



**The Cairo Regional Centre for  
International Commercial Arbitration**

*The Settlement of Disputes According to  
the Rules of the World Trade Organization  
(WTO)  
(A brief study)*

Presented by

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# Settlement of Disputes According to the Rules of the World Trade Organization

## **I. Introduction**

Since the Uruguay Round was concluded in 1994 and the World Trade Organization was established, the multilateral trade system has now become a sophisticated and comprehensive system including an unprecedented legal framework and mechanism for dispute settlement.

This comprehensive mechanism plays the important role of being the custodian and the guarantor of a legal and rule-based multilateral trading regime. The Dispute Settlement Body DSB is this an integral part of the WTO from the organic and legal point of view. The task of this dynamic and compulsory DSB is precisely to insure that trade rules and their effectiveness can keep pace with the rapid development of the world economy and to guarantee the honest implementation of the rules governing the Multilateral Trading System (MTS).

It is important and significant to note that the dispute settlement system of the WTO is unprecedented not only from the perspective of its content as we shall see, but also as for its universality. One hundred twenty countries have signed and are expected to abide by the WTO rules as well as its rulings.

In this paper we shall briefly analyze the dispute settlement system of the WTO from two perceptions. One of the most important achievements of the new World Trade Organization (WTO) was its success in formulating its different bodies and in practicing its jurisdictions through its different councils and committees according to

the final act embodying the results of the Uruguay Round and the Marrakesh agreement establishing the World Trade Organization.

## **I. Main Features and Overall View of the Dispute Settlement System within the WTO**

The dispute settlement during the GATT era has been generally considered ineffective.

The main critics to the GATT / DS can essentially be centered on three main considerations :

a . The ineffectiveness of the DS in the GATT has often been rightfully attributed to the so-called "consensus rule". This rule operated on three distinctive levels : the establishment of a panel to examine the dispute, the adoption of the report of the panel after having examined the dispute and finally the adoption of concrete countermeasures as a last resort if the panel report has not been accepted and implemented by both parties of the dispute. In fact, parties could block the settlement procedures at any of its aforementioned stages.

b . In addition to that fundamental critic, complaints had often been voiced as to the time needed to conclude a settlement. In fact, the GATT /DS did not contain a well-defined and compulsory time-frame by which the parties to the dispute should be bound during the settlement procedures.

c . Finally, the lack of transparency was a major default in the GATT/ DS. The panel reports, for example, remained confidential even after these reports have been adopted. It is not only a matter of confidence gained by the transparency, but the problem was also a legal one : the lack of transparency meant the inability of the GATT / DS to establish respected legal precedents. An element which is of capital importance to ensure the effectiveness of any dispute settlement system.

The main advantage of the WTO / DSB is that the "consensus rule" has been reversed : from " consensus" to "negative consensus". In this

respect, which stipulates that “ ... unless the dispute settlement body (DSB) decided by consensus not to establish a panel”. It is evident that the “negative consensus rule” at all three levels ( establishing a panel, adopting its report and implementing its ruling) makes the whole system more operative and effective as there can be no blockage.

Moreover, strict deadlines are provided by the WTO / DSB : six months for normal settlement procedures, which can possibly be extended up to nine.

The thrust of the WTO / DSB is that it is a mandatory system which can not be neither blocked nor manipulated by any part to a dispute. The rulings of a panel are binding and implementable unless challenged, within precise framework and through defined procedures, within an Appellate Body whose decisions are final.

An Appellate Body is now fully established and effectively operated. On February 15, 1996, it adopted a detailed working procedures for appellate review of case examined and adjudicated within the WTO / DSB.

It is important to note that the possibility of appeal to any party to a dispute in a panel proceeding is only limited to questions of law, and not issues of facts, in the panel report and the legal interpretation and analyses developed by that panel.

Three members of the seven-person Appellate Body sit at any time to hear an appeal. They have the right to uphold, modify or reverse the legal analyses and the final outcome representing the conclusions of a panel report.

As a general rule, the appeal proceedings should not exceed 60 days but in no case shall they exceed 90 days. Within 30 days after it is issued, the DSB has to adopt the report of the Appellate Body which then must be unconditionally accepted and faithfully implemented by all the parties to the dispute, unless there is a consensus against its adoption.

It is significant to quote the Chairman of the Appellate Body, Ambassador Julio Lacart- Muro, who, in a letter to the DSB Chairman,



pointed out the central concerns which motivated the conception as well as the drafting of the detailed Appellate working procedures as following:  
" ... the need for vigilance in protecting the basic right of all parties in the proceedings :

" ...the need for the rotation in the establishment of divisions along with the advantages of collegiality ;

"... the need for independence and impartiality in the decision making ;  
"... the need for constant and conscientious compliance with both the letter and spirit of the Dispute Settlement Understanding (DSU) and all other covered agreements of the WTO in order to strengthen the multilateral trading system ”

It can therefore be safely claimed that the “Bargaining Power Theory” is no longer the only determinant factor as for the settlement of commercial disputes on the international level . In fact, the WTO / DSB is overwhelmingly considered to be able to put an end to “ power position” in international economic relations , and to widen and strengthen , instead , the scope of rule-oriented polices .

One of the most important bodies established in the regard is the body handling the system of dispute settlement based on the “ Understanding on Rules and Procedures Governing the Settlement of Disputes ” . The rules of Dispute Settlement Understanding (DSU) apply on the disputes between the members of the WTO concerning their rights and obligations related to the organization . To realize this objective, the Dispute Settlement Body (DSB) was established . This body formulates a panel for each dispute . In this regards Article ( 2 ) of the DSU contained in the concluding document issued in Marrakesh on April 15 , 1994 Provides that : “ the Dispute Settlement Body is hereby established to administer these rules and procedures and , except as otherwise provided in a covered agreement , the consultation and dispute settlement provisions of the covered agreements . Accordingly, the DSB shall have the authority to establish panels , adopt panel and appellate Body reports , maintain surveillance of implementation of rulings and recommendations , and authorize suspension of concessions and other obligations under the covered agreements . With respect to disputes arising under a covered

agreement which is a Plurilateral Trade Agreement, the term "Member" as used herein shall refer only to those Members that are parties to the relevant Plurilateral Trade Agreement. Where the DSB administers the dispute settlement provisions of a Plurilateral Trade Agreement, only those members that are parties to that agreement may participate in decisions or actions taken by the DSB with respect to that dispute.

\* The DSB shall inform the relevant WTO Councils and Committees of any developments in disputes related to provisions of the respective covered agreements.

\* The DSB shall meet as often as necessary to carry out its functions within the time-frames provided in this understanding.

\* Where the rules and procedures of this Understanding provide for the DSB to take a decision, it shall do so by consensus."

Article (3) of the Rules affirms that the members "adhere to the principals for the management of the disputes heretofore applied under Articles XXII and XXIII of GATT 1947, and the rules and procedures as further elaborated and modified.

Article (4) of the Rules provides that, "If a request for consultations is made pursuant to a covered agreement, the Member to which the request is made shall, unless otherwise mutually agreed, reply to the request within 10 days after the date of its receipt and shall enter into consultations in good faith within a period of no more than 30 days after the date of receipt of the request, or does not enter into consultations within a period of no more than 30 days, or a period otherwise mutually agreed, after the date of receipt of the request, then the Member that requested the establishment of a panel.

\* All such request for consultations shall be notified to the DSB and the relevant Councils and Committees by the Member which requests consultations. Any request of consultations shall be submitted in writing and shall give the reasons for the request including the identifications of the measures at issue and an indication of the legal basis for the complaint.

\* In the course of consultations in accordance with the provisions of a covered agreement, before resorting to further action under this Understanding, Members should attempt to obtain satisfactory adjustment of the matter.

\* Consultations shall be confidential, and without prejudice to the rights of any Member in any further proceedings.”

\* If the consultations fail to settle a dispute within 60 days after the date of receipt of the request for consultations, the complaining party may request the establishment of a panel. The complaining party may request a panel during the 60 days period if the consulting parties jointly consider that consultations have failed to settle the dispute.

\* In case of urgency, including those which concern perishable goods, Members shall enter into consultations within a period of no more than 10 days after the date of receipt of the request. If the consultations have failed to settle the dispute within a period of 20 days after the date of receipt of the request, the complaining party may request the establishment of a panel.”

Article 5 of the Rules permit the use of : “ Good offices, conciliation and mediation” .

## **II - Legal Description of the Content and Mechanism of the Dispute Settlement System within the WTO**

### **1- Establishment of Panels**

In case consultations are not successful “ the complaining party may request a panel to be established at the latest at the DSB meeting following that at which the request first appears as an item on the DSB ‘s agenda, unless at that meeting the DSB decides by consensus not to establish a panel.

\* The request for the establishment of a panel shall be made in writing. It shall indicate whether consultations were held, identify the specific measures at issue and provide a brief summary of the legal basis of the complaint sufficient to present the problem clearly. In case of applicant requests the establishment of a panel with other than standard terms of reference, the written request shall include the proposed text of special terms of reference. ( Article 6 )

The jurisdiction of the panels is provided for in Article (7) as follows :

1. "Panels shall have the following terms of reference unless the parties to the dispute agree otherwise within 20 days from the establishment of the panel :

To examine, in the light of the relevant provisions in ( name of the covered agreement(s) cited by the parties to the dispute), the matter referred to the DSB by ( name of party) in document and to make such findings as will, assist the DSB in making the recommendations or in giving the rulings for in that /those agreement(s).

2. Panels shall address the relevant provisions in any covered agreement or agreements cited by the parties to the dispute.

3. In establishing a panel, the DSB may authorize its Chairman to draw up the terms of reference of the panel in consultation with the parties to the dispute, subject to the provisions of paragraph 1. The terms of reference thus draw up shall be circulated to all Members. If other than standard terms of reference are agreed upon, any Member may raise any point relating thereto in the DSB."

- Panels shall be composed of well-qualified governmental and/ or non-governmental individuals.

- Panel Members are selected with a view to insuring the independence of the members, a sufficiently diverse background and a wide spectrum of experience.

- Citizens of Members whose governments are parties to the dispute or third parties shall not serve on a panel concerned with the dispute, unless the parties to the dispute agree otherwise.

- The Secretary of the body shall maintain an indicative list of governmental and non-governmental individuals possessing the qualifications from which penalties may be drawn as appropriate.

- Panels shall be composed of three panelists unless the parties to the dispute agree, within 10 days from the establishment of the panel, to a panel composed of five panelists. Members shall be informed promptly of the composition of the panel.

- The Secretariat shall propose nominations for the panels to the parties to the dispute. The parties to the dispute shall not oppose nominations except for compelling reasons.

- If there is no agreement on the panelists within 20 days after the date of the establishment of a panel, at the request of either party, the Director-General, in consultation with the Chairman of the DSB and the Chairman of the relevant Council of Committee, shall determine the composition of the panel by

appointing the panelists whom the Director General considers most appropriate in accordance with any relevant special or additional rules or procedures of the consulting with the parties to the dispute. The Chairman of the DSB shall inform the Members of the composition of the panel thus formed no later than 10 days after the date of the Chairman receives such a request.

- Panelists shall serve in their individual capacities and not as government representatives, nor as representatives of any organization. Members shall therefore not give them instructions nor seek to influence them as individuals with regard to matters before a panel.

- When a dispute is between a developing country and a Member of a developed country Member the panel shall, if the developing country Member so requests, include at least one panelist from a developing country Member.

- Panelists' expenses, including travel and subsistence allowance, shall be met from the WTO budget in accordance with criteria to be adopted by the General Council, based on recommendations of the Committee on Budget, Finance, and Administration( Art.8 )

## 2- Panels Procedures

Any Member having a substantial interest in a matter before a panel and having notified its interest to the DSB shall have an opportunity to be heard by the panel and to make written submissions to the panel as a third party. These submissions shall also be given to the parties to the dispute and shall be reflected in the panel report.( Art. 10 )

- Panel procedures should provide sufficient flexibility so as to ensure high-quality panel reports, while not unduly delaying the panel process.

- After consulting the parties to the dispute, the panelist shall, as soon as practicable and whenever possible within one week after the composition and terms of reference of the panel have been agreed upon, fix the timetable for the panel process. (Art. 12 )

- Where the parties to the dispute have failed to develop a mutual satisfactory solution, the panel shall submit its findings in the form of a written report to the DSB. In such cases, the report of a panel shall set out the findings of fact, the applicability of relevant provisions and the basic rationale behind any findings and recommendations that it makes. Where a settlement of the matter among the parties to the dispute has been found, the report of the panel shall be confined to a brief description of the case and to reporting that a solution has been reached.

- In order to make the procedures more efficient, the period in which the panel shall conduct its examination, from the date that the composition and terms of reference of the panel have been agreed upon until the date the final report is issued to the parties to the dispute, shall, as a general



rule, not exceed six months. In cases of urgency, including those relating to perishable goods, the panel shall aim to issue its report to the parties to the dispute within three months.

- When the panel considers that it cannot issue its report within six months, or within three months in cases of urgency, it shall inform the DSB in writing of the reasons for the delay together with an estimate of the period within which it will issue its report. In no case should the period from the establishment of the panel to the circulation of the report to the Members exceed nine months. (Art.12)

-It is important to note that Panel deliberations shall be confidential. The reports of panels shall be drafted without the presence of the parties to the dispute in the light of the information provided and the statements made.

It is worth mentioning also that opinions expressed in the panel report by individual panelists shall be anonymous. (Article 14)

### 3- Panels Reports

In order to provide sufficient time for the Members to consider panel reports, the reports shall not be considered for adoption by the DSB until 20 days after the date they have been circulated to the Members having objections to a panel report shall give written reasons to explain their objections for circulation at least 10 days prior to the DSB meeting at which the panel report will be considered.

The parties to a dispute shall have the right to participate fully in consideration of the panel report by the DSB, and their views shall be fully recorded.

Within 60 days after the date of circulation of a panel report to the Members, the report shall be adopted at a DSB meeting unless a party to the dispute formally notifies the DSB of its decision to appeal or the DSB decides by consensus not to adopt the report. If a party has notified its



decision to appeal, the report by the panel shall not be considered for adoption by the DSB until after completion of the appeal. This adoption procedure is without prejudice to the right of Members to Express their views on a panel report. ( Article 16)

#### 4-Appellate Review

A standing Appellate Body shall be established by the DSB. The Appellate Body shall hear appeals from panel cases. It Shall be composed of seven persons, three of whom shall serve in rotation. Such rotation shall be determined in the working procedures of the Appellate Body.

The DSB shall appoint persons to serve on the Appellate Body for a four year term, and each person may be re-appointed once. However, the terms of three of the seven persons appointed immediately after the entry into force of the WTO Agreement shall expire at the end of two years , to be determined by lot . Vacancies shall be filled as they arise. A person appointed to replace a person whose term of office has not expired shall hold office for the remainder of the predecessor's term .

The Appellate Body shall comprise persons of recognized authority, with demonstrated expertise in law, international trade and the subject matter of the covered agreements generally. They shall be unaffiliated with any government. The Appellate Body membership shall be broadly representative of membership in the WTO .

An appeal shall be limited to issues of law covered in the panel report and legal interpretations developed by the panel.

The Appellate Body shall be provided with appropriate administrative and legal support as it requires.

The expenses of persons serving on the Appellate Body, including travel and subsistence allowance, shall be met from the WTO budget in accordance with criteria to be adopted by the General Council, based on

recommendations, of the Committee on Budget, finance and administration.(article 17)

An Appellate Body report shall be adopted by the DSB and unconditionally accepted by the parties to the dispute unless the DSB decides by consensus not to adopt the Appellate Body report within 30 days following its circulation to the Members. This adoption procedure is without prejudice to the right of Members to express their views on an Appellate Body report. (Art17)

Where a panel or the Appellate Body concludes that a measure is in consistent with a covered agreement, it shall recommend that the Member concerned bring the measure into conformity with that agreement. In addition to its recommendations, the panel or Appellate Body may suggest ways in which the Member concerned could implement the recommendations.(Art.19)

At a DSB meeting held within 30 days after the date of adoption of the panel or Appellate Body report, the Member concerned shall inform the DSB of its intentions in respect of implementation of the recommendations and rulings of the DSB. If it is impracticable to comply immediately with the recommendations and rulings, the member concerned shall have a reasonable period of time in which to do so.

The DSB shall keep under surveillance the implementation of adopted recommendations or rulings. (Art.21)

#### 5- Compensation and the Suspension of Concessions

If the Member concerned fails to comply with the recommendations and rulings within the reasonable period of time, such member shall, if so requested, and no later than the expiry of the reasonable period of time, enter into negotiations with a party having invoked the dispute settlement procedures, with a view to developing mutually acceptable compensation. If no satisfactory compensation has been agreed within 20

days after the date of expiry of the reasonable period of time, any party having invoked the dispute settlement procedures may request authorization from the DSB to suspend the application to the member concerned of concessions or other obligations under the covered agreements (Art.22)

It is worth mentioning that particular attention is to be paid to matters affecting the interests of developing countries with respect to measures which have been subject to dispute settlement. (Art 21)

### 6-Expeditions Arbitration

Apart from the above mentioned ways of settling disputes between members states (Article 25.) of the Rules provides for a special technique of dispute settlement i.e., "Expeditions Arbitration" The said Article states the following:-

◆ 1- Expeditious arbitration within the W TO as an alternative means of dispute settlement can facilitate the solution of certain disputes that concern issues that are clearly defined by both parties.

◆ 2 - Except as otherwise provided in this Understanding , resort to arbitration

shall be subject to mutual agreement of the parties which shall agree on the procedures to be followed. Agreements to resort to arbitration shall be notified to all Members sufficiently in advance of the actual commencement of the arbitration process.

◆ 3 - Other Members may become party to an arbitration proceeding only upon the agreement of the parties which have agreed to have recourse to arbitration. The parties to the proceeding shall agree to abide by the arbitration award.

Arbitration awards shall be notified to the DSB and the Council or committee of any relevant agreement where any member may raise any point relating thereto.

4 - Articles 21 and 22 of this Understanding shall apply *mutatis mutandis* to arbitration awards .

### 7 - Evaluations :

There has not been enough time to evaluate the above mentioned system of settling member disputes especially that the disputes which were settled between Member States were settled outside this system .

Following are statistics published by the WTO about the activities of the DS in June 1998 under topic " Documentation on WTO Dispute Settlement Procedures and Practices " .

#### DISPUTE SETTLEMENT STATISTICS

Information concerning panels	1948-94	1970-94	1980-94
No of panels established	126	108	88
No of cases in which panel reports were submitted	114	89	75
No of panel reports adopted	93	68	58
No of panel reports not adopted	14*	14*	14*
No of cases in which complainant was a developing country	21	19	15
No of cases in which party complained against was a developing country	11	10	9

- \*Note - excludes some early cases where there was no formal adoption of report, and
- excludes current cases (i.e. panel established after 1 January 1994), and
  - excludes cases where there was a settlement between the parties before adoption



licensing system. The report of the Panel was circulated to Members on 22 May 1997. On 11 June 1997, the European Communities notified its intention to appeal certain issues of law and legal interpretations developed by the Panel. 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. The report of the Appellate Body was circulated to Members on 9 September 1997. 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. 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 the period from 25 September 1997 to 1 January 1999. The report of the Arbitrator was circulated to Members on 7 January 1998.

## 2. Appellate Report Issued

(1) India - Patent Protection for Pharmaceutical and Agricultural Chemical Products, complaint by the United States (WT/DS50). This request, dated 2 July 1996, concerns 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 United States requested the establishment of a panel on 7 November 1996. The DSB established a panel at its meeting on 20 November 1996. 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. The report of the Panel was circulated on 5 September 1997. On 15 October 1997, India notified its intention to appeal certain issues of law and legal interpretations developed by the Panel. 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 report of the Appellate Body was circulated to Members on 19 December 1997.

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This Overview updates the Overview dated 19 December. New developments are reflected in paragraphs 1(7), 6(16)(b) and 6(35), (36), (37) and (38).

### Overview of the State-of-play of WTO Disputes

	Consultation Requests	Distinct Matters	Active Cases	Completed Cases	Settled or Inactive Cases
Total	115	80	18	7	20

## 1. Appellate Reports Adopted

(1) United States - Standards for Reformulated and Conventional Gasoline, complaints by Venezuela (WT/DS2) and Brazil (WT/DS4). A single panel considered the complaints of both Venezuela and Brazil. Complainants alleged that a U.S. 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). The report of the panel found the regulation to be inconsistent with GATT Article III:4 and



(3) United States - Import Prohibition of Certain Shrimp and Shrimp Products, complaint by India, Malaysia, Pakistan and Thailand (WT/DS58). This request, dated 8 October 1996, concerns a joint complaint by India, Malaysia, Pakistan and Thailand against a ban on importation of shrimp and shrimp products from these countries imposed by the United States under Section 609 of US Public Law 101-62. Violations of Articles I, XI and XIII of GATT 1994, as well as nullification and impairment of benefits, are alleged. On 9 January 1997, Malaysia and Thailand requested the establishment of a panel. On 30 January 1997, Pakistan also requested the establishment of a panel. At its meeting on 25 February 1997, the DSB established a panel. Australia, Colombia, the EC, Philippines, Singapore,

(2) United States - The Cuban Liberty and Democratic Solidarity Act, complaint by the European Communities (WT/DS38). 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 25 April 1997, the Panel suspended its work.

it was established on 16 October 1996. The US also alleges that these measures nullify or impair benefits accruing to the US (a non-violation claim). The United States requested the establishment of a panel on 20 September 1996 and treated imported film and paper less favourably through these measures, in violation of GATT Articles III and X. The US also alleges that these measures nullify or impair benefits accruing to the US (a non-violation claim). The United States requested the establishment of a panel on 20 September 1996 and

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Hong Kong, India, Guatemala, Mexico, Japan, Nigeria and Sri Lanka reserved their third-party rights. On 25 February 1997, India also requested the establishment of a panel in the same matter. At its meeting on 10 April 1997, the DSB agreed to establish a panel in respect of India's request but agreed to incorporate this with the panel already established in respect of the other complainants.

(4)(a) European Communities - Customs Classification of Certain Computer Equipment, complaint by the United States (WT/DS62). This request, dated 8 November 1996, is in respect of the reclassification by the European Communities, for tariff purposes, of certain Local Area Network (LAN) adapter equipment and personal computers with multimedia capability. The United States alleges that these measures violate Article II of GATT 1994. On 11 February 1997, the US requested the establishment of a panel. At its meeting on 25 February 1997, the DSB established a panel. Japan, the Republic of Korea, India and Singapore reserved their third-party rights.

(4)(b) United Kingdom - Customs Classification of Certain Computer Equipment, complaint by the United States (WT/DS67). This request, dated 14 February 1997, is in respect of the reclassification by the UK for tariff purposes of certain Local Area Network (LAN) equipment and personal computers with multimedia capability. The US alleges that these measures violate Article II of GATT 1994. A nullification and impairment of benefits claim is also alleged. A similar request concerning these measures was made by the US in respect of the EC (DS62). On 7 March 1997, the US requested the establishment of a panel. At its meeting on 20 March 1997, the DSB agreed to incorporate this dispute into the Panel already established in respect of DS62.

(4)(c) Ireland - Customs Classification of Certain Computer Equipment, complaint by the United States (WT/DS68). This request, dated 14 February 1997, covers the same measures as in WT/DS67/1 in respect of Ireland, except for the reference to multimedia capability. Again the US alleges a violation of Article II of GATT 1994, as well as a nullification and impairment of benefits. On 7 March 1997, the US requested the establishment of a panel. On 7 March 1997, the US requested the establishment of a panel. At its meeting on 20 March 1997, the DSB agreed to incorporate this dispute into the Panel already established in respect of DS62.

(5) Guatemala - Anti-Dumping Investigation Regarding Imports of Portland Cement from Mexico, complaint by Mexico (WT/DS60). This request, dated 15 October 1996 is in respect of an anti-dumping investigation commenced by Guatemala with regard to imports of portland cement from Mexico. Mexico alleges that this investigation is 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 20 March 1997, the DSB established a panel. The US, Canada, Honduras and El Salvador have reserved their third-party rights.

(6) Australia - Measures Affecting the Importation of Salmon, complaint by Canada (WT/DS18). This request for consultations, dated 5 October 1995, is in respect of Australia's prohibition of imports of salmon from Canada based on a quarantine regulation. Canada alleges 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 10 April 1997, the DSB established a panel. The US and the European Communities reserved their third-party rights.

(7)(a) Indonesia - Certain Measures Affecting the Automobile Industry, complaint by Japan (WT/DS55). This request, dated 4 October 1996, concerns Indonesia's National Car Programme - basically the same measures as in WT/DS54. Japan contends that these measures are 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. On 17 April 1997, Japan requested the establishment of a panel. At its meeting on 12 June 1997, the DSB established a panel. In accordance with Article 9.1 of the DSU, the DSB decided that a single panel will examine this dispute together with DS54 and DS64.

(7)(b) Indonesia - Certain Measures Affecting the Automobile Industry, complaint by Japan (WT/DS64). This request, dated 29 November 1996, is in respect of Indonesia's National Car Programme - the same measures the subject of complaints in WT/DS54, DS55 and DS59. In its earlier request for consultations on these measures (WT/DS55) Japan had confined itself to violations under GATT and TRIMs. In this request Japan is now alleging violations of Articles 3, 6 and 28 of the SCM Agreement. On 17 April 1997, Japan requested the establishment of a panel. At its meeting on 12 June 1997, the DSB established a panel. In accordance with Article 9.1 of the DSU, the DSB decided that a single panel will examine this dispute together with DS54 and DS55.

(7)(c) Indonesia - Certain Measures Affecting the Automobile Industry, complaint by the European Communities (WT/DS54). This request, dated 3 October 1996, concerns the exemption from customs duties and luxury taxes by Indonesia, on imports of "national vehicles" and components thereof, and related measures. The EC contends that these measures are in violation of Indonesia's obligations under Articles I and III of GATT 1994, Article 2 of the TRIMs Agreement and Articles 3 of the SCM Agreement. On 12 May 1997, the EC requested the establishment of a panel. At its meeting on 12 June 1997, the DSB established a panel. In accordance with Article 9.1 of the DSU, the DSB decided that a single panel will examine this dispute together with DS55 and DS64.

(7)(d) Indonesia - Certain Measures Affecting the Automobile Industry, complaint by the United States (WT/DS59). This request, dated 8 October 1996, concerns Indonesia's National Car Programme - basically the same measures being complained of in WT/DS54. The United States contends that these measures are in violation of Indonesia's obligations under Articles I and III of GATT 1994, Article 2 of the TRIMs Agreement, Articles 3, 6 and 28 of the SCM Agreement and Articles 3, 20 and 65 of the TRIPS Agreement. On 12 June 1997, the United States requested the establishment of a panel. At its meeting on 30 July 1997, the DSB established a panel. At the request of the US, the DSB agreed that pursuant to Article 9.1 of the DSU, this dispute will be examined by the same panel established in respect of DS54, DS55 and DS64.

(8) European Communities - Measures Affecting Importation of Certain Poultry Products, complaint by Brazil (WT/DS69). This request dated 24 February 1997, is 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 contends 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 contends 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 30 July 1997, the DSB established a panel. The US and Thailand reserved their third-party rights.

(9)(a) Korea - Taxes on Alcoholic Beverages, complaint by the European Communities (WT/DS/75/1). This request, dated 4 April 1997, is in respect of internal taxes imposed by Korea on certain alcoholic beverages pursuant to its Liquor Tax Law and Education Law. The EC contends 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 10 September 1997, the EC requested the establishment of panel. At its meeting on 16 October 1997, the DSB established a panel, which would also examine the complaint by the US below. Canada and Mexico reserved their third-party rights.

(9)(b) Korea - Taxes on Alcoholic Beverages, complaint by the United States (WT/DS84/1). This request, dated 23 May 1997, is in respect of the same measures complained of by the EC in DS75 above. The US also alleges violations of Article III:2. On 10 September 1997, the US requested the establishment of a panel. At its meeting on 16 October 1997, the DSB established a panel, which would also examine the complaint by the EC above. Canada and Mexico reserved their third-party rights.

(10) Argentina - Measures Affecting Textiles, Clothing and Footwear, complaint by the European Communities (WT/DS77/1). 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.

(11) India - Patent Protection for Pharmaceutical and Agricultural Chemical Products, complaint by the European Communities (WT/DS79/1). This request, dated 28 April 1997, is 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 contends that this is inconsistent with India's obligations under Article 70, paragraphs 8 and 9, of the TRIPS Agreement. See similar US complaint in DS50 now on appeal. On 9 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.

(12) Chile - Taxes on Alcoholic Beverages, complaint by the European Communities (WT/DS87/1). This request, dated 4 June 1997, is 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 contends 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. The DSB established a panel on 18 November 1997. Canada, Mexico, Peru and the US reserved their third-party rights.

(13) India - Quantitative Restrictions on Imports of Agricultural, Textile and Industrial Products complaint by the United States (WT/DS90/1). This request, dated 15 July 1997, is in respect of quantitative restrictions maintained by India on importation of a large number of agricultural, textile and industrial products. The US contends 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. The DSB established a panel on 18 November 1997.

(14) Japan - Measures Affecting Agricultural Products, complaint by the United States (WT/DS76/1). This request, dated 7 April 1997, is in respect of the prohibition by Japan, under quarantine measures, of imports of agricultural products. The US alleges 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 alleges 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 makes a claim for nullification and impairment of benefits. On 3 October 1997, the US requested the establishment of a panel. The DSB established a panel on 18 November 1997. The EC, Hungary and Brazil reserved their third-party rights.

(15) European Communities - Measures Affecting Butter Products, complaint by New Zealand (WT/DS72). 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, 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.

## 6. Pending Consultations



- (1)(a) Korea - Measures Concerning the Testing and Inspection of Agricultural Products, complaint by the United States (WT/DS3). Request circulated on 6 April 1995. The dispute involves 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 below.
- (1)(b) Korea - Measures Concerning Inspection of Agricultural Products, complaint by the United States (WT/DS41). This request for consultations, dated 24 May 1996, concerns testing, inspection and other measures required for the importation of agricultural products into Korea. The United States claims 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 United States requested consultations with Korea on similar issues on 4 April 1995 (WT/DS3/1). See above.
- (2) Australia - Measures Affecting the Importation of Salmonids, complaint by the United States (WT/DS21). 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 a panel has been established (see above).
- (3)(a) Turkey - Restrictions on Imports of Textile and Clothing Products, complaint by Hong Kong (WT/DS29). This request, dated 12 February 1996, claims that Turkey's quantitative restrictions on imports of textile and clothing products 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 claims that GATT Article XXIV does not entitle Turkey to impose new quantitative restrictions in the present case. See below.
- (3)(b) Turkey - Restrictions on Imports of Textile and Clothing Products, complaint by India (WT/DS34). This request, dated 21 March 1996, claims that Turkey's imposition of quantitative restrictions on imports of a broad range of textile and clothing products is inconsistent with GATT Articles XI and XIII, 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). See above and below.
- (3)(c) Turkey - Restrictions on Imports of Textile and Clothing Products, complaint by Thailand (WT/DS47). This request for consultations, dated 20 June 1996, concerns 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.
- (4) Brazil - Countervailing Duties on Imports of Desiccated Coconut and Coconut Milk Powder from Sri Lanka, complaint by Sri Lanka (WT/DS30). This request, dated 23 February 1996, claims that Brazil's imposition of countervailing duties on Sri Lanka's export of desiccated coconut and coconut milk powder is inconsistent with GATT Articles I, II and VI and Article 13(a) of the Agriculture Agreement (the so-called peace clause). See 3(1) above (WT/DS22).
- (5) Japan - Measures Affecting Distribution Services, complaint by the United States (WT/DS45). This request, dated 13 June 1996, concerns 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 alleges that these measures nullify or impair benefits accruing to the US (a non-violation claim). See 5(4) above. The United States requested further consultations with Japan on 20 September 1996, expanding the factual and legal basis of its claim.

(6) Brazil - Export Financing Programme for Aircraft, complaint by Canada (WT/DS46). 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 claims 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.

(7)(a) Brazil - Certain Automotive Investment Measures, complaint by Japan (WT/DS51). This request, dated 30 July 1996, concerns 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 makes a non-violation claim under GATT Article XXIII:1(b).

(7)(b) Brazil - Certain Measures Affecting Trade and Investment in the Automotive Sector, complaint by the United States (WT/DS52). This request, dated 9 August 1996, concerns the same measures as identified in Japan's request above. 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 makes a non-violation claim under GATT Article XXIII:1(b).

(7)(c) Brazil - Certain Measures Affecting Trade and Investment in the Automotive Sector, complaint by the United States (WT/DS65). This request, dated 10 January 1997, concerns more or less the same measures as in WT/DS52 above. However, this request also includes measures adopted by Brazil subsequent to consultations held with the United States pursuant to the request under WT/DS52, which measures confer benefits to certain companies located in Japan, the Republic of Korea, and the European Communities. The United States alleges 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 has also made a nullification and impairment of benefits claim under Article XXIII:1(b) of GATT 1994.

(7)(d) Brazil - Measures Affecting Trade and Investment in the Automotive Sector, complaint by the European Communities (WT/DS81/1). This request, dated 7 May 1997, is 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 contends 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 makes a claim for nullification and impairment of benefits under both GATT 1994 and the Subsidies Agreement. See also DS51, 52 and 65.

(8) Mexico - Customs Valuation of Imports, complaint by the European Communities (WT/DS53). This request, dated 27 August 1996, concerns the Mexican Customs Law. The EC claims 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.

(9) United States - Import Prohibition of Certain Shrimp and Shrimp Products, complaint by the Philippines (WT/DS61). This request, dated 25 October 1996, is 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 United States under Section 609 of U.S. 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).

- (10) United States - Anti-Dumping Measures on Imports of Solid Urea from the Former German Democratic Republic, complaint by the European Communities (WT/DS63). This request, dated 28 November 1996, is in respect of Anti-Dumping duties imposed on exports of solid urea from the former German Democratic Republic by the United States. The EC contends that these measures violate Articles 9 and 11 of the Anti-Dumping Agreement.
- (11) Japan - Measures Affecting Imports of Pork, complaint by the European Communities, (WT/DS66). This request, dated 15 January 1997, is in respect of certain measures affecting imports of pork and its processed products imposed by Japan. The EC contends that these measures are in violation of Japan's obligations under Articles I, X:3 and XIII of the GATT 1994. The EC also contends that these measures nullify or impair benefits accruing to it under the GATT 1994.
- (12)(a) Canada - Measures Affecting the Export of Civilian Aircraft, complaint by Brazil (WT/DS70). This request dated 10 March 1997, is in respect of certain subsidies granted by the Government of Canada or its provinces intended to support the export of civilian aircraft to Brazil. The request is made pursuant to Article 4 of the Subsidies Agreement. Brazil contends that these measures are inconsistent with Article 3 of the Subsidies Agreement.
- (12)(b) Canada - Measures Affecting the Export of Civilian Aircraft, complaint by Brazil (WT/DS71). This request dated 10 March 1997, is in respect of the same measures complained of in WT/DS70. However, the request is made pursuant to Article 7 of the Subsidies Agreement. In this request, Brazil contends 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.
- (13)(a) Philippines - Measures Affecting Pork and Poultry, complaint by the United States (WT/DS74/1). 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.
- (13)(b) Philippines - Measures Affecting Pork and Poultry (WT/DS102/1), 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.
- (14) United States - Safeguard Measure Against Imports of Broom Corn Brooms, complaint by Colombia (WT/DS78/1). This request, dated 28 April 1997, is in respect of US Presidential Proclamation 6961 of 28 November 1996, adopting a safeguard measure against imports of broom and corn brooms. Colombia contends 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 makes a claim for nullification and impairment of benefits under GATT 1994.
- (15) Belgium - Measures Affecting Commercial Telephone Directory Services, complaint by the United States (WT/DS80/1). This request, dated 2 May 1997, is 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 alleges 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.

(16)(a) Ireland - Measures Affecting the Grant of Copyright and Neighbouring Rights, complaint by the United States (WT/DS82/1). This request, dated 14 May 1997, is in respect of Ireland's alleged failure to grant copyright and neighbouring rights under its law. The US contends that this failure violates Ireland's obligations under Articles 9-14, 63, 65 and 70 of the TRIPS Agreement.

(16)(b) European Communities - Measures Affecting the Grant of Copyright and Neighbouring Rights, complaint by the United States (WT/DS115/1). This request, dated 6 January 1998, raises exactly the same measures as in 16(a) above in respect of Ireland but makes the complaint to the EC.

(17) Denmark - Measures Affecting the Enforcement of Intellectual Property Rights, complaint by the United States (WT/DS83/1). 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.

(18) United States - Measures Affecting Textiles and Apparel Products, complaint by the European Communities (WT/DS85/1). 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.

(19) Sweden - Measures Affecting the Enforcement of Intellectual Property Rights, complaint by the United States (WT/DS86/1). 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 Denmark's obligations under Articles 50, 63 and 65 of the TRIPS Agreement.

(20)(a) United States - Measure Affecting Government Procurement, complaint by the European Communities (WT/DS88/1). 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.

(20)(b) United States - Measure Affecting Government Procurement, complaint by Japan (WT/DS95/1). This request, dated 18 July 1997, is in respect of the same issue raised by the EC in DS88 above.

(21) United States - Anti-Dumping Duties on Imports of Colour Television Receivers from Korea, complaint by Korea (WT/DS89/1). 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.

(22)(a) India - Quantitative Restrictions on Imports of Agricultural, Textile and Industrial Products complaint by Australia (WT/DS91/1). 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.

(22)(b) India - Quantitative Restrictions on Imports of Agricultural, Textile and Industrial Products, complaint by Canada (WT/DS92/1). 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).

(22)(c) India - Quantitative Restrictions on Imports of Agricultural, Textile and Industrial Products, complaint by New Zealand (WT/DS93/1). 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.

(22)(d) India - Quantitative Restrictions on Imports of Agricultural, Textile and Industrial Products, complaint by Switzerland (WT/DS94/1). 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.

(22)(e) India - Quantitative Restrictions on Imports of Agricultural, Textile and Industrial Products, complaint by the European Communities (WT/DS96/1). 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.

(23) United States - Countervailing Duty Investigation of Imports of Salmon from Chile, complaint by Chile (WT/DS97/1). This request, dated 5 August 1997, is in respect of a countervailing duty investigation initiated by the US Department of Commerce against imports of salmon from Chile. Chile contends 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 contends a violation of Article 11.4, in relation to the representative status of producers of salmon fillets.

(24) Korea - Definitive Safeguard Measure on Imports of Certain Dairy Products, complaint by the European Communities (WT/DS98/1). This request, dated 12 August 1997, is in respect of a definitive safeguard measure imposed by Korea on imports of certain dairy products. The EC contends 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 considers 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.

(25) United States - Anti-Dumping Duty on Dynamic Random Access Memory Semiconductors (DRAMS) of One Megabyte or Above from Korea, complaint by Korea (WT/DS99/1). 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 bumped 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 considers 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.

(26) United States - Measures Affecting Imports of Poultry Products, complaint by the European Communities (WT/DS100/1). This request, dated 18 August 1997, is 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 contends 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 considers 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.

(27) Mexico - Anti-Dumping Investigation of High-Fructose Corn Syrup (HFCS) from the United States, complaint by the United States (WT/DS101/1). This request, dated 4 September 1997, is 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 in an investigation of 25 June 1997, and the consequent imposition of provisional measures on imports of HFCS from the United States. The US alleges violations of Articles 5.5, 6.1.3, 6.2, 6.4 and 6.5 of the Anti-Dumping Agreement.

(28) Canada - Measures Affecting the Importation of Milk and the Exportation of Dairy Products (WT/DS103/1), complaint by the United States. This request, dated 8 October 1997, is 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 contends that these export subsidies by Canada distort markets for dairy products and adversely affect US sales of dairy products. The US alleges violations of Article II of GATT 1994, Articles 8 and 10 of the Agreement on Agriculture, Article 3 of the Subsidies Agreement, and Articles 1 and 3 of the Import Licensing Agreement.

(29) European Communities - Measures Affecting the Exportation of Processed Cheese (WT/DS104/1), complaint by the United States. This request, dated 8 October 1997, is 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 contends that these measures by the EC distort markets for dairy products and adversely affect US sales of dairy products. The US alleges violations of Article II of GATT 1994, Articles 8, 9, 10 and 11 of the Agreement on Agriculture, and Article 3 of the Subsidies Agreement.

(30) European Communities - Regime for the Importation, Sale and Distribution of Bananas (WT/DS105/1), complaint by Panama. This request, dated 24 October 1997, is 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 does not specify 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 (DS27).

(31) Australia - Subsidies Provided to Producers and Exporters of Automotive Leather (WT/DS106/1), 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.

(32) Pakistan - Export Measures Affecting Hides and Skins (WT/DS107/1), complaint by the European Communities. This request, dated 7 November 1997, is 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 contends that this measure limits access of EC industries to competitive sourcing of raw and semi-finished materials.

(33) United States - Tax Treatment for "Foreign Sales Corporations" (WT/DS108/1), complaint by the European Communities. This request, dated 18 November 1997, is 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 contends that these provisions are inconsistent with US obligations under Articles III:4 and XVI of GATT 1994, and Articles 3.1(a) and (b) of the Subsidies Agreement.

(34)(a) Chile - Taxes on Alcoholic Beverages, complaint by the United States (WT/DS109/1). This request, dated 11 December 1997, is 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 contends that this differential treatment of imported spirits violates Article III:2 of GATT 1994. Taxes on these beverages are the subject of a complaint by the EC (DS87), in respect of which a panel has already been established.

(34)(b) Chile - Taxes on Alcoholic Beverages, complaint by the European Communities (WT/DS110/1). This request, dated 15 December 1997, is in respect of Chile's internal tax regime for alcoholic beverages complained of by the EC (DS87) and by the US (DS109). In essence, this new request by the EC takes issue with the modification to the law on taxation on alcoholic beverages passed by Chile to address the concerns of the EC in DS87. The EC contends that the modified law still violates Article III:2 of GATT 1994.

(35) United States - Tariff Rate Quota for Imports of Groundnuts, complaint by Argentina (WT/DS111/1). This request, dated 19 December 1997, is in respect of the alleged commercial damage 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 alleges 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.

(36) Peru - Countervailing Duty Investigation against Imports of Buses from Brazil, complaint by Brazil (WT/DS112/1). This request, dated 23 December 1997, is in respect of a countervailing duty investigation being carried out by Peru at the request of Carroceria Morillas S.A., against imports of buses from Brazil. Brazil contends that the procedures followed by the Peruvian authorities to initiate this investigation are inconsistent with Articles 11 and 13.1 of the Subsidies Agreement.

(37) Canada - Measures Affecting Dairy Products, complaint by New Zealand (WT/DS113/1). This request, dated 29 December 1997, is in respect of an alleged dairy export subsidy scheme commonly referred to as the "special milk classes" scheme. New Zealand contends that the Canadian "special milk classes" scheme is inconsistent with Articles 3, 8, 9 and 10 of the Agreement on Agriculture.

(38) Canada - Patent Protection of Pharmaceutical Products, complaint by the European Communities (WT/DS114/1). This request, dated 19 December 1997, is 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 contends 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.

## 7. Settled Cases or Inactive Panels



- (1) Malaysia - Prohibition of Imports of Polyethylene and Polypropylene, complaint by Singapore (WT/DS1). 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) Korea - Measures Concerning the Shelf-life of Products, complaint by the United States (WT/DS5). This request dated 3 May 1995, was 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.
- (3) United States - Imposition of Import Duties on Automobiles from Japan under Sections 301 and 304 of the Trade Act of 1974, complaint by Japan (WT/DS6). On 19 July 1995, the parties notified settlement of this dispute. Japan had alleged that the import surcharges violated GATT Articles I and II.
- (4) Japan - Measures Affecting the Purchase of Telecommunications Equipment, complaint by the European Communities (WT/DS15). 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)(a) European Communities - Duties on Imports of Cereals, complaint by Canada (WT/DS9). 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.
- (5)(b) European Communities - Duties on Imports of Grains, complaint by the United States (WT/DS13). 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.
- (5)(c) European Communities - Duties on Imports of Rice, complaint by Thailand (WT/DS17). 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, (5)(c) below).
- (5)(d) European Communities - Implementation of the Uruguay Round Commitments Concerning Rice, complaint by Uruguay (WT/DS25). This request for consultations, dated 18 December 1995, seems similar to the claim by Thailand (WT/DS17, (5)(b) above).

- (6) Venezuela - Anti-Dumping Investigation in Respect of Imports of Certain Oil Country Tubular Goods (OCTG), complaint by Mexico (WT/DS23), 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) Korea - Measures Concerning Bottled Water, complaint by Canada (WT/DS20). In this request, 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.
- (8) United States - Measures Affecting Imports of Women's and Girls' Wool Coats, complaint by India (WT/DS32). 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) European Communities - Trade Description of Scallops, complaints by Canada (WT/DS7), Peru (WT/DS12) and Chile (WT/DS14). The complaint concerns a French Government Order laying down the official name and trade description of scallops. Complainants claim 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 are 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 have concluded their substantive work, but they suspended the proceedings pursuant to Article 12.12 of the DSU in May 1996 in view of the consultations held among the parties concerned toward 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.
- (10) United States - Tariff Increases on Products from the European Communities, complaint by the European Communities (WT/DS39). 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 1995 (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) Poland - Import Regime for Automobiles, complaint by India (WT/DS19). 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.
- (12) Portugal - Patent Protection under the Industrial Property Act, complaint by the United States (WT/DS37). 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.

(13) United States - Anti-Dumping Investigation Regarding Imports of Fresh or Chilled Tomatoes from Mexico, complaint by Mexico (WT/DS49). 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.

(14) Australia - Textiles, Clothing and Footwear Import Credit Scheme, complaint by the United States (WT/DS57). This request, dated 7 October 1996, concerns a complaint by the United States against subsidies being granted and maintained by Australia on leather products under the TCF scheme. A violation of Article 3 of the SCM Agreement is alleged. The US is also invoking Article 30 of the SCM Agreement to the extent that it incorporates by reference Article XXIII:1 of GATT 1994. An official release from the USTR in Washington on 25 November 1996 indicates that the case has been settled.

(15)(a) Japan - Measures Concerning Sound Recordings, complaint by the United States (WT/DS28). 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.

(15)(b) Japan - Measures Concerning Sound Recordings, complaint by the European Communities (WT/DS42). 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.

(16) Pakistan - Patent Protection for Pharmaceutical and Agricultural Chemical Products, complaint by the United States (WT/DS36). 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.

(17) Turkey - Taxation of Foreign Film Revenues, complaint by the United States (WT/DS43). 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.

(18) Hungary - Export Subsidies in Respect of Agricultural Products, complaint by Argentina, Australia, Canada, New Zealand, Thailand and the United States (WT/DS35). 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.

(19) Japan - Procurement of a Navigation Satellite, complaint by the European Communities (WT/DS73/1). 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.

(20) Korea - Laws, Regulations and Practices in the Telecommunications Sector, complaint by the European Communities (WT/DS40). 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.