EC Regulation is inconsistent with Article 2.4 of the TBT Agreement.

The Appellate Body recommended that the DSB request the EC to bring the EC Regulation, as found in its and in the Panel Report, as modified by its Report, to be inconsistent with Article 2.4 of the TBT Agreement, into conformity with EC's obligations under that Agreement.

On 23 October 2002, the DSB adopted the Appellate Body Report and the Panel Report, as modified by the Appellate Body Report.

70. 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 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. At its meeting on 5 December 2001, the DSB established a panel. The EC and India reserved their third-party rights to participate in the panel proceedings. On 17 December 2001, Japan requested to participate in the proceedings as a third party.

On 22 January 2002, Canada requested the Director-General to determine the composition of the panel. On 1 February 2002, the Director-General composed the panel.

On 27 September 2002, the Panel Report was circulated. The Panel found that the USDOC Preliminary Countervailing Duty Determination:

- (a) was not inconsistent with Article 1.1 (a) SCM Agreement when the USDOC found that the provision of stumpage constituted a financial contribution, in the form of the provision of a good or service;
- (b) failed to determine the existence and amount of benefit to the producers of the subject merchandise on the basis of the prevailing market conditions in Canada as required by Article 1.1 (b) and Article 14 and 14 (d) SCM Agreement; and
- (c) failed to establish that a benefit was conferred to certain producers of the subject merchandise as the USDOC did not examine whether a benefit was passed through by the unrelated upstream producers of log inputs to the downstream producers of the subject merchandise;

Therefore, the Panel concluded that the USDOC's imposition of provisional measures based on the preliminary countervailing duty determination was inconsistent with the US obligations under Articles 1.1 (b), 10, 14, 14 (d), and 17.1(b) SCM Agreement.

The Panel exercised judicial economy in respect of Canada's claim that the USDOC instructions transmitted to the United States Customs Service on 4 September 2001, imposed provisional measures in excess of the subsidy preliminarily found to exist in a manner inconsistent with Articles 10, 17.2, 17.5, 19.4 and 32.1 of the SCM Agreement and Article VI:3 of GATT 1994.

The Panel further concluded that the retroactive imposition of a provisional measure on the basis of the USDOC Preliminary Critical Circumstances Determination is inconsistent with Articles 20.6, 17.3, and 17.4 SCM Agreement and exercised judicial economy in respect of Canada's claim that the USDOC failed to establish the existence of critical circumstances under Article 20.6 SCM Agreement in its Preliminary Critical Circumstances Determination.

Finally, the Panel concluded that the US laws and regulations challenged by Canada on expedited and administrative reviews are not inconsistent with the SCM Agreement as they do not require the executive authority to act in a manner inconsistent with the US obligations under Articles 19 and 21 of the SCM Agreement concerning expedited and administrative reviews. As a result the Panel rejected Canada's claims that the United States has 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.

The Panel recommended that the DSB request the United States to bring its measure into conformity with its obligations under the SCM Agreement.

At its meeting on 1 November 2002, the DSB adopted the Panel Report.

71. 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 is inconsistent with Articles 2, 4, 5 and 12 of the Agreement on Safeguards, and Article XIX:1 of GATT 1994.

On 6 December 2001, Chile requested the establishment of a panel. At its meeting on 18 December 2001, the DSB deferred the establishment of the panel. At the DSB meeting on 18 January 2002, a panel was established. Immediately after the establishment, Chile stated that it would not, for the moment, proceed with the appointment of panelists, as it was still hoping to reach a mutually satisfactory solution with Argentina. The European Communities, Paraguay and the United States reserved their third-party rights to participate in the Panel's proceedings. On 13 March 2002, Chile informed the Chairman of the DSB that it would like the composition of the panel to go ahead. The panel was composed on 16 April 2002.

On 15 October 2002, the Chair of the Panel informed the DSB that it would not be possible to complete its work in six months due to the schedule agreed with the parties and that the Panel expected to circulate its report at the end of January 2003. On 14 February 2003, the Panel circulated its Report to the Members. The Panel concluded that the Argentine preserved peaches measure was imposed inconsistently with certain provisions of the Agreement on Safeguards and GATT 1994. In particular:

- Argentina acted inconsistently with its obligations under Article XIX:1(a) of GATT 1994 by failing to demonstrate the existence of unforeseen developments as required;

- Argentina acted inconsistently with its obligations under Article XIX:1(a) of GATT 1994 and Articles 2.1 and 4.2(a) of the Agreement on Safeguards by failing to make a determination of an increase in imports, in absolute or relative terms, as required;
- Argentina acted inconsistently with its obligations under Article XIX:1(a) of GATT 1994 and Articles 2.1, 4.1(b) and 4.2(a) of the Agreement on Safeguards because the competent authorities, in their determination of the existence of a threat of serious injury:
 - (i) did not evaluate all of the relevant factors having a bearing on the situation of the domestic industry;
 - (ii) did not provide a reasoned and adequate explanation of how the facts supported their determination; and
 - (iii) did not find that serious injury was clearly imminent.

The Panel did not find that Argentina acted inconsistently with its obligations under Articles 2.1 and 4.1(b) of the Agreement on Safeguards by basing a finding of the existence of a threat of serious injury on an allegation, conjecture or remote possibility. The Panel exercised judicial economy with respect to all other claims.

At its meeting on 15 April 2003, the DSB adopted the Panel Report.

72. WT/DS241 – Argentina – Definitive Anti-Dumping Duties on Poultry from Brazil

Complaint by Brazil. On 7 November 2001, Brazil requested consultations with Argentina in respect of the definitive anti-dumping duties imposed by Argentina on imports of poultry from Brazil, classified under Mercosur tariff line 0207.11.00 and 0207.12.00. These measures were adopted by the Ministry of Economy of Argentina in Resolution 574 from 21 July 2000, published in the Argentinean Official Gazette on 24 July 2000. Brazil considered that the definitive anti-dumping duties imposed, as well as the investigation conducted by the Argentinean Authorities might have been flawed and based on erroneous or deficient procedures, inconsistent with Argentina's obligations under Articles 1, 2, 3, 4, 5, 6, 9, 12 and Annex II of the Anti-Dumping Agreement, Article VI of the GATT 1994, and Articles 1 and 7 of the Customs Valuation Agreement.

On 19 November 2001, the EC requested to join the consultations. On 25 February 2002, Brazil requested the establishment of a panel. At its meeting on 8 March 2002, the DSB deferred the establishment of a panel. At the DSB meeting on 17 April 2002, the panel was established. Argentina noted that notwithstanding the establishment of the panel at the present meeting, it was still hopeful that a mutually satisfactory solution to the dispute could be found. Canada, Chile, the EC, Guatemala, Paraguay and the US reserved their third-party rights.

On 17 June 2002, Brazil requested the Director-General to compose the panel. On 27 June 2002, the panel was composed.

On 18 December 2002, the Chair of the Panel informed the DSB that it would not be possible to complete its work in six months due to the schedule agreed with the parties and that the Panel expected to complete its work by the beginning of April 2003.

On 22 April 2003, the Panel circulated its Report to the Members. The Panel found that Argentina had acted inconsistently with its obligations under Articles 2.4, 2.4.2, 3.1, 3.2, 3.3, 3.4, 3.5, 5.1, 5.8, 6.1.1, 6.1.3, 6.8 and Annex II, 6.10 and 12.1 of the Anti-Dumping

Agreement. The Panel also concluded that Argentina had not acted inconsistently with a number of Articles from the same Agreement and declined to rule on a number of claims for judicial economy reasons.

At its meeting on 19 May 2003, the DSB adopted the Panel Report.

73. WT/DS243 – United States – Rules of Origin for Textiles and Apparel Products

Complaint by India. On 11 January 2002, India requested consultations with the United States in respect of its rules of origin applicable to imports of textiles and apparel products as set out in Section 334 of the Uruguay Round Agreements Act, Section 405 of the Trade and Development Act of 2000 and the customs regulations implementing these provisions.

India argued that, prior to the abovementioned Section 334, the rule of origin applicable to textiles and apparel products was the "substantial transformation" rule. India considered that Section 334 changed the system by identifying specific processing operations which would confer origin to the various types of textiles and apparel products. In India's view, these changes appear to have been made to protect the United States textiles and clothing industry from import competition. India indicated that the changes introduced by Section 334 had already been challenged by the European Communities on the grounds that they were incompatible with the United States' obligations under the Agreement on Rules of Origin and other WTO Agreements (WT/DS151). India explained that that dispute was settled through a *procès-verbal* whereby the United States agreed to introduce legislation amending Section 334. According to India, the changes introduced by the amending legislation, i.e. Section 405, were aimed at taking account of the particular export interests of the European Communities.

India is of the view that the changes introduced by Sections 334 and 405 have resulted in extraordinary complex rules under which the criteria that confer origin vary between similar products and processing operations. India argued that the structure of the changes, the circumstances under which they were adopted and their effect on the conditions of competition for textiles and apparel products suggest that they serve trade policy purposes. On those grounds, India questioned the compatibility of those changes with paragraphs (b), (c), (d) and (e) of Article 2 of the Agreement on Rules of Origin.

On 7 May 2002, India requested the establishment of a panel. At its meeting on 22 May 2002, the DSB deferred the establishment of a panel. Further to a second request by India, the DSB established a panel at its meeting on 24 June 2002. EC, Pakistan and the Philippines reserved their third party rights. On 3 July 2002, Bangladesh reserved its third party rights. On 4 July 2002, China reserved its third party rights. On 10 October 2002, the Panel was composed. On 9 April 2003, the Chairman of the Panel informed the DSB that due to the complexity of the matter, the Panel would not be able to complete its work in six months. The Panel expects to issue its final report to the parties in early May 2003.

On 20 June 2003, the Panel Report was circulated to Members. The Panel found that:

- (a) India failed to establish that section 334 of the Uruguay Round Agreements Act is inconsistent with Articles 2(b) or 2(c) of the *RO Agreement*; and
- (b) India failed to establish that section 405 of the Trade and Development Act is inconsistent with Articles 2(b), 2(c) or 2(d) of the *RO Agreement*;
- (c) India failed to establish that the customs regulations contained in 19 C.F.R. § 102.21 are inconsistent with Articles 2(b), 2(c) or 2(d) of the *RO Agreement*;

At its meeting on 21 July 2003, the DSB adopted the Panel Report.

74. WT/DS244 – United States – Sunset Review of Anti-Dumping Duties on Corrosion-Resistant Carbon Steel Flat Products from Japan

Complaint by Japan. On 30 January 2002, Japan requested consultations with the United States in respect of the final determinations of both the United States Department of Commerce (DOC) and the United States International Trade Commission in the full sunset review of the anti-dumping duties imposed on imports of corrosion-resistant carbon steel flat products from Japan. These determinations were issued on 2 August 2000 and 21 November 2000, respectively.

- Japan claimed that these determinations were erroneous and based on deficient rulings, procedures and provisions pertaining to the United States Tariff Act of 1930, as amended ("the Act") and related regulations.
- Japan further claimed that the procedures and provisions of the Act and related regulations as well as the above determinations were inconsistent with, *inter alia*, Articles VI and X of GATT 1994; Articles 2, 3, 5, 6 (including Annex II), 11, 12, and 18.4 of the Anti-Dumping Agreement; and Article XVI:4 of the WTO Agreement.

On 13 February 2002, the EC requested to join the consultations. On 14 February 2002, India requested to join the consultations.

On 4 April 2002, Japan requested the establishment of a panel. At its meeting on 17 April 2002, the DSB deferred the establishment of a panel. . Further to a second request from Japan, the DSB established a panel at its meeting on 22 May 2002. Brazil, Canada, Chile, EC, India, Korea, Norway and Venezuela reserved third-party rights to participate in the Panel proceedings.

On 9 July 2002, Japan requested the Director-General to compose the panel. On 17 July 2002, the panel was composed.

On 5 August 2002 Venezuela decided to withdraw as a third party from the panel proceedings.

On 9 January 2003, the Chair of the Panel informed the DSB that it would not be possible to complete its work within six months due to the timetable adopted after having heard the parties' views and based on the time periods prescribed in Appendix 3 of the DSU. The Panel expected to complete its work by April 2003. On 22 May 2003, the Panel issued its report to the parties to the dispute. On 14 August 2003, the Panel circulated its Report to the Members. The Panel rejected all of Japan's claims challenging various aspects of the US laws and regulations regarding the conduct of "sunset" reviews of anti-dumping duties under US law. The Panel found, *inter alia*, that the obligations pertaining to evidentiary standards for self-initiation and *de minimis* standards in investigations do not apply to sunset reviews. The Panel also rejected Japan's argument that the US *Sunset Policy Bulletin* – which, by its own terms, provides guidance on methodological or analytical issues not explicitly addressed by the US statute and regulations -- was a mandatory instrument that could be challenged *as such* in WTO dispute settlement. Rather, the Panel found that the *Bulletin* may be challenged only in respect of its application by the US Department of Commerce ("USDOC") in a particular case. The Panel further found that the USDOC's determination of likelihood of continuation or recurrence of dumping in this particular case was not WTO-inconsistent. Accordingly, the Panel made no recommendation.

On 15 September 2003, Japan sent its notification of an appeal to the DSB and filed the Notice of Appeal with the Appellate Body.

On 12 November 2003, the Chairman of the Appellate Body informed the DSB that the Appellate Body would not be able to circulate its Report within 60 days due to the time required for completion and translation of the Report and that it estimated that the Appellate Body Report in this appeal would be circulated to WTO Members no later than 15 December 2003.

On 15 December 2003, the report of the Appellate Body was circulated to Members. The Appellate Body upheld three findings but reversed four of the Panel's legal findings. The Appellate Body found, contrary to the Panel, that the *Bulletin* can be challenged in WTO dispute settlement. However, the Appellate Body did not find any of the provisions of the *Bulletin* inconsistent with the Anti-Dumping Agreement or the WTO Agreement. Although its analysis of Japan's claims differed from that of the Panel in important respects, the Appellate Body did not make any finding that the US had acted inconsistently with its obligations under the Anti-Dumping Agreement or the WTO Agreement.

At its meeting on 9 January 2004, the DSB adopted the Appellate Body report and the Panel report, as modified by the Appellate Body report.

75. WT/DS245 – Japan – Measures Affecting the Importation of Apples

Complaint by the United States. On 1 March 2002, the United States requested consultations with Japan regarding restrictions allegedly imposed by Japan on imports of apples from the United States.

The United States' complaint arose from the maintenance by Japan of quarantine restrictions on apples imported into Japan, which restrictions were said to be necessary to protect against introduction of fire blight. Among the measures the United States complained of were the prohibition of imported apples from orchards in which any fire blight was detected, the requirement that export orchards be inspected three times yearly for the presence of fire blight and the disqualification of any orchard from exporting to Japan should fire blight be detected within a 500 meter buffer zone surrounding such orchard.

The United States claimed that these measures might be inconsistent with the obligations of Japan under:

- Article XI of GATT 1994,
- Articles 2.2, 2.3, 5.1, 5.2, 5.3, 5.6, 6.1, 6.2 and 7 and Annex B of the SPS Agreement, and
- Article 14 of the Agreement on Agriculture.

On 7 May 2002, the United States requested the establishment of a panel. At its meeting on 22 May 2002, the DSB deferred the establishment of a panel. Further to a second request to by the United States, at its meeting on 3 June 2002, the DSB established a panel. Australia, Brazil and the EC reserved their third-party rights. On 10 June 2002, New Zealand reserved its third party rights. On 12 June 2002, Chinese Taipei reserved its third party rights.

On 9 July 2002, the US requested the Director-General to compose the panel. On 17 July 2002, the panel was composed. On 16 January 2003, the Chairman of the Panel informed the DSB that the Panel could not complete its work within 6 months from its composition. The Panel expected to issue its final report to the parties by the end of May 2003.

The Panel circulated its Report to Members on 15 July 2003. The Panel found that Japan's phytosanitary measure imposed on imports of apples from the United States was contrary to Article 2.2 of the SPS Agreement and was not justified under Article 5.7 of the SPS Agreement and that Japan's 1999 Pest Risk Assessment did not meet the requirements of Article 5.1 of the SPS Agreement.

On 28 August 2003, Japan 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 23 October 2003, the Chairman of the Appellate Body informed the DSB that the Appellate Body would not be able to circulate its Report within 60 days due to the time required for completion and translation of the Report and that it estimated that the Appellate Body Report in this appeal would be circulated to WTO Members no later than 26 November 2003.

On 26 November 2003, the report of the Appellate Body was circulated. The Appellate Body rejected all four of Japan's claims on appeal. The Appellate Body **upheld** the Panel's findings that Japan's phytosanitary measure at issue was inconsistent with Japan's obligations under Articles 2.2, 5.7, and 5.1 of the SPS Agreement. The Appellate Body also found that the Panel properly discharged its duties under Article 11 of the DSU in the Panel's assessment of the facts of the case. The US sole claim on appeal challenged the "authority" of the Panel to make findings and draw conclusions with respect to apples *other than* "mature, symptomless" apple fruit. The Appellate Body **rejected** this claim, finding that the Panel did have the "authority" to make rulings covering all apple fruit that could possibly be exported from the United States to Japan, including apples other than "mature, symptomless" apples.

At its meeting on 10 December 2003, the DSB adopted the Appellate Body report and the Panel report, as modified by the Appellate Body report.

76. WT/DS248, WT/DS249, WT/DS251, WT/DS252, WT/DS253, WT/DS254, WT/DS258 and WT/DS259 – United States – Definitive Safeguard Measures on Imports of Certain Steel Products

Complaints by the European Communities (WT/DS248), Japan (WT/DS249), Korea (WT/DS251), China (WT/DS252), Switzerland (WT/DS253), Norway (WT/DS254), New Zealand (WT/DS258) and Brazil (WT/DS259).

On 7 March 2002, the European Communities requested consultations with the United States regarding the definitive safeguard measures imposed by the US in the form of an increase in duties on imports of certain flat steel, hot-rolled bar, cold-finished bar, rebar, certain welded tubular products, carbon and alloy fittings, stainless steel bar, stainless steel rod, tin mill products and stainless steel wire and in the form of a tariff rate quota on imports of slabs effective as of 20 March 2002. The European Communities considered that the aforementioned US measures were in breach of US obligations under the Agreement on Safeguards and GATT 1994, and in particular Articles 2.1, 2.2, 3.1, 3.2, 4.1, 4.2, 5.1, 5.2, 7.1 and 9.1 of the Agreement on Safeguards and Articles I:1, XIII and XIX:1 of GATT 1994. The European Communities also reserved all its rights regarding the pursuit of the remedies provided for under the Agreement on Safeguards and the DSU.

On 14 March 2002, Japan and Korea requested to join the consultations. On 15 March 2002, Switzerland and Canada also requested to join the consultations. On 20 March 2002, Venezuela also requested to join the consultations. On 21 March 2002, Norway and China requested to join the consultations as well. On 22 March 2002, Mexico also requested to join the consultations. On 25 March 2002, New Zealand also requested to join the consultations.

The US informed the DSB that it had accepted the requests of Canada, China, Japan, Korea, Mexico, New Zealand, Norway, Switzerland and Venezuela to join the consultations.

On 20 March 2002, Japan (WT/DS249) requested consultations with the United States also with regard to the definitive safeguard measures imposed by the US on the imports of certain steel products and claimed violations of Articles 2.1, 2.2, 3.1, 3.2, 4.1, 4.2, 5.1, 7.1, 7.4, 8.1, 12.1, 12.2, 12.3 of the Agreement on Safeguards and Articles I:1, II, X:3, XIII and XIX:2 of GATT 1994. On 27 March, Norway requested to join the consultations. On 5 April, Mexico requested to join the consultations. On 9 April 2002, New Zealand requested to join the consultations. The US informed the DSB that it had accepted the requests of Mexico, New Zealand and Norway to join the consultations.

On 20 March 2002, Korea (WT/DS251) requested consultations with the United States also with regard to the definitive safeguard measures imposed by the US on the imports of certain steel products and the related laws of the US, including Sections 201 and 202 of the Trade Act of 1974 and Section 311 of the NAFTA Implementation Act. Korea claimed violations of Articles 2.1, 2.2, 3, 4, 5, 7.1, 7.4, 8.1, 9.1 and 12 of the Agreement on Safeguards, Articles X:3 and XIX:1 of GATT 1994 and Article XVI:4 of the Marrakesh Agreement. On 27 March 2002, Japan and Norway requested to join the consultations. On 5 April, Mexico and New Zealand requested to join the consultations. The US informed the DSB that it had accepted the requests of Japan, Mexico, New Zealand and Norway to join the consultations.

On 26 March 2002, China (WT/DS252) requested consultations with the United States also with regard to the definitive safeguard measures imposed by the US on imports of certain steel products and claimed violations of Articles 2.1, 2.2, 3.1, 3.2, 4.1, 4.2, 5.1, 5.2, 7.1, 8.1, 9.1 and 12 of the Agreement on Safeguards and Articles I:1, II, X:3, XIX:1 and XIX:2 of GATT 1994. On 4 April 2002, Japan requested to join the consultations. On 5 April 2002, New Zealand also requested to join the consultations. The US informed the DSB that it had accepted the requests of Japan and New Zealand to join the consultations.

On 3 April 2002, Switzerland (WT/DS253) also requested consultations with the United States with regard to the definitive safeguard measures imposed by the US on imports of certain steel products and claimed violations of Articles 2.1, 2.2, 3, 4.1, 4.2, 5.1, 7.1, 8.1 and 12 of the Agreement on Safeguards and Articles I:1 and XIX:1 of GATT 1994. On 11 April 2002, New Zealand requested to join the consultations. On 15 April 2002, Japan requested to join the consultations. The US informed the DSB that it had accepted the requests of Japan and New Zealand to join consultations.

On 4 April 2002, Norway (WT/DS254) requested consultations with the United States with regard to the same safeguard measures imposed by the US on imports of certain steel products and claimed violations of Articles 3, 4.1, 4.2, 5.1, 7, 8.1, 9.1 and 12 of the Agreement on Safeguards and Articles I:1, II, X:3 and XIX of GATT 1994. On 11 April 2002, New Zealand requested to join the consultations. On 15 April 2002, Japan requested to join the consultations. The US informed the DSB that it had accepted the requests of Japan and New Zealand to join consultations.

On 14 May 2002, New Zealand (WT/DS258) requested consultations with the United States with regard to the same safeguard measures on steel imposed by the US and claimed violations of Articles 2.1, 2.2, 3.1, 3.2, 4.1, 4.2, 5.1, 7, 8.1 and 12 of the Agreement on Safeguards and Articles I:1, X and XIX:1 of GATT 1994. On 24 May 2002, the European Communities requested to join the consultations. On 27 May 2002, Japan requested to join the consultations. On 30 May 2002, Korea requested to join the consultations. On 31 May 2002, Norway, China and Mexico requested to join the consultations. The US informed the

DSB that it had accepted the requests of China, the EC, Japan, Korea, Mexico and Norway to join consultations.

On 21 May 2002, Brazil (WT/DS259) requested consultations with the United States with regard to the same definitive safeguard measures imposed by the US on imports of certain steel products. On 24 May 2002, the European Communities requested to join the consultations. On 27 May 2002, Japan requested to join the consultations. On 30 May 2002, Korea requested to join the consultations. On 31 May 2002, Norway, China and Mexico requested to join the consultations. The US informed the DSB that it had accepted the requests of China, the EC, Japan, Korea, Mexico and Norway to join consultations.

Further to individual requests for the establishment of a panel submitted by the eight complainants at the following DSB meetings:

- 3 June 2002 – the EC claimed that the US measures violated Articles 2.1, 3.1, 4.2(a), 4.2(b), 4.2(c) and 5.1 of the Agreement on Safeguards and Article XIX:1 of GATT 1994;
- 14 June 2002 – Japan claimed that the US measures violated Articles 2, 3, 4 and 5 of the Agreement on Safeguards and Articles I:1, X:3 and XIX:1 of GATT 1994. Korea claimed that the US measures violated Articles 2, 3, 4, 5, 7.1, 8.1, 9.1 and 12 of the Agreement on Safeguards and Articles X:3, XIII and XIX of GATT 1994;
- 24 June 2002 – China claimed that the US measures violated Articles 2.1, 3.1, 4.1, 4.2, 5.1, 5.2, 8.1, 9.1 and 12 of the Agreement on Safeguards and Articles I:1, II and XIX of GATT 1994. Switzerland claimed that the US measures violated Articles 2.1, 2.2, 3.1, 4, 5.1 and 8.1 of the Agreement on Safeguards and Article XIX:1 of GATT 1994. Norway claimed that the US measures violated Articles 2, 3, 4, 5.1, 7.1 and 9.1 of the Agreement on Safeguards and Articles I:1, X:3(a) and XIX of GATT 1994;
- 8 July 2002 – New Zealand claimed that the US measures violated Articles 2.1, 2.2, 3.1, 4.2, 5.1, 7 and 8.1 of the Agreement on Safeguards and Articles X:3(a) and XIX:1 of GATT 1994;
- 29 July 2002 – Brazil claimed that the US measures violated Articles 2.1, 2.2, 3.1, 4 and 5 of the Agreement on Safeguards and Articles I:1, X:3 and XIX:1 of GATT 1994;

the DSB established a single Panel, pursuant to an agreement between the parties and in accordance with Article 9.1 of the DSU.

The Members which had reserved their third-party rights in the Panels established at the request of these parties were also considered as third parties in the single Panel. Canada, Chinese Taipei, Cuba, Malaysia, Mexico, Thailand, Turkey and Venezuela have reserved their rights to participate in the Panel proceedings as a third party.

On 15 July 2002, the DSB was notified of a procedural agreement between the United States and the European Communities, Japan, Korea, China, Switzerland, Norway and New Zealand. On 18 July 2002, the DSB was notified of a procedural agreement between the United States and Brazil.

On 15 July 2002, the European Communities, Japan, Korea, China, Switzerland, Norway and New Zealand requested the Director-General to determine the composition of the Panel. On 25 July 2002, the Panel was composed.

On 23 October 2002, Malaysia decided to withdraw as a third party from the panel proceedings.

On 20 February 2003, the Chairman of the Panel informed the DSB that the Panel would not be able to complete its work in six months due to the volume, complexities and sensitivity of the legal and factual questions that had been raised. The Panel hoped to complete its work by the end of April 2003.

The Panel circulated its Reports³ to Members on 11 July 2003. The Panel concluded that all the United States' safeguard measures at issue were inconsistent with at least one of the following WTO pre-requisites for the imposition of a safeguard measure: lack of demonstration of (i) unforeseen developments; (ii) increased imports; (iii) causation; and (iv) parallelism. The Panel thus requested the United States to bring the relevant safeguard measures into conformity with its obligations under the Agreement on Safeguards and GATT 1994..

On 11 August 2003, 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 8 October 2003, the Chairman of the Appellate Body informed the DSB that the Appellate Body would not be able to circulate its Report within 60 days due to the time required for completion and translation of the Report and that it estimated that the Appellate Body Report in this appeal would be circulated to WTO Members no later than 10 November 2003.

On 10 November 2003, the Appellate Body Report was circulated to Members. The Appellate Body upheld the Panel's ultimate conclusions that each of the ten safeguard measures at issue in this dispute was inconsistent with the United States' obligations under Article XIX:1(a) of the GATT 1994 and the *Agreement on Safeguards*. The Appellate Body reversed the Panel's findings that the US failed to provide a reasoned and adequate explanation on "increased imports" and on the existence of a "causal link" between increased imports and serious injury for two of the ten safeguard measures. Ultimately, however, even these measures were found to be inconsistent with the *WTO Agreement* on other grounds.

At its meeting on 10 December 2003, the DSB adopted the Appellate Body report and the Panel report, as modified by the Appellate Body report.

³ Although all complaints made by the eight co-complainants were considered in a single panel process, the United States requested the issuance of eight separate panel reports, claiming that to do otherwise would prejudice its WTO rights, including its right to settle the matter with individual complainants. The complainants vigorously opposed this request, stating that to grant it would only delay the panel process. The Panel decided to issue its decisions in the form of "one document constituting eight Panel Reports". Thus, for WTO purposes, this document is deemed to be eight separate reports, relating to each of the eight complainants in this dispute. The document comprises a common cover page, a common descriptive part and a common set of findings. However, the document also contains conclusions and recommendations that are "particularized" for each of the complainants, with a separate number (symbol) for each individual complainant. In the Panel's view, this approach respected the rights of all parties while ensuring the prompt and effective settlement of the disputes.

B. APPELLATE BODY AND PANEL COMPLIANCE REPORTS (ARTICLE 21.5) ADOPTED

1. 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.

2. 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..

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. The report of the compliance panel requested by the EC, under Article 21.5 of the DSU, was never adopted by 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.

3. 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 21 July 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.

4. 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. On 21 November 2001, the DSB adopted the Appellate Body Report and the Panel Report, as upheld by the Appellate Body Report.

5. 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 compliance panel. The report of the Appellate Body was circulated to Members on 21 July 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.

6. 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.

7. 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 and WT/DS103/RW/2 for follow-up). 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 compliance Panel was composed.

The compliance Panel circulated its report on 11 July 2001. It 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 compliance Panel report 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).

The report of the Appellate Body was circulated to Members on 3 December 2001. The Appellate Body reversed the compliance Panel's findings to the effect that the supply of CEM by domestic milk producers to domestic dairy processors involves "payments" on the export of milk "that are financed by virtue of governmental action" under Article 9.1(c) of the Agreement on Agriculture. The Appellate Body concluded that, in the light of the factual findings made by the Panel and the uncontested facts in the Panel record, it was unable to complete the analysis of the claims made by New Zealand and the United States under Articles 9.1(c) or 10.1 of the Agreement on Agriculture, or the claim made by the United States under Article 3.1 of the SCM Agreement. At its meeting on 18 December 2001, the DSB adopted the Appellate Body Report and the Panel Report, as reversed by the Appellate Body Report.

8. WT/DS103/RW/2 and WT/DS113/RW/2 – Canada - Measures Affecting the Importation of Milk and the Exportation of Dairy Products

(See WT/DS103, WT/DS103/RW for precedents). On 6 December 2001, the US submitted to the DSB a second recourse for the establishment of a panel pursuant to Article 21.5 of the DSU. The US submits that, since the Appellate Body's 21.5 Report did not make any findings on the consistency of Canada's new measures, the US continues to believe that Canada had failed to comply with the original recommendations and rulings of the DSB. On the same date, New Zealand made a similar request.

At its meeting on 18 December 2001, the DSB agreed, pursuant to Article 21.5 of the DSU, to refer to the original Panel, for the second time, the matter raised by New Zealand and the US. At the meeting, the EC and Australia reserved third-party rights to participate in the Panel's proceedings. On 28 December 2001, Argentina also reserved its third-party rights to participate in the Panel's proceedings.

On 18 December 2001, Canada concluded with New Zealand and the US respectively, additional understandings regarding procedures under Article 21 and 22 of the DSU.

Pursuant to both understandings, Canada and the respective party agree to request that the arbitration requested by Canada under Article 22.6 of the DSU remain suspended pending the work of the compliance Panel.

On 17 January 2002, the Panel was composed. On 26 July 2002, the Report was circulated to the Members. The Panel concluded that Canada, through the CEM scheme and the continued operation of Special Milk Class 5(d), had 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 and "other dairy products". It also concluded that Canada had acted inconsistently with its obligations under Article 10.1 of the Agreement on Agriculture and that therefore Canada had acted inconsistently with its obligations under Article 8 of the Agreement on Agriculture. Accordingly, the Panel recommended that the DSB request Canada to bring its dairy products marketing regime into conformity with its obligations in respect of export subsidies under the Agreement on Agriculture.

On 23 September 2002, Canada notified its intention to appeal certain issues of law and legal interpretations developed by the compliance panel. On 20 December 2002, the Appellate Body circulated its report. The Appellate Body upheld the Panel's finding that the measure at issue—the supply of "commercial export milk" ("CEM") by Canadian milk producers to Canadian dairy processors—involves export subsidies in the form of "payments" on the export of milk that are "financed by virtue of governmental action" within the meaning of Article 9.1(c) of the *Agreement on Agriculture*. It reversed the Panel's interpretation of the rules on burden of proof in Article 10.3 of the *Agreement on Agriculture*. However, the Appellate Body held that this error did not affect any of the Panel's other findings under the *Agreement on Agriculture*. In view of its conclusion under Article 9.1(c) of the *Agreement on Agriculture*, the Appellate Body declined to rule on the Panel's alternative finding under Article 10.1 of that Agreement.

On 17 January 2003, the DSB adopted the Appellate Body Report and the Panel Report, as modified by the Appellate Body Report.

9. 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 FSC Repeal and Extraterritorial Income Exclusion Act of 2000 (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. On 14 January 2002, the Appellate Body circulated its Report to the Members. The Appellate Body:

- upheld the Panel's findings that the US acted inconsistently with its obligations under the SCM Agreement, the Agreement on Agriculture, and the GATT 1994 through the FSC amended legislation, a measure taken by the United States to implement the recommendations and rulings made by the DSB in the original proceedings in the *United States – FSC* dispute;
- with respect to third party rights, found that the Panel erred in its interpretation of Article 10.3 of the DSU in declining to rule that *all* written submissions of the parties filed prior to the first meeting of the Panel must be provided to the third parties.

At its meeting on 29 January 2002, the DSB adopted the Appellate Body Report and the Panel Report, as upheld by the Appellate Body Report.

10. 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.

11. 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. On 21 November 2001, the DSB adopted the Appellate Body Report and the Panel Report, as upheld by the Appellate Body Report.

12. WT/DS141/RW – European Communities – Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India

(See WT/DS141 for precedents) On 8 March 2002, India sought recourse to Article 21.5 of the DSU (request for consultations), stating that there was disagreement as to the existence or consistency with a covered agreement of measures taken to comply with the recommendations and rulings. On 4 April 2002, India requested the establishment of a compliance panel. In particular, India claimed that the EC had violated Articles 2, 3, 5.7, 6, 9, 12 and 15 of the Anti-Dumping Agreement.

Accordingly, India requested the Panel to conclude that:

- (a) The re-determination, as amended, and the subsequent actions as identified above, are inconsistent with the above provisions of the Anti-Dumping Agreement and GATT 1994; and
- (b) By failing to withdraw the measures found to be inconsistent with the Anti-Dumping Agreement and to bring its measures into conformity with its obligations under the Anti-Dumping Agreement and GATT 1994, the EC has failed to comply with the DSB recommendations and rulings in this dispute.

At the DSB meeting on 17 April 2002, India informed the DSB that pursuant to an understanding reached between the EC and India, it was requesting the withdrawal of the item from the agenda in accordance with Rule 6 of the Rules of Procedure for WTO meetings. The DSB agreed to India's request.

On 7 May 2002, India again requested the establishment of a compliance panel. At the DSB meeting on 22 May 2002, it was agreed that, if possible, the matter would be referred to the original panel. Japan and the United States reserved their third party rights to participate in the proceedings. On 27 May 2002, Korea reserved its third party rights. On 25 June 2002, the compliance panel was composed. On 19 August 2002, the Chairman of the Panel informed the DSB that it expected to complete its work in November 2002. On 29 November 2002, the report was circulated to Members. The Panel concluded that the EC's definitive anti-dumping measure on imports of bed linen from India, EC Regulation 1644/2001, is not inconsistent with the AD Agreement or the DSU and that, therefore, the EC had implemented the recommendation of the original Panel, the Appellate Body, and the DSB to bring its measure into conformity with its obligations under the AD Agreement.

On 8 January 2003, India informed the DSB that it intended to appeal certain issues of law and legal interpretations developed by the Panel in its Report. On 6 March 2003, the Appellate Body informed the DSB that it was not able to circulate its report within the 60-day deadline and that it intended to do so no later than 8 April 2003. On 8 April 2003, the Appellate Body circulated its Report. The Appellate Body:

- upheld the Panel's finding that India's claim under Article 3.5 was not properly before the Panel and, consequently, declined to rule on it,
- reversed the Panel's finding that the EC did not act inconsistently with paragraphs 1 and 2 of Article 3 of the Anti-Dumping Agreement,
- declined to rule on the Panel's finding that the EC applied the second alternative in the second sentence of Article 6.10 for limiting its examination in this investigation; and
- found that the Panel properly discharged its duties under Article 17.6 of the Anti-Dumping Agreement and Article 11 of the DSU and, therefore, upheld the Panel's finding that the EC had information before it on the relevant economic factors listed in Article 3.4 of the Anti-Dumping Agreement when making its injury determination.

The Appellate Body recommended that the DSB request the EC to bring its measure into conformity with the Anti-Dumping Agreement. At its meeting on 24 April 2003, the DSB adopted the Appellate Body Report and the Panel Report, as modified by the Appellate Body Report.

VI. IMPLEMENTATION STATUS OF ADOPTED REPORTS

For descriptions of the reports see Section V: Completed Panel and Appellate Body Review.

1. 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.

2. 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.

3. 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.

4. 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.

5. 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.

At the DSB meeting on 7 November 2003, the EC stated that following the entering into force of its new Directive (2003/74/EC) regarding the prohibition on the use in stockfarming of certain hormones, there was no legal basis for the continued imposition of retaliatory measures by Canada and the US; one of the reasons cited by the Appellate Body in its ruling against the EC was its failure to carry out a risk assessment within the meaning of Articles 5.1 and 5.2 of the SPS Agreement; and, having commissioned such an assessment to be undertaken on its behalf by an independent scientific committee whose findings indicated that the hormones in question posed a risk for consumers, the EC had fulfilled its WTO obligations and was entitled to demand the immediate lifting of the sanctions imposed by Canada and the US in accordance with the provisions of Article 22.8 of the DSU. The US stated that they had carefully reviewed the new EC Directive and did not share the view that it implemented the recommendations and rulings of the DSB. The new measure lacked any scientific basis and as such could not be justified under the SPS Agreement. Contrary to the EC's claim, a number of studies had found that there was no increased health risk from the consumption of meat from animals treated with growth-promoting hormones. In the circumstances, the US was not in a position to accede to the request by the EC. Canada said that while his country was prepared to discuss this matter further with the EC, it doubted whether the new studies presented any new scientific basis for the ban of hormone-treated beef, and was also not in a position to accede to the request of the EC. The EC responded that on the basis of the negative position expressed by the US and Canada, it would reflect on the appropriate actions that would be necessary in order to preserve its rights under the WTO agreements.

At the DSB meeting on 1 December 2003, the EC stated that: in light of the disagreement between the parties to the dispute with regard to the EC's compliance with the DSB's recommendations, the matter should be referred to the WTO for a multilateral decision; this situation was similar to other cases, which had been resolved in the past through recourse to Article 21.5 of the DSU; Canada and the US should initiate multilateral procedures to determine whether or not the EC was in compliance; the EC stood ready to discuss this matter with Canada and the United States. Canada stated that, although at the 7 November DSB meeting, Canada had put forward a suggestion for bilateral discussions concerning the justification for the EC's position regarding its compliance with the WTO ruling, the EC had not responded to this suggestion; it was up to the EC to establish that it had complied with the WTO ruling; Canada continued to be open to discussions with the EC regarding its justification for its position; at this stage, Canada did not see any basis for removal of its retaliatory measures nor wished to take any other action. The US stated that: the US failed to see how the revised EC measure could be considered to implement the DSB's

recommendations; with regard to the EC's suggestion that multilateral proceedings be established to determine whether or not the EC was in compliance with the WTO rulings, the US was ready to discuss this matter along with other outstanding issues in relation to the EC's ban on US beef.

6. 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.

At the DSB meeting on 18 December 2001, the EC welcomed the granting of the two waivers by the Ministerial Conference, which were the prerequisite for the implementation of phase II of the Understandings reached with the United States and Ecuador. The EC noted that the Regulation implementing phase II would be adopted on 19 December 2001, with effect on 1

January 2002. Ecuador, Honduras, Panama and Colombia noted the progress made and sought information from the EC concerning the granting of import licences by one EC Member State in a manner that was inconsistent with the Understandings. On 21 January 2002, the EC announced that Regulation (EC) NO. 2587/2001 had been adopted by the Council on 19 December 2001 and indicated that through this Regulation the EC had implemented phase 2 of the Understandings with the US and Ecuador.

7. 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.

8. 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.

9. 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.

At the meeting of the DSB on 18 December 2001, India made a statement concerning the lack of notification by Turkey of tariff reductions carried out as part of the implementation process.

10. 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.

11. 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. On 14 January 1999, the US requested consultations with India in accordance with Article 21.5 of the DSU (without prejudice to the US position on whether Article 21.5 requires consultations before referring to the original panel.) regarding the *Patents (Amendment) Ordinance, 1999*, promulgated by India to implement the rulings and recommendations of the DSB. On 29 January 1999, the European Communities requested to join the consultations. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

On 12 April 2001, the compliance Panel was composed. It circulated its report on 11 July 2001. On 4 September 2001, Canada appealed the compliance Panel report. The report of the Appellate Body was circulated to Members on 3 December 2001. The Appellate Body concluded that, in the light of the factual findings made by the Panel and the uncontested facts in the Panel record, it was unable to complete the analysis of the claims made by New Zealand and the United States under Articles 9.1(c) or 10.1 of the Agreement on Agriculture, or the claim made by the United States under Article 3.1 of the SCM Agreement. At its meeting on 18 December 2001, the DSB adopted the Appellate Body Report and the Panel Report, as reversed by the Appellate Body Report.

On 6 December 2001, the US submitted to the DSB a second recourse for the establishment of a panel pursuant to Article 21.5 of the DSU. The US submitted that, since the Appellate Body's 21.5 Report did not make any findings on the consistency of Canada's new measures, the US continued to believe that Canada had failed to comply with the original recommendations and rulings of the DSB. On the same date, New Zealand made a similar request. At its meeting on 18 December 2001, the DSB agreed, pursuant to Article 21.5 of the DSU, to refer to the original Panel, for the second time, the matter raised by New Zealand and the US. At the meeting, the EC and Australia reserved third-party rights to participate in the Panel's proceedings. On 28 December 2001, Argentina also reserved its third-party rights to participate in the Panel's proceedings.

On 18 December 2001, Canada concluded with New Zealand and the US respectively, additional understandings regarding procedures under Article 21 and 22 of the DSU. Pursuant to both understandings, Canada and the respective party agree to request that the arbitration requested by Canada under Article 22.6 of the DSU remain suspended pending the work of the compliance Panel.

On 17 January 2002, the second compliance Panel was composed. On 26 July 2002, the Report was circulated to the Members. On 23 September 2002, Canada notified its intention to appeal certain issues of law and legal interpretations developed by the compliance panel. On 20 December 2002, the Appellate Body circulated its report.

On 16 January 2003, the parties informed the DSB that they had requested an extension of the suspension of the Art. 22.6 DSU arbitration until 7 February 2003, in order to permit time for further consultations. On 6 February 2003, the parties informed the DSB that they had agreed that the arbitration remain suspended until 10 April 2003. On 9 April 2003, the parties informed the DSB that they had agreed to further suspend the arbitration until 9 May 2003. On 9 May 2003, Canada and the United States, and Canada and New Zealand informed the DSB that they had reached a mutually agreed solution under Article 3.6 of the DSU in the disputes WT/DS103 and WT/DS113.

25. 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 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. On 14 January 2002, the Appellate Body circulated its Report to the Members. The Appellate Body upheld the Panel's findings that the US acted inconsistently with its obligations under the SCM Agreement, the Agreement on Agriculture, and the GATT 1994 through the FSC amended legislation, a measure taken by the United States to implement the recommendations and rulings made by the DSB in the original proceedings in the *United States – FSC* dispute. With respect to third party rights, the Appellate Body found that the Panel erred in its interpretation of Article 10.3 of the DSU in declining to rule that *all* written submissions of the parties filed prior to the first meeting of the Panel must be provided to the third parties.

At its meeting on 29 January 2002, the DSB adopted the Appellate Body Report and the Panel Report, as upheld by the Appellate Body Report. In accordance with the procedural agreement concluded by the parties to the dispute in September 2000 (WT/DS108/12), Article 22.6 arbitration on the amount of countermeasures and suspension of concessions would be automatically reactivated.

On 30 August 2002, the Arbitrator's award was circulated. The Arbitrator determined that the suspension by the EC of concessions under the GATT 1994 in the form of the imposition of a 100 per cent *ad valorem* charge on imports of certain goods from the United States in a

maximum amount of \$4,043 million per year, as described in the EC's request for authorization to take countermeasures and suspend concessions, would constitute appropriate countermeasures within the meaning of Article 4.10 of the SCM Agreement.

On 24 April 2003, the EC requested authorization to suspend concessions or other obligations under Article 22.7 of the DSU and Article 4.10 of the SCM Agreement. At its meeting on 7 May 2003, the DSB granted the EC authorization to take appropriate countermeasures and to suspend concessions.

26. 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.

27. 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.

28. 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.

At the DSB meeting on 18 December 2001, Thailand announced that it had fully implemented the DSB's recommendations. Poland said that it could not accept the way in which Thailand had implemented the DSB's recommendations because it expected that the measures in question would be either rescinded or modified. In Poland's view, Thailand only changed the justification for the imposition of the measures. Poland reserved its rights under Article 21.5 of the DSU.

On 18 December 2001, Thailand and Poland concluded an understanding with regard to possible proceedings under Article 21 and 22 of the DSU. Pursuant to the understanding, in

the event that Poland initiates proceedings under Articles 21.5 and 22 of the DSU, Poland agrees to initiate complete proceedings under 21.5 prior to any proceedings under Article 22. On 21 January 2002, the parties informed the DSB that they have reached an agreement to the effect that the implementation of the recommendations of the DSB in this dispute should no longer remain on the agenda of the DSB.

29. 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.

30. 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. The report was circulated to WTO Members on 22 October 2001. The DSB adopted the Appellate Body report and the Panel report, as upheld by the Appellate Body report, on 21 November 2001.

31. WT/DS136 and WT/DS162 – United States - Anti-Dumping Act of 1916

Complaints by the European Communities (WT/DS136) and Japan (WT/DS162). 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 on 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.

At the DSB meeting on 18 December 2001, the US informed that on 23 July 2001 it submitted proposed legislation to the US Congress repealing the 1916 Act and terminating all pending actions under the Act.. It added that, since the US Congress has not yet been adjourned, the US Administration continued to seek passage of the proposed legislation. Japan urged the US to complete the implementation within the reasonable period of time. However, in the event of non-compliance by the US, Japan will use its rights under Article 22 of the DSU. The EC also indicated that if the US would fail to comply with the DSB's recommendations, it would have no choice, but to request the authorization to suspend concessions or other obligations under Article 22.2 of the DSU. On 7 January 2002, on the grounds that that the US had failed to bring its measures into conformity within the reasonable period of time, the EC and Japan requested authorisation to suspend concessions pursuant to Article 22.2 of the DSU. Both Members propose that the suspension of concessions takes the form of an equivalent legislation to the Anti-Dumping Act of 1916 against imports from the US. On 17 January 2002, the US objected to the levels of suspension of obligations proposed by the EC and Japan and requested the DSB to refer the matter to arbitration, in accordance with Article 22.6 of the DSU. The US claimed that the principles and procedures of Article 22.3 had not been followed by the EC and Japan. At the DSB meeting on 18 January 2002, the matter was referred to arbitration. During the meeting, the parties indicated that they were still engaged in consultations and would be requesting the arbitrators, once appointed, to suspend their work with a view to exploring the possibility of finding a mutually satisfactory solution. On 25 February 2002, the US submitted to the DSB a status report regarding implementation of the DSB recommendations and rulings. On 27 February 2002, the parties requested the arbitrator to suspend the arbitration proceeding noting that a proposal to repeal the 1916 Act and to terminate cases pending under the Act was being examined by the US Congress. The parties noted, however, that the arbitration proceeding could be reactivated at the request of either party after 30 June 2002 if no substantial progress would have been made in resolving the dispute by then.

At the DSB meeting on 17 April 2002, the US submitted its Status Report regarding implementation of the DSB recommendations and rulings. The US stated that a bill had already been introduced to repeal the 1916 Antidumping Act and terminate some pending

cases. While acknowledging the progress made, the EC and Japan stressed the necessity for prompt compliance. Japan noted that under its bilateral agreement with the US, either party could re-activate the arbitration proceedings after 30 June 2002.

At the DSB meeting on 22 May 2002, the US submitted its status report regarding the implementation of the DSB recommendations and rulings. The US stated that on 23 April 2002 a bill had been introduced in the US Senate which would repeal the 1916 Act and apply to all pending court cases.

At the DSB meeting on 24 June 2002, the US submitted a status report where it stated that a bill had already been introduced in the US Congress to repeal the 1916 Anti-Dumping Act and to terminate some pending cases, and that it was continuing its efforts to find a mutually satisfactory solution to this dispute with the EC and Japan. The EC and Japan expressed concern about the lack of progress in this matter and urged the US to repeal the 1916 Act as soon as possible. Japan cautioned the US that it might reactivate arbitration proceedings if the 1916 Act was not repealed by 30 June. At the DSB meeting on 29 July 2002, the US reiterated the above statement. The EC and Japan expressed concern about the lack of progress in this matter and urged the United States to repeal the 1916 Act as soon as possible. They noted that proceedings against some of their companies might resume very soon and that it was imperative for swift action to be taken by the United States to prevent their companies from incurring huge expenses to defend themselves under legislation which had been found to be inconsistent with WTO rules.

At the DSB meeting on 1 October 2002, the US submitted its status report and, in reference to the concerns expressed by the EC and Japan at the previous meetings of the DSB, stated that the bills currently before the Congress would repeal the 1916 Act and apply to all pending cases. The EC and Japan expressed concern about the lack of progress and indicated that swift action was imperative to prevent their companies from incurring huge expenses under WTO-inconsistent legislation.

At the DSB meeting on 11 November 2002, the US indicated that the US Administration would continue to work with the US Congress following the Congressional recess to achieve further progress in resolving this dispute. The EC and Japan expressed concern about the lack of progress in this matter and urged the United States to repeal the 1916 Act without further delay. They noted that proceedings against some of their companies had resumed and that it was imperative for swift action to be taken by the US to prevent their companies from incurring huge expenses to defend themselves under legislation which had been found to be inconsistent with WTO rules. The EC said that the US status report was incomplete, as it did not mention the bill introduced by Representative Henry Hyde last June, which if adopted, would repeal the 1916 Act, but would not affect pending cases. For the EC, this would be unacceptable, as it would not fully comply with the recommendations and rulings of the DSB.

At the DSB meeting on 28 November 2002, the US reiterated that the bills repealing the 1916 Act which had been introduced in the US Congress, would apply to all pending court cases. It further stated that the US Administration would continue to work with the US Congress after the Congressional recess to achieve further progress in resolving this dispute. The EC and Japan expressed concern about the lack of progress in this matter and urged the US to repeal the 1916 Act without further delay. They also reiterated their concern about the bill introduced by Representative Henry Hyde on June 2002, which if adopted, would repeal the 1916 Act, but would not affect pending cases. They noted that such a result would be unacceptable, as it would not fully comply with the recommendations and rulings of the DSB. At the DSB meeting on 27 January 2003, the US repeated its previous status reports and the EC and Japan reiterated their concerns.

Given that no legislation had been adopted to repeal the 1916 Act and to terminate the cases pending before the US courts, on 19 September 2003 the EC requested the Arbitrators to reactivate the arbitration proceeding in dispute WT/DS136. In accordance with the request from the EC, the Arbitrators resumed the arbitration proceeding on the same day.

At the DSB meeting on 2 October 2003, the US stated that legislation repealing the 1916 Act and terminating all pending cases had been introduced in both the US Senate and the US House of Representatives. The US regretted that the EC had decided to request the resumption of the arbitration procedure in this dispute. Japan said that it remained gravely concerned about the lack of implementation by the US and requested the US to provide more detailed information in order to make it clear if and how the repealing bills introduced to the US Congress were being addressed, and that it was still contemplating the possibility of reactivation of the arbitration procedure.

At the DSB meeting on 7 November 2003, the US repeated its previous status report and the EC and Japan reiterated their concerns. The EC also said that the facts of this case were quite similar to the case initiated by the US against Mexico and it hoped that this was an indication that of the readiness of the US to repeal the 1916 Act and terminate all pending cases. Japan stated that it was still considering whether to reactivate the arbitration procedure under Article 22 of the DSU, which could lead to Japan suspending equivalent concessions towards the US.

At the DSB meeting on 1 December 2003, the US repeated its previous status report and the EC and Japan reiterated their concerns. Japan said that it was still contemplating the possibility of reactivation of the arbitration procedure under Article 22 of the DSU.

32. 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.

33. 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.

34. 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 regulation imposing a definitive anti-dumping duty on imports of cotton-type bed linen originating in Egypt, India and Pakistan and suspending its application with regard to imports originating in India by the deadline of 14 August 2001. 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.

On 8 March 2002, India sought recourse to Article 21.5 of the DSU (request for consultations), stating that there was disagreement as to the existence or consistency with a covered agreement of measures taken to comply with the recommendations and rulings. On 4 April 2002, India requested the establishment of a compliance panel. At the DSB meeting on 17 April 2002, India informed the DSB that pursuant to an understanding reached between the EC and India, it was requesting the withdrawal of the item from the agenda in accordance with Rule 6 of the Rules of Procedure for WTO meetings. The DSB agreed to India's request.

On 7 May 2002, India again requested the establishment of a compliance panel. At the DSB meeting on 22 May 2002, it was agreed that, if possible, the matter would be referred to the original panel. The United States reserved its third party rights to participate in the proceedings.

35. WT/DS146 and WT/DS175 – India - Measures Affecting the Automotive Sector

Complaints by the European Communities (WT/DS146) and the United States (WT/DS175). On 2 May 2002, India informed the DSB that it would need a reasonable period of time to implement the recommendations and rulings of the DSB and that it was ready to enter into discussions with the EC and the US in this regard.

On 18 July 2002, the parties informed the DSB that they had mutually agreed that the reasonable period of time to implement the recommendations and rulings of the DSB, shall be five months, that is from 5 April 2002 to 5 September 2002.

On 6 November 2002, India informed the DSB that it had fully complied with the recommendations of the DSB in this dispute by issuing Public Notice No. 31 on 19 August 2002 terminating the trade balancing requirement. India also informed that earlier it had removed the indigenisation requirement vide Public Notice No. 30 on 4 September 2001.

36. 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 was therefore to expire on 28 February 2002.

In view of the concrete action undertaken by Argentina to comply with the DSB recommendations and rulings during the reasonable period of time in this dispute, and in light of the economic problems that Argentina is currently facing, the parties agreed on the following procedures: the parties would pursue their discussions on compliance by Argentina with the DSB recommendations and rulings; and the EC would retain the right to make a request for authorization to suspend concessions or other obligations under the DSU at any time after the expiry of the reasonable period of time, but only after completion of proceedings under Article 21.5 DSU. On 25 February 2002, the parties requested the DSB to circulate their agreement on procedures under Articles 21 and 22 of the DSU. On 8 March 2002, the parties notified the DSB of their agreement.

37. 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.

38. 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. On 9 November 2001, the arbitrator determined that the level of EC benefits which were being nullified or impaired as a result of the operation of Section 110(5)(B) amounted to Euro 1,219,900 per year.

At the DSB meeting on 18 December 2001, the US indicated that it was engaged in productive discussions with the EC with a view to resolving the dispute before the end of the expiry of the reasonable period of time. The EC underlined that the resolution of the dispute

required an amendment of the WTO-inconsistent legislation. The EC stated that if it was not possible to conclude any arrangements before the end of the reasonable period of time, it would have to seek the DSB's authorization to suspend concessions or other obligations under Article 22.2 of the DSU. On 7 January 2002, on the grounds that that the US had failed to bring its measures into conformity within the reasonable period of time, the EC requested authorisation to suspend concessions pursuant to Article 22.2 of the DSU. The EC proposed to suspend concessions under the TRIPs Agreement in order to permit the levying of a special fee from US nationals in connection with border measures concerning copyright goods. On 17 January 2002, the US objected to the level of suspension of obligations proposed by the EC and requested the DSB to refer the matter to arbitration, in accordance with Article 22.6 of the DSU. The US claimed that the principles and procedures of Article 22.3 had not been followed. During the DSB meeting on 18 January 2002, the parties indicated, however, that they were engaged in constructive negotiations and were hopeful of finding a mutually satisfactory solution. On 25 February 2002, the US submitted a status report regarding implementation of the DSB recommendations and rulings. On 26 February 2002, the parties requested the arbitrator to suspend the arbitration proceeding, while noting that the proceeding may be reactivated at the request of either party after 1 March 2002.

At the DSB meeting on 17 April 2002, the US presented a status report on its progress in implementing the DSB's recommendations and rulings. The US indicated that it was engaged in discussions with the EC to find a positive and mutually acceptable solution to the dispute. The EC expressed its concern about the US' slow progress in implementation and requested the US to provide more information in its next status report. Australia also expressed its concern about the delay and requested that any compensatory arrangement between the parties must be applied on a non-discriminatory basis.

At the DSB meeting on 24 June 2002, the US presented a status report on its progress in implementing the DSB's recommendations. The US stated that the US Administration was engaged in discussions with Congress and the EC in order to reach a mutually acceptable resolution to the dispute. The EC acknowledged the efforts being undertaken by the US Administration, but underlined the importance of the US to bring its measures into conformity with its obligations under the TRIPs Agreement. Australia reiterated its concern about the delay by the US in implementing the recommendations and rulings of the DSB and requested again that any compensatory arrangement reached between the parties must be applied on a non-discriminatory basis. At the DSB meeting on 29 July 2002, the US reiterated its previous statement. The EC acknowledged the efforts being made by the US Administration, but expressed concern about the significant delay in the implementation of the recommendations and rulings of the DSB. He inquired whether it would be possible for Congress to take action very soon considering the summer recess and legislative elections scheduled to take place in the fall.

At the DSB meeting on 1 October 2002, the US presented its status report regarding the implementation of the DSB's recommendations and rulings. At that meeting, the US stated that its administration was engaged in discussion with Congress and the EC to find a mutually acceptable solution. The EC inquired about the prospects of a solution in the short run. Australia stated that since its views were well-known it did not wish to repeat those. It also indicated that it had made a proposal in the context of the DSU negotiations to deal with its concerns.

At the DSB meetings on 11 November 2002, 28 November 2002 and 27 January 2003, the US presented status reports where it stated that the US and the EC were committed to finding a positive and mutually acceptable solution to the dispute and that the US Administration would continue to engage the US Congress following the Congressional recess with a view to settling this dispute as soon as practicable. The EC expressed disappointment with the lack of

implementation by the US and urged the US to take rapid and concrete action to settle this dispute.

On 23 June 2003, the US and the EC informed the DSB of a mutually satisfactory temporary arrangement.

39. 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.

40. 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.

41. 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.

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

Complaint by the European Communities and its member States. At the DSB meeting on 19 February 2002, the US stated that it needed a reasonable period of time to comply with the rulings and recommendations of the DSB. On 28 March 2002, the US and the EC informed the DSB that they have reached a mutual agreement on the reasonable period of time for the US to implement the recommendations and rulings of the DSB. The reasonable period of time will expire on 31 December 2002, or on the date on which the current session of the US Congress adjourns, and in no event later than 3 January 2003.

At the DSB meeting on 1 October 2002, the US presented its status report regarding the implementation of the DSB's recommendations and rulings. The US referred to the mutually agreed reasonable period of time. It also stated that the US Administration was consulting with the Congress to determine the appropriate statutory measures needed to be taken to resolve the dispute. Both the EC and Cuba expressed their expectation that a solution would be found within the agreed reasonable period of time.

At the DSB meeting on 28 November 2002, the US presented a status report where it said that the reasonable period of time for the implementation of the recommendations and rulings of the DSB would expire on 31 December 2002, or on the date on which the current session of the US Congress adjourned, whichever was later, and in no event later than 3 January 2003. He further stated that the US Administration was working with the US Congress with a view to resolving this dispute. The EC said that the EC was open to all solutions that would favour compliance by the US with its obligations under the WTO Agreement. While the EC expected to find a mutually satisfactory solution to the dispute with the US, it was concerned about recent pronouncements by the US Administration that there was no need to clarify that Section 211 did not apply in cases where the trademark had been abandoned by the original owner. He recalled that during the Panel proceedings, the US representatives gave assurances, which were accepted by the Panel, that Section 211 would not apply to a new trademark after a former trademark, to which the Section might have applied, had been abandoned. He further noted that the US Federal Courts had taken a contrary view and had applied Section 211 to trademarks succeeding abandoned trademarks. Given the uncertainty, it was imperative for any solution to this dispute to specifically address the issue of the abandonment of trademarks. Cuba urged the United States to bring its measures into conformity with the recommendations and rulings of the DSB within the reasonable period of time that it had agreed with the EC.

At the DSB meeting on 28 November 2002, the US submitted a status report indicating that the US Congress would convene early 2003 and that the US Administration would continue to engage the US Congress with a view to finding a solution to this dispute. The EC noted that the US status report was too brief and did not shed light on the steps being taken by the US to bring its measures into conformity with the recommendations and rulings of the DSB. The EC urged the US to stand by the affirmations it expressly made during the Panel proceedings and which were relied upon by the Panel. It was necessary for it to be clarified that Section 211 did not apply to a new trademark after a former trademark, to which Section 211 might have applied, had been abandoned. Cuba urged the US to bring its measures into conformity with the recommendations and rulings of the DSB within the reasonable period of time that it had agreed with the EC.

On 20 December 2002, the EC and the US informed the DSB that they had mutually agreed to modify the reasonable period of time for the US to implement the recommendations and rulings of the DSB, so as to expire on 30 June 2003. At the DSB meeting on 27 January 2003, the US submitted its status report and indicated that US Administration was intent on working with the new Congress in order to find a solution to this dispute. The EC indicated that, given the extension of the reasonable period, it expected that the US Administration would work diligently with the new Congress to bring its measures into conformity by the new deadline. Cuba strongly urged the US to implement the recommendations and rulings of the DSB within the reasonable period of time that it had agreed with the EC.

On 30 June 2003, the EC and the US informed the DSB that they had mutually agreed to modify the reasonable period of time for the US to implement the recommendations and rulings of the DSB, so as to expire on 31 December 2003.

At the DSB meeting on 2 October 2003, the US presented its status report noting that there is a bill pending in the US House of Representatives that would, among others, repeal Section 211. The US administration would continue to work with the US Congress with respect to appropriate statutory measures that would resolve this dispute. The EC welcomed the introduction of a bill in June 2003 in the US Congress that would, *inter alia*, repeal Section 211. The EC hoped that this repeal, which was part of a whole scheme of measures to ensure adequate protection of intellectual property rights, would offer a solution to this dispute to the benefit of all.

At the DSB meeting on 7 November 2003, the US said that the US administration would continue to work closely with the US Congress on appropriate statutory measures to resolve this dispute. The EC welcomed the introduction of the bill in the US Congress in June 2003. Cuba expressed concern about the lack of implementation by the US and urged it to promptly bring its measures into conformity with the recommendations and rulings of the DSB as soon as possible.

At the DSB meeting on 1 December 2003, the US repeated its previous status report. The EC noted that the deadline for implementation in this case would expire by the end of December 2003. Cuba reiterated its concern.

On 19 December 2003, the EC and the US informed the DSB that they had mutually agreed to modify the reasonable period of time for implementation of the DSB recommendations and rulings so as to expire on 31 December 2004.

43. WT/DS177 and WT/DS178 – United States – Safeguard Measure on Imports of Fresh, Chilled or Frozen Lamb from New Zealand and Australia

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.

44. 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.

45. WT/DS184 – United States – Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan

Complaint by Japan. On 20 November 2001, Japan requested that the reasonable period of time for implementation of the DSB's recommendations be determined by binding arbitration under Article 21.3(c) of the DSU. Pending the appointment of the arbitrator, Japan and the US agreed to extend the time-period under that provision. They agreed that the award of the arbitrator is to be made no later than 19 February 2002. On 19 February 2002, the arbitrator circulated his award. The arbitrator concluded that the reasonable period of time for implementation by the United States of the DSB's recommendations was 15 months from 23 August 2001. Accordingly, this period will expire on 23 November 2002.

At the DSB meeting on 1 October 2002, the US presented its status report regarding the implementation of the recommendations and rulings of the DSB. The US stated that the US Administration had started taking steps to comply with the recommendations and rulings of the DSB. To that end, the US Department of Commerce had published a proposed change to its "arm's length" test with a view to complying with the recommendations and rulings of the DSB. The US would apply this test to the hot-steel products which were the subject matter of the dispute. The US confirmed that this test would be applied in future anti-dumping proceedings initiated by the US. Regarding the statutory aspects of this dispute, the US stated that the Administration was consulting with Congress with a view to determining which measures might be required to achieve a solution to the dispute.

Japan expressed its concerns that the US might not be able to fulfil its obligations by the expiry of the reasonable period of time. It stated that while the status report submitted by the US indicated that the DOC and Congress were taking steps to comply with the recommendations and rulings of the DSB, the report did not disclose anything in relation to the International Trade Commission, whose application of the relevant US law was found to be inconsistent with the US obligations under the WTO. Japan urged the US to bring its measures into compliance with the recommendations and rulings of the DSB and stated that Japan would monitor all aspects of US implementation of the DSB recommendations and rulings. The EC urged the US to implement promptly the recommendations and rulings of the DSB.

At the DSB meeting on 11 November 2002, the US submitted a status report stating that the US Department of Commerce had published a proposed change to its "arm's length" test with a view to complying with the recommendations and rulings of the DSB. He said that the US would apply this test to the hot-steel products which were the subject matter of this dispute. The US confirmed that this test would be applied in future anti-dumping proceedings initiated by the US. Regarding the statutory aspects of this dispute, he said that the Administration was working with Congress with a view to finding a solution to this dispute. Japan stated that the reasonable period of time for the implementation of the recommendations and rulings of the DSB would expire on 23 November 2002 and Japan was concerned that the United States might not be able to fulfil its obligations by that time. He said that while the status report submitted by the US indicated that the Department of Commerce and Congress were taking steps to comply with the recommendations and rulings of the DSB, it did not disclose anything in relation to the International Trade Commission, whose application of the relevant US law was found to be inconsistent with the obligations of the United States under the WTO Agreement. He urged the US to bring its measures into compliance with the recommendations and rulings of the DSB, and said that Japan would be entitled after the expiration of the reasonable period of time to request authorization to suspend concessions or other obligations pursuant to Article 22.2 of the DSU.

On 22 November 2002, the US requested the DSB to modify the reasonable period of time. The US proposed that the reasonable period of time be modified so as to expire on 31 December 2003, or on the date on which the first session of the next US Congress adjourns, whichever was earlier. The US believed that such an extension of time would promote a principal aim of the dispute settlement system, which is to provide mutually satisfactory solutions to disputes.

At the DSB meeting of 28 November 2002, the US stated that the DOC had issued a new final determination in the hot-rolled steel anti-dumping duty investigation, which implemented the recommendations and rulings of the DSB with respect to the calculation of anti-dumping margins in that investigation. Regarding the recommendations and rulings of the DSB with respect to the US anti-dumping statute, the US stated that the US Administration was continuing to consult and to work with the US Congress with a view to resolving this dispute in a mutually satisfactory manner. To that end, the US was consulting with Japan and had sought its agreement to extend the reasonable period of time in this case to 31 December 2003 or the end of the first session of the next Congress, whichever is earlier. Japan expressed disappointment about the failure of the US to implement the recommendations and rulings of the DSB within the reasonable period of time, and said that the lack of implementation compromised the credibility of the dispute settlement mechanism. Japan further stated that whilst it would probably agree to an extension of the reasonable period of time, it expected the US to bring its measures into compliance as soon as practicable. Japan also reserved its right to take appropriate action in the event of non-compliance again by the US.

At its meeting on 5 December 2002, the DSB agreed to the request by the US for an extension of the reasonable period of time for the implementation of the recommendations and rulings of the DSB in this dispute. At the DSB meeting on 27 January 2003, the US submitted a status report where it recalled his earlier statement concerning the issuance of a new final determination in the hot-rolled steel antidumping duty investigation by the Department of Commerce which, according to the US, implemented the recommendations and rulings of the DSB with respect to the calculation of anti-dumping margins in that investigation. Regarding the recommendations and rulings of the DSB with respect to the US anti-dumping statute, the US said that its Administration would work with the new Congress with a view to finding a satisfactory solution to the dispute. Japan expressed disappointment about the failure of the US to implement the recommendations and rulings of the DSB within the reasonable period of time, and said that the lack of implementation compromised the credibility of the dispute settlement mechanism. Japan urged the US Administration to intensify its efforts and work with the new Congress to implement as promptly as possible the recommendations and rulings of the DSB.

At its meeting on 2 October 2003, the US presented its status report and stated that with respect to the DSB's recommendations and rulings on the US anti-dumping statute, the US administration would continue to consult and to work with Congress with a view to resolving this matter. In this regard, the US stated that the US administration was supporting the passage of specific amendments to the US anti-dumping duty law that would implement these recommendations and rulings. Japan noted that the US status report and its statement did not contain a concrete explanation of its plan for implementation. Japan urged the United States to implement the DSB's recommendations before the end of the first session of the 108th Congress and to consult with Japan in an urgent and detailed manner on how and when it intended to implement the recommendations.

At the DSB meeting on 7 November 2003, the US stated that with respect to the DSB's recommendations and rulings on the US anti-dumping statute, the US administration was supporting the passage of specific amendments to the US anti-dumping duty law in order to bring it into conformity with the DSB's recommendations and rulings. Japan said that the

extended reasonable period of time for the implementation of the DSB's recommendations and rulings agreed to by the parties was about to expire, yet the necessary statutory changes had not been introduced in the US Congress which was about to go on recess very soon. Japan also suggested that it would be helpful if the US consulted Japan on how it intended to implement the recommendations. On 21 November, 2003, the US notified the Chairman of the DSB that it proposed that the reasonable period of time for implementation of the recommendations and rulings of the DSB be modified so as to expire on 31 July 2004, and that it was consulting with Japan regarding this proposal. At its meeting on 10 December 2003, the DSB agreed to the request by the US for an extension of the reasonable period of time for the implementation of the recommendations and rulings of the DSB.

46. WT/DS189 – Argentina – Definitive Anti-Dumping Measures on Imports of Ceramic Floor Tiles from Italy

Complaint by the European Communities. On 20 December 2001, the EC and Argentina informed the DSB that they have mutually agreed a reasonable period of time of 5 months to implement the recommendations and rulings of the DSB, i.e. from 5 November 2001 until 5 April 2002.

At the DSB meeting of 22 May 2002, Argentina announced that on 24 April 2002, the Ministry of Production had enacted Resolution 76/02 revoking the anti-dumping measures at issue in this case. With the publication of this Resolution, Argentina considered that it had now fully implemented the DSB's recommendations and rulings in this dispute. The EC welcomed Argentina's prompt implementation in this case.

47. WT/DS192 – United States – Transitional Safeguard Measure on Combed Cotton Yarn from Pakistan

Complaint by Pakistan. At the DSB meeting of 21 November 2001, the US declared that on 8 November 2001 the Committee for the Implementation of Textile Agreement had directed the US Customs Services to eliminate the limit on imports of combed cotton yarn from Pakistan. The US indicated that, through this action, effective from 9 November 2001, it had implemented the DSB's recommendations

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

Complaint by Korea. At the DSB meeting on 5 April 2002, the US expressed its intention to implement the DSB's recommendations and indicated that it would enter into consultations with Korea to determine a reasonable period of time for implementation. At the DSB meeting on 17 April 2002, Korea expressed concern about the lack of any proposal from the US regarding a reasonable period of time for compliance. The US stated that they would be proposing a reasonable period of time as soon as possible. On 29 April 2002, Korea requested the DSB that the "reasonable period of time" be determined by binding arbitration pursuant to Article 21.3(c) of the DSU. On 13 May 2002, Korea requested the Director-General to appoint an arbitrator. On 23 May 2002, the Director-General appointed an arbitrator. The issuance of the award was scheduled for 12 July 2002. By joint letter of 12 July 2002, the parties requested the Arbitrator to delay the issuance of the award until 22 July 2002 in order to allow time for additional bilateral negotiations between the parties. The arbitrator acceded to the request. Additional joint requests for delay were received on 19 and 22 July 2002, wherein the parties requested that the award, pursuant to Article 21.3(c) of the DSU, be delayed until 24 July 2002 and 26 July 2002, respectively. The Arbitrator agreed also to these additional requests. By letters dated 24 July 2002, the parties informed the Arbitrator that they had reached agreement on the reasonable period of time for compliance in

this matter. Accordingly, the Arbitrator did not issue his award and, instead, issued a Report setting out the procedural history of this arbitration.

At the DSB meeting on 18 March 2003, the US informed that its safeguard measure on line pipe from Korea had been terminated on 1 March 2003.

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

Complaint by India. On 1 October 2002 the United States and India informed the DSB that pursuant to Article 21.3(b) of the DSU they have mutually agreed that the reasonable period of time to implement the DSB recommendations and rulings in this dispute shall be five months, i.e., from 29 July 2002 to 29 December 2002. On 17 January 2003, the parties informed the DSB that they had mutually agreed to modify the reasonable period of time for implementation so as to expire on 31 January 2003.

On 14 February 2003, the parties informed the DSB that they had agreed on certain procedures under Article 21 and 22 of the DSU. Pursuant to these agreed procedures, if India requests the establishment of a 21.5 compliance panel, the US will not oppose it. India agrees not to request the authorisation to suspend concessions under Article 22 until the adoption of the compliance reports (Panel and AB, if any) and the US agrees not to assert that India is precluded from doing so given that the request would be made outside the 30 day period.

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

Complaint by Argentina. At the DSB meeting of 11 November 2002, Chile stated that it intended to comply with the recommendations and rulings of the DSB. To that end, Chile was engaged in consultations with Argentina to find a mutually satisfactory solution to the dispute. Chile further stated that it would need a reasonable period of time to bring its measures into conformity with the recommendations and rulings of the DSB. On 6 December 2002, Chile informed the DSB, that to date Chile and Argentina had been unable to agree on the length of the reasonable period of time and thus Chile was requesting that the determination of the reasonable period of time be the subject of binding arbitration in accordance with Article 21.3(c) of the DSU. On 16 December 2002, Argentina and Chile informed the DSB that they have agreed to postpone the deadline for the binding arbitration which would now be completed no later than 90 days from the appointment of the arbitrator (instead of 90 days from the date of adoption of the rulings and recommendations of the DSB). Also on 16 December 2002, Argentina and Chile requested Mr. John Lockhart, Member of the Appellate Body, to act as arbitrator for the purposes of Article 21.3(c) of the DSU. On 17 December 2002, Mr. John Lockhart accepted the appointment of arbitrator.

On 17 March 2003, the arbitrator circulated its award. The Arbitrator concluded that the "reasonable period of time" that should be extended to Chile to implement the recommendations and rulings of the DSB in this dispute was 14 months (23 December 2003).

At the DSB meeting on 2 October 2003, Chile stated that on 25 September 2003 Law No 19.897 to establish a new price band system had been promulgated replacing Law No 18.525. The new Law would come into force on 16 December 2003: i.e. prior to the expiry of the reasonable period of time for compliance. Argentina raised detailed questions concerning the new Law. Chile noted the statement by Argentina and requested that Argentina make its questions available in writing.

At the DSB meeting on 7 November 2003, Chile stated that Law No 19.897 was scheduled to come into force on 16 December 2003: i.e. prior to the expiry of the reasonable period of time for compliance, and that, with this new law, Chile had complied with the DSB's recommendations and rulings. Argentina stated that the new system did not comply fully with the recommendations and rulings of the DSB, as it retained most of the essential features of the previous system; and it was still waiting for the responses to its questions concerning the new price band system. Argentina also stated that, given the close relationship between the Chile and Argentina, it was still willing to explore the possibility of reaching a mutually satisfactory solution to this dispute.

At the DSB meeting on 1 December 2003, Chile said that it had already adopted a number of measures to comply with the DSB's recommendations, as stated previously. Argentina reiterated its view that the measures taken by Chile to comply with the recommendations did not constitute the implementation in this case since the price band system would continue to be maintained. Argentina considered that it would be appropriate for the parties to enter into negotiations on compensation before the expiry of the deadline for implementation. Brazil said that it also considered that the measures taken for compliance by Chile were still not consistent with the provisions of the Agreement on Agriculture.

On 24 December 2003, Argentina and Chile informed the DSB that they had agreed on certain procedures under Articles 21 and 22 of the DSU.

At the DSB meeting on 23 January 2004, Chile and Argentina noted that they had concluded a bilateral agreement regarding the procedures under Articles 21.5 and 22 of the DSU. In this regard, Chile noted that the issue of sequencing between Articles 21.5 and 22 required a multilateral solution since ad hoc agreements only applied to specific disputes. Argentina noted that the parties would shortly enter into consultations regarding the implementation issues.

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

Complaint by Turkey. On 14 November 2002, Egypt and Turkey informed the Chairman of the Dispute Settlement Body, that they had mutually agreed that the reasonable period of time to implement the recommendations and rulings of DSB should not be more than nine months, that is from 1 November 2002 until 31 July 2003.

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

Complaint by the European Communities. At the DSB meeting on 27 January 2003, the US indicated that it intended to comply with the recommendations and rulings of the DSB in a manner that respected its WTO obligations and that, in that connection, it would need a reasonable period of time to implement them. The EC urged the US to promptly bring its measures into conformity with the recommendations and rulings of the DSB. The EC indicated that, since the principle underlying the findings in this case had been established by the Appellate Body in an earlier case (US – Imposition of countervailing duties on lead and bismuth carbon steel from the UK), and as such the US should by now know what it had to do to bring its measures into conformity with WTO disciplines, the reasonable period of time had to be short. On 10 April 2003, the parties notified the DSB that they had agreed on a reasonable period of time for implementation of 10 months (from 8 January 2003 to 8 November 2003)

At the DSB meeting on 7 November 2003, the US presented its first status report where it stated that on 23 June 2003, the US Department of Commerce (DOC) published a notice

announcing a modification of the manner in which the Department would analyze the question of whether a subsidized, government-owned company remained subsidized after it was "privatized"; the DOC had also issued final revised determinations for each of the twelve countervailing determinations that were at issue on 24 October 2003; and as a result of these measures, the US considered that it had brought its measures into full conformity with the recommendations and rulings of the DSB. The EC said that while the amending legislation was to be welcomed, as it established a presumption that a company would not be deemed to have benefited from prior subsidies, if the company had been privatized in an arm's length, fair market value transaction, certain elements of the legislation gave rise to concern; it would appear that some of the factors which had to be taken into account by the DOC in its determination went beyond "governmental economic and other policies". The EC further stated that while the EC was satisfied with the results of the DOC's re-examination in eight out of the twelve privatization cases, it regretted the decision that an analysis of privatization was not necessary to implement the DSB rulings in the other four cases, and that the EC was evaluating the reasons given for such an omission and its consequences on the implementation process. Mexico said that it, as a third-party, was in the process of analyzing whether the new US measure fully complied with the recommendations and rulings of the DSB.

At the DSB meeting on 1 December 2003, the EC reiterated its concerns regarding some aspects of the US implementation of the DSB's rulings. In particular, the EC was concerned with the treatment of the four cases where the DOC had refused to examine the nature of the privatizations. He said that discussions were ongoing on this matter to explore the possibility for a mutually acceptable solution. However, the EC reserved its right to initiate compliance proceedings. The US said that it had complied with the DSB's recommendations in this case. The US was disappointed to hear that the EC had some concerns regarding certain aspects of the revised determinations and was ready to discuss with the EC possible approaches to these concerns. Brazil said that its companies suffered commercial damages as a result of the US methodology, which was WTO-inconsistent.

53. WT/DS217, WT/DS234 – United States – Continued Dumping and Subsidy Offset Act of 2000

Joint complaint by Australia, Brazil, Chile, European Communities, India, Indonesia, Japan, Korea and Thailand (WT/DS217), and Canada and Mexico (WT/DS234). On 14 March 2003, the complainants requested arbitration under Article 21.3(c) of the DSU to determine the reasonable period of time for implementation by the US of the DSB recommendations. On 24 March 2003, the complainants requested the Director-General to appoint the arbitrator in consultation with the parties pursuant to footnote 12 of the DSU. On 4 April 2003, the Director-General appointed an Arbitrator. On 13 June 2003, the Arbitrator issued its award to the parties. The Arbitrator concluded that the "reasonable period of time" for the United States to implement the DSB's recommendations and rulings should be 11 months from the date of the DSB's adoption of the Panel and Appellate Body Reports in this dispute. The reasonable period of time will therefore expire on 27 December 2003.

On 14 January 2004, the DSB was informed that the United States had mutually agreed to modify the reasonable period of time with Thailand, Australia and Indonesia, respectively, so as to expire on 27 December 2004. On 15 January 2004, on the grounds that the US had failed to implement the DSB recommendations and rulings within the reasonable period of time, Brazil, Chile, the EC, India, Japan, Korea, Canada and Mexico requested the DSB authorization to suspend concessions pursuant to Article 22.2 of the DSU. On 23 January 2004, the US requested, in accordance with Article 22.6 of the DSU, that the matter be referred to arbitration, since the US objected to the level of suspension of concessions proposed by the foregoing parties. At its meeting on 26 January 2004, the DSB decided to refer the matter to arbitration.

54. WT/DS219 – European Communities – Anti-Dumping Duties on Malleable Cast Iron Tube or Pipe Fittings from Brazil

Complaint by Brazil. On 18 August 2003 the DSB adopted the Appellate Body report and the Panel report as modified by the Appellate Body Report. On 15 September 2003, the European Communities confirmed in a communication to the DSB its intention to implement the recommendations and rulings of the DSB.

On 1 October 2003, the EC and Brazil informed that DSB that they had agreed that the reasonable period of time for the EC to implement the DSB's recommendations and rulings would be 7 months; i.e. until 19 March 2004.

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

Complaint by Brazil. At the DSB meeting on 8 March 2002, Canada stated that it was considering its options on how best to implement the recommendations and rulings of the DSB.

On 23 May 2002, on the grounds that Canada had failed to implement the recommendations of the DSB within the 90-day time-period granted by the DSB, Brazil requested authorization to suspend concessions pursuant to Article 22.2 of the DSU. Brazil proposed that the suspension of concessions takes the form of some or all of the following countermeasures:

- suspension of its obligations under paragraph 6(a) of Article VI of GATT 1994 to determine the effect of subsidization under EDC Canada Account and EDC Corporate Account programmes;
- suspension of application of obligations under the Agreement on Import licencing procedures relating to licensing requirement on imports from Canada; and
- suspension of tariff concessions and related obligations under GATT 1994 concerning those products in the list attached to Brazil's communication of 23 May 2002.

At the DSB meeting on 3 June 2002, Brazil and Canada informed the DSB that they had reached an agreement in this matter. Under the terms of the agreement, the parties agreed that it would in no way prejudice the right of Brazil to request authorization to take appropriate countermeasures under Article 4.10 of the SCM Agreement and Article 22.2 of the DSU, nor affect the relevant time periods under the DSU.

At the DSB meeting on 24 June 2002, Brazil stated that it was requesting authorization to suspend concessions for an amount of US\$3.36 billion towards Canada as the latter had failed to withdraw its prohibited export subsidies within the time-frame specified by the Panel. Canada disputed Brazil's right to request authorization from the DSB to suspend concessions. It argued that Brazil had not fulfilled the conditions spelt out in Article 22.2 of the DSU and as such it could not avail itself of Article 22.6 of the DSU. Canada also objected to the countermeasures proposed by Brazil. The DSB referred the matter to arbitration according to Article 22.6 of the DSU and Article 4.11 of the SCM Agreement.

On 17 February 2003, the arbitrator circulated its award. The arbitrator determined that the suspension of concessions by Brazil covering trade in a total amount of US\$247,797,000 would constitute appropriate countermeasures within the meaning of Article 4.10 of the SCM Agreement. On 6 March 2003, Brazil requested authorization to suspend concessions or other obligations under Article 22.7 of the DSU and Article 4.10 of the SCM Agreement. At its meeting on 18 March 2003, the DSB authorized the suspension of concessions.

56. WT/DS231 – European Communities – Trade Description of Sardines

Complaint by Peru. At the DSB meeting of 11 November 2002, the EC stated that it was working towards implementing the rulings and recommendations of the DSB in a manner consistent with its obligations under WTO rules, in particular, Article 2.4 of the TBT Agreement. However, the EC stated that in order to be able to achieve this it would need a reasonable period in which to bring its measures into conformity with its obligations under the TBT Agreement, especially given that implementation would entail the repeal of a statutory measure. To that end, the EC was willing to consult with Peru, pursuant to Article 21.3 of the DSU, in order to achieve agreement on the reasonable period of time needed for implementation of the DSB's rulings and recommendations.

On 19 December 2002, Peru and the EC informed the DSB that they had agreed that the reasonable period of time for the EC to implement the recommendations and rulings of the DSB, will expire on 23 April 2003. On 14 April 2003, the parties informed the DSB that they had reached an agreement to extend the reasonable period of time until 1 July 2003.

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

Complaint by Canada. At the DSB meeting of 28 November 2002, the US said that the measures at issue in this dispute were no longer in effect and that the provisional cash deposits that Canada challenged had been refunded prior to the circulation of the Panel Report. As such, it was not necessary for the US to take any further action to comply with the recommendations and rulings of the DSB. Canada dismissed the US view that no action was required on its part to implement the recommendations and rulings of the DSB. Canada stated that the legal methodologies found by the Panel to be plainly illegal in the US Preliminary Countervailing Duty Determination remained unchanged in the Final Determination.

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

Complaint by Chile. At its meeting on 15 April 2003, the DSB adopted the Panel Report. On 14 May 2003, Argentina informed the DSB that it could not comply with its recommendations immediately and thus asked for a reasonable period of time for implementation. On 27 June 2003, Argentina and Chile informed the DSB that they had agreed that the reasonable period of time will be 31 December 2003.

At its meeting on 23 January 2004, Argentina announced that the safeguard measure at issue had been withdrawn on 31 December 2003 in line with the agreement reached between Argentina and Chile and thus in its view it had implemented the DSB's recommendations. Chile welcomed the withdrawal of the measure by Argentina.

59. WT/DS245 – Japan – Measures Affecting the Importation of Apples

Complaint by the United States. At the DSB meeting on 9 January 2004, Japan indicated that it intended to comply with the recommendations and rulings of the DSB in a manner that respected its WTO obligations under the SPS Agreement. In that connection, Japan also stated that it would need a reasonable period of time to implement the said recommendations and rulings and was willing to discuss this matter with the United States in accordance with Article 21.3(b) of the DSU. The US welcomed the statement by Japan and said that it

expected that with the benefit of the clear guidance in the Panel and Appellate Body reports, Japan would remove its WTO-inconsistent measures promptly.

60. WT/DS248, WT/DS249, WT/DS251, WT/DS252, WT/DS253, WT/DS254, WT/DS258 and WT/DS259 – United States – Definitive Safeguard Measures on Imports of Certain Steel Products

Complaints by the European Communities (WT/DS248), Japan (WT/DS249), Korea (WT/DS251), China (WT/DS252), Switzerland (WT/DS253), Norway (WT/DS254), New Zealand (WT/DS258) and Brazil (WT/DS259). At the DSB meeting of 10 December 2003, the US informed Members that, on 4 December 2003, the President of the United States had issued a proclamation that terminated all of the safeguard measures subject to this dispute, pursuant to section 204 of the US Trade Act of 1974.

VII. SETTLED OR INACTIVE CASES

A. MUTUALLY AGREED SOLUTIONS

1. 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.

2. 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.

3. 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.

4. 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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 these 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.

17. 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. On 6 November 2000, the parties informed the DSB that they had reached a mutually satisfactory solution.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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. At its meeting on 19 March 1999, the DSB adopted the Panel Report. 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. 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.

27. 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.

28. WT/DS103 and WT/DS113 – Canada - Measures Affecting the Importation of Milk and the Exportation of Dairy Products

(See also Sections V and VI). Complaints by the United States and New Zealand.

On 9 May 2003, Canada and the United States, and Canada and New Zealand informed the DSB that they had reached mutually agreed solutions under Article 3.6 of the DSU in both disputes.

29. 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. On 6 November 2000, the parties notified the DSB that they had reached a mutually satisfactory solution.

30. 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.

31. 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.

32. 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.

33. 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.

34. 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.

On 31 May 2002, the US and Argentina notified the DSB that they have reached an agreement on all of the matters raised by the US in its requests for consultations regarding this dispute and that concerning Argentina – Certain Measures on the Protection of Patents and Test Data (WT/DS196).

35. 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.

36. 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.

On 31 May 2002, the US and Argentina notified the DSB that they have reached an agreement on all of the matters raised by the US in its requests for consultations regarding

this dispute and that concerning Argentina – Patent Protection for Pharmaceuticals and Test Data Protection for Agricultural Chemicals (WT/DS171).

37. 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.

38. 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.

39. 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 1994;

- 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. On 19 November 2001, the US requested the Panel to suspend its work until 30 November 2001.

On 18 December 2001, the US and the EC informed the DSB that they had reached a mutually agreed solution pursuant to Article 3.6 of the DSU.

40. WT/DS231 – European Communities – Trade Description of Sardines

(See also Sections V and VI above). Complaint by Peru.

On 25 July 2003, the European Communities and Peru informed the DSB that they had reached a mutually agreed solution pursuant to Article 3.6 of the DSU.

41. 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.

On 11 January 2002, the parties notified the DSB that they have reached a mutually agreed solution within the meaning of Article 3.6 of the DSU. Accordingly, Slovakia agreed to a progressive increase of the level of its quota for imports of sugar from Poland between 2002 and 2004, and Poland agreed to remove its quantitative restriction on imports of butter and margarine. Both parties agreed to implement the above by 1 January 2002.

42. WT/DS237 – Turkey – Certain Import Procedures for Fresh Fruit

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).

On 20 September 2001, the EC requested to be joined in the consultations.

On 14 June 2002, Ecuador requested the establishment of a panel. At its meeting on 24 June 2002, the DSB deferred the establishment of a panel. Further to a second request by Ecuador, the DSB established a panel at its meeting on 29 July 2002. During the meeting, Ecuador also requested the DSB to suspend the composition of the Panel as the parties were engaged in consultations to find a mutually satisfactory solution to the dispute between them. The EC and the US reserved their third-party rights. On 7 August 2002, Colombia requested third party rights.

On 22 November 2002, the parties to the dispute informed the DSB that they had found a mutually agreed solution to their dispute.

43. WT/DS261 – Uruguay – Tax Treatment on Certain Products

Complaint by Chile. On 18 June 2002, Chile requested consultations with Uruguay with regard to the tax treatment applied by the latter to certain products.

In particular, Chile referred to Uruguay's Internal Specific Tax ("IMESI") which taxes the first alienation and the importation by non-taxpayers of certain goods which include, *inter alia*, beverages (alcoholic beverages, juices, mineral water), tobacco and cigarettes, automobiles, lubricants and fuel. The fiscal framework for the IMESI is contained in various legal instruments, including Chapter 11 of the 1996 "Texto Ordenado", Decree 96/990 of 21 February 1990 from the Ministry of Economy and Finance, and the bi-monthly Resolutions of the Direction General for Taxation. This framework was recently amended as regards cigarettes by Decree 200/2002 of 3 June 2002.

Chile contended that, in most cases, taxable income for this tax is determined by using a fictitious price. According to Chile, this system would increase the taxable income if compared to the real sales price, especially in the case of foreign goods. Chile submits that the IMESI violates Articles I and III of GATT 1994 because it establishes a tax system based on the use of fictitious prices in order to determine the taxable income. Chile considered that this system discriminates between national and imported products and, in some cases, between imported products depending on their origin. Chile further claimed that this alleged discrimination constitutes a *de facto* import prohibition as regards certain products.

Chile recalled that in the trade policy review for Uruguay in 1998, this system was subject to some discussion and Uruguay indicated, at the time, that they were in the process of elaborating norms that ensured an equal treatment to all products regardless of their origin.

On 4 July 2002, the European Communities requested to join the consultations. On 5 July 2002, Mexico requested to join the consultations. On 3 April 2003, Chile requested the DSB to establish a panel. At its meeting on 15 April 2003, the DSB deferred the establishment of the panel. Further to a second request by Chile, the DSB established a panel at its meeting on 19 May 2003. The EC, Mexico and the US reserved their third-party rights. On 4 July 2003, the Panel was composed. On 15 August 2003, the Chair of the Panel informed the DSB that both parties had jointly requested the Panel to suspend its work for a period of 60 days, until 12 October 2003. The Panel has agreed to this request and is suspending its work from 14 August to 12 October 2003. On 12 October 2003, both parties jointly requested the Panel to extend the suspension of its work for another 60 days, until 11 December 2003. The Panel agreed to this request and was continuing to suspend its work until 11 December 2003. On 11 December 2003, both parties jointly requested the Panel to suspend its work for a final additional period of 30 days, until 10 January 2004, in order to formalize a mutually agreed solution over the coming days and notify it to the Dispute Settlement Body, in accordance with Article 3.6 of the DSU. The Panel agreed to this request and is suspending its work from 12 December 2003 to 10 January 2004.

On 8 January 2004, Chile and Uruguay informed the DSB that they had reached a mutually agreed solution under Article 3, paragraphs 5 and 6 of the DSU.

B. OTHERS

1. 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.

2. 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.

3. 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.

4. 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.

5. 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).

6. 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.

7. 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).

8. 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.

9. 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.

10. 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.

11. 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.

12. 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 US 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.

13. 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.

14. 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).

15. 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.

16. WT/DS95 – United States - Measure Affecting Government Procurement

Complaint by Japan. This request, dated 18 July 1997, is in respect of the same issue 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.

17. 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 HFCS 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.

18. 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.

19. WT/DS181 – Colombia – Safeguard Measure on Imports of Plain Polyester Filaments from Thailand

Complaint by Thailand. On 28 and 29 September 1998, at the request of Colombia pursuant to Article 6.7 of the ATC, consultations took place between Thailand and Colombia regarding imports into the latter of plain polyester filaments (tariff heading 5402.43) from Thailand. Failing the consultations, Thailand requested the establishment of a panel on 7 September 1999 to settle this dispute. 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.

20. 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 EC informed the Director-General of the WTO and the Chairman of the DSB that they agreed to suspend the process for the constitution of the panel. On 28 March 2001, Chile did likewise.

On 12 November 2003, the parties to the dispute informed the Chairman of the DSB that they agreed to maintain the suspension of the process for the constitution of the panel.

21. 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.

22. 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.

23. 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 claimed 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.

On 30 October 2001, Hungary requested consultations with Romania according to the urgency procedure provided in Article 4.8 of the DSU. On 27 November 2001, Hungary requested the establishment of a panel. At its meeting on 10 December 2001, the DSB deferred the establishment of the panel. On 10 December 2001, Hungary requested the holding of a special meeting of the DSB in order to establish a panel. On 20 December 2001, further to the abrogation by Romania of its legislation regarding the quality requirements for imported wheat and wheat flour, Hungary withdrew its request.

24. WT/DS255 – Peru– Tax Treatment on Certain Imported Products

Complaint by Chile. On 22 April 2002, Chile requested consultations with Peru in respect of its tax treatment on imports of fresh fruits, vegetables, fish, milk, tea and other natural products. In particular, Chile explained that before the adoption of Law 27.614, published on 29 December 2001, both the sale in the Peruvian market and the importation into Peru of the products at issue had been exempt from sales tax. Further to the adoption of Law 27.614, the importation into Peru of the products at issue was no longer exempt from sales tax (18 per cent) while the sale of those products in the Peruvian market was still exempt from sales tax.

Chile considered that the different tax treatment between domestic and imported products constituted a violation by Peru of its national treatment commitments both:

- at bilateral level: Article 19 of the Economic Complementarity Agreement (ECA 38) and,
- at multilateral level (WTO): Article III of GATT 1994. In this regard, Chile claimed that Law 27.614 by providing that the exemption from sales tax only applied to the sale in Peru and not to the importation, was inconsistent with Article III of the GATT 1994.

Chile contended that the above measure prejudiced the competitiveness of Chile's exports to Peru of the said products, in particular although not limited to, apples, table grapes and peaches.

On the grounds that the products affected by the measure at issue were natural goods and thus perishable, Chile was invoking the urgency consultation procedure under Article 4.8 of the DSU and already announced that it would make use of the expeditious Panel and Appellate Body procedures referred to in Article 4.9 of the DSU.

On 8 May 2002, the United States requested to join the consultations.

On 13 June 2002, Chile requested the establishment of a panel. At its meeting on 24 June 2002, the DSB deferred the establishment of a panel. On 26 July 2002, Chile requested that its second request for the establishment of a panel be removed from the agenda of the DSB meeting on 29 July 2002.

On 25 September 2002, Chile informed the DSB that it was withdrawing this complaint as Peru had repealed Article 2 of Law 27.614 and as a result the disputed measures had disappeared.
