

**GENERAL OVERVIEW OF ACTIVE WTO DISPUTE SETTLEMENT CASES
INVOLVING THE EU AS COMPLAINANT OR DEFENDANT AND OF ACTIVE
CASES UNDER THE TRADE BARRIERS REGULATION**

INDEX

A) WTO DISPUTES

I – Argentina – p. 5

Offensive case

Measures affecting the importation of goods (DS438)

Defensive case

- 1) TRQ on garlic (DS 349)
- 2) Certain measures concerning the importation of biodiesel (DS443)
- 3) Certain EU and Member States measures concerning biodiesels (DS459)

II – Brazil – p. 7

Offensive case

Measures affecting imports of retreaded tyres (DS 332)

Defensive case

Generic medicines in transit (DS409)

III – Canada – p. 9

Offensive cases

- 1) Continued suspension of obligations in the *Hormones* dispute (DS 321)
- 2) Measures relating to the Feed-in-Tariff Program (DS 426)

Defensive cases

- 1) Hormones (DS 48)
- 2) Certain measures prohibiting the importation and marketing of seal products (Belgium and Netherlands) (DS 369)
- 3) Measures concerning the marketing of seals products (DS400)

IV – China – p. 12

Offensive cases

- 1) Measures Related to the Exportation of Various Raw Materials (DS395)
- 2) Provisional Anti-Dumping Duties on Fasteners from the EU (DS407)
- 3) Definitive anti-dumping duties on x-ray security inspection equipment from the EU (DS 425)
- 4) Measures Related to the Exportation of Rare Earths, Tungsten, and Molybdenum (DS 432)
- 5) China - Measures Imposing Anti-Dumping Duties on High-Performance Stainless Steel Seamless Tubes ("HP-SSST") from the European Union (DS460)

Defensive case

- 1) Certain measures affecting the renewable energy generation sector (DS452)
- 2) Definitive Anti-dumping measures of certain Iron or Steel Fasteners from China (DS397)

V – Faroe Islands – p. 20

Defensive case

Atlanto-scandian herring (DS 469)

VI – India – p. 20

Offensive cases

- 1) AD measures on certain products from the EC and/or MS (DS 304)
- 2) Certain taxes and other measures on imported wines and spirits (DS 380)

Defensive cases

- 1) AD and CVD measures on PET (DS 385)
- 2) Generic medicines in transit (DS408)

VII – Indonesia – p. 23

Defensive case

AD measures on imports of certain fatty alcohol from Indonesia (DS442)

VIII - Japan – p. 23

Defensive case

Tariff Treatment of Certain Information Technology Products (DS 376)

IX – Norway– p. 25

Defensive case

Measures concerning the marketing of seals products (DS401)

X – Philippines – p. 26

Offensive case

Discriminatory taxation of spirits. (DS396)

XI – Russia – p. 26

Offensive case

Recycling Fee on Motor Vehicles (DS 462)

XII – Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu ("Chinese Taipei") – p. 27

Defensive case

Tariff Treatment of Certain Information Technology Products (DS 377)

XIII – Thailand – p. 28

Offensive case

Customs valuation of certain products from the EC (DS370)

XIV – USA – p. 29

Offensive cases (p. 29)

- 1) "Byrd amendment" (DS 217)
- 3) Section 110(5) of the US Copyright Act ("Irish Music") (DS 160)
- 4) Section 211 of the Omnibus Appropriations Act (Havana Club) (DS 176)
- 5) Aircraft – Boeing (DS 317 and DS 353)
- 6) Continued suspension of obligations in the *Hormones* dispute (DS 320)

Defensive cases (p. 34)

- 1) Hormones (DS 26)
- 2) Measures affecting the approval and marketing of biotech products (GMOs) (DS 291)
- 3) Aircraft – Airbus (DS 316 and DS347)
- 4) Banana import regime (DS 27)
- 5) Tariff Treatment of Certain Information Technology Products (DS 375)
- 6) Poultry (DS389)

B) CASES UNDER THE TRADE BARRIERS REGULATION (TBR)

I - Canada – Prosciutto di Parma – p.42

II- Chile – Swordfish - p.43

III - India – Wines and spirits – p.44

IV - Korea – Pharmaceuticals – p. 44

V – Chinese Taipei – Compulsory licensing of CD-Rs – p. 44

VI - Turkey – Pharmaceuticals – p. 45

VII - USA – Oilseeds – p. 46

VIII – USA – Gambling – p. 46

INTRODUCTION

At present, the EU is actively involved in 41¹ WTO disputes: in 19 of these cases the EU is the complaining party while in the remaining 22 cases the EU is on the defending side. These cases relate to the EU's relations with 13 of its trading partners (Argentina, Brazil, Canada, China, Faroe Islands, India, Indonesia, Japan, Norway, Philippines, Russia, Chinese Taipei, Thailand and the US).

Dispute settlement activities against the US continue to represent the majority of EU's active disputes. The EU is the complaining party in 6 of the disputes and, being the defendant in 6 cases (GMOs, hormones, bananas, poultry, aircraft and Information Technology Agreement). Regarding the substance of EU's offensive cases with the US, a major part concerns the misuse of trade defence instruments.

Our cases with China concern services, anti-dumping measures and raw materials on the offensive side and antidumping and feed-in-tariff measures on the defensive side.

Below follows a short description of each of the above-mentioned disputes. New developments are indicated in bold.

I - ARGENTINA

OFFENSIVE CASE

DS438 – Argentina – Measures affecting the importation of goods (procedural stage: panel)

On 25 May 2012, EU requested consultations with Argentina on its restrictive import measures affecting a wide range of products exported from Europe. The restrictive, non-transparent measures include Argentina's import licensing regime and notably the procedures to obtain an import licence, including certificates of importations required for more than 600 product types, such as electrical machinery, auto parts and chemical products, shoes, paper products; a pre-registration and pre-approval regime, called the "Declaración Jurada Anticipada de Importación", which extends to imports of all goods since February 2012. In addition, Argentina requires importers to balance imports with exports, or to increase the local content of the products they manufacture in Argentina, or not to transfer revenues abroad. This practice is systematic, non-written and non-transparent. Acceptance by importers to undertake this practice appears to be a condition for obtaining the license allowing imports of their goods. These measures delay or block goods at the border and inflict major losses to industry in the EU and worldwide. During consultations the EU has also challenged certificates of imports for food products as well as some automatic import licenses which appear to be used as non-automatic licenses.

These measures are at odds with the WTO rules, in particular the prohibition to institute quantitative restrictions as well as the obligation of non-discrimination and national treatment principle under the GATT 1994 and the rules of the Agreement on Import Licensing Procedures.

Consultations were held on 11 and 12 July 2012 in Geneva but did not bring a solution to the dispute. In the meantime, the US, Japan and Mexico have requested consultations on

¹ Each case is counted separately

the same set of measures (DS444, DS445, DS446), and the EU was accepted as third party in those consultations. Consultations did not bring a solution to the dispute.

In view of unsuccessful consultations and no sign of an improvement of the situation, the EU, US, Japan and Mexico have closely cooperated since then with a view to requesting the establishment of a Panel by the end of 2012.

Accordingly, the EU requested the establishment of a Panel on 6 December 2012. The US and Japan have requested the establishment of a Panel on the same day on the same measures. Their request, together with the EU's request and Mexico's request, which was filed on 21 November, were all on the agenda of the DSB of 17 December 2012 for the first time. Argentina blocked the establishment of a panel at that meeting. At the DSB meeting of 28 January, the panel was automatically established.

In May 2013, the WTO Director-General appointed the three panellists that will hear and decide on this dispute. The first substantive meeting with the Parties took place in September 2013.

DEFENSIVE CASES

(1) DS 349 –EC –TRQ on garlic (procedural stage: consultations)

On 6 September 2006, Argentina requested Article XXIII consultations on the TRQ that the EC created for garlic (NC 07 03 2000) as a result of Article XXIV:6 GATT negotiations with China. Argentina invokes a violation of Article XXIV:6 and XXVIII GATT. Consultations were held in Geneva on 5 October 2006.

(2) DS 443 – Certain measures concerning the importation of biodiesel (procedural stage: consultations)

On 17 August 2012, Argentina requested consultations with the European Union concerning certain measures relating to the consideration of imported biodiesels for accounting purposes with regard to the compliance with the mandatory targets for biofuels. The measure challenged by Argentina is the Spanish Ministerial Order IET/822/2012 of 20 April 2012 regulating the allocation of biodiesel volumes needed to achieve the mandatory target.

Argentina claims that the Spanish measure is inconsistent with:

- Articles III:1, III:4, III:5 and XI:1 of the GATT 1994;
- Articles 2.1 and 2.2 of the TRIMs Agreement; and
- Article XVI:4 of the WTO Agreement.

Consultations were held on 4-5 October. Australia and Indonesia participated as third parties.

On 6 December, Argentina requested the establishment of a panel. The EU opposed the establishment of a panel at the DSB meeting of 17 December. It has to be noted that the procedures foreseen in the challenged measure had already been cancelled in October, and Ministerial Order IET/822/2012 was amended in December. Thus, Argentina's panel

request is without object. At the following January DSB meeting Argentina did not request the establishment of a panel.

(3) DS 459 – Certain EU and Member States' measures concerning biodiesels (procedural stage: consultations)

On 15 May 2013, Argentina requested consultations with the European Union concerning EU Directives 2009/82/EC (Renewable Energy Directive), and 2009/30/EC (Fuel Quality Directive). In addition, Argentina challenges measures of a number of Member States that seek to implement the above directives, as well as certain Member States' measures that, allegedly, provide support to the EU biodiesels industry.

Argentina makes claims under:

- Articles I:1, III:1, III:4 and III:5 of the GATT 1994;
- Articles 2.1, 2.2, 5.1 and 5.2 of the TBT Agreement;
- Article 2.1 and 2.2 of the TRIMS Agreement;
- Article 3.1(b) and 3.2 of the SCM Agreement;

Consultations must be held within 60 days of Argentina's request.

A consultations meeting took place in Brussels on 26-27 June.

Argentina may engage in further consultations with the EU, or it may at any time request the establishment of a panel to hear this dispute.

II – BRAZIL

OFFENSIVE CASE

DS332 – Measures affecting imports of retreaded tyres (procedural stage: implementation)

On 20 June 2005, the EC requested WTO consultations with Brazil on its measures affecting the importation of retreaded tyres from the EC. Brazil maintains an import ban on retreaded tyres and also applies financial fines on the importation as well as storage, transportation and sale of imported retreaded tyres. Imports from other Mercosur countries are exempted from these measures. The EC considers that these measures are inconsistent with Articles I:1, III:4, XI:1 and XIII:1 of the GATT 1994. Consultations were held on 20 July 2005. The DSB established the panel at its meeting on 20 January 2006. The panel publicly circulated its final report on 12 June 2007. Based on a procedural agreement with Brazil, the appeal was delayed so that it has started on 3 September 2007.

The Appellate Body circulated its report on 3 December 2007. The Appellate Body has strengthened the previous panel ruling against Brazil's imports ban on retreaded tyres. The EC wins the dispute entirely on the chapeau of Article XX (arbitrary and unjustifiable discrimination, disguised restriction on international trade) because of both the MERCOSUR exception and the importation of casings. The Appellate Body confirms that these features of the import ban's application make the import ban illegal, no matter how few casings or MERCOSUR retreads are actually imported. The EC however loses on its claims that the import ban on retreaded tyres is not "necessary" to protect human health and life. Still, the reasoning of the Appellate Body on the "necessity" test is of

significantly higher quality than that of the panel, and indirectly redeems certain of the EC's misgivings with the panel's reasoning. On 17 December 2007, the Dispute Settlement Body adopted the Appellate Body report. On 29 August 2008, a WTO arbitrator ruled that the reasonable period of time to implement ends on 17 December 2008. Brazil has failed to meet that deadline. The EC and Brazil have, on 5 January, concluded a "sequencing agreement", under which the EC maintains its right to directly initiate retaliation procedures, but is obliged to first conduct a compliance review once Brazil adopts implementing measures.

On 24 June 2009, the Brazilian Supreme Court (STF) confirmed the constitutionality of the Brazilian import prohibition against the import of retreaded tyres and declared that any decision to import retreaded tyres in Brazil (including the Mercosur exception) is unconstitutional.

Brazil's Secretary of Foreign Trade issued a new regulation, Portaria SECEX 24/2009, published on 28 August 2009. This regulation prohibits new licenses for the importation of used and retreaded tyres to be issued, irrespective of their origin (abolition of the Mercosur exception).

In its seventh Status Report to the DSB, dated 15 September 2009, Brazil claimed to be in full compliance.

The Commission is continuing to monitor Brazil's claim of full compliance.

DEFENSIVE CASES

DS 409 - Generic medicines in transit (procedural stage – consultations)

On 12 May 2010 Brazil requested consultations with the EU and the Netherlands in respect of certain EU and Dutch legislation, as well as their alleged application in certain cases of detention of generic medicines in transit through the EU. A similar, but not identical, request has also been filed on the same date by India (for further details see below under subheading VIII)

The EU measures challenged are: (i) Council Regulation (EC) No. 1383/2003 of 22 July 2003; (ii) Commission Regulation (EC) No. 1891/2004 of 21 October 2004; (iii) Council Regulation (EEC) No 2913/92 of 12 October; (iv) Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004; (v) Regulation (EC) No 816/2006 of the European Parliament and of the Council of 17 May 2006. The request also covers the following Dutch measures: (i) relevant provisions of the Patents Act of the Kingdom of the Netherlands, 1995, as amended, including, but not limited to, the provisions of Chapter IV thereof, especially Articles 53 and 79, and relevant rules, regulations, guidelines and administrative practices; (ii) Relevant provisions of the General Customs Act of the Netherlands, as amended, including, but not limited to, Articles 5 and 11 and relevant rules, regulations, guidelines and administrative practices; (iii) Customs Manual VGEM (30.05.00 Intellectual Property Rights, Version 3.1) including, but not limited to, the provisions of Chapter 6 and of other relevant Chapters; (iv) the Public Prosecutor's Office Guide to Intellectual Property Fraud 20005A022 of 1 February 2006 and the Public Prosecutor's Office Directive (2005R013); (v) Relevant provisions of the

Criminal Code of the Netherlands including, but not limited to, the provisions of Article 337, and relevant rules, regulations, guidelines and administrative practices; (vi) Relevant provisions of the Criminal Procedure Code of the Netherlands and relevant rules, regulations, guidelines and administrative practices; and, (vii) national courts' jurisprudence finding that goods in transit infringe patents (or supplementary protection certificates) in the Netherlands, including, but not limited to, due to the operation of a legal fiction pursuant to which the legal status of goods in transit is to be assessed *as if* they had been manufactured in the Netherlands.

Brazil alleges that a rule of general and prospective application seems to result from the individual or combined operation of the above mentioned instruments providing that, ex officio or following request from right-holders, competent authorities seize, authorize the seizure, order the seizure or otherwise restrict the passage of goods in transit on grounds that they infringe patents (or supplementary protection certificates) under a relevant national law, or are suspected of such infringement.

Brazil has alleged that these measures are inconsistent with Article V:1, V:2, V:3, V:4; V:5, V:7 and X:3 of the GATT 1994; Articles 1.1, 2, 28, 31, 41.1, 41.2, 42, 49, 50.3, 50.7, 50.8, 51, 52, 53.1, 53.2, 54, 55, 58(b), and 59 of the TRIPS Agreement, and Article 4bis of the Paris Convention of 1967; Article XVI:4 of the WTO Agreement.

The EU accepted Brazil's consultation request on 21 May 2010 and informed Brazil that as the alleged violations all relate to matters for which the EU bears responsibility in the WTO, the EU alone is the proper respondent in this dispute.

On 28 May 2010 Canada, Ecuador and India and on 31 May 2010 Japan, China and Turkey made requests to join consultations in DS409 as third parties.

A first round of consultations was held jointly with India on 7-8 July 2010 in Geneva. This was followed by a second round of consultations on 13-14 September 2010.

III – CANADA

OFFENSIVE CASES

1) DS 321 – Canada – Continued suspension of obligations in the *Hormones* dispute
(procedural stage: implementation)

Case is practically identical to that against the US. See description under US.

2) DS 426 – Canada – measures relating to the Feed-in-Tariff Program (procedural stage – implementation)

On 11 August 2011 the EU requested consultations with Canada concerning Canada's measures relating to domestic content requirements in the feed-in tariff program (the "FIT Program").

At the request of Japan a panel was established on the same matter on 22 July 2011 in case DS 412, in which the EU is third party.

The Ontario Green Energy and Economy Act (OGEA) empowers the Ontario Power Authority (OPA) to develop programs to encourage the use of renewable energy. Under this regime, the OPA has developed a FIT Program that allows buying renewable energy

at an above market price, in order to compensate for the higher costs involved in producing solar and wind electricity. In order to benefit from this incentive programme, the OPA has set domestic content requirements (for solar 40-50% initially of the costs to develop a project, rising to 60% for post 2011 projects; and for wind 25% initially, rising to 50% post 2012).

The European Union considers the measure to be inconsistent with GATT Article III:4, Article 3.1(b) of the SCM Agreement and Article 2.1 of the TRIMs Agreement.

Consultations between Canada and the EU were held on 7 September 2011. Japan and the US joined the consultations as third parties. The consultations failed to result in a positive solution of the matter. Therefore, on 9 January 2012 the EU requested the establishment of a WTO panel in order to determine whether Ontario's measures are consistent with WTO rules. The Dispute Settlement Body of the WTO approved the establishment of a panel at its meeting on 20 January. The panel was composed on 23 January by mutual agreement between the EU and Canada, which agreed that the panellists in dispute WT/DS412 would also serve as panellists in dispute WT/DS426. The timetable of the two disputes has been harmonised in order to ensure an efficient handling.

The Panel Report was circulated to all WTO Members and was publicly released on 19 December. The Panel confirmed that the domestic content rules in Ontario's feed-in-tariff programme for electricity from wind and solar power are in breach of Article 2.1 of the TRIMs Agreement and of Article III:4 of GATT, as they make an advantage (the FIT contracts) conditional upon the use of locally-sourced goods (generation equipment). The Ontario measures are not covered under the GATT public procurement provision (Article III:8(a)) because electricity is placed on the market and resold for use by industrial users and households. Lastly, the Panel found that the EU (and Japan) had not provided sufficient evidence establishing the existence of a "benefit" within the meaning of Article 1.1(b) of the SCM Agreement.

On 5 February 2013, Canada filed a notice of appeal. Japan and the EU filed counter-appeals on 11 February. The Appellate Body released its report on 6 May 2013, where it upheld the panel's interpretation with respect to Articles III:4 and III:8(a) of the GATT 1994, and therefore, left unaffected the Panel's finding that the measures at issue are inconsistent with Article III:4 of the GATT 1994, in conjunction with Article 2.1 of the TRIMs Agreement. The Appellate Body further upheld the European Union's contention that the Panel had erred in its disposition of the benefit issue in Article 1.1(b) of the SCM Agreement. However, the Appellate Body found itself unable to complete the legal analysis.

At its meeting on 24 May 2013, the DSB adopted the Appellate Body report and the panel report, as modified by the Appellate Body report.

On 20 June 2013, Canada informed the DSB that it intended to implement the DSB's recommendations and rulings in a manner that respects its WTO obligations and that it will require a reasonable period of time to do so. On 29 July 2013, Canada and the European Union informed the DSB that they had agreed that the reasonable period of time to implement the DSB's recommendations and rulings shall be 10 months. Accordingly, the reasonable period of time expires on 24 March 2014.

DEFENSIVE CASES(1) DS 48 – Hormones (procedural stage: –implementation)

Joint case with the US. See also description under DS 26.

On 17 March the Commission and the Government of Canada signed a Memorandum of Understanding setting out a road-map that, if confirmed, will provide a temporary solution to the dispute. Under this roadmap, Canada would suspend all its sanctions on European products, while the EU would increase market access opportunities for beef imports. (WTO document WT/DS48/26)

The Memorandum foresees that Canada would suspend trade sanctions against EU products as soon as possible in the next weeks.

Increased market access opportunities on the EU market would take the form of an increase of an existing duty-free tariff-rate quota for imports of "high quality beef", in the form of 1,500 additional tons until August 2012 (Phase 1), which could be increased to 3,200 tons until August 2013 (Phase 2). Canada and the EU would then assess the situation and decide whether to reach a permanent settlement of the case (Phase 3). Both the suspension of sanctions and the increase to the EU TRQ remain subject to the domestic decision-making procedures.

The MoU is non-binding and without prejudice to the EU rights in the WTO dispute and contains provisions on the timing of 21.5 proceedings similar to the US MoU.

Canada repealed its sanctions on 29 July 2011, with an order published in the Canada Gazette on 17 August 2011.

The European Parliament and Council have approved a proposal to increase the size of the TRQ as from 1st of August 2012.

2) DS 369 Certain measures prohibiting the importation and marketing of seal products (procedural stage: –Panel)

On 25 September 2007 Canada requested consultations with the EC in respect of Belgian and Dutch laws which ban the import, distribution, marketing and sale of seal products and items containing seals products. The Belgian law was adopted on 16 March 2007 and prohibits the manufacture and commercialisation (including the importation) of products containing seal products. The Canadian request also covers the Belgian law on import licences as amended to cover imports of seal products. The Dutch ban covers the importation and offering for sale of harp and hooded seal products

Canada has alleged that these measures are inconsistent with Articles 2.1 and 2.2 of the TBT Agreement, and with Article I:1, III:4, V:2, V:3, V:4 and XI:1 of GATT 1994.

Consultations took place on 14 November 2007

On 11 February 2011 Canada requested the establishment of a panel. The panel was established at the DSB meeting of 25 March 2011.

3) DS 400 - Measures concerning the marketing of seal products (procedural stage: –Panel)

On 2 November 2009 Canada requested consultations with the EC in respect of Regulation (EC) No. 1007/2009 of the European Parliament and the Council on trade in seal products. The Regulation was adopted on 16 September 2009 and was published on 31 October 2009. It enters into force 20 days after publication. The Regulation prohibits the marketing of products derived from seals on the EU market, and is enforced on the border. It applies to seal products produced in the EU and imported products. It does not apply to transit through the EU. The marketing prohibition entered into force on 20 August 2010. On 10 August 2010 the Commission adopted regulation 737/2010, which lays down implementing measures, which also entered into force on 20 August 2010.

Canada has alleged that these measures are inconsistent with Articles 2.1 and 2.2 of the TBT Agreement, Articles I.1, III.4 and X.1 of GATT 1994 and Article 4.2 of the Agreement on Agriculture. Joint consultations with Norway were held on 15 December 2009.

On 18 October 2010 Canada requested supplementary consultations. On 28 October the EU informed Canada to have accepted its request. On 29 October Norway requested to be joined in the supplementary consultations.

On 11 February 2011 Canada requested the establishment of a panel and the panel was established at the DSB meeting of 25 March 2011.

On 24 September 2012 Canada and Norway requested the WTO Director General to appoint the panellists in accordance with Article 8.7 DSU, and the panel was composed on 4 October 2012. A single panel will rule on both DS 400 and 401.

The first oral hearing took place in Geneva from 18 to 20 February 2013; the second hearing took place on 29 and 30 April 2013.

IV – China

OFFENSIVE CASES

(1) DS 395 – China – Measures Related to the Exportation of Various Raw Materials (procedural stage: compliance)

On 23 June 2009 the EC requested consultations with China regarding various export restrictions on the exportation of certain raw materials from China. The EC has previously sought to raise the important issue with China at various levels, but to no avail.

The materials in question are various forms of bauxite, coke, fluorspar, magnesium, manganese, silicon carbide, silicon metal, yellow phosphorus and zinc.

The export restrictions are mainly quotas (bauxite, coke, fluorspar, silicon carbide and zinc), export duties (bauxite, coke, fluorspar, magnesium, manganese, silicon metal, yellow phosphorus and zinc), a minimum export price system, as well as additional requirements and procedures that exporters must meet.

The export restrictions appear to be in violation of GATT Articles VIII, X, and XI, as well as commitments contained in the Protocol on China's Accession to the WTO as well as in the Report of the Working Party on China's Accession.

Consultations on the matter took place in Geneva on 30 July and 1-2 September 2009. On 21 August Mexico requested consultations with China on the matter. Following agreement among the Parties, Mexico was added as a co-complainant and the consultations on 1-2 September 2009 took the form of joint consultations with all three complainants. The consultations confirmed the EC's view that the measures are not WTO compatible.

On 4 November 2009, the EC, the United States and Mexico filed requests for the establishment of a WTO panel. The item appeared on the agenda of the meeting of the DSB on 19 November 2009 at which occasion China blocked the establishment of a panel. It appeared again on the agenda of the DSB meeting on 21 December 2009, at which occasion a panel was established.

On 29 March 2010, the WTO Director-General determined as panellists: Mr Elbio Rosselli (Chairman; Uruguay); Ms Dell Higgie (New Zealand); Mr Nugroho Wisnumurti (Indonesia).

On 7 May 2010, the panel issued a ruling on certain preliminary objections raised by China. The panel ruled in favour of the EU, the US and Mexico on a number of points and decided to rule on other issues after the examination of the first written submissions.

The first hearing with the panel took place from 31 August to 2 September 2010 in Geneva. The second hearing with the panel took place from 22 to 23 November 2010 in Geneva.

On 1 April 2011, the Panel circulated its final confidential report to the parties of the dispute.

On 5 July 2011 the Panel made its final report public, circulating it to all WTO Members. The Panel supported most of the EU's claims against China. The Panel found: (1) China's export duties imposed on certain raw materials inconsistent with China's obligations under its WTO Accession Protocol; (2) The export quotas imposed by China in violation of the provision that prohibits quantitative trade restrictions. In the Panel's view, China did not demonstrate that these export quotas are justified (neither on the alleged need to prevent a critical shortage of an essential product, nor on environmental protection aims). The Panel did take due account of environmental considerations raised by China, but it clearly stated that these cannot be used as a pretext for restricting exports. The Panel also upheld the EU's claim that the conditions imposed by China for the allocation of export quotas violate its obligations under the WTO Accession Protocol. Finally, the Panel found that China imposed a minimum export price requirement on exporters of the products at issue which violate the GATT Article on general elimination of quantitative restrictions.

On 31 August 2011 China appealed the Panel Report submitting its Notice of Appeal and its Appellant's submission. Amongst others, China has appealed the panel's findings

regarding the applicability of Article XX GATT 1994 to the commitments in paragraph 11.3. of its Accession Protocol, the interpretation of the term “critical shortage” in Art. XI:2 (a) GATT and the interpretation of the natural resource conservation justification in Art. XX (g) GATT 1994. An appeal normally takes around three months (90 days) to reach a conclusion.

The EU has filed a conditional cross-appeal on 6 September 2011 concerning the scope of the recommendations made by the Panel. The Co-complainants US and Mexico have filed separate conditional cross-appeals concerning the same matter. The Oral Hearing by the Appellate Body (AB) took place from 7 - 9 November 2011 in Geneva. The division of the AB was composed of Mr. Ramirez-Hernandez (Chairman), Ms. Hillman and Mr. Oshima.

The Appellate Body report was circulated on 30 January 2012. The Appellate Body Report confirmed all the main findings of the Panel. None of the modifications undertaken by the Appellate Body on the Panel's findings has changed the Panel's conclusion that China's export restrictions; i.e. the export duties and export quotas, are in violation of WTO rules and of China's commitments, and cannot be justified under WTO law. Most importantly, the Appellate Body upheld the Panel's finding that there is no basis in China's Accession Protocol to allow the application of Article XX of the GATT 1994 to China's obligations under Paragraph 11.3 of the Accession Protocol to justify export duties that are found to be inconsistent with China's obligations. For procedural reasons (Article 6.2 GATT 1994) the Appellate Body was not in a position to rule on the additional claims with regard to China's quota and license administration measures and minimum export pricing.

The Panel and Appellate Body reports were adopted at the DSB meeting of 22 February 2012.

At the DSB meeting of 23 March 2012 China presented its intentions to comply with the DSB recommendations and rulings and asked for a reasonable period of time to do so (RPT). The parties agreed on a RPT of 10 month and 9 days which gives China until 31 December 2012 to implement the ruling. The RPT agreement was notified to the DSB and circulated on 30 May 2012, WT/DS395/17. At the DSB meeting of 17 December 2012, China presented its first status report on implementation, WT/DS395/18 (circulated on 7 December 2012).

On 28 December 2012, China issued the 2013 Tariff Implementation Program and on 31 December 2012, the 2013 Catalogue of Goods subject to Export Licensing Administration. According to the notices, the application of export duties to certain forms of bauxite, coke, fluorspar, magnesium, manganese, silicon metal and zinc, and the export quotas to certain forms of bauxite, coke, fluorspar, silicon carbide and zinc, which were found inconsistent with the WTO rules by the Panel and Appellate Body in these disputes, has been removed. Both notices took into effect on 1 January 2013.

At the DSB meeting of 28 January 2013, China claimed to have fully implemented the DSB recommendations and rulings through these measures. However, an export licencing requirement remains on all products previously subject to an export quota. While the EU welcomed the implementing measures taken by China, the EU also raised concerns this licensing requirement and its administration, hoping that it will not be an obstacle for exports. The Commission will continue to closely monitor the situation and the development of exports, and more particular the impact of these new licensing requirements.

(2) DS407 China - Provisional Anti-Dumping Duties on Fasteners from the EU
(procedural stage: consultations)

On Friday, 7 May 2010, the European Union requested WTO dispute settlement consultations with China on China's provisional anti-dumping duties on certain iron or steel fasteners from the European Union. As from 28 December 2009, China has imposed provisional anti-dumping duties on certain iron or steel fasteners of 16.8% for the sole co-operating exporter, and of 24.6% for all other EU exporters. The EU considers that the imposition of these provisional duties is incompatible with WTO law, both on procedural and on substantive grounds. The EU challenges the following measures: The Ministry of Commerce of the People's Republic of China, Notice no. 115 (2009), including its annex, imposing provisional anti-dumping duties on certain iron or steel fasteners from the European Union, and Article 56 of the Regulations of the People's Republic of China on Anti-Dumping. The EU considers that these measures violate Articles 2.2, 2.2.2, 2.4, 3.1, 3.4, 3.5, 6.1.3, 6.2, 6.4, 6.5, 6.5.1, 6.5.2, 6.10, 12.2.1, 18.1 of the *Anti-Dumping Agreement*, Articles I:1, VI:1 and X:3(a) of the GATT 1994, and Article 23 DSU.

Consultations between the EU and China took place on 4 June 2010 in Geneva.

On 28 June 2010, China imposed definitive anti-dumping duties. The antidumping duty for the sole co-operating EU exporter was substantially lowered. The Commission is currently analysing the Chinese measure.

(3) DS 425 China – Definitive anti-dumping duties on x-ray security inspection equipment from the EU (procedural stage – implementation)

On 25 July 2011 the EU requested consultations with China on China's definitive anti-dumping duties. Consultations were held on 19 September 2011 in Geneva.

On 23 October 2009 China's Ministry of Commerce (MOFCOM) initiated an anti-dumping investigation against x-ray scanners imported from the EU. On 23 January 2011 MOFCOM imposed definitive anti-dumping duties of 33.5% for the sole EU co-operating exporter and 71.8% for all the others (residual duty).

The European Union considers that the measure is inconsistent with Articles 2.4, 3.1, 3.2, 3.4, 3.5, 6.1, 6.2, 6.4, 6.5, 6.9, 12.2.2 of the *Anti-Dumping Agreement*, and Articles VI:1 and VI:6(a) of the GATT 1994.

On 9 December the EU requested the establishment of a Panel in this case. The panel was established at the 20 January 2012 meeting of the DSB. India, Japan, Norway, Thailand and the United States reserved their third party rights. Subsequently, Chile reserved its third party rights. On 12 March 2012, the Director-General composed the panel.

On 26 February 2013, the panel report was circulated to WTO Members.

The panel found China violated WTO rules in all aspects of the investigation challenged by the EU (price effects analysis, injury determination and causality and transparency claims), including crucial aspects of China's assessment, necessary for the imposition of

the duties. While the panel rejected a limited number of EU claims and exercised judicial economy regarding certain other claims, the outcome is clearly positive to the EU.

China did not appeal the report and consequently it was adopted by the DSB on 24 April 2013.

At the DSB meeting on 24 May, China indicated that it would need a reasonable period of time to implement the recommendations and rulings in this case.

On 19 July 2013, China and the EU informed the DSB that they have agreed that the reasonable period of time to implement the DSB's recommendations and rulings shall be 9 months and 25 days. Accordingly, the reasonable period of time expires on 19 February 2014.

Specific findings of the panel:

Price effects (Articles 3.1 and 3.2 of the Anti-Dumping Agreement)

The panel agreed with the EU that China used a flawed methodology in analysing the effects of EU exports on prices of X-ray security scanners in China's domestic market and that therefore its price effects findings were not based on an objective examination of positive evidence, contrary to the obligations under Articles 3.1 and 3.2 of the Anti-Dumping Agreement.

This methodology involved comparing the weighted average unit values for the entire range of products covered by the investigation, without taking into account the considerable differences among the products, particularly between "high-energy" and "low-energy" scanners. While EU exports were exclusively of the cheaper "low-energy" scanners, used mainly for luggage inspection, China's investigating authority (MOFCOM) compared the prices of those products with average unit prices for the entire range of domestic products that included very expensive "high-energy" scanners used for inspecting cargo.

The panel stressed that an investigating authority must consider whether the prices of imported and domestic products are actually comparable. In this case, the records showed that MOFCOM did not take any steps to ensure that the prices were in fact comparable. MOFCOM also disregarded a considerable amount of evidence showing that price comparability was an issue: there are clear differences in the uses of, and physical characteristics between, scanners exported to China and some Chinese domestic scanners.

Injury and causality (Articles 3.1, 3.4 and 3.5 of the Anti-Dumping Agreement)

Concerning the state of domestic industry, the Panel ruled that China acted inconsistently with Articles 3.1 and 3.4. In particular, China failed to consider all relevant economic factors and its examination of the state of the domestic industry, including the trends in individual injury factors, lacked objectivity and was not always reasoned and adequate. In particular, the Panel was "concerned" about MOFCOM's failure to acknowledge and analyse the trends observed in each injury factor and its failure to indicate the basis of its assertion that profits were below "expected" levels. Finally, MOFCOM failed to conduct an objective examination that would have included and weighed each of the 16 injury indicia as a part of the analysis of the state of the industry.

Concerning causality, the panel agreed with the EU that given that MOFCOM relied upon the price effects of subject imports in its causation analysis, the flaws in the price effects analysis also undermine MOFCOM's conclusion on the causal link between the subject imports and the injury suffered by the industry. Consequently, MOFCOM's causation analysis is inconsistent with Articles 3.1 and 3.5 of the Anti-Dumping Agreement. In addition, MOFCOM did not provide a reasoned and adequate explanation regarding how the dumped imports caused price suppression in the domestic industry, particularly in 2008 when the prices of the dumped imports were above those of the domestic industry. Finally, the Panel finds that MOFCOM failed to separate and distinguish the injurious effects of other causal factors from those of the dumped imports, contrary to the non-attribution requirement of Article 3.5. In this regard, MOFCOM failed to consider the evidence on the record regarding the Chinese producer's aggressive business expansion, aggressive pricing strategy and the "product quality and technology factors/fair competition".

Transparency claims (Articles 6.5.1, 6.9 and 12.2.2 of the Anti-dumping agreement)

The panel agreed with the EU that MOFCOM failed to respect certain procedural/transparency requirements of the Anti-dumping agreement, in particular:

- MOFCOM failed to require the petitioner to properly summarize certain confidential information and failed to require the Public Security Bureau to provide a statement of reasons why summarization of certain information it had submitted in the investigation was not possible (Article 6.5.1 of the Anti-dumping Agreement):
- MOFCOM failed to disclose, in the course of the investigation, certain essential facts under consideration, contrary to Article 6.9 of the Anti-Dumping Agreement (such as underlying data –average unit values- for price effects analysis, the price and adjustment data underlying its determination of the EU producer's margin of dumping, and essential facts that formed the basis for determination of the level of the residual duty).
- MOFCOM violated the first sentence of Article 12.2.2 by failing to provide, in its public notice, relevant information regarding its price effects analysis, and its determination of the residual rate.
- MOFCOM violated the second sentence of Article 12.2.2 by failing to explain in its public notice why it rejected certain EU producer's arguments (regarding the treatment of domestic sales to affiliated distributors)

The panel also rejected a limited number of EU claims, in particular those concerning the disclosure of calculations of the margin of dumping during the procedure under article 6.9 of the Anti-dumping Agreement and the disclosure of such calculations and underlying data in the public notice under Article 12.2.2 of the Antidumping Agreement, as well as claims with regard to the state of the industry under Articles 3.1 and 3.4 of the Antidumping Agreement. Finally, the panel also exercised judicial economy with regard to certain claims.

- (4) DS 432 China – Measures related to the Exportation of Rare Earths, Tungsten, and Molybdenum (procedural stage: panel)

On 13 March 2012 the EU, together with the US and Japan, requested consultations with China on China's export restrictions regarding various forms of Rare Earths, Tungsten,

and Molybdenum. The export restrictions are mainly export duties and quotas as well as additional requirements and procedures linked to the quota administration..

The export restrictions appear to be in violation of GATT Articles VII, X, and XI, as well as of commitments contained in the Protocol on China's Accession to the WTO.

The consultations took place on 25 and 26 April 2012 in Geneva but did not bring a solution to the dispute.

On 27 June 2012 the EU, together with the US and Japan, requested the establishment of a Panel. At its meeting on 10 July 2012, the Dispute Settlement Body (DSB) deferred the establishment of a panel. The Panel was established at the DSB meeting of 23 July 2012. On 24 September 2012, the WTO Director-General determined as panellists: Mr Nacer Benjelloun-Touimi (Chairman; Morocco); Mr Hugo Cayrús (Uruguay); Mr Darlington Mwape (Zambia). Third parties are: Argentina, Australia, Brazil, Canada, Colombia, the European Union (with respect to WT/DS431 and WT/DS433), India, Indonesia, Japan (with respect to WT/DS431 and WT/DS432), the Republic of Korea, Norway, Oman, Peru, the Russian Federation, the Kingdom of Saudi Arabia, Chinese Taipei, Turkey, the United States (with respect to WT/DS432 and WT/DS433), and Viet Nam.

The EU as well as the co-complainants US and JP filed their first written submissions on 30 October, China replied with its first written submission on 21 December. The first oral hearing took place in Geneva from 26 to 28 February 2013. On 25 April 2013 the parties submitted their second written submissions. The second oral hearing took place in Geneva on 17 and 18 June 2013.

(5) DS 460 China - Measures Imposing Anti-Dumping Duties on High-Performance Stainless Steel Seamless Tubes ("HP-SSST") from the European Union

On 16 August 2013 the European Union (EU) requested the establishment of a panel concerning People's Republic of China's (China) anti-dumping duties imposed on imports of certain high-performance stainless steel seamless tubes (HP-SSST) from the EU, as set forth in Ministry of Commerce of the People's Republic of China ("MOFCOM") Notice No. 21 [2012] (the "Preliminary Determination notice") and Notice No. 72 [2012] (the "Final Determination notice"), including any and all annexes and any amendments thereof. The consultations which followed the EU's request for consultations with China of 13 June 2013 failed to resolve the dispute.

The panel was established at the meeting of the WTO Dispute Settlement Body of 30 August 2013. The same panel will rule on this case and the case introduced earlier this year by Japan concerning the same measures (DS454).

The EU claims that these measures are inconsistent with Articles, 2.2, 2.4, 3.1, 3.2, 3.4, 3.5, 6.4, 6.5, 6.7, 6.8, 6.9, 7.4 and 12.2 of the WTO Anti-dumping (AD) Agreement and with Article 1 of the AD Agreement and Article VI of the GATT 1994 as a consequence of the breaches of the AD Agreement described above.

DEFENSIVE CASES

DS 397- EC-Definitive Anti-dumping measures of certain Iron or Steel Fasteners from China (compliance stage)

On 28 July 2011, the Dispute Settlement Body ("DSB") adopted its recommendations and rulings in the dispute European Communities - Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China (WT/DS397). In its communication of 18 August 2011, the European Union notified the DSB that it intends to implement the recommendations and rulings of the DSB in this dispute in a manner that respects its WTO obligations. On 19 January 2012 China and the European Union agreed that the reasonable period of time for the European Union to implement the recommendations and rulings of the DSB would expire on 12 October 2012.

The recommendations and rulings concerned, on the one hand, Article 9(5) of Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community ('the EU Basic Anti-Dumping Regulation') that was found to be "as such" inconsistent with Articles 6.10, 9.2 and 18.4 of the WTO Anti-Dumping Agreement and Article XVI:4 of the WTO Agreement. Article 9 (5) of the Basic Anti-Dumping Regulation provided that individual exporting producers in non-market economy countries which do not receive market economy treatment pursuant to Article 2(7)(c) of the Basic Anti-Dumping Regulation will be subject to a countrywide duty rate unless such exporters can demonstrate that they meet the conditions for individual treatment laid out therein.

On the other hand, certain aspects the specific AD Fasteners Regulation (Council Regulation (EC) No. 91/2009 of 26 January 2009 imposing a definitive anti-dumping duty on imports of certain iron or steel fasteners in China) were also found to be WTO-inconsistent. Those aspects concerned the application of Article 9(5) of the basic AD Regulation in the investigation, certain aspects of the dumping determination, the definition of the Union industry, the consideration of the volume of dumped imports, the causation analysis and the treatment of certain confidential information.

The European Union adopted the measures necessary to comply with those recommendations before the expiry of the reasonable period of time agreed with China. In particular:

i) Regulation (EU) No 765/2012 of the European Parliament and of the Council of 13 June 2012 amending Council Regulation (EC) No 1225/2009 on protection against dumped imports from countries not members of the European Community ("Basic Anti-dumping Regulation"), published in the Official Journal of the European Union on 3 September 2012 (OJ L 237, 3.9.2012, p. 1). This Regulation fully implements the recommendations and rulings with regard to Article 9(5) "as such" of the Basic Anti-dumping Regulation.

ii) Council Implementing Regulation (EU) No 924/2012 of 4 October 2012 amending Regulation (EC) No 91/2009 imposing a definitive anti-dumping duty on imports of certain iron or steel fasteners originating in the People's Republic of China, published in the Official Journal of the European Union on 10 October 2012 (OJ L 275, 10.10.2012, p. 1). This Regulation fully implements the recommendations and rulings with regard to the relevant anti-dumping measures on fasteners from China.

The adoption of the measures listed above ensures the full implementation of the DSB recommendations and rulings of the DSB in this dispute.

On 30 October 2013, China requested consultations with the European Union pursuant to Articles 21.5 and 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes, Article XXIII:1 of the General Agreement on

Tariffs and Trade 1994, Article 17 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 and paragraph 1 of the Agreed Procedures under Articles 21 and 22 of the Dispute Settlement Understanding between China and the European Union, with regard to anti-dumping measures on certain iron or steel fasteners originating in China. The request relates to Council Implementing Regulation (EU) No 924/2012 of 4 October 2012.

The EU accepted China's request for consultations.

DS 452 – EU- Certain measures affecting the renewable energy generation sector (consultation stage)

On 5 November 2012, China requested consultations with the European Union, regarding the local content requirements included in the Greek and Italian Feed-in-Tariffs (FIT) Programmes. The measures challenged include in particular Italy's Fifth and Fourth Energy Bills (Ministerial Decree of 5 July 2012 and 5 May 2011 respectively) and Greece' Law 4062/2012 (FEK A'70/30.03.2012) of 27 March 2012 on the "Development of the Athens former international airport Hellinikon - Project HELIOS - Promotion of the use of energy from renewable sources (Integration of Directive 2009/28/EC) Sustainability criteria of biofuel and bioliquids (integration of Directive 2009/30/EC)" China claims that these measures are inconsistent with: Articles I, III:1, III:4 and III:5 of the GATT 1994; Articles 3.1(b) and 3.2 of the SCM Agreement; and Articles 2.1 and 2.2 of the TRIMs Agreement.

The EU accepted the request for consultations and the participation of Japan as third party.

V – FAROE ISLANDS

DEFENSIVE CASE

On 4 November 2013, Denmark filed in respect of the Faroe Islands a request for consultations with the EU on measures against imports of herring and mackerel from the Faroe Islands.

In the request, the Faroe Islands challenge the trade measures adopted by the EU on 20 August 2013 banning the import into the EU and the unloading in EU ports of herring and mackerel fished under the authority of the Faroe Islands, based on the so-called "Fish Trade Instrument" regulation. These measures were taken after in March 2013 the Faroe Islands unilaterally tripled its quota for herring, despite scientific evidence that such levels are unsustainable.

The Faroe Islands consider the measure to be inconsistent with Art I:1, Art V:2 and Art XI:1 of the GATT.

VI – INDIA

OFFENSIVE CASES

- (1) DS304 –Anti-Dumping Measures (procedural stage: consultations)

On 8 December 2003, the EC requested consultations with India on 27 antidumping measures imposed on a variety of EC exports, including pharmaceuticals, chemicals, paper, textile and steel. The problems in the Indian cases mainly referred to the highly insufficient injury and causality analysis, the failure to provide meaningful disclosure documents and a continuous disregard of arguments presented by EC exporters and the EC.

Following the consultations held in February 2004, India opened a review process which has led to the termination of most of the contested measures, including those of most economic interest for EC exporters (steel and pharmaceutical products). The issue has been raised again in the margin of the third round of consultations concerning case DS380.

(2) DS 380 India-Certain taxes and other measures on imported wines and spirits
(procedural stage: consultations)

On 22 September 2008 the EC requested DSU consultations with India on certain tax measures and other import measures applied at State level on imported wines and spirits, *i.e.* the EC claimed that Maharashtra, Goa and Tamil Nadu tax measures appear to discriminate against imported wines and spirits in breach of Article III:2; the continuously restrictive retail and wholesale distribution of wines and spirits practised by the state of Tamil Nadu appear to be in breach of Article III:4 or, alternatively, Article XI. Maharashtra tax exemption for local wines is claimed to be a prohibited subsidy in breach of Article 3.1b) and 3.2 of the ASCM. Consultations were held in Delhi on 11 and 12 November 2008: they confirmed the EC legal analysis and at the same time, prompted the state of Goa to re-establish WTO compatibility.

On 15 December 2008, the EC sent an updated version of the consultations request, covering possible discrimination in Karnataka. Consultations were held on 29 January 2009. They confirmed that Karnataka tax measures are in breach of Article III:2 of the GATT 1994 by subjecting imported wines to higher taxation on domestic like products. Andhra Pradesh subsequently implemented new tax measures. An additional updated request for consultations was therefore sent on 4 May 2009. Consultations covering the entire scope of this dispute, including new claims on Andhra Pradesh, took place in Delhi on 16-17 July 2009. They confirmed the discriminatory nature of the taxes and other measures at issue and unveiled additional breaches of WTO rules. The capital Delhi implemented new discriminatory tax measures in June 2009. The EC updated the scope of consultations accordingly, and including so far unexplored aspects of the monopolies in Andhra Pradesh and Tamil Nadu and requested the fourth round of consultations on 16 November 2009. The consultations took place on 18 and 19 February 2010 and recorded slow but steady progress, including new rules by Andhra Pradesh at the end of January 2010 setting out a) new, lower rates of taxation on imported wines and spirits and b) the issuance of tenders for imports wines and spirits from outside India. The state of Tamil Nadu eliminated the identified *de jure* discriminations and Delhi announced the reform on its taxation system of alcoholic beverages. The Commission, together with the EU wines and spirits industry, is closely monitoring the developments on the grounds as well as the implementation of the announced developments. Any possible improvement of market access in India is also assessed in the light of parallel efforts under the EU/India FTA negotiations to tackle the high Indian tariff rates for wines and spirits.

DEFENSIVE CASE

DS 385 – AD and CVD measures on PET (procedural stage: consultations)

On 4 December 2008 India requested consultations with the EU in respect of Article 11(2) of the Basic Anti-dumping Regulation (Council Regulation (EC) No. 384/96 of 22 December 1995), Article 18(1) of the Basic CVD Regulation (Council Regulation (EC) No. 2026/97 of 6 October 1997) and in respect of two Council Regulations imposing, respectively, a definitive anti-dumping/countervailing duty on imports of PET originating in India following an expiry review.

India has alleged that these acts are inconsistent with Articles 11.3 of the AD Agreement and 21.3 of the SCM Agreement, and with Article VI of the GATT 1994, Articles 11.1, 11.3, 11.4, 11.5, 6.1, 6.2, 6.5, 6.6, 6.8 and Annex II of the AD Agreement and Articles 21.3, 21.4, 12.1, 12.4, 12.5 and 12.7 of the SCM Agreement.

Consultations with India were held on 3 April 2009 in Brussels. India has not, for the moment, taken any further steps.

DS408 - Generic medicines in transit (procedural stage – consultations)

On 12 May 2010 India requested consultations with the EU and the Netherlands in respect of certain EU and Dutch legislation, as well as their alleged application in certain cases of detention of generic medicines originating in India while in transit through the EU. A similar, but not identical, request has also been filed on the same day by Brazil (for further details see above under subheading II).

The EU measures challenged by India are: (i) Council Regulation (EC) No. 1383/2003 of 22 July 2003; (ii) Commission Regulation (EC) No. 1891/2004 of 21 October 2004; (iii) Council Regulation (EEC) No 2913/92 of 12 October; (iv) Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004; (v) Regulation (EC) No 816/2006 of the European Parliament and of the Council of 17 May 2006. The request also covers the following Dutch measures: (i) relevant provisions of the Patents Act of the Kingdom of the Netherlands, 1995, as amended, including, but not limited to, the provisions of Chapter IV thereof, especially Articles 53 and 79, and relevant rules, regulations, guidelines and administrative practices; (ii) Relevant provisions of the General Customs Act of the Netherlands, as amended, including, but not limited to, Articles 5 and 11 and relevant rules, regulations, guidelines and administrative practices; (iii) Customs Manual VGEM (30.05.00 Intellectual Property Rights, Version 3.1) including, but not limited to, the provisions of Chapter 6 and of other relevant Chapters; (iv) the Public Prosecutor's Office Guide to Intellectual Property Fraud 20005A022 of 1 February 2006 and the Public Prosecutor's Office Directive (2005R013); (v) Relevant provisions of the Criminal Code of the Netherlands including, but not limited to, the provisions of Article 337, and relevant rules, regulations, guidelines and administrative practices; (vi) Relevant provisions of the Criminal Procedure Code of the Netherlands and relevant rules, regulations, guidelines and administrative practices.

India has alleged that these measures are inconsistent with Article V:2, V:3, V:4, V:5; and V:7 and X:3 of the GATT 1994; Article 28 of the TRIPS Agreement read together with Article 2 of the TRIPS Agreement, Article 4bis of the Paris Convention of 1967, and paragraph 6(i) of the Decision of the General Council of 30 August 2003 on the implementation of paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health; Article 31 of the TRIPS Agreement read together with of the Decision of the General Council of 30 August 2003 on the implementation of paragraph 6 of the

Doha Declaration on the TRIPS Agreement and Public Health; Articles 41, 42 of the TRIPS Agreement.

The EU accepted India's consultation request on 21 May 2010 and informed India that as the alleged violations all relate to matters for which the EU bears responsibility in the WTO, the EU alone is the proper respondent in this dispute.

On 28 May 2010 Canada, Ecuador and Brazil and on 31 May 2010 Japan, China and Turkey made requests to join consultations in DS408 as third parties.

A first round of consultations was held jointly with Brazil on 7-8 July 2010 in Geneva. This was followed by a second round of consultations on 13-14 September 2010.

VII – INDONESIA

DEFENSIVE CASE

DS 442 – AD measures on imports of certain fatty alcohols from Indonesia

On 27 July 2012 Indonesia requested WTO consultations with the EU on the subject of Antidumping Measures on Imports of Certain Fatty Alcohols from Indonesia. This concerns provisional anti-dumping duties on certain chemical products imposed by the EU in May 2011 and definitive anti-dumping duties imposed by the EU in November 2011. The measures concern also India and Malaysia. It is the first WTO case launched by Indonesia against the EU. The EU accepted the request for consultations on 20 August 2012. Consultations were held on 13 September in Geneva. *On 1 May 2013 Indonesia made the first request to establish a panel in case DS 442.* Their second request was accepted in the DSB meeting of 25 June.

VIII – JAPAN

DEFENSIVE CASE

DS 376 – Information Technology Agreement (procedural stage: panel)

On 28 May 2008, Japan and the US requested WTO consultations with the EU on the customs classification and resulting tariff treatment of 3 products, (i) set-top boxes with modems of certain types or which incorporate a device performing a recording or reproducing function such as a hard disk or a DVD drive, (ii) LCD monitors capable of reproducing video images from a source other than an automatic data-processing machine or with certain attributes such as a Digital Visual Interface, (iii) multifunctional printers. They were later joined by Chinese Taipei which also requested consultations on 12 June 2008. Japan and the other two complainants claim that these products should be classified under tariff lines which are duty free in application of the commitments taken under the Information Technology Agreement and implemented via a modification of the EU schedule of concessions in 1997. Complainants consider that, by failing to do so, the EU has breached Article II of the GATT 1994. In addition, they claim that the EU applied classification rules on set-top boxes before their publication in the Official Journal of the EU in May 2008 in breach of Article X:1 and X:2 of the GATT 1994.

Consultations with Japan were held on 26 June 2008 and 16-17 July 2008 in Geneva.

Japan requested the establishment of a panel for the first time at the DSB meeting of 29 August 2008, jointly with the US and Chinese Taipei. As this was the first time the request for the establishment of a Panel was placed on the agenda of the DSB, the EU exercised its right to oppose the establishment. A panel was established at the DSB meeting on 23 September 2008, but agreement between the parties on its composition could not be reached. On 22 January 2009 the Director-General of the WTO nominated the panel members.

The parties received the panel's final report on 23 July 2010. The report was circulated on 16 August 2010. The EU was found to be in violation of its WTO commitments both under Article II and Article X GATT, with respect to the measures challenged on the three specific products. At the same time, the panel stressed in its report that not all multifunction copy machines, television set-top boxes and flat panel display devices "will necessarily fall within the scope of this concession. That would have to be determined on a case-by-case basis, taking into account all the objective characteristics of a particular product"(para. 7.734; 7.986, etc.).

None of the parties to the dispute filed an appeal, as consequence the Dispute Settlement Body (DSB) of the WTO adopted the panel's report on 21 September 2010.

The EU confirmed its intent to implement the recommendations and rulings in this dispute in a communication to the DSB on 15 October 2010 (WT/DS375/14, WT/DS376/14, WT/DS377/12) and at the DSB meeting of 25 October 2010. The EU requested a reasonable period of time in which to do so.

On 20 December 2010, the parties to the dispute informed the DSB that they had agreed that the reasonable period of time for the EU to implement the recommendations and rulings of the DSB would be nine months and nine days from the date of the adoption of the recommendations and rulings of the DSB. Accordingly, the reasonable period of time expired on 30 June 2011.

On 30 June 2011, the EU notified to the complainants that it had adopted the measures necessary to comply with the recommendations and rulings of the DSB in this dispute. These measures are the following:

(a) Commission Implementing Regulation (EU) No. 620/2011 amending Annex I to Council Regulation (EEC) no 2658/78 on the tariff nomenclature and the Common Customs Tariff , published on the Official Journal of the European Union (hereinafter referred to as OJEU), L 166/16 of 25.06.2011);

(b) Deletion of Explanatory Notes for CN codes 8521 90 00, 8528 71 13, 8528 71 19 and 8528 71 90 (2011/C 185/1, published on the OJEU C 185/1 of 25.06.2011); and

(c) Statement adopted by the Customs Code Committee on 7 June 2011, and published on 29 June 2011, according to which the Statement on the classification of "multifunctional devices" agreed at the 360th meeting of the Customs Code Committee is to be disregarded.

Although not directly related to the Panel findings, the EU, following the request of industry and Member States, adopted in December 2011 several guidance regulations on the classification of products related to those covered by the WTO dispute, notably on set-top boxes and multifunctional machines. **With regard to Flat Panel Displays, Council Regulation No 953/2013 amending Annex I to Regulation (EEC) No 2658/87**

on the tariff and statistical nomenclature and on the Common Customs Tariff was adopted on 26 September 2013 and entered into force on 25 October 2013.

For a complete update of facts and arguments used by the EU in its submissions and in the Panel meetings, and more background information on the case, see: <http://trade.ec.europa.eu/wtodispute/show.cfm?id=409&code=2>

This is the last time this dispute will figure in this overview document.

IX – NORWAY

DEFENSIVE CASES

DS 401 - Measures concerning the marketing of seal products (procedural stage – request for the establishment of a panel)

On 4 November 2009 Norway requested consultations with the EC in respect of Regulation (EC) No. 1007/2009 of the European Parliament and the Council on trade in seal products. The Regulation was adopted on 16 September 2009 and was published on 31 October 2009. It enters into force 20 days after publication. The Regulation prohibits the marketing of products derived from seals on the EU market, and is enforced on the border. It applies to seal products produced in the EU and imported products. It does not apply to transit through the EU. The marketing prohibition entered into force on 20 August 2010. On 10 August 2010 the Commission adopted regulation 737/2010, which lays down implementing measures, which also entered into force on 20 August 2010. Norway has alleged that these measures are inconsistent with Articles 2.1 and 2.2 of the TBT Agreement, Articles I.1, III.4 and X.1 of GATT 1994 and Article 4.2 of the Agreement on Agriculture. Joint consultations with Canada were held on 15 December 2009.

On 19 October Norway requested supplementary consultations. On 14 March 2011, Norway requested the establishment of a panel.

The panel was established at the DSB meeting of 21 April 2011.

On 24 September 2012 Canada and Norway requested the WTO Director General to appoint the panellists in accordance with Article 8.7 DSU. and the panel was composed on 4 October 2012. A single panel will rule on both DS 400 and 401.

The first oral hearing took place in Geneva from 18 to 20 February 2013; the second hearing took place on 29 and 30 April 2013.

X – PHILIPPINES**OFFENSIVE CASE**

DS 396/403 – Discriminatory taxation of spirits (procedural stage: panel proceedings).
Joint case with the US

On 29 July 2009, the EC requested consultations with respect to the longstanding discriminatory taxation applied on imported alcoholic beverages by the Philippines, which is in breach of Article III:2 of GATT 1994. Consultations took place in Manila on 8 October 2009.

In view of the lack of prospects of a solution to this longstanding tax discrimination under the former Administration, the EU requested the establishment of a WTO panel on 10 December 2009. The panel was established at the DSB meeting of 19 January 2010. On 14 January, 2010 the United States requested DSU consultations with the Philippines on the same measures. These consultations were held in Geneva and the EU participated as third party. These consultations failed to bring a solution to this matter and a panel was established at the DSB meeting of 20 April. The EU and the US cases are being examined by a common panel. This panel was composed on 5 July 2010. The panel report was circulated to WTO Members on 15 August 2011. The Panel report, circulated on 15 August 2011, found that the Philippines has acted inconsistently with its obligations under Article III:2, first sentence of the GATT 1994, in particular “through its excise taxes , the Philippines subjects imported distilled spirits made from raw materials other than those designated in its legislation to internal taxes in excess of those applied to like domestic products made from the designated raw materials, and is thus inconsistent with Article III:2, first sentence of the GATT 1994”.

This report was appealed; the report of the Appellate Body report was circulated on 21 December 2011 and upheld the Panel’s findings. The Appellate Body and Panel reports in *Philippines-Spirits* were adopted at the DSB meeting of 20 January 2012.

The Philippines and complainants agreed that the reasonable period of time to implement would end on 8 March 2013.

The EU has closely followed the Philippines' on-going work to reform their taxation system on distilled spirits.

On 19 December 2012 the Philippines adopted a new tax reform law. At the DSB of 28 January 2013 the Philippines claimed full compliance.

XI RUSSIA**OFFENSIVE CASE**

DS 462 – Russian Federation- Recycling Fee on Motor Vehicles (procedural stage-consultations.)

On 9 July 2013, the European Union requested consultations with the Russian Federation regarding Russia's measures relating to a charge, the so-called “recycling fee”, imposed on motor vehicles.

According to the European Union, the Russian Federation imposes the recycling fee only on imported motor vehicles. Under certain conditions, domestic vehicles, as well as

vehicles imported from Belarus and Kazakhstan, are exempted from the fee. In contrast, there is no exemption from the fee for vehicles imported from the European Union.

The European Union also argues that the structure of the recycling fee has a detrimental impact on imported vehicles as compared with relevant domestic vehicles, because the fee is progressive and differentiates between “new vehicles” and “vehicles produced more than 3 years ago”.

The European Union claims that the measures appear to be inconsistent with:

- Articles I:1, II:1(a), II:1(b), III:2 and III:4 of the GATT 1994; and
- Article 2.1 and 2.2 of the TRIMs Agreement.

The United States, Japan, China, Turkey and Ukraine requested to join the consultations and Russia accepted those requests. The consultations were held in Brussels.

On 10 October 2013, the EU tabled a request for the establishment of a panel. The establishment was blocked by Russia at the first DSB meeting on 22 October 2013.

XII– CHINESE TAIPEI

DEFENSIVE CASE

DS 377 – Information Technology Agreement (procedural stage: panel)

See description of the dispute under DS 375.

Chinese Taipei requested consultations on 12 June 2008. Consultations were held on 3 July, 18 July and 25 July 2008 in Geneva.

Chinese Taipei requested the establishment of a Panel for the first time at the DSB meeting of 29 August 2008, jointly with the US and Japan, but the EU opposed said establishment. A panel was established at the DSB meeting on 23 September, but agreement between the parties on its composition could not be reached. On 22 January 2009 the Director-General of the WTO nominated the panel members.

The parties received the panel's final report on 23 July 2010. The report was circulated on 16 August 2010. The EU was found to be in violation of its WTO commitments both under Article II and Article X GATT, with respect to the measures challenged on the three specific products. At the same time, the panel stressed in its report that not all multifunction copy machines, television set-top boxes and flat panel display devices "will necessarily fall within the scope of this concession. That would have to be determined on a case-by-case basis, taking into account all the objective characteristics of a particular product" (para. 7.734; 7.986, etc.).

None of the parties to the dispute filed an appeal, as consequence the Dispute Settlement Body (DSB) of the WTO adopted the panel's report on 21 September 2010.

The EU confirmed its intent to implement the recommendations and rulings in this dispute in a communication to the DSB on 15 October 2010 (WT/DS375/14,

WT/DS376/14, WT/DS377/12) and at the DSB meeting of 25 October 2010. The EU requested a reasonable period of time in which to do so.

On 20 December 2010, the parties to the dispute informed the DSB that they had agreed that the reasonable period of time for the EU to implement the recommendations and rulings of the DSB would be nine months and nine days from the date of the adoption of the recommendations and rulings of the DSB. Accordingly, the reasonable period of time expires on 30 June 2011.

On 30 June 2011, the EU notified to the complainants that it had adopted the measures necessary to comply with the recommendations and rulings of the DSB in this dispute. These measures are the following:

(a) Commission Implementing Regulation (EU) No. 620/2011 amending Annex I to Council Regulation (EEC) no 2658/78 on the tariff nomenclature and the Common Customs Tariff, published on the Official Journal of the European Union (hereinafter referred to as OJEU), L 166/16 of 25.06.2011);

(b) Deletion of Explanatory Notes for CN codes 8521 90 00, 8528 71 13, 8528 71 19 and 8528 71 90 (2011/C 185/1, published on the OJEU C 185/1 of 25.06.2011); and

(c) Statement adopted by the Customs Code Committee on 7 June 2011, and published on 29 June 2011, according to which the Statement on the classification of "multifunctional devices" agreed at the 360th meeting of the Customs Code Committee is to be disregarded.

Although not directly related to the Panel findings, the EU, following the request of industry and Member States, adopted in December 2011 several guidance regulations on the classification of products related to those covered by the WTO dispute, notably on set-top boxes and multifunctional machines. **With regard to Flat Panel Displays, Council Regulation No 953/2013 amending Annex I to Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff was adopted on 26 September 2013 and entered into force on 25 October 2013.**

For a complete update of facts and arguments used by the EU in its submissions and in the Panel meetings, and more background information on the case, see: <http://trade.ec.europa.eu/wtodispute/show.cfm?id=409&code=2>

This is the last time this dispute will figure in this overview document.

XIII– THAILAND

OFFENSIVE CASE

DS 370 – Measures on the customs valuation of certain products from the EC (procedural stage: consultations)

Since September 2006, Thailand seems to systematically challenge and in general reject the declared transaction price of alcoholic beverages and other products from the

European Communities imported into Thailand by related parties, and to apply instead an arbitrary value.

This arbitrary value ("assessed value") is calculated by deducting (1) a standard margin of profit and general expenses and (2) the customs duty and internal taxes paid from (3) the wholesale price of those goods in the Thai market, regardless of the transaction price provided by the importer. Broad standard margins of profit and general expenses have been fixed by the Thai customs authorities on the basis of sources that have never been explained or disclosed.

Where the shipments are tested and the declared value is different from the "assessed value", the Thai Customs authorities will require a guarantee, or if the amount is small, a cash payment, for an indefinite period of time. The bank guarantee or cash payment is set at the level of the difference between the duty (and taxes) on declared value and the duty (and tax) amount on the "assessed value".

The Thai measures seem to violate not only substantive and procedural obligations of the Customs Valuation Agreement, they also raise doubts about compatibility with other key provisions of the WTO Agreement such as Articles I, II, III, X and XI of the GATT 1994.

The request for consultations was sent to Thailand on 25 January 2008. The consultations were held on 11 March in Bangkok.

The Commission services are currently monitoring the situation.

XIV - USA

OFFENSIVE CASES

- (1) DS 217 – Continued Dumping and Subsidy Offset Act ("Byrd amendment")
(procedural stage: implementation)

The Continued Dumping and Subsidy Offset Act (named "Byrd amendment" after its sponsor, the Senator, R. Byrd) adopted in October 2000 provides that the proceeds from anti-dumping and countervailing duty cases shall be paid to the US companies responsible for bringing the cases. This imposes a second hit on dumped or subsidised products: domestic producers are, first, protected by anti-dumping and anti-subsidy duties and, second they receive subsidies paid from these duties at the expense of their competitors. To date, the US authorities have distributed to domestic petitioners more than US \$ 1,9 billion.

The *Byrd Amendment* was condemned in January 2003 at the unprecedented common request of 11 Members (Australia, Brazil, Canada, Chile, the EC, India, Indonesia, Japan, Korea, Mexico and Thailand). Following the US failure to repeal it by 27 December 2003, the EC and 7 other co-complainants (Brazil, Canada, Chile, India, Japan, Korea, Mexico) obtained the DSB's authorisation to impose countermeasures on US products at any time they deem fit (DSB meeting of 24 November 2004, and of 17 December 2004 for Chile).

Since 1 May 2005, an additional duty of 15% has been imposed on imports of certain products originating in the United States (Council regulation (EC) No 673/2005 of 25

April 2005 establishing additional customs duties on imports of certain products originating in the United States of America, OJ L 110, 30/04/2005, p. 1).

On 8 February 2006, the United States enacted the *Deficit Reduction Act of 2005*, which *inter alia*, repeals the *Byrd Amendment* but allows for a transition period. The repeal does not affect distribution of the anti-dumping and countervailing duties collected on imports made before 1 October 2007. Since in the US, these duties are usually collected several years after the import, this means, in turn, that distribution under the *Byrd Amendment* may continue for several years after 1 October 2007. The Congressional Budget Office foresees that the repeal of the *Byrd Amendment* will not produce effects before 1 October 2009.

Consequently, retaliatory measures were maintained. As required by the WTO authorisation for sanctions and Council Regulation (EC) 673/2005, the level of retaliation is adjusted every 1 May depending on the amount distributed in the most recent distribution from duties collected on EU products. The current level of retaliation is USD 3 241 000 USD (Commission Regulation (EC) No 308/2012, OJ L 102, 12.4.2012, p. 5). The Commission Regulation (EU) No 3081/2012 of 11 April 2012 adjusting the level of retaliation was published, entered into force on 1 April 2012 and has applied from 1 May 2012. It imposes an additional 6% customs duty on three products, *i.e.* sweet corn, crane lorries, spectacles frames and mountings.

The Commission has updated the annual amount of authorized retaliation from 1 May 2013.

(3) DS 160 - Section 110(5) of the US Copyright Act ("Irish Music") (procedural stage: implementation)

On 27 July 2000, the DSB adopted the Panel report that found Section 110(5)(B) of the US Copyright Act to be incompatible with the TRIPs Agreement, in connection with the Bern Convention on the Protection of Literary and Artistic Works, as it provides an exceedingly broad derogation from the exclusive right of authors to authorise the public communication of their works. In particular, Section 110(5) allows the public retransmission of broadcast music in commercial premises (bars, shops, restaurants etc.) without royalties being paid.

In 2001, an arbitration panel determined that the level of nullification or impairment was equal to € 1.219.900 per year.

The EC's right to suspend concessions or other obligations has been safeguarded by means of a request under Article 22.2 DSU made on 7 January 2002. The requested suspension of TRIPs obligations consists in the levying of a special fee to US right holders that apply for action by the EU customs authorities to block pirated copyright goods. The EC request was immediately submitted to arbitration due to US opposition. The arbitration procedure is currently suspended.

So far, the US has failed to comply with the DSB report adopted in 2000.

(4) DS 176 - Section 211 of the US Omnibus Appropriations Act ("Havana Club") (procedural stage: implementation)

Section 211 U.S. of the Omnibus Appropriations Act was adopted by the U.S. Congress in October 1998. It is designed to diminish the rights of owners of U.S. trademarks and

trade-names which previously belonged to a Cuban national or company which was expropriated in the course of the Cuban revolution.

On 26 September 2000, a WTO panel was established to rule on the compatibility of Section 211 with the obligations of the US under the TRIPs Agreement. The panel report was issued on 6 August 2001. The Appellate Body issued its report on 2 January 2002. It substantially reversed the reasoning of the panel. It ruled that trade names are protected by the TRIPs Agreement. On appeal, it was found that Section 211 violates both the national treatment and the MFN obligations of the TRIPs Agreement. It however reversed the finding of the panel on Article 42 TRIPs and maintained the finding of the panel that the TRIPs does not govern the issue of the determination of ownership of IP rights.

The DSB adopted the Panel's and the Appellate Body's reports at the regular DSB meeting on 1 February 2002. The reasonable period of time for implementation, extended several times, expired on 30 June 2005.

The EC has decided not to request authorisation to retaliate at this stage and reached an agreement with the US preserving each other's rights in the future. If the EC decides at some future date to request from the DSB authorisation to retaliate, the United States has undertaken not to block that request on the ground that such DSB action would not be within 30 days of the expiry of the implementation period. The United States retains the right to object to the level of suspension proposed, or to claim that the principles and procedures set forth in Article 22.3 of the DSU have not been followed, and to have the matter referred to arbitration under Article 22.6 of the DSU. This agreement was endorsed by a decision of the DSB at its meeting of 20 July 2005. On 24 May 2009 Senator Baucus, Chairman of the Senate Finance Committee, introduced a bill to repeal various U.S. restrictions on travel and agricultural sales to Cuba. Such bill also contains provisions which *inter alia* repeal Section 211 U.S. of the Omnibus Appropriations Act. The Commission will carefully monitor this and other initiatives currently pending in the US Congress.

(5) DS 317 and DS 353 – Aircraft (procedural stage: 21.5 panel)

On 6 October 2004, the European Communities requested consultations with the United States pursuant to Articles 4, 7 and 30 of the SCM Agreement, Article XXIII of the GATT 1994 and Article 4 of the DSU regarding subsidies granted to Boeing.

The EC considers that the US Government has been following now for a number of years a policy of systematic and persistent subsidisation of Boeing through a number of measures involving, *inter alia*, paying research and development costs through NASA, the Department of Defense, the Department of Commerce and other government agencies. The latest and most flagrant violation consists in massive subsidies in the form, *inter alia*, of tax reductions and exemptions and infrastructure support for the development and production of Boeing's 787 in the State of Washington, as well as other benefits in the states of Kansas and Illinois. (For a summary of the EU's WTO Challenge of US Subsidies to Boeing, See the Commission fact sheets at: http://trade.ec.europa.eu/doclib/docs/2007/june/tradoc_134957.pdf -- note that a more recent version will be made available on 27 or 28 September 2007 on the following page: <http://trade.ec.europa.eu/wtodispute/show.cfm?id=354&code=1>).

The EU considers that the above mentioned subsidies are in violation of Articles 3, 5, and 6 of the SCM Agreement and Article III of the GATT 1994.

Consultations were held in Geneva on 5 November 2004. In parallel to the US request for the establishment of a panel on 31 May 2005, the EC submitted a similar request the same day.

During the DSB meeting on 13 June 2005, the US argued that a number of the measures referred to in the EC panel request of 31 May 2005 were not listed in the consultation request of October 2004. For reasons of absolute legal certainty, the EC on 27 June 2005 filed a second consultation request which explicitly lists all the measures in question. The US has accepted the request for consultations, which were held in Geneva on 3 August 2005.

The Panel was established on 20 July 2005 and composed on 17 October 2005. The first phase of the fact-gathering (“Annex V”) procedure was completed by 22 December 2005 with the submission of replies by the parties to follow-up questions posed on information submitted on 18 November. The Facilitator submitted his report on the above procedure to the Panel on 24 February 2006.

The EC requested the WTO Director General to compose the panel in DS317 bis (second offensive EC case) on 17 November 2006. The Panel was composed on 23 November 2006, with Mr. Crawford Falconer as Chairman, and Mssrs. Francisco Orrego Vicuna and Varachai Plasai as Members. On 4 December 2006 the WTO Secretariat renamed DS317 bis, which became DS353.

Pursuant to the composition of the Panel, the EC filed a request for preliminary ruling to the Panel on 24 November 2006. In this request the EC asked the Panel to rule that the Annex V information-gathering procedure has been initiated at the EC's request in April/May 2006, and that the US is under an obligation to answer the questions that have been put to them on 23 May 2006, or alternatively, to use its fact-seeking powers under Article 13 DSU to request the US to provide relevant information that would be identified by the EC.

The EC filed its first written submission on 22 March 2007. The US for its part filed its first written submission on 6 July 2007. Third Parties filed their first written submissions on 1 October 2007.

The first meeting of the Panel with the parties took place on 26 and 27 September 2007. The Parties had also agreed that parts of the hearing should be open to the public. As a result, a public screening of the open parts of the hearings was scheduled to take place at the WTO on 28 September 2007.

The Parties filed their rebuttal submissions on 19 November 2007 (instead of 6 November 2007 as initially scheduled), as well as their responses to the Panel's questions on 5 December 2007. The first meeting of the Panel with the Third Parties took place on 15 January 2008, followed by the second meeting of the Panel with the Parties on 16-17 January 2008. Parties filed answers to the Panel's additional questions pursuant to the second panel meeting, as well as comments on the other party's answers, on 15 April 2008 and 5 May 2008 respectively. The delay was caused by the Panel sending questions to the Parties six weeks after the panel meeting (such questions are usually posed to parties within 1 to 2 weeks after a panel meeting).

On 15 September 2010, the Panel issued the confidential interim report to the Parties. On 31 January, the Panel transmitted the confidential final report to the Parties. The final and public report was issued by the WTO on 31 March 2011.

On 1 April 2011 the EU appealed to the Appellate Body a number of errors of law and legal interpretation contained in the Panel report.

The Appellate Body in this case is chaired by Ms. L. Bautista accompanied by Mr. D. Unterhalter and Ms. Y Zhang. First session of the oral hearing took place in the middle of August (16-19 August) in Geneva where the Appellate Body focused on the financial contribution, benefit and specificity issues. The second session took place on 11-14 October and covered Annex V and Adverse Effects issues.

On 12 March 2012, the AB report was circulated to Members. The AB report is very positive for the EU, as it has confirmed almost all the core findings of the panel report i.e. that NASA/DOD, FSC/ETI and Washington State B&O tax subsidies cause adverse effects to Airbus, and has also brought back the Kansas/Wichita subsidies, by reversing the panel's finding that these were not injurious. The AB also confirmed that the subsidies caused significant lost sales, displacement and impedance of exports and price suppression in the 200-300 seat LCA market, and threat of displacement of exports in the 100-200 seat market.

For a complete update of facts and arguments used by the EC and the US in their submissions and in the Panel and Appellate Body hearings, and more background information on the case, see:
<http://trade.ec.europa.eu/wtodispute/show.cfm?id=354&code=1>

At the DBS meeting held 13 April 2012, the US stated its intentions to comply with the DSB rulings within 6 months from the adoption of the reports, i.e. 23 September 2012.

On 24 September 2012 the US submitted, in a document dated 23 September 2012, that it had achieved compliance. Upon review of this document, the EU requested compliance consultations on 25 September 2012, which were held on 10 October 2012. On 27 September 2012 the EU requested the DSB to grant authorization for countermeasures at the annual amount of USD 12 billion. On 23 October 2012 a compliance panel was established. At the DSB, the EU also asked for the initiation of an Annex V procedure under the SCM Agreement to which the US objected.

The written stage of the proceedings has been closed in August 2013. **The hearing on the US compliance measures took place from 29 till 31 October 2013.**

(6) DS 320 – US – Continued suspension of obligations in the *Hormones* dispute
(procedural stage: implementation)

On 8 November 2004, the EC requested consultations with both Canada and the US against the application of countermeasures. The EC's challenge is directed against the United States' continued suspension of obligations and its continued imposition of import duties in excess of bound rates on imports from the European Communities despite the EC's removal of the inconsistent measures. The challenge is secondly directed against the United States' unilateral determination that the new EC legislation is in violation of obligations under the WTO Agreement. Thirdly, the EC challenges the United States' failure to have recourse to dispute settlement proceedings as required by

Article 21.5 of the DSU in order to resolve the disagreement over whether the new EC legislation is WTO-consistent.

WTO consultations took place on 16 December 2004 in Geneva, but failed to resolve the issue. The DSB established the panel on 17 February 2005. The panel circulated its report on 31 March 2008. It finds the US in breach of its obligations under Article 23 (2)(a) and Article 23.1 of the DSU and recommends that the DSB request the US to bring its measure into conformity with its obligations under the DSU. On 29 May 2008, the EC has filed an appeal against parts of the panel report. Subsequently, the US and Canada filed a cross-appeal against those parts of the panel report which the EC had won. The hearing of the Appellate Body has taken place on 28-29 July 2008. It was the first time ever that an Appellate Body hearing has been open to the public. The Appellate Body on 16 October circulated its report, which the DSB adopted on 14 November 2008. The report reverses the panel's finding of a US and Canadian breach of Article 23, but also the panel's findings that the EC directive was SPS-incompatible. The Appellate Body recommends that the US, Canada and the EC initiate compliance review proceedings under Article 21.5 of the DSU. The EC on 22 December 2008 complied with the DSB recommendation and ruling by requesting consultations with the US and Canada under Article 21.5 of the DSU. On 15 January 2009, USTR announced that it would apply the "carousel" legislation and partly rotate the sanctions to other products and other Member States, to increase their impact. The new measures were postponed several times and, following the *Hormones* Memorandum, USTR has now repealed the *Carousel* list of sanctions and has substituted it with the reduced list applied since 23 March 2009, with effect from 19 September 2009. Sanctions were later terminated on 27 May 2011 (see below for the *Hormones* case).

DEFENSIVE CASES

(1) DS 26 - Hormones (procedural stage: implementation)

On the basis of the studies reviewed by the Scientific Committee on Veterinary Matters relating to Public Health ("SCVPH"), on 5 May 2000 the Commission adopted a proposal to amend the "hormones directive." This proposal provides for a permanent ban of 17 β oestradiol, which carcinogenic and genotoxic effects have been clearly demonstrated, and a provisional ban for the other 5 hormones. The new directive entered into force on 14 October 2003.

The adoption of new rules based on a revised risk assessment brings the EU into conformity with its WTO obligations. At the Dispute Settlement Body meeting of 7 November 2003 the EC notified the new Directive as compliance in this case. Both Canada and the US disagreed and stated that they will keep their sanctions.

At the DSB on 1 December 2003, the EC noted that this disagreement on compliance should be solved through multilateral DSB procedures. In this regard, the EC has informed Canada and the US its readiness to discuss procedural matters further with a view to agree on appropriate action. However, the United States and Canada refused to initiate proceedings under Article 21.5 of the DSU or to agree on other procedures in order to resolve the issue of compliance through a multilateral ruling.

On 8 November 2004, the EC has requested consultations with both Canada and the US against the application of countermeasures. The object of this case is the sanctions, not

WTO-compliance of the new Hormones Directive. The case is therefore listed separately as a new, offensive case (see above).

Following the recommendations of the Appellate Body in the Hormones Sanctions cases (see DS320-321 above), the EC requested and held consultations with the US and Canada and started compliance proceedings under Article 21.5 DSU in the original Hormones cases (DS26 and 48), with a view to demonstrate that the current ban on hormones-treated beef is no longer in breach of the SPS Agreement and that therefore the US and Canada must lift the sanctions.

On 15 January 2009, USTR announced that it would apply the “carousel” legislation and partly rotate the sanctions to other products and other Member States, to increase their impact. The application of carousel was postponed several times (the latest postponement runs until 15 August) during negotiations with the EC on a provisional solution to the dispute. Sanctions that were scheduled to be eliminated on 23 March have been eliminated from that date. On 13 May a Memorandum was signed with the United States under which the EC will grant MFN market access opportunities for high quality beef, and the U.S. will reduce the sanctions applied to EC products.

The memorandum provides for three phases:

Phase 1 will last three years. The United States will maintain a reduced level of sanctions on EU products of USD 38 million instead of USD 116 million. The United States also agrees not to impose so-called Carousel sanctions. This legislation would have meant that existing sanctions would have rotated to new products every six months, affecting EU exports worth over USD 200 million to the United States, including products such as mineral waters, Roquefort cheese, fruit juices and canned peaches. In return for the US assurances not to raise sanctions, the EC will open a tariff rate quota, on an autonomous and MFN basis, for imports of 20,000 tons of high quality beef at zero duty. This beef will be in line with all EU import requirements, including that it must be hormone-free.

The Memorandum provides for the possibility to advance to Phase 2 in the fourth year. The United States would then suspend the remaining sanctions on EU products, while the EC would increase the size of the tariff rate quota for high quality beef to 45,000 tons. During phase 2 the United States and the EC would also discuss whether to extend the agreement into a phase 3, the duration of which remains to be discussed (including the possibility to make the arrangement permanent), together with other issues such as the status of the WTO dispute on Beef Hormones.

The Memorandum also provides a roadmap for the WTO dispute on Beef Hormones pending a definitive solution that may be agreed under Phase 3. The Memorandum is without prejudice to the EC and United States legal position in the Hormones dispute. The EC and United States agree however not to request a compliance panel for the first 18 months following the beginning of phase 1. If a compliance panel is launched after this date, such a panel will not render its report to the parties during phase 1 or phase 2. The status of such panel report, if any, will be clarified in phase 3.

The TRQ was opened by Council Regulation (EC) No 617/2009 and its management rules adopted in Commission Regulation (EC) No 620/2009. The United States has repealed the *Carousel* list of sanctions and has substituted it with the reduced list applied since 23 March 2009, with effect from 19 September 2009. In February 2011 the Commission and the US government made contact as required under Article IV:2 of the MoU to start discussions concerning the possibility to move to phase 2 in August 2012.

On 27 May 2011, the United States published a notice in the Federal Register terminating the imposition of all *Hormones* sanctions, and ordering the refund of sanctions already paid in some cases (<http://www.gpo.gov/fdsys/pkg/FR-2011-05-27/pdf/2011-13282.pdf>). This action is related to the implementation of domestic court proceedings but also constitutes early unilateral implementation by the US of Phase 2 of the Memorandum, under which the United States would have been entitled to maintain sanctions until the enlargement of the TRQ.

The European Parliament and Council have approved a proposal to increase the size of the TRQ as from 1st of August 2012.

(2) DS 291 – Measures affecting the approval and marketing of certain biotech products (GMOs) (procedural stage: implementation)

On 13 May 2003, the US, Argentina and Canada requested consultations on certain measures concerning GMOs. The US argued that there was a suspension of approvals in the approval of GMOs and GM food in the EU, which was contrary to several WTO agreements (GATT, SPS, TBT, and AoA). In this connection, the US also complained about the failure to consider for approval a number of specific products listed in the consultations request. Furthermore, the US considered that the restrictions imposed by several Member States on the sale or use of approved GMOs and GM food were inconsistent with WTO rules.

Consultations were held on 19 June 2003 and a panel was established on 29 August 2003 and composed by the WTO Director General on 4 March 2004. A confidential Final Report was circulated to the parties on 10 May. The final report concludes that: (a) the EU applied a general *de facto* moratorium on the approval of biotech products between June 1999 and August 2003 in violation of its obligations under Annex C(1)(a) first clause of the SPS Agreement and Article 8 of the SPS Agreement (i.e. obligation to undertake and complete approval procedures without "undue delays"); (b) The EU acted in violation of the above-mentioned SPS provisions in the approval procedures concerning 24 (out of 27) specific GM products; (c) nine national safeguard measures introduced by Austria, Greece, France, Germany, Italy and Luxemburg were not based on a risk assessment and were therefore inconsistent with Article 2.2 and 5.1 of the SPS Agreement. With respect to the alleged moratorium and the product-specific measures (other than national safeguard measures), the Panel rejected the complainant's claims of violation of Article 5 of the SPS Agreement.

The Panel report was adopted by the DSB on 21 November 2006. The EU indicated at the DSB on 19 December 2006 that it intended to comply with the recommendations and rulings of the panel but needed a reasonable period of time (RPT) to do so. The EU engaged in technical discussions with the complainants on biotech-related issues, including those relevant for the implementation of the WTO Panel report.

On 21 June 2007, the EC and the complainants notified the DSB of their agreement on a RPT of 12 months (i.e. until 21 November 2007). The RPT was further extended by agreement amongst the parties until 11 January 2008.

On 17 January 2008, the US made a retaliation request following the expiration of the RPT. This request only contains a general formula (i.e. annual level of nullification or impairment equivalent to the lost value of US shipments of biotech products). According to the request, suspension of concessions could occur under the GATT, the SPS

Agreement or the Agreement on Agriculture. No specific amount or targeted EU products is indicated. By letter to the DSB Chairman of 6 February 2008, the EU objected to the US retaliation request. At the special DSB meeting held on 8 February, the matter was referred to arbitration under Article 22.6 DSU. However, according to the sequencing agreement reached by the EU and the US, those proceedings were suspended on 18 February 2008 and will only be resumed after completion of Article 21.5 DSU compliance procedures.

The latest round of technical discussions with the US took place on 27 September 2011.

Related disputes with Canada and Argentina have been closed following the notification of a mutually agreed solution to the WTO DSB.

(3) DS 316 and DS 347 – Aircraft (procedural stage: 21.5 panel)

On 6 October 2004, the US requested WTO consultations with Germany, France, the United Kingdom and Spain, and with the EC on alleged support to AIRBUS pursuant to Articles 4, 7 and 30 of the SCM Agreement, Article XXIII of the GATT 1994 and Article 4 of the DSU. On the same day, the US attempted to abrogate the 1992 Agreement. The United States considers that the EC and the Member States provide subsidies that are inconsistent with Articles 3.1(a) and 3.2 of the SCM Agreement and Article XVI:1 of the GATT 1994 and that they causing adverse effects to the United States in the sense of Articles 5(a), 5(c), 6.3(a), 6.3(b), 6.3(c), and 6.4 of the SCM Agreement.

On 31 May 2005, the US requested the establishment of a panel on the ground that subsidies are granted by the EC and the Member States to Airbus in violation of Articles 3, 5 and 6 of the SCM Agreement and Article XVI of the GATT 1994. The EC considers that the scope of the panel request exceeds that of the consultation request. The Panel was established on 20 July 2005.

As in the parallel case against the US (DS317), the Panel was composed on 17 October 2005. The first phase of the fact-gathering (“Annex V”) procedure was completed by 22 December 2005 with the submission of replies by the parties to follow-up questions posed on information submitted on 18 November. The Facilitator submitted his report on the above procedure to the Panel on 24 February 2006.

Following the filing by the EC of a second panel request in DS317 on 20 January 2006 (based on its second request for consultations of 27 June 2005), the US submitted a second consultation request in DS316 on 31 January 2006 which has largely the same purpose as the second EC request, i.e. to explicitly list measures which were contained in the US panel request, but not in the consultation request. Consultations with the US took place on 23 March 2006. The US filed a second panel request on 10 April 2006 and it was placed on the agenda for the meeting of the DSB on 21 April 2006 along with a US request that the initial DS316 panel and a new DS316 panel be merged. Both the request for the new panel and the request for merger were rejected by the EC. Following the second US request for the establishment of a panel, a panel for DS316bis was established on 9 May 2006.

WTO Deputy-DG Jara on 17 July 2006 composed the panel. On 20 July the WTO Secretariat renamed DS316bis, which became DS347.

Pursuant to the new timetable set by the Panel, the US filed its first written submission on 15 November 2006. The US submitted a non-confidential version of the US first written submission on 10 January 2007.

The EC had filed a request for preliminary rulings on 7 November 2006 relating to a number of measures which in the view of the EC, are not properly before the Panel. The Panel on 22 December 2006 indicated that Parties should "proceed on the understanding that all of the alleged measures challenged by the United States continue to fall within the scope of this proceeding". The Panel on 11 July 2007 issued a ruling to respond to the EC request for a preliminary ruling. It ruled that a number of the measures which the EC claimed were outside the scope of the Panel did indeed fall within its scope. For one other measure challenged by the US, the Panel ruled that its falling within its scope was a question of fact that would be decided at a later stage.

The EC filed its 745-page long first written submission on 9 February 2006. The first meeting of the Panel with the parties took place on 20 and 21 March 2007. Following this meeting, the EC made available the non-confidential version of its first written submission and of its oral statements at the meeting, as well as an executive summary on its website (these documents can be found at: <http://trade.ec.europa.eu/wtodispute/show.cfm?id=268&code=2>). The Parties had also agreed that parts of the hearing should be open to the public. As a result, a public screening of the open parts of the hearings took place at the WTO on 22 March 2007. Following this meeting, the Panel also sent detailed questions to the parties, to which the parties answered on 30 April 2007.

The EC and the US filed their respective second written submissions on 25 May 2007. The second meeting of the Panel with the Parties took place on 25 and 26 July 2007, and the first meeting of the Panel with Third Parties took place on 24 July 2007. The non-confidential part of the second meeting with the Parties was videotaped and was shown in a public screening at the WTO premises on 27 July 2007. The Parties on 10 September 2007 filed answers to the questions posed by the Panel following the second meeting of the Panel with the Parties. The Panel subsequently posed additional questions to the parties, to which the Parties responded on 22 January 2008. The parties then submitted comments on the answers of the other party on 8 February 2008.

Under the revised timetable, the issuance of the final Panel report was due on 19 December 2007. This timetable was subsequently suspended.

As subsequently communicated by the Panel to the Parties, the confidential interim report was issued on 4 September 2009. The final and public report was issued by the WTO on 30 June 2010.

On 21 July 2010 the EU appealed to the Appellate Body a number of errors of law and legal interpretation contained in the Panel report, and therefore prevented the DSB from adopting it. On 16 August 2010 the EU filed its Appellant's Submission. On 19 August 2010 the US decided to cross-appeal to the Appellate Body certain issues of law and legal interpretation contained in the Panel Report. The Members of the Appellate Body division hearing the appeal are Mr David Unterhalter (Presiding Member), Ms Lilia Bautista (Member) and Mr Peter Van den Bossche (Member).

The first hearing took place on 11-17 November 2010. The second hearing took place on 9-14 December 2010. On 18 May 2011 the Appellate Body published its report. The Appellate Body overturned key findings of the Panel, vindicating many of the EU's long

held positions. At a special meeting of the DSB held on 1 June 2011, the Appellate Body and Panel reports were adopted.

On 1 December EU submitted to the DSB its compliance report stating full compliance with the DSB recommendations and rulings. The compliance report can be found: http://trade.ec.europa.eu/doclib/docs/2011/december/tradoc_148389.12.2011%20EU%20Compliance%20Report.pdf.

On 9 December 2011, the US submitted

1) a request for compliance consultations under Article 21.5 of the DSU, stating that it considered that, through the actions listed in the 1 December compliance report, the EU has failed to withdraw the subsidies or remove their adverse effects, and thus has failed to comply with the DSB recommendations and rulings in the Airbus case.

2) a request for authorizing sanctions under Article 22.2 of the DSU of an amount ranging between \$7 and \$10 billion per year. According to the US, as it is impracticable and ineffective to retaliate up to \$10 billion solely on the EU exports of goods, it also requested authorization to impose sanctions on the EU exports of services, except financial services. There is however no product list attached to the sanctions request.

On 22 December 2012, at as special DSB, the EU objected to the level of suspension of concessions or other obligations requested by the US, claimed that the principles and procedures set forth in Article 22.3 have not been followed and that the proposal is not allowed under the covered agreements, and requested for that the matter to be referred to arbitration pursuant to Article 22.6 of the DSU.

On 12 January 2012, a sequencing Agreement was signed between the EU and the US. As a result, the arbitration of the US retaliation request is now suspended, and may only be reactivated following an adverse ruling by the DSB in compliance proceedings.

On 13 January 2012, compliance consultations were held under Article 21.5 DSU.

On 30 March 2012, the US requested the establishment of a compliance panel under Art. 21.5 DSU. At a special DSB meeting held on 13 April, the panel was established. The matter was referred to the original panel (DS316).

The written stage of the proceedings has been closed. The meeting with the panel took place in April 2013.

For a complete update of facts and arguments used by the EU and the US in their submissions and in the Panel meetings, and more background information on the case, see: http://trade.ec.europa.eu/doclib/docs/2007/july/tradoc_135341.pdf

(4) DS 27- Bananas (procedural stage: implementation)

On 29 June 2007, the US requested the establishment of a WTO panel under Article 21.5 DSU on the EC import regime for bananas (the US was part of the original *Bananas III* proceedings). The US did not request prior consultations (in contrast with Ecuador). The US requested a special DSB meeting on 12 July 2007 where the panel was established. The Panel was finally composed by the WTO DG on 13 August. Its members were the same as those integrating the panel in the proceedings brought by Ecuador (see above).

The interim panel report was issued on 6 February 2006 and the final panel report was transmitted to the Parties on 29 February 2008. This report has been circulated to the WTO Members on 19 May 2008. The claims made by the US in its panel request were the same as those made by Ecuador, with the exception of the claim of violation of Article II GATT, absent in the US request. As a result, the US challenged exclusively the preferential duty-free TRQ granted to ACP banana imports.

On 24 June, the DSB adopted an agreement between the US and the EC (similar to the agreement between the EC and Ecuador) that allows the extension of the period for adoption of the panel report from 19 June until 29 August.

The US requested the adoption of the panel report by the DSB at its meeting of 29 August. On 28 August, the EC introduced a notice of appeal of this report. On 26 November 2008, the Appellate Body upheld, but for other reasons, the violation of Article XIII identified by the panel. The panel and AB reports were adopted at the regular DSB meeting on 22 December 2008, following a US request for correction of certain aspects of the report and a consequent US request to have the reports withdrawn from the agenda of the DSB meeting on 11 December. The AB had rejected most of this request and has only accepted correcting minor clerical errors.

An agreement setting the conditions for the final settlement of this dispute was initialled by the EU and the US on 15 December 2009. This Agreement was signed by the US and the EU in Geneva on 8 June. It provides that upon settlement by the signatories to the Geneva Agreement on Trade in Bananas (EU and Latin American banana suppliers) of the pending banana disputes and claims, the dispute shall be settled as between the United States and the EU. The EP gave its consent on the conclusion of the GATB on 3 February 2011. Notification to the WTO by the EU of the termination of internal procedures for the conclusion of the GATB and the parallel agreement with the US took place on 17 March 2011.

On 8 November 2012, the EU and Latin American banana suppliers (Brazil, Colombia, Costa Rica, Ecuador, Guatemala, Honduras, Mexico, Nicaragua, Panama and Venezuela) notified the DSB that the relevant banana disputes are settled as of 27 October 2012.

(5) DS 375 – Information Technology Agreement (procedural stage: panel)

On 28 May 2008, the US requested WTO consultations on the customs classification and resulting tariff treatment of 3 products, (i) set-top boxes with modems of certain types or which incorporate a device performing a recording or reproducing function such as a hard disk or a DVD drive, (ii) LCD monitors capable of reproducing video images from a source other than an automatic data-processing machine or with certain attributes such as a Digital Visual Interface, (iii) multifunctional printers. The US claims that these products should be classified under tariff lines which are duty free in application of the commitments taken under the Information Technology Agreement and implemented via a modification of the EU schedule of concessions in 1997. The US considers that, by failing to do so, the EU has breached Article II of the GATT 1994. In addition, the US claims that the EU applied classification rules on set-top boxes before their publication in the Official Journal of the EU in May 2008 in breach of Article X:1 and X:2 of the GATT 1994.

Consultations were held on 25 and 26 June 2008 and 15 and 16 July 2008 in Geneva. The US requested the establishment of a panel for the first time at the DSB on 29 August

2008, jointly with Japan and Chinese Taipei, but the EU opposed said establishment. A panel was established at the DSB meeting on 23 September, but agreement between the parties on its composition could not be reached. On 22 January 2009 the Director-General of the WTO nominated the panel members.

The parties received the panel's final report on 23 July 2010. The report was circulated on 16 August 2010. The EU was found to be in violation of its WTO commitments both under Article II and Article X GATT, with respect to the measures challenged on the three specific products. At the same time, the panel stressed in its report that not all multifunction copy machines, television set-top boxes and flat panel display devices "will necessarily fall within the scope of this concession. That would have to be determined on a case-by-case basis, taking into account all the objective characteristics of a particular product". (para. 7.734; 7.986, etc.).

None of the parties to the dispute filed an appeal; as consequence, the Dispute Settlement Body (DSB) of the WTO adopted the panel's report on 21 September 2010.

The EU confirmed its intent to implement the recommendations and rulings in this dispute in a communication to the DSB on 15 October 2010 (WT/DS375/14, WT/DS376/14, WT/DS377/12) and at the DSB meeting of 25 October 2010. The EU requested a reasonable period of time in which to do so.

On 20 December 2010, the parties to the dispute informed the DSB that they had agreed that the reasonable period of time for the EU to implement the recommendations and rulings of the DSB would be nine months and nine days from the date of the adoption of the recommendations and rulings of the DSB. Accordingly, the reasonable period of time expires on 30 June 2011.

On 30 June 2011, the EU notified to the complainants that it had adopted the measures necessary to comply with the recommendations and rulings of the DSB in this dispute. These measures are the following:

(a) Commission Implementing Regulation (EU) No. 620/2011 amending Annex I to Council Regulation (EEC) no 2658/78 on the tariff nomenclature and the Common Customs Tariff, published on the Official Journal of the European Union (hereinafter referred to as OJEU), L 166/16 of 25.06.2011);

(b) Deletion of Explanatory Notes for CN codes 8521 90 00, 8528 71 13, 8528 71 19 and 8528 71 90 (2011/C 185/1, published on the OJEU C 185/1 of 25.06.2011); and

(c) Statement adopted by the Customs Code Committee on 7 June 2011, and published on 29 June 2011, according to which the Statement on the classification of "multifunctional devices" agreed at the 360th meeting of the Customs Code Committee is to be disregarded.

Although not directly related to the Panel findings, the EU, following the request of industry and Member States, adopted in December 2011 several guidance regulations on the classification of products related to those covered by the WTO dispute, notably on set-top boxes and multifunctional machines. **With regard to Flat Panel Displays, Council Regulation No 953/2013 amending Annex I to Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff was adopted on 26 September 2013 and entered into force on 25 October 2013.**

For a complete update of facts and arguments used by the EU in its submissions and in the Panel meetings, and more background information on the case, see: <http://trade.ec.europa.eu/wtodispute/show.cfm?id=409&code=2>

This is the last time this dispute will figure in this overview document.

(6) DS 389 – Poultry Antimicrobial Treatment (AMT) (procedural stage: panel request)

On 16 January 2009, the United States requested consultations with the EC on certain measures concerning the production and marketing of poultry, and in particular not allowing the use of substances other than water for the treatment of poultry carcasses. In their request for consultations, the US challenges the following measures:

- "(1) Regulation (EC) No 853/2004, including Articles 3 and 6;
- (2) Council Regulation (EC) No 1234/2007, including Annex XIV(B)(II)(2);
- (3) SCoFCAH's rejection of the Commission's proposal regarding the removal of surface contamination from poultry carcasses on June 2, 2008;
- (4) the EU Agricultural and Fisheries Council's rejection of the Commission's proposal regarding the removal of surface contamination from poultry carcasses on December 18, 2008; and
- (5) any amendments, related measures, or implementing measures. "

The US argues that these measures appear to be inconsistent with the SPS Agreement (Articles 2.2, 5, 8, and Annex C (1)); the GATT (Articles X and XI:1), the Agreement on Agriculture (Article 4.2) and the TBT Agreement (Article 2).

The Commission has held consultations with the US on 11 February 2009.

On 8 October 2009, the US requested the establishment of a panel to rule on the matter. At the DSB meeting of 23 October, the US requested for the first time the establishment of a Panel. Such request was opposed by the EC. The US requested a second time the establishment of a panel at the DSB meeting of 19 November, when the panel was established.

B) CASES UNDER THE TRADE BARRIERS REGULATION (TBR)

Please consult document 482/07 of 15 November 2007 for a description of the cases.

I – CANADA – PROSCIUTTO DI PARMA

Recent developments:

The issue was raised at the TISC in November 2007, and a questionnaire was subsequently sent to the Canadian authorities. The answers to this questionnaire were provided by Canada on 23 May 2008. They explained the procedural situation of the Consorzio's application and provided some further explanations of the functioning of the Canadian trademark system. This issue, as well as the action launched by Maple Leaf in order to have the official mark (Parma "Ducal Crown Mark") granted in 1998 to the Consorzio declared invalid, were then discussed at the TISC meeting held on 28 May 2008. Canada basically said that it could not anticipate any of the decisions that the Courts may take in the judicial proceedings that would most likely follow. The issue was

again on the agenda of the TISC meeting of 25 November 2008 and 15-16 July, after which Canada replied to further written questions by the Commission. The issue was again on the agenda of the TISC meeting held on 7 December 2009, where the EC insisted on its concerns.

The collective mark "Prosciutto di Parma" requested by the Consorzio was approved for registration by the Canadian Trademarks Office (TMO) in December 2006 and published on 24 January 2007. Maple Leaf filed an opposition to this registration on 25 June 2007. Several procedural steps before the Trademarks Opposition Board have since then been taken by both the Consorzio and Maple Leaf. Once a decision by the Opposition Board is issued, it can be appealed to the Federal Court and then again to the Federal Court of Appeal. As a result, and provided that appeals are launched, the proceedings would last for at least five more years.

On 15 October 2009 the Federal Court of Canada issued its judgment dismissing Maple Leaf's application to annul the Parma "Ducal Crown Mark". The Court also ordered that Maple Leaf pay the Consorzio's costs of the proceeding. As a result, the Consorzio retained its rights with regard to the "Ducal Crown Mark", with the name "Parma" inscribed in it, in Canada. This outcome strengthens the position of the Consorzio in other proceedings regarding the use of "Parma" in Canada. However, on 12 November 2009 Maple Leaf appealed this judgment before the Federal Court of Appeal. That appeal was dismissed in September 2010, and Maple Leaf was again ordered to pay the Consorzio's costs.

Maple Leaf owns a pending application to register the trademark Parma & Design, which was rejected in 2003 on the basis of the Consorzio's "Ducal Crown Mark" rights. Maple Leaf's appeal to the Federal Court in 2008 was dismissed, and the further appeal by Maple Leaf to the Federal Court of Appeal was again dismissed with costs in September 2010. On 16 December 2010, the Canadian Trademarks Office formally rejected Maple Leaf's application to register the trademark Parma & Design.

II- CHILE- SWORDFISH

The negotiating directives for a permanent agreement with Chile were adopted by the Council on 7 April 2008. On 16 October 2008, the Commission and their Chilean counterparts agreed on a Draft Text, which would constitute the basis for the establishment of a new "Understanding Concerning the Conservation of Swordfish Stock in the South Eastern Pacific Ocean" ("the Understanding"). The Understanding shall enter into force after the necessary procedures are completed on both sides. This draft Understanding provides for access of EU vessels to designated Chilean ports in exchange for commitments on cooperation in the management of stocks and fishing efforts.

In light of progress made, and on request of the Commission and the Chilean authorities, the International Tribunal for the Law of the Sea (ITLOS) further extended the suspension of proceedings brought by Chile and the EC until 31 December 2009. In view of the EU and Chile's commitment to present the Understanding for signature and conclusion through their respective internal procedures, and on the request of the Parties, the ITLOS adopted on 16 December 2009 an Order of discontinuance of this case. On 28 May 2010, the EU and Chile also notified jointly the withdrawal of case DS193 to the WTO Dispute Settlement Body (see prior note to the TPC 197/10, dated 14 April 2010).

On 3 December 2009, the Commission presented to the External Fishery Working Group the Understanding initialled in 2008, together with a revised annex regarding the conditions for access to ports by EU vessels fishing swordfish and an official communication from Chile on the replacement of the third port suggested by Chile for access by EU vessels (Caldera) by Antofagasta. The Council adopted the Decision authorising the signature and provisional application of the Understanding on 3 June 2010 (doc. 9337/08). The EP PECH Committee adopted on 30 November 2010 a report recommending the rejection of this Understanding.

III – INDIA –SPIRITS AND WINES

Information about this case is now provided under DS 352 and DS 380.

IV – KOREA - PHARMACEUTICALS

Recent developments:

The Korean authorities have implemented the reform of their health insurance system on 29 December 2006. The new system is based on "positive listing" of pharmaceuticals eligible for reimbursement, whereby the assessment of the pharmaceutical cost-efficiency plays a major role. Despite improved drafting of the legislation and a modified timeline for obtaining a decision for reimbursement and a decision on a maximum reimbursement price for a new drug, in substance the reformed system does not address the EC concerns to the EC satisfaction and seems to leave the door open to possible *de-facto* discrimination between generic products (mainly locally produced) and innovative products. In particular, the new system does not provide the legal certainty the EC has been striving for, since it does not yet refer to transparent, objective and verifiable criteria nor does it provide due process guarantees in decision-making on reimbursement and pricing of pharmaceutical products. The Commission had the opportunity to raise its concerns by letter and on occasion of several bilateral fora where pressure has continued to be exerted to address the industry's concerns and find a definitive solution to them. The conclusion of the Korea /US FTA negotiations had prompted a public consultation on an independent review system in the National Health insurance system to which the Commission participated and submitted its views on 11 December 2007. On this occasion, the Commission also re-stressed the need to make such a system available to both reimbursement decisions and decisions resulting from price negotiations as well as the need for the new legislation to address the current lack of transparency and due process guarantees.

At various bilateral fora the Commission also raised concern with regard to lack of transparency in both methodology and criteria applied to the evaluation of innovative products within a recent pilot project on the re-evaluation of the prices of lipid-lowering drugs. A sectoral annex on pharmaceuticals was included in the initialled EU/Korea FTA. The technical background and investigations carried out under the TBR substantially contributed to identifying the EU interests and the obligations included in the annex at issue.

V– Chinese Taipei – Compulsory licensing of CD-Rs

The investigation report was circulated to Member States on 11 January 2008 and was made public on 30 January 2008.

The report concludes that the Patent Act of Chinese Taipei is inconsistent with the TRIPs Agreement, and that the specific application to the case between Philips and Gigastorage was also inconsistent with the TRIPs Agreement. It calls on Chinese Taipei to take concrete steps to amend the law, and eliminate the precedential effects of the Gigastorage/Philips decision within 2 months.

A first round of contacts took place in early March but did not permit resolution of the matter. On 13 March 2008 an administrative court in Chinese Taipei annulled the grant of the compulsory licence. The court's reasoning still leaves a great deal of flexibility to the administration.

A second set of contacts took place on 29 April 2008. This was conducted in a far more positive atmosphere. Chinese Taipei confirmed that it would not appeal the Court's decision. The administration was required to issue a redetermination on the original case. This is to be done within 6 months (i.e. October 2008). The administration was also planning a major revision of its Patent Law which will include the provisions on compulsory licensing. Chinese Taipei agreed to continue discussions with the Commission over the next months.

On 17 June 2008 the authorities of Chinese Taipei informed the Commission that Gigastorage had requested that there be no redetermination, so there would be no more decisions on the specific Philips-Gigastorage case. The Commission has presented its views as part of the review of the Patent Law, and the authorities of Chinese Taipei have now submitted a draft law to the Legislative Yuan. The Legislative Yuan is expected to adopt the law during its session, starting in March 2010. The Commission will continue to carefully monitor developments. In the light of the removal of any immediate commercial disadvantages for EU companies, the Commission will continue to monitor the situation and consult with the authorities of Chinese Taipei.

VI– TURKEY – PHARMACEUTICALS

Since the TBR case was initiated in 2003 the Commission in co-operation with the industry has worked to contain possible damages deriving from the lack of legal certainty in Turkey on the issue of data exclusivity. This issue has been systematically raised by means of regular letters addressed to the Turkish authorities within the framework of the TBR case as well as in the appropriate bilateral fora (e.g. EC/Turkey Customs Union Joint Committees, meetings on trade policy, EC/Turkey Association Committees, EU-Turkey Information Meeting on Trade, EU-Turkey information meetings) and on occasion of bilateral meetings at senior level. It should be acknowledged that thanks to the TBR case Turkey has continued to maintain a *moratorium* on pending generics applications (with one single exception), but has not yet provided a definitive solution to the existing legal uncertainty. Turkey's most recent letters (5 March 2009, 4 September 2009) remain ambiguous with regard to the treatment of pending generic applications and maintain a situation of legal uncertainty. The Commission has reiterated its concerns with various letters, including on 17 December 2008, to which Turkey replied on 5 March 2009. With regard to combination products and possible unlawful approval of generic applications as reported by the industry, the Commission expressed once again its concerns in a letter dated 17 February 2009 and met the Turkish authorities in Ankara on 26 March 2009 to explain once again the *acquis communautaire* and Turkey's obligations in this regard. The meeting did not shed light on the way Turkey intends to treat combination products, though it provided an apparently divergent interpretation of the *acquis communautaire* with regard to so-called "fixed combinations". On 22 April

2009 Turkey published amended rules on the registration of medicinal products for human use. On 4 September 2009 Turkey provided an unclear record of the meeting of 26 March 2009. The Commission has worked closely with the industry and concurred with it that at that stage Turkey did not appear to provide the long-sought legal certainty on the issue of regulatory data protection. With a letter dated 15 September 2009 the Commission requested confirmation that the *moratorium* on pending generics applications within the scope of the TBR case be respected, including with regard to combination products and in spite of Turkey's divergent interpretation of "fixed combinations" under the relevant *acquis communautaire*. Turkey replied with an explanatory note dated 12 May, to which the Commission answered by clarifying and once again reiterating its concerns. The issue of regulatory data exclusivity is equally addressed within the broader framework of the bilateral EU/Turkey fora, e.g. at the last EU/Turkey Joint Custom Union Committee of 26 October 2009, together with other questions on regulatory issues that stem from the amended Regulation, but do not directly fall within the scope of the TBR case at issue. The Commission has continued to closely monitor Turkey in the field of data exclusivity in co-ordination with the industry. As of September 2011, there are no indications of approval of unlawful generics applications. Within the 2003 TBR case on pharmaceuticals, Turkey has *de facto* maintained a moratorium on pending generics applications, i.e. on generics applications submitted until 1 January 2005 with regard to original products (including some combinations) registered in the Customs Union area during the period from 1 January 2001 to 1 January 2005. As of September 2011, the data exclusivity period has elapsed for all pending generics at issue within the TBR case.

VII – USA - OILSEEDS

The Commission is monitoring the evolution of the oilseed market and the US subsidies and is collecting further evidence on the possible negative impact of the US oilseed subsidies on prices. It has presented an oral report on the situation during the TBR Committee held on 18 November 2005. Further information has been received from the complainant in February 2006. Further light on the US regime has been shed by the compliance panel requested by Brazil against the US cotton regime (DS267), where the final report has been circulated on 18 December 2007 and has been appealed. The Appellate Body circulated its report on 2 June 2008.

VIII – USA – GAMBLING

The Commission decided on 11 March 2008 to open a formal examination procedure following a complaint against US measures lodged by the Remote Gambling Association (RGA). In summary, the RGA argued that US legislation banning internet gambling; the measures taken to enforce that legislation; and the fact that the legislation is enforced in a discriminatory way, are all inconsistent with Articles XVI and XVII of the GATS. The RGA maintained that these violations would remain even after the current process of withdrawal of US GATS gambling commitments. In their view, the withdrawal of commitments would not have retroactive effects, that is, would only remove US obligations for the future, but not in respect of past events. Given that the only relevant trade at issue in this case was the remote gambling that a number of EU based operators offered to persons in the US prior to their withdrawal from the US market, while the US commitments were in place, the US would be under the obligation not to take or continue any measure that would constitute a violation of its international obligations in relation to such past events.

Following the conclusion of its investigation, the Commission submitted the report on this matter to the TBR Committee. The report was communicated to the complainant and to the US on 9 June 2009, and made public on the Commission's website on 10 June 2009.

The report concludes that there is an obstacle to trade in the US, that the obstacle to trade causes adverse effects, and that action is necessary in the interests of the Community. This means that the EU could bring a WTO case against the US. However, the Commission has indicated to the US that it favours an amicable solution.

More specifically, the report finds that the relevant US measures deny market access to the US online gambling market and discriminate in favour of US companies which can freely operate online gambling on horse racing in the US, while EC companies and individuals are prosecuted for the online services that they provided in the past. This is incompatible with GATS Articles XVI and XVII, and cannot be justified under GATS Article XIV.

The report addresses also the question of the possible withdrawal of US GATS commitments on gambling and betting. It concludes in this respect that a withdrawal of these commitments would not make a WTO case unfeasible. The reason is that the relevant DOJ criminal investigations focus on gambling services offered at a time when the US still had GATS commitments. The EU would, once the withdrawal occurs, still be able to challenge US laws to the extent that they are applied in respect of gambling services trade that took place while the US commitments were in place, but disregarding those commitments.

The Commission has asked the US to provide a definitive solution for this matter and continues to discuss the issue with USTR and the DOJ.