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OVERVIEW OF ACTIVE WTO DISPUTE SETTLEMENT CASES INVOLVING THE EU AS COMPLAINANT OR DEFENDANT, OF CASES UNDER BILATERAL AGREEMENTS, AND OF ACTIVE CASES UNDER THE TRADE BARRIERS REGULATION

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Introduction

At present, the EU is a party in 45[1] pending WTO disputes, in 29 of which it is the complaining party. These WTO disputes relate to the EU's relations with Argentina, Brazil, Canada, China, Colombia, India, Indonesia, Philippines, Russia, Thailand, Turkey and the United States. In addition, the EU is the complaining party in four cases governed by the dispute settlement provisions of separate bilateral agreements (between the EU and Algeria, Korea, the Southern African Customs Union and Ukraine respectively). The EU also has open proceedings under the 'Trade Barriers Regulation'[2] in five matters. These involve measures of Canada, Chile, Saudi Arabia, South Korea and Mexico.

This overview document is in three parts. The first covers selected WTO dispute settlement cases where the EU is the complainant or defendant (the rest of these cases are listed in Annex A).

The second part concerns cases arising under bilateral agreements to which the EU is a party.

The third part concerns cases under the Trade Barriers Regulation.

Dispute settlement activities concerning the United States represent the highest number of EU's active disputes. The EU is the complaining party in seven of these disputes and the defendant in six.

The EU's cases with China concern technology transfer measures and raw materials on the offensive side, and antidumping and feed-in-tariff measures on the defensive side.

Below follows a description of a good many of the above-mentioned disputes. **New developments are indicated in bold**.

As flagged in the two previous editions of this overview (April 2020 and July 2020), this overview in principle no longer includes those defensive or offensive WTO cases where the latest procedural or other development has taken place before 2018. For the purposes of the WTO dispute settlement, however, these cases continue to remain formally pending. Annex A contains a list of all pending WTO cases in which the EU is a party.

For the April 2020 edition of this overview document (which contains entries for several disputes that are simply listed in the annex to the present edition), see:

https://trade.ec.europa.eu/doclib/html/154243.htm

[1] Each case is counted separately.

[2] Regulation (EU) 2015/1843 of the European Parliament and of the Council of 6 October 2015 laying down Union procedures in the field of the common commercial policy in order to ensure the exercise of the Union's rights under international trade rules, in particular those established under the auspices of the World Trade Organization (codification), OJ L 272, 16.10.2015, p. 1.

Part 1 – WTO Disputes

I – Brazil

OFFENSIVE CASE

DS472 – Certain Measures Concerning Taxation and Charges

Procedural stage: compliance

On 19 December 2013 the EC requested consultations with Brazil on certain Brazilian measures concerning taxation and charges affecting several economic sectors (e.g. automotive, computing and automation goods). The dispute also involves measures granting tax benefits to domestic goods produced in certain areas in Brazil, whatever the sector, and cross-cutting export support programmes.

These measures, taken as a whole and individually, increase the effective level of border protection in Brazil, whilst providing preferences and support to domestic producers and exporters, by inter alia (1) imposing a higher tax burden on imported goods than on domestic goods, (2) conditioning tax advantages to the use of domestic goods, and (3) providing export contingent subsidies.

The EU considers that these measures are inconsistent with Articles I:1, II:1(b), III:2, III:4, III:5 of the GATT 1994, Article 3.1(b) of the SCM Agreement and Article 2.1 of the TRIMS Agreement in conjunction with Article 2.2 and the Illustrative List in the Annex to the TRIMS Agreement.

Consultations were held in Geneva on 13 and 14 February 2014. Given that consultations failed to bring a satisfactory resolution to the dispute, the EU asked for a panel to be appointed. The DSB established a panel on 17 December 2014 to adjudicate the dispute. Argentina, Australia, China, India, Japan, Korea, Russia, Chinese Taipei, Turkey and the United States reserved their third-party right to participate in the panel's proceedings. Proceedings are ongoing.

Of note, Japan has launched a case against Brazil with the same scope and claims (DS497). The establishment of the panel in DS497 took place on 28 September 2015. The procedures for this dispute and for DS472 have been merged. The first substantive meeting took place on 23 to 25 February 2016. The second substantive meeting took place on 31 May to 1 June 2016. The Panel report was circulated to the DSB on 30 August 2017. The Panel sided with the EU in all its claims.

Brazil appealed on 28 September 2017. Amongst other, Brazil challenged the Panel's characterisation of Inovar-Autos and the ICT programmes as product-related measures covered by the scope of non-discrimination obligations in Article III of the GATT; and as fiscal advantages contingent on the use of domestic over imported goods prohibited under the SCM Agreement. Brazil also contended that the Panel acted inconsistently with Article 11 of the DSU by failing to make an objective assessment of the facts of the case by assessing "export contingency" in the PEC and RECAP programmes within the meaning of Article 3.1(a) of the SCM Agreement; and by recommending under Article

4.7 of the SCM Agreement that prohibited subsidies be withdrawn in 90 days from the adoption of the reports.

In turn, the EU and Japan filed a cross-appeal taking issue with the Panel's erroneous exercise of judicial economy when omitting to make findings and recommendations on the imposition of requirements to use domestic products in the production of incentivised products under the ICT and Inovar-Autos programmes in the in-house scenario. By omitting to make such findings, the complainants took the view that the Panel did not "secure a positive resolution to the dispute".

The appeal hearing in cases DS472 (EU) and DS497 (Japan) was held on 19-20 June 2018.

On 13 December 2018, the Appellate Body adopted its Report which confirmed that Brazil's automotive and ICT programmes:

- were inconsistent with Article III:2 of the GATT (national treatment), by subjecting imports to internal taxes in excess of those applied to like domestic products; and

- discriminated against imports in a manner that is inconsistent with Article III: 4 of the GATT and Article 2 of TRIMs Agreement (national treatment), by conditioning fiscal advantages to local content requirements.

The Appellate Body partially upheld the Panel's findings that by granting some tax exemptions, reductions and suspensions under the automotive and ICT programmes, Brazil confers subsidies contingent on the use of domestic over imported products, prohibited under Articles 3.1(b) and 3.2 of the SCM Agreement. It upheld this with regard to so-called nested basic production processes ("PPB"), which it considered require as a condition the use of domestic components produced in accordance with their own PPB in order to benefit from the tax incentives. However, for the remaining PPBs , the Appellate Body found that they do not provide for more than a series of production steps which must be carried out in Brazil for a company to get fiscal advantages but do not require the use of domestic components and thus do not amount to prohibited subsidies.

The Appellate Body also endorsed the Panel's finding that the automotive programme is in breach of the MFN obligation under Article I of the GATT, by discriminating between automotive products originating from MERCOSUR and Mexico and automotive products originating from other WTO members.

The Appellate Body reversed the following findings of the panel.

- Brazil is in breach of Articles 3.1(a) and 3.2 of the SCM Agreement by providing subsidies contingent upon export performance through the PEC and RECAP programmes. This was based on the wrong identification by the Panel of the benchmark for comparison: the Panel should have determined the tax treatment of comparably situated tax payers, instead of seeking to determine the existence of a general rule whereby the tax suspensions would only apply to companies that structurally accumulate credits. Having reversed the Panel's findings on the identification of the benchmark, the Appellate Body then concluded that it was not able to complete the analysis as to whether the tax suspensions granted under the PEC and RECAP programmes constituted illegal subsidies.

- The PADIS and the Digital Inclusion programmes require the use of domestic over imported goods inconsistently with Article 3.1(b) of the SCM Agreement.

- The prohibited subsidies should be removed within 90 days. The SCM Agreement provides that prohibited subsidies should be removed "without delay" and the Panel should specify a time-period in which they should be withdrawn. However, the Appellate Body found that the underlying reasoning of the Panel for giving a 90 day deadline was not related to the specific circumstances of this case. The Appellate Body did not complete the legal analysis and specify the time-period, as requested by Brazil, but left undisturbed the Panel's recommendations that Brazil withdraw the prohibited subsidies at issue "without delay".

The DSB adopted the Appellate Body Reports on 11 January 2019. For the illegal subsidies, Article 4.7 of the SCM stipulates that Brazil must comply "without delay", which the parties have agreed means that they must be withdrawn by 21 June 2019. For the other measures, it has a reasonable period of time, which was agreed by the parties as expiring on 31 December 2019.

At the DSB meeting of 27 January 2020 Brazil recalled the information contained in its status report of 16 January 2020. Brazil recalled that three programmes (INOVAR-AUTO, PATVD, and Digital Inclusion) have expired before the adoption of the reports of the Panel and of the AB and have not been renewed. With regard to the findings on "Processos Produtivos Básicos" (PPBs), Brazil noted that it has either revoked or substituted all implementing orders found to be inconsistent. With relation to the findings on the Informatics and PADIS programmes, Brazil stated that the Government of Brazil has enacted Law 13.969 of 26 December 2019, bringing those measures into conformity within the agreed RPT. Brazil considered that it is in full compliance with the DSB recommendations and rulings in this dispute. At the DSB meeting of 28 February, Brazil has not provided further status reports. The EU (like Japan) is currently analysing Brazil's compliance efforts.

II – China

OFFENSIVE CASE

DS549 – China – Certain Measures on the Transfer of Technology

Procedural stage: consultations

On 1 June 2018, the European Union requested consultations with China regarding certain Chinese legislation concerning the transfer of foreign technology to China. The challenged measures include in particular regulations on the Administration of the Import and Export of Technologies ("TIER") and on Joint Ventures ("JV Regulation").

The European Union claims that these measures are inconsistent with Articles 3, Article 28.1(a) and (b), Article 28.2, Article 33 and Article 39.1 and 39.2 of the TRIPS Agreement.

Moreover the European Union alleges that China appears to apply and administer its laws, regulations and other measures governing the transfer of technology into China with a view of inducing the transfer of foreign technology to China, contrary to China's

obligations under Article X.3(a) of the GATT 1994 and Paragraph 2(A)2 of the Protocol on the Accession of the People's Republic of China to the WTO.

Japan, the United States and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, requested to join the consultations.

On 20 December 2018, the European Union filed a revised request for consultations replacing the request of 1 June 2018 and expanding the scope of its claims. In addition to the measures covered in the June 2018 request, the European Union challenged the following measures: the Law of the People's Republic of China on Chinese-Foreign Equity Joint Ventures ("JV Law"); the New Energy Vehicle Production Enterprises and Product Admissions Regulations ("NEV Regulation"); the Administration of the Examination, Approval and Registration of Foreign-invested Crop Seed Enterprises Provisions ("Seed FIE Approval Provisions"); the Measures for the Administration of Crop Seed Production and Operation Licenses ("Seed Measures").

In addition to restating the claims contained in the request of 1 June 2018, in the revised request of 20 December 2018 the European Union also claims that:

- the JV Regulation operating separately or together with the JV Law, and the NEV Regulation, are inconsistent with paragraphs 1.2, as it incorporates commitments under paragraphs 49 and 203 of the Working Party Report on China's Accession to the WTO, and 7.3 of Part I of China's Protocol of Accession;

- the Seed FIE Approval Provisions and the Seed Measures, are inconsistent with paragraphs 1.2, as it incorporates commitments under paragraph 203 of the Working Party Report on China's Accession to the WTO, and 7.3 of Part I of China's Protocol of Accession;

- the TIER, operating separately or together with other relevant instruments, is inconsistent with paragraph 1.2, as it incorporates commitments under paragraphs 49 and 203 of the Working Party Report on China's Accession to the WTO, of Part I of China's Protocol of Accession.

On 15 January 2019, Chinese Taipei requested to join the revised consultations. On 18 January 2019, Japan and the United States requested to join the revised consultations.

Consultations between the EU and China took place on 19 and 20 February 2019 in Geneva.

III – Colombia

OFFENSIVE CASE

DS591 – Colombia – Anti-dumping duties on frozen fries

Procedural stage: **panel composed**

On 15 November 2019, the European Union requested consultations with Colombia over Colombia's imposition of anti-dumping measures on frozen fries from Belgium, the Netherlands and Germany.

In November 2018, Colombia imposed definitive anti-dumping (AD) measures on imports of frozen fries from Belgium, Germany and the Netherlands. The duties ranged from around 3% to around 8% and were imposed for a period of two years.

The EU considers that the investigation of dumping, injury and causality that led to the imposition of duties were WTO-inconsistent, in particular with Articles 1, 2.1, 2.4, 2.4.1, 2.6, 3, 3.1, 3.2, 3.4, 3.5, 3.6, 3.7, 3.8, 5.3, 5.8, 6.1.2, 6.2, 6.4, 6.5, 6.5.1, 6.8, 6.9, 9.1, 9.2, 9.3, 11.1, 12.2, 12.2.2, 18.1, and paragraphs 3 and 6 of Annex II of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Anti-Dumping Agreement); Article 10 of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 (Customs Valuation Agreement); and Article VI of the General Agreement on Tariffs and Trade 1994 (GATT 1994).

Consultations took place with Colombia on 15 and 16 January 2020 but failed to resolve the issue. On 17 February 2020, the EU asked that the request for the establishment of a panel be placed on the agenda for the meeting of the Dispute Settlement Body to be held on 28 February 2020. The panel was established at the DSB meeting of 29 June 2020 **and was composed on 24 August 2020.**

IV – India

OFFENSIVE CASE

DS582 – ICT Products

Procedural stage: **panel composed**

On 2 April 2019, the EU requested consultations with India on excessive tariffs on information and communications technology (ICT) products. India had introduced a duty-free regime in its WTO bound Schedule on ICT products as a translation of its ITA-1 commitments. However, since 2014, India has been progressively re-introduced import duties on certain ICT products and regularly increased them.

The EU has challenged India's excessive tariffs on ICT products on the basis of GATT Article II:1. India accords to the EU commerce of certain ICT products treatment less favourable than that provided for in its WTO bound Schedule.

Consultations with India took place on 21 May 2019, but failed to resolve the issue. The Commission followed up with the analysis of the elements provided by India at the occasion of the consultation meeting. This analysis confirmed the Commission's position on India's tariffs on ICT products. The EU asked for a panel at the meeting of the Dispute Settlement Body of 5 March 2020, while India opposed. The panel was established at the DSB meeting of 29 June 2020 **and composed on 31 August 2020.**

V – Indonesia

OFFENSIVE CASE

DS592 – Measures Relating to Raw Materials

Procedural stage: consultations

On 22 November 2019, the EU requested consultations with Indonesia with respect to various measures restricting exports of certain input materials for the production of stainless steel, notably nickel, scraps, coal and coke, iron ore and chromium; in particular export restrictions and prohibitions as well as domestic processing requirements, domestic marketing obligations and export licensing procedures. The EU's request also covers an import duty exemption scheme which amounts to a prohibited subsidy conditional upon the use of domestic over imported goods and that applies across several industries.

The EU and Indonesia held consultations on 30 January 2020 in Geneva.

DEFENSIVE CASE

DS593 – Certain measures concerning palm oil and oil palm crop-based biofuels

Procedural stage: **panel established**

On 9 December 2019, Indonesia filed a WTO request for consultations with the EU taking issue with the EU's renewable energy framework, notably the recast Renewable Energy Directive (EU) No 2018/2001 (RED II) and the related Delegated Regulation (EU) No 2019/807, as well as certain French measures which establish incentive schemes for biofuels (DS593). Indonesia attacks the EU measures under the WTO Agreements on Technical Barriers to Trade (TBT), Tariffs and Trade (GATT) and subsidies (SCM). Indonesia claims the measures are *inter alia* constitute unnecessary obstacles to trade, fail to rely on scientific evidence and relevant international standards, amount to quantitative restrictions, as well as fail to ensure a uniform, impartial and reasonable administration of laws by the EU. Indonesia also claims that certain Member State support schemes amount to actionable subsidies causing adverse effect to Indonesia's interests.

The EU and Indonesia held consultations on 19 February 2020 in Geneva, attended also by Colombia, Costa Rica, Guatemala, Malaysia and Thailand as third parties.

On 18 March 2020, Indonesia requested the establishment of a WTO panel. At the DSB meeting of 29 June 2020, the EU blocked this first request for establishment of a panel. **At its meeting on 29 July 2020, the DSB established a panel.** The following reserved their third-party rights: Argentina, Brazil, Canada, China, Colombia, Costa Rica, Ecuador, Guatemala, Honduras, India, Japan, Korea, Malaysia, Norway, Russia, Singapore, Thailand, Turkey and the US.

VI – Russia

OFFENSIVE CASE

DS475 – Russian Federation – Import ban on life pigs, pork and certain pig products originating in the EU

Procedural stage: arbitration under Article 22.6 of the DSU; panel proceedings under Article 21.5 of the DSU suspended

On 8 April 2014, the European Union requested consultations with the Russian Federation regarding Russia's import ban on life pigs, pork and certain pig products originating in the EU. Following the finding of two dead wild boars in Lithuania and two wild boars in Poland that were diagnosed with African swine fever (ASF) end of January and beginning of February 2014 respectively, the Russian Federation imposed an import ban on the mentioned products from Lithuania and Poland. However, no imports of life pigs, pork and certain pig products from the entire EU were accepted since 27 January 2014, purportedly because the requirements of the necessary veterinary certificates were not fulfilled. In spring 2014 Russia also imposed bans against Latvia and Estonia where cases of ASF were detected.

In July 2016, the panel was established. The EU challenged the EU-wide ban on life pigs, pork and certain pig products and the four national bans as, according to the EU, all measures to prevent the spread of the disease were immediately taken in full transparency vis-à-vis Russia. Australia, Brazil, China, India, Japan, Korea, Norway, Chinese Taipei, South Africa and the United States had reserved their third-party rights.

The panel report was circulated to Members on 19 August 2016 and was a clear victory for the EU.

The EU challenged the bans as being inconsistent with several provisions of the SPS Agreement relative to: harmonization (Articles 3.1, 3.2, and 3.3), adaptation to regional conditions (Articles 6.1, 6.2, and 6.3), SPS approval procedures (Article 8 and Annex C), the scientific basis of the measures (Articles 5.1, 5.2, 5.7 and 2.2), the application of SPS measures (Articles 5.3, 5.4, and 5.6), discrimination (Articles 2.3 and 5.5), and transparency (Articles 7 and Annex B).

The panel found that contrary to Russia's claims there was an EU wide ban in place which constituted a SPS measure. Regarding the claims on harmonization, the panel found that the EU wide ban neither conformed to nor was it based on the relevant OIE international standards existing for ASF. In addition, also the national bans were overwhelmingly neither conforming to nor based on those standards with the exception of the ban on non-treated products from Latvia which were found to be based on those standards and therefore consistent with Article 3.2 of the SPS Agreement.

In respect of adaptation to regional conditions, the panel found that as of 11 September 2014, the EU had provided to Russia the necessary evidence to objectively demonstrate, pursuant to Article 6.3 of the SPS Agreement, that there are: (i) areas within the EU territory outside Estonia, Latvia, Lithuania, and Poland, which are free of ASF and are likely to remain so; as well as (ii) areas within Estonia, Latvia, Lithuania, and Poland that are free of ASF and are likely to remain so. Thus, Russia violated Article 6.3 of the

SPS Agreement. Only in relation to the national ban regarding Latvia, the EU failed to provide to Russia the necessary evidence to objectively demonstrate that there are areas within Latvia that are likely to remain ASF-free. The panel also found that Russia did not adapt the EU-wide ban and the bans on products from Estonia, Latvia, Lithuania, and Poland to the SPS characteristics of the areas from where the products originated nor to the ASF-related characteristics in Russia and thus violated Article 6.2 of the SPS Agreement.

Regarding Russia's SPS approval procedures, notably the approval of the EU regionalisation measures, the panel found that this falls within the scope of Article 8 and Annex C(1) of the SPS Agreement; and Russia required information that was not limited to what is necessary for the procedure at issue, thus breaching Annex C(1)(c), and completed the procedure with undue delay, thus breaching Annex C(1)(a), with the result that the procedure was also inconsistent with Article 8 of the SPS Agreement.

Concerning the scientific claims raised, the panel confirmed the EU's view that Russia failed to perform a risk assessment on which it could base its measures and thus breached Article 5.1. and 5.2. It also found that the bans do not fulfil the conditions to qualify as provisional measures pursuant to Article 5.7. The qualified exemption from the obligations in Articles 5.1, 5.2 and 2.2 of the SPS Agreement is thus not available to Russia.

Regarding the application of the SPS measures, the panel found that the EU-wide ban and the Member State bans are inconsistent with Article 5.6 of the SPS Agreement because they are significantly more trade restrictive than required to achieve Russia's appropriate level of protection (ALOP). In light of this and the lack of rebuttal by Russia of the presumption of inconsistency with Article 2.2 arising from a finding of inconsistency with Article 5.6, the panel found the measures to be inconsistent with Article 2.2 of the SPS Agreement.

In respect of claims pertaining to discrimination, the panel confirmed the EU's view that Russia's measures are inconsistent with Article 2.3, first sentence, of the SPS Agreement because they arbitrarily and unjustifiably discriminate between Members where identical or similar conditions prevail. The panel also found that Russia's measures are inconsistent with Article 2.3, second sentence, because they are applied in a manner which constitutes a disguised restriction on international trade. Lastly, the panel exercised judicial economy with respect to the EU's claims under Article 5.5.

On 23 September 2016, Russia appealed to the Appellate Body ('AB') a number of errors of law and legal interpretation contained in the Panel report with respect to the attribution of the EU-wide ban and Article 6 of the SPS Agreement, and therefore prevented the DSB from adopting it. On 28 September 2016, the EU filed a cross-appeal to the Appellate Body regarding one issue of law and legal interpretation regarding Article 6 of the SPS Agreement contained in the Panel Report. The Members of the Appellate Body division hearing the appeal were: Shree B.C. Servansing, Ricardo Ramirez-Hernandez and Peter Van den Bossche.

On 23 February 2017, the Appellate Body issued its report which is a clear success for the EU as the AB upheld the panel's finding that the EU wide import ban was a measure that could be attributed to Russia and thus, it upheld the panel's finding that the ban is inconsistent with several provisions of the WTO SPS Agreement. The AB also sided with the EU's cross-appeal and found that Russia did not meet further obligations under the SPS Agreement.

In detail, the AB rejected Russia's claim that the EU-wide ban is not a measure that can be attributed to the Russian Federation. Russia argued that the basis for the ban emanates from the wording of the veterinary certificate which would be not an act attributable to Russia. The AB considered that the measure at issue consisted of Russia's decision to deny the importation of the products at issue from the whole EU stemming from the requirement, set out in the bilateral veterinary certificates agreed between Russia and the EU, that the entire EU be free from ASF for a period of at least three years. However, according to the AB, the fact that the basis for the ban may not have been set out in Russian law does not alter the conclusion that the action of restricting imports of the products at issue is attributable to Russia. The AB also considered that the panel was not barred from reviewing the WTO consistency of the EU-wide ban due to commitments set out in Russia's terms of accession to the WTO. Irrespective of the commitment in Russia's terms of accession regarding which veterinary certificate would be operative in the conduct of certain trade to Russia from other WTO Members, Russia remains under an ongoing obligation, pursuant to Article 6 of the SPS Agreement, to adapt its measures to regional SPS characteristics.

Secondly, Russia had claimed that the panel erred in the interpretation of Article 6(3) of the SPS Agreement by not finding that this provision requires consideration of the evidence relied upon by the importing Member and that this provision also contemplates a certain period of time for the importing Member to evaluate and verify evidence provided by the exporting Member. The AB rejected Russia's claims and found that although all the pertinent evidence in respect of SPS characteristics of the relevant areas needs to be evaluated, the requirement of taking into account the evidence by the importing Member is not contained in Article 6(3). The obligations of the importing Member in connection with the process of adapting measures to regional SPS characteristics are set forth in Articles 6(1) and 6(2); Article 6(3) in turn sets out the duties of an exporting Member claiming that areas within its territory are pest- or disease-free. Therefore, the panel's task under that provision is to evaluate whether the evidence provided by the EU (as exporting Member) was sufficient to enable Russia (as the importing Member) to make a determination as to the pest status of the relevant areas. As a consequence, the AB found that the panel did not err in its interpretation of Article 6(3) by not finding that this provision requires consideration of the evidence relied upon by the importing Member. Russia had further contended that the importing Member's evaluation whether the exporting Member has provided the "necessary" evidence requires a certain amount of time to be completed. The AB disagreed with Russia and found that such duties and obligations are covered by the disciplines of Articles 6(1) and (2), and are not part of the exporting Member duties pursuant to Article 6(3). The AB found that the Panel did not err in its interpretation of Article 6(3) by not taking into account the time required for the Russian authorities to evaluate and verify the evidence provided by the EU.

Thirdly, Russia had claimed that the panel erred in its interpretation of Article 6(1) in finding that an importing Member can be found to have failed to adapt its measures to the SPS characteristics of areas within the exporting Member's territory even in a situation where the exporting Member has failed to provide the necessary evidence pursuant to Article 6(3) in order to objectively demonstrate that such areas are and are likely to remain pest- or disease-free or of low pest prevalence. Therefore the panel would have erred in finding that the ban on imports from Latvia is inconsistent with Article 6(1).

The AB recalled that the panel in the context of its analysis of Article 6(3) had found that the EU had demonstrated that there were ASF-free areas in Latvia, in accordance with

Article 6(1). The panel had also found that the EU did not provide the necessary evidence that these areas were likely to remain so and that therefore the EU did not comply with Article 6(3). The exporting Member's failure to provide the necessary evidence to objectively demonstrate that areas within its territory will remain disease or pest-free thus does have implications for the importing Member's ability to assess the SPS characteristics of such areas to adapt its measures accordingly. There can be situations however – like in India – Agricultural Products, where this is not the case. A panel should have provided a reasoning explaining why the circumstances of the dispute fall within this situation. Therefore, the AB modified the panel's finding in that respect and found that the EU failed to demonstrate that Russia did not adapt the ban to SPS characteristics of the Latvian territory. However, given the panel's (not appealed) finding that Russia failed to adapt the ban to SPS characteristics of areas within the Russian territory, the conclusion that this measure is inconsistent with Article 6(1) stands.

Regarding the EU's cross appeal, the AB agreed with the EU that the panel erred in finding that Russia recognises the concept of pest- or disease-free areas or of low pest or disease prevalence in respect of ASF and that therefore the EU-wide ban and the country-specific bans are not inconsistent with Article 6(2). The EU had argued that the panel wrongly considered that Article 6(2) requires merely an "abstract" recognition of the concept of regionalisation, for instance, in the form of a pre-existing regulatory framework. The AB found that the panel failed to explore whether or to what extent Russia's practice with respect to SPS measures provided an effective opportunity for the EU to claim that certain areas within its territory are pest- or disease free or of low pest or disease prevalence, rendering operational the concept of regionalisation. Therefore, the Appellate Body reversed the panel's findings and found that the EU-wide ban and the country-specific bans are inconsistent with Article 6(2) of the SPS Agreement.

The panel report as modified by the Appellate Body was adopted on 21 March 2017. After the adoption of the reports, the EU and Russia agreed on a reasonable period of time for Russia to comply. This period was fixed at 8½ months, expiring on 6 December 2017. On 8 December 2017 Russia informed the DSB of measures taken on 5 December 2017 to comply with the recommendations and rulings.

In the absence of a sequencing agreement with the Russian Federation, the EU requested on 19 December 2017 authorization from the DSB to suspend concessions at the level of €1,39 billion. On 20 December 2017 the Russian Federation informed the DSB that it has complied and that it objects to the level of suspension requested. A special DSB meeting took place on 3 January 2018 with the matter now referred to arbitration in line with Article 22.6 of the DSU.

On 28 February 2018 consultations were held on Russia's compliance under Article 21.5 of the DSU on the basis of the Russian request of 25 January 2018 and the EU request of 2 February 2018.

Following the EU request for the establishment of a panel, the DSB referred the matter to the original panel on 21 November 2018. On 28 January 2020, the panel suspended its work at the request of the EU.

DEFENSIVE CASES

1) DS476 – European Union and Certain Member States – Certain Measures Relating to the Energy Sector ("Third energy package")

Procedural stage: appeal proceedings suspended

On 30 April 2014, the Russian Federation (Russia) requested consultations with the European Union regarding certain measures in the energy sector, in particular the Third Energy Package ("TEP"). Two rounds of WTO consultations took place on 23-24 June 2014 in Geneva and on 10 July 2014 in Brussels. While Russia refrained from requesting the establishment of the panel for over 10 months, it did so on 11 May 2015. The panel was established on 20 July 2015 and composed on 7 March 2016. The first hearing took place on 4-5 September 2016. The second hearing took place on 28 February – 1 March 2017. The panel issued its (confidential) report to the parties on 24 October 2017. Due to a backlog in translation, the panel report was only circulated to WTO members on 10 August 2018.

The legal challenge mounted by Russia is two-pronged.

First, Russia challenges the consistency with the GATS and the GATT of certain provisions of the TEP and related instruments with respect to: the unbundling of transmission system operators and transmission networks from activities in the production and supply of natural gas and electricity; the certification requirements in relation to transmission system operator where the system operator or system owner is controlled by person(s) from third countries; and certain infrastructure-related exemptions, which also apply to the requirement to grant access to natural gas network capacity by transmission service operators (i.e. third party access). Russia considers these measures discriminatory, restrictive and not administered in a reasonable, objective and impartial manner.

Second, Russia challenges the consistency with the GATS and the GATT of certain regulations establishing trans-European energy infrastructure priority corridors and areas and setting forth criteria to identify "projects of common interest" (PCIs). Russia alleges that the fact that the initial list of PCIs does not include any project to facilitate the importation or transportation of natural gas from Russia results in discrimination against Russian services and service suppliers as well as against the importation of natural gas originating in Russia.

Russia claims that the measures are inconsistent with:

- Articles II, VI, XVI and XVII of the GATS and the specific commitments under GATS; as well as

- Articles I, III, X and XI of the GATT 1994.

In its report, the panel rejected all Russia's claims with respect to the unbundling measure (which is pivotal for the Third Energy Package), the public body measure, the LNG measure and the upstream pipeline networks measure. The panel also rejected Russia's claims with respect to the infrastructure exemption measure, except for two conditions attached to the OPAL decision, which were found to be a trade restriction inconsistent with Article XI:1 of the GATT.

Furthermore, the panel rejected Russia's claims with respect to the third-country certification measure enshrined in the EU directive. However, the panel found the implementation of such measure by Croatia, Hungary and Lithuania to be inconsistent with the national treatment obligation under Article XVII GATS and not justified under the general exception in Article XIV(a) GATS.

As regards the TEN-E measure, the panel found it to be inconsistent with Articles I:1 and III:4 GATT and not justified under the general exception in Article XX(j) GATT.

On 21 September 2018 the EU appealed the panel report with regard to the findings where Russia prevailed (TEN-E Regulation, implementation of third country certification by Croatia, Hungary and Lithuania, and OPAL exemption decision).

On 26 September 2018 Russia cross-appealed on most of the findings where they lost at the panel stage, with the exception of the GATT claims for unbundling and the GATS Market Access findings which they accepted.

On 10 December 2019, the Division of the Appellate Body hearing the appeal decided to suspend its work pursuant to Rule 16 of the Working Procedures for Appellate Review.

2) DS494 – European Union – Cost Adjustment Methodologies and Certain Anti-dumping Measures on Imports from Russia (second complaint)

Procedural stage: **panel report under appeal**

On 7 May 2015, Russia requested consultations with the European Union regarding "cost adjustment" methodologies used by the EU for the calculation of dumping margins in anti-dumping investigations and reviews.

The subject matter of the request is similar to the one in another WTO dispute launched by Russia in December 2013 (DS474). However, the current request also targets developments which occurred after the consultations and panel request in DS474 were made (respectively in December 2013 and June 2014). These developments relate to the results of expiry reviews which were adopted concerning ammonium nitrate on 23 September 2014 (Regulation 999/2014) and concerning welded tubes and pipes on 26 January 2015 (Regulation 2015/110). Both measures have been maintained with regard to Russia. In addition, in this new request, Russia has also challenged the expiry review procedures and practice separately from the cost adjustment methodologies.

Russia claims that the measures are inconsistent with:

- Articles 1, 2.1, 2.2, 2.2.1, 2.2.1.1, 2.2.2, 2.3, 2.4, 3.1, 3.2, 3.4, 3.5, 5.8, 6.8, 9.2, 9.3, 11.1, 11.2, 11.3, 11.4, 17.6, 18.1 and 18.4, and Annex II, of the Anti-Dumping Agreement;

- Articles 10 and 32.1 of the SCM Agreement;

- Articles I, VI:1, VI:2, VI:6 and X:3(a) of the GATT 1994; and

- Article XVI:4 of the WTO Agreement.

Consultations were held in Geneva on 26 June 2015.

On 29 March 2016 Russia requested additional consultations in this case. Those consultations concern mainly the Commission Implementing Regulation (EU) No 999/2014 of 23 September 2014 adopted following the expiry review proceeding extending the duration of anti-dumping measures on imports of ammonium nitrate originating in Russia. The additional consultations took place on 19 May 2016.

On 7 November 2016 Russia requested the establishment of a panel. The panel was established at the DSB meeting on 16 December 2016.

Following the agreement of the parties, the panel was composed on 17 December 2018. The hearings were held in the course of September and November 2019.

On 24 July 2020, the panel report was circulated to the WTO Members. The panel report contains findings on matters important to the EU and its stakeholders that are, in the EU's view, legally erroneous. In the context of the current Appellate Body situation, the EU repeatedly invited Russia to discuss and enter into appeal arbitration under Article 25 of the DSU. The EU's clear principled preference is to allow for appeal arbitration, as it would preserve the features of the appellate review despite the current paralysis of the Appellate Body. However, Russia has been unwilling to engage on this path. Instead, it requested the adoption of the panel report for the DSB meeting of 28 August 2020. To prevent the adoption of a panel report containing, in the EU's view, legal errors to the detriment of the EU and its stakeholders and to preserve its legitimate right of appeal within the applicable time limits, the EU exercised its right of appeal before the Appellate Body in accordance with Articles 16.4 and Article 17 of the DSU. Thus, on 28 August 2020, the EU submitted an appeal notice with respect to certain issues of law and legal interpretations. Russia noted its dissatisfaction with the EU's appeal and on 2 September 2020, Russia cross-appealed the panel report. The EU's offer to Russia to enter into an appeal arbitration agreement remains open. Should Russia agree, the parties could transform that appeal into an appeal arbitration and proceed with the resolution of the dispute.

3) DS521 – European Union – Anti-Dumping Measures on Certain Cold-Rolled Flat Steel Products from Russia

Procedural stage: panel proceedings

On 27 January 2017, the Russian Federation requested consultations with the European Union with respect to the anti-dumping measures imposed by the European Union on imports of certain cold-rolled flat steel products originating in the Russian Federation pursuant to the following:

(a) Commission Implementing Regulation (EU) 2016/181 of 10 February 2016 imposing a provisional anti-dumping duty on imports of certain cold-rolled flat steel products originating in the People's Republic of China and the Russian Federation,[3]

(b) Commission Implementing Regulation (EU) 2016/1328 of 29 July 2016 imposing a definitive anti-dumping duty and collecting definitively the provisional duty

[3] OJ L 37, 12.2.2016, p. 1-39.

imposed on imports of certain cold-rolled flat steel products originating in the People's Republic of China and the Russian Federation,[4]

(c) Commission Implementing Regulation (EU) 2016/1329 of 29 July 2016 levying the definitive anti-dumping duty on the registered imports of certain cold-rolled flat steel products originating in the People's Republic of China and the Russian Federation.[5]

The Russian Federation claimed that the measures appear to be inconsistent with:

- Articles 1, 2.1, 2.2, 2.3, 2.4, 3.1, 3.2, 3.3, 3.4, 3.5, 5.2, 5.3, 5.8, 6.1, 6.2, 6.5, 6.8, 6.9, 6.13, 9.1, 9.2, 9.3, 10.6, 12.2, 18.1 and paragraphs 1, 2, 3, 5, 6 and 7 of Annex II of the Anti-Dumping Agreement; as well as

- Article VI of the GATT 1994.

The consultations took place on 8 June 2017 in Geneva. While Russia refrained from requesting the establishment of the panel for almost 2 years, it did so on 13 March 2019. At its meeting of 11 April 2019, the DSB deferred the establishment of a panel. The panel was established on 26 April 2019. China, India, Japan, Korea, Saudi Arabia, Ukraine and the United States reserved their third-party rights.

At the request of Russia of 6 March 2020, according to Article 8(7) DSU, the WTO Director General determined the composition of the Panel on 16 March 2020. **The panel proceedings have been delayed by the ongoing public health situation. The panel will continue to monitor the situation and assess the prospects of having a first substantive meeting later in 2020**.

VII – Turkey

OFFENSIVE CASE

DS583 – Pharmaceuticals

Procedural stage: panel proceedings

On 2 April 2019, the European Union requested consultations with Turkey regarding various measures concerning the production, importation and marketing of pharmaceutical products. Turkey has since 2016 implemented measures to achieve progressively the localisation in Turkey of the production of a substantial part of the pharmaceutical products consumed in Turkey. These measures are:

The localisation requirement: The Turkish authorities have adopted plans to achieve progressively the localisation in Turkey of the production of a substantial part of the pharmaceutical products consumed in Turkey. In order to achieve that objective, Turkey requires foreign producers to commit to localise in Turkey their production of certain

[4] OJ L 210, 4.8.2016, p. 1-26.

[5] OJ L 210, 4.8.2016, p. 27-42.

pharmaceutical products. If such commitments are not given, are not accepted by Turkish authorities, or are not fulfilled, the pharmaceutical products concerned are excluded from the scheme for the reimbursement of the pharmaceutical products sold by pharmacies to patients operated by Turkey's social security system (the "reimbursement scheme"). That scheme covers the vast majority of sales of pharmaceutical products by pharmacies to patients. Consequently, if an imported pharmaceutical product is excluded from the reimbursement scheme, its competitive opportunities in the Turkish market are significantly impaired, as compared with domestically produced like products.

In order to comply with the above described localisation requirement (the "localisation requirement"), certain producers of pharmaceutical products commit to localise their production of certain pharmaceutical products in Turkey. In those cases where foreign producers do not give the required commitments to localise (or where their offered commitments are rejected, or are considered not to be fulfilled, by the Turkish authorities), the pharmaceutical products concerned are no longer reimbursed. The localisation requirement is designed to apply on an ongoing basis, or at least until the localisation objectives established by the Turkish government are achieved.

The specific commitments to be implemented in order to comply with the localisation requirement are established for each foreign producer in a non-transparent manner and may differ from producer to producer.

The import ban on localised products: Where the production of a pharmaceutical product has been localised in Turkey in accordance with the localisation requirement, applied in conjunction with the Turkish rules for approving the importation and marketing of pharmaceutical products, the importation of that pharmaceutical product is no longer permitted ("the import ban on localised products").

Prioritisation: Even in certain cases where imported products are not excluded from the reimbursement scheme by virtue of the localisation requirement, Turkey gives priority to the review of applications for inclusion of domestic pharmaceutical products in the list of products covered by the reimbursement scheme, as well as with respect to any pricing and licensing policies and processes, over the review of the applications of like imported products (the "prioritization measure").

The relevant WTO provisions concerned are:

- Articles III:4, X:1, and XI:1 of the General Agreement on Tariffs and Trade 1994 (GATT 1994);

- Article 2.1 of the Agreement on Trade Related Investment Measures (TRIMs Agreement); and

- Article 3.1.(b) of the Agreement on Subsidies and Countervailing Measures (ASCM).

The consultations in this case took place on 9 and 10 May 2019 in Geneva with a view to reaching a mutually satisfactory solution. These consultations, however, failed to resolve the dispute. At the DSB meeting of 30 September 2019, the panel was established in this dispute. The panel was composed on 17 March 2020.

The panel proceeding is currently on-going. On 15 May 2020, Turkey filed a request for a preliminary ruling. The EU filed its first written submission on 19 May 2020 and its responses to Turkey's request for a preliminary ruling on 5 and 26 June 2020

respectively. **On 15 September 2020, the Chair of the panel informed the DSB that due to the delays caused by the current public health situation, the panel did not expect to issue its final report to the parties before the second half of 2021.**

DEFENSIVE CASE

DS595 – Safeguard measures on certain steel products

Procedural stage: **panel composition**

On 13 March 2020, Turkey requested consultations with the European Union concerning the provisional and definitive safeguard measures imposed by the European Union on imports of certain steel products and the investigation that led to the imposition of those measures.

Turkey claimed that the measures appear to be inconsistent with: Articles 2.1, 2.2, 3.1, 4.1(b), 4.1(c), 4.2, 4.2(a), 4.2(b), 4.2(c), 5.1, 5.2, 6, 7.1, 7.4 and 9.1 of the Agreement on Safeguards; and Articles I:1, II:1(b), XIII:1, XIII:2 and XIX:1(a) of the GATT 1994.

The EU has accepted the request to enter into consultations on 23 March 2020. Consultations took place by videoconference on 29 April 2020. On 25 May 2020 and in relation to EU's safeguard measures on imports of steel, Turkey notified to the WTO its intention to adopt rebalancing measures by suspending trade concessions and imposing import duties as of 25 June 2020 on a range of EU products, including steel, wine and coffee, affecting EU exports valued at 1.6 billion USD per year. **On 23 July 2020, Turkey submitted a revision of the proposed suspension of concessions without any change in the magnitude of the rebalancing measures notified on 25 May 2020. As of 29 September 2020, Turkey had not imposed the notified import duties. On 16 July 2020, Turkey requested the establishment of a panel. At its meeting on 28 August 2020, the DSB established a panel.**

VIII – United States

OFFENSIVE CASES

1) DS217 – 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 and subsequent codified Council Regulation (EU) 2018/196, 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.

On 25 November 2019, a new disbursement report was published by U.S. Customs and Border Protection and based on those values, on 21 February 2020, Commission Delegated Regulation (EU) 2020/578 amended Council Regulation (EU) 2018/196. The new level of nullification and impairment is set to 25.506,30 USD and the additional duty on products on list in Annex I (sweet corn, crane lorries, spectacles frames and mountings, and women or girls' cotton denim trousers and breeches) is set to 0,012%. The amendment entered into force on 1 May 2020.

2) DS317 and DS353 – Aircraft

Procedural stage: Article 22.6 arbitration

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 considered that the US Government has been following 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, as well as through tax reductions and exemptions and infrastructure support for the development and production of Boeing's 787 in the State of Washington, and other benefits in the states of Kansas and Illinois. **(**For an updated summary of the EU's WTO Challenge of US Subsidies to Boeing: http://trade.ec.europa.eu/doclib/docs/2007/june/tradoc_134957.pdf)

The EU considered that these 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.

At 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 explicitly listing 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 C. Falconer (Chairperson), Mr. F. Orrego Vicuna and V. Plasai (members). On 4 December 2006, the WTO Secretariat renamed DS317 bis, which became DS353.

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 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 2007, 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).

The panel report was circulated 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 division hearing the appeal included Ms L. Bautista (Presiding member) Mr D. Unterhalter and Ms Y Zhang (members). Oral hearings took place 16-19 August 2011 and 11-14 October 2011.

On 12 March 2012, the AB report was circulated to Members. The AB report was 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.

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 22 October 2012, the US objected to the level of suspension of concessions or other obligations and referred the matter to arbitration pursuant to Article 22.6 of the DSU. At the DSB meeting on 23 October 2012, it was agreed that the matter is referred to arbitration. At the request of the parties, the Arbitrator suspended the arbitration proceedings from 28 November 2012.

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 compliance proceedings has been closed in August 2013. The hearing on the US compliance measures took place from 29-31 October 2013. Due to the scale and complexity of the dispute, the panel informed the DSB in May 2014, in March 2015, and in June 2016 that additional time was needed to complete its work. The compliance panel report was circulated to the WTO Members on 9 June 2017.

The panel report clearly confirmed that the US has not brought itself into compliance with the WTO findings of 2012. The US continues to provide subsidies to Boeing in violation of WTO rules. That being said, there were certain panel findings on the subsidies and adverse effects sides that are not entirely satisfactory for the EU. The panel, despite confirming massive government subsidies, erred in finding that certain federal and state measures are not subsidies under the SCM Agreement. Further, the panel erred in finding that only the Washington state tax breaks have caused adverse effects to Airbus A320 (single aisle aircraft) and that the US R&D subsidies do not cause adverse effects for the A350 XW/B787 category (twin aisle aircraft) (http://trade.ec.europa.eu/doclib/press/index.cfm?id=1670).

In light of this, on 29 June 2017, the EU appealed the compliance report. On 10 August 2017, the United States notified the DSB of its decision to cross-appeal.

In the compliance appeal stage, the first hearing took place on 17-20 April 2018. The second hearing took place 17-21 September 2018. The Appellate Body report was circulated to the Members on 28 March 2019. On 11 April 2019, the DSB adopted the AB report and the panel report, as modified by the AB report. (http://europa.eu/rapid/press-release_IP-19-1892_en.htm)

On 20 May 2019, the EU requested the resumption of the Article 22.6 arbitration. Since none of the original panel members were available to serve as Arbitrator, at the request of the EU, on 3 June 2019 the WTO Director General determined the new composition of the Arbitrator, comprising Ms A.M Dawes (Chairperson), Ms T. Epps and Mr E. Muñoz (members). The Arbitrator resumed its work as of 5 June 2019. The arbitration proceeding for the determination of the appropriate level of countermeasures is currently on-going.

Upon the completion of the arbitrator's work the European Union will request the DSB for an authorisation to take countermeasures against the United States. As foreseen under the EU's Enforcement Regulation, the Commission has started preparations so that the EU can promptly take action based on the arbitrator's decision. As a first step, on 17 April 2019 the Commission launched a public consultation to seek views of EU stakeholders on a list of US products that may be subject to EU commercial policy measures. (http://trade.ec.europa.eu/doclib/press/index.cfm?id=2011).

For more background: *http://trade.ec.europa.eu/wtodispute/show.cfm?id=354&code=1*

3) DS548 – US – Certain Measures on Steel and Aluminium Products

Procedural stage: panel proceedings

This dispute concerns the additional duties which the US introduced on certain steel and aluminium imports from most countries on 23 March 2018 and started to apply also to imports from the EU on 1 June 2018. On the same day, the EU requested dispute settlement consultations, which were held with the US on 19 July 2018 in Geneva. The EU considers these US measures to be inconsistent with: Articles 2.1, 2.2, 3.1, 4.1, 4.2, 5.1, 7, 9.1, 11.1(a), 11.1(b), 12.1, 12.2 and 12.3 of the Agreement on Safeguards; Articles I:1, II:1(a), II:1(b), X:3(a), XI:1, XIX:1(a) and XIX:2 of the GATT 1994; and Article XVI:4 of the WTO Agreement. The US considers its measures to be justified by essential security interests pursuant to Article XXI of the GATT 1994. Six other WTO Members are also challenging these US measures in WTO dispute settlement (Canada and Mexico initially filed a similar case as well, but found an agreement with the US in July 2019, settling their own cases). The panel proceedings are ongoing. The first hearings with the parties and third parties in all the seven cases took place from 29 October 2019 to 19 November 2019. In view of the public health situation, the panel postponed the second hearing. **The panel indicated its preference to schedule a physical second hearing in Geneva before the end of 2020**. The hearings in this case are public.

4) DS577 – Anti-dumping and Countervailing Duties on Ripe Olives from Spain

Procedural stage: panel proceedings

On 28/1/2019 the EU requested consultations with the US concerning the imposition of countervailing (CVD) and anti-dumping (AD) duties on ripe olives from Spain. The consultations took place on 20/3/2019.

On 17/5/2019 the EU requested the establishment of a panel challenging the duties as well as the underlying legislation as inconsistent with:

- Articles 19.1, 19.3, 19.4, 1.2, 2.1, 2.1(a), (b) and (c), 2.2 and 2.4 of the SCM Agreement, because the US is countervailing subsidies that are not specific;

- Articles 1.1(b), 10, 14, 19.1, 19.3, 19.4 and 32.1 of the SCM Agreement and Article VI:3 of the GATT 1994, because the US did not carry out a pass-through analysis to assess to what extent subsidies to olive growers pass-through to the processors of ripe olives;

- Article VI:3 of the GATT 1994, Articles 15.1, 15.2 and 15.5 of the SCM Agreement, as well as Articles VI:1 and VI:2 of the GATT 1994, and Articles 3.1, 3.2 and 3.5, and

Article 12.2.2 of the Anti-Dumping Agreement in relation to the injury determination; and

- Article VI:3 of the GATT 1994, and Articles 1.1(a), 1.1(b), 10, 14, 19.1, 19.3, 19.4 and 32.1 of the SCM Agreement and Article VI:3 of the GATT 1994 as regards the calculation of the final subsidy rate for one of the companies.

The panel was composed on 18 October 2019. The panel proceeding is currently on-going. In view of the current public health situation, the panel has still to fix the date of the first hearing**.**

DEFENSIVE CASES

1) DS26 – 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 17ß oestradiol, which carcinogenic and genotoxic effects have been clearly demonstrated, and a provisional ban for the other five hormones. The new directive entered into force on 14 October 2003.

The adoption of new rules based on a revised risk assessment brought 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 informed Canada and the US of 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 requested consultations with both Canada and the US against the application of countermeasures. The object of this case are the US and Canadian 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 during negotiations with the EC on a provisional solution to the dispute. Sanctions that were scheduled to be

eliminated on 23 March 2009 have been eliminated from that date. On 13 May 2009 a Memorandum of Understanding was signed with the United States under which the EC granted MFN market access opportunities for high quality beef, and the U.S. reduced the sanctions applied to EC products.

The memorandum provided for three phases:

Phase 1 lasted three years. The United States maintained a reduced level of sanctions on EU products of USD 38 million instead of USD 116 million. The United States also agreed 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 opened 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 was in line with all EU import requirements, including that it must be hormone-free.

The Memorandum provided 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 provided a roadmap for the WTO dispute on Beef Hormones pending a definitive solution that may be agreed under phase 3. The Memorandum was without prejudice to the EC and United States legal position in the Hormones dispute. The EC and United States agreed however not to request a compliance panel for the first 18 months following the beginning of phase 1. If a compliance panel had been launched after this date, such a panel would not have rendered its report to the parties during phase 1 or phase 2. The status of such panel report, if any, was to 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 repealed the Carousel list of sanctions and 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 increased the size of the TRQ as from 1 August 2012.

As no agreement could be reached with the United States to enter into phase 3 and as the legal obligations of both sides under phase 2 expired on 1.2.2014, the EU and the United

States agreed on a revision of the existing Memorandum in order to maintain the status quo. Phase 2 was extended until 31 July 2015 and the steps to be taken for final settlement under phase 3 as well as the management of the TRQ were clarified. The automatic termination of the Memorandum in case there was no agreement to move to phase 3 was also deleted. The revision of the Memorandum will allow for more time to find a final settlement to this dispute. Following the consent of the European Parliament in December 2013, the Council adopted the revised Memorandum on 28 January 2014 and it entered into force on the same day.

On 28 December 2016, the US published a notice of review concerning a reinstatement of trade sanctions which is ongoing. Following consultations between the EU and US on the operation of the Memorandum, the Commission presented on 3/9/2018 a Recommendation for a Council decision authorizing the opening of negotiations with the US on the importation of hormone-free high quality beef. The negotiating directives were adopted on 19 October 2018.

On 15 July 2019 the Council adopted a decision on the signing of the agreement allocating a share of the Tariff Rate Quota for High Quality Beef to the US, and forwarded the decision on its conclusion to the European Parliament for its consent. The agreement was signed on 2 August 2019. The European Parliament gave its consent on 28 November 2019.

The agreement entered into force on 14 December 2019. The EU opened the new quotas with an allocation to the US as from 1 January 2020. The US terminated the proceeding with a determination not to reinstate action as from the same date.

2) DS291 – 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. The panel report was circulated on 29 September 2006. 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 12 June 2019. Related disputes with Canada and Argentina have been terminated following the notification of a mutually agreed solution to the WTO DSB.

3) DS316 and DS347 – Aircraft

Procedural stage: Article 22.6 arbitration completed with authorisation for countermeasures granted / second compliance proceedings in appeal stage (suspended)

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 considered 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 DDG 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 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 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 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 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. The panel report was circulated 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. 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 included Mr D. Unterhalter (Presiding member), Ms L. Bautista and Mr P. Van den Bossche (members).

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 circulated 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 2011, EU submitted to the DSB its compliance report stating full compliance with the DSB recommendations and rulings. 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;

(2) a request for authorizing sanctions under Article 22.2 of the DSU of an amount ranging between USD 7 and 10 billion per year.

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 was suspended, pending the ruling by the DSB in the (first) 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 compliance panel issued its report on 22 September 2016. The compliance panel rejected US claims that the repayable support for the Airbus models A350 XWB and A380 qualify as "prohibited subsidies". Further, the panel also confirmed that a significant part of the subsidies granted to Airbus, namely all repayable launch investment aid pre-A380, in particular those for the A320, had already come to an end before the end of the compliance period. However, the panel found that the EU has not complied with the DSB rulings and recommendations and that the RLI continues to cause adverse effects to the US in the single aisle, twin aisle and very large aircraft markets as 'actionable subsidies'. The report also held that the A350XWB RLI, which did not yet exist during the original proceedings, is within the scope of the compliance proceedings and constitutes an actionable subsidy causing adverse effects.

On 13 October 2016, the EU appealed several findings of the compliance panel report. In particular, the EU appealed 1) the panel's interpretation of Article 7.8 of the SCM Agreement. According to the EU, the panel erred in interpreting Article 7.8 of the SCM by requiring the EU to “remove the adverse effects” found from an actionable subsidy in original proceedings, even if that subsidy has been “withdrawn” and is no longer “maintained”; 2) the methodology used by the compliance panel in calculating the appropriate market benchmark for determining whether the A350XWB confer a benefit;

3) the reasoning of the compliance panel in assessing the alleged adverse effects on Boeing of the subsidies granted to Airbus.

On 10 November 2016, the US cross-appealed the compliance report. Both sides have submitted the submissions by January 2017. The first hearing in the case took place on 2-5 May 2017 and the second one on 25-29 September 2017.

The Appellate Body's report in the compliance proceedings was issued on 15 May 2018, and adopted together with the panel report at a DSB meeting on 28 May 2018.

The Appellate Body report is positive for the EU as the AB significantly reduced the scope of the EU's compliance obligations. The Appellate Body ruled that the EU has no compliance obligations in respect of pre-A380 subsidies (ie. French, German, and Spanish LA/MSF subsidies for the A300B/B2/B4, A300-600, A310, A320, and A330/A340, and the UK LA/MSF subsidies for the A320 and A330/A340) as they have expired before the end of the implementation period (June 2011). The Appellate Body agreed with EU that a Member cannot be required to take measures to withdraw adverse effects of subsidies that have expired before the implementation period.

The EU's attempts to reverse the Panel's finding on subsidization of A350XWB were not successful, with the Appellate Body upholding that French, German, Spanish, and UK A350XWB LA/MSF contracts each constitute a specific subsidy because they were granted at below market rates. EU arguments on the "product effect" theory for the A380 were rejected.

Concerning adverse effects caused by A380 and A350 XWB RLI, the Appellate Body significantly reduced the findings that the panel had made with regard to types of adverse effects, and product markets. The Appellate Body reversed the panel findings on lost sales, displacement and impedance and found that there are no compliance obligations for adverse effects in the single-aisle LCA market. With regard the twin-aisle (A350XWB/787/777) and Very Large Aircraft (A380/747) LCA market, the Appellate Body reduced the EU's compliance obligations. For twin-aisle the Appellate Body found only lost sales, while for the VLA segment it found adverse effects only in the form of lost sales and impedance. In both these markets the Appellate Body reversed the Panel's finding on displacement, and for the twin aisle market also on impedance. The Appellate Body rejected US claims to consider A350 XWB RLI as prohibited import substitution subsidies. **(**http://trade.ec.europa.eu/doclib/press/index.cfm?id=1841**)**

To address its few remaining compliance obligations, on 17 May 2018, EU notified to the WTO a second set of compliance measures, and informed the DSB of these measures on 28 May. (http://trade.ec.europa.eu/doclib/docs/2018/may/tradoc_156901.pdf)

On 30 May 2018, the EU launched (second) compliance proceedings under Article 21.5 of the DSU to seek a WTO assessment on this second set of compliance measures. The compliance panel was established on 27 August 2018. A meeting with the parties was held on 7-8 May 2019, and the parties filed their integrated executive summaries on 2 July 2019. The (second) compliance panel report has been issued on 2 December 2019. The compliance panel rejected the EU's main arguments and found that the EU has failed to comply with earlier rulings.

On 6 December 2019 the EU filed an appeal, considering that significant aspects of the report that cannot be regarded as legally correct, and are very problematic from a systemic perspective (WT/DS316/43). The EU appeal covers a number of findings by the

panel, including its interpretation of Article 7.8 of the SCM Agreement regarding the terms "withdraw the subsidy" and "take appropriate steps to remove the adverse effects", in particular with respect to the terminated A380 programme, but also with respect to the A350XWB. While an Appellate Body division has been assigned to hear and decide on this appeal, on 10 December 2019, the work on this appeal – together with other 9 on-going appeals – has been suspended.

In parallel, on 28 June 2018, the US initiated the re-start of the Article 22.6 sanctions arbitration to determine its sanction rights vis-à-vis the EU. Following the resignation of the Chair of the Arbitrator and the unavailability of one of the members of the Arbitrator, on 28 June 2018, the United States requested the Director-General to appoint a new Chair and a new member of the Arbitrator. On 9 July 2018, the Director-General composed the Arbitrator, comprising Mr F. Khilji (Chairperson), Mr S. Gallacher and Mr Th. Jacobsz. The Arbitrator resumed its work as of 13 July 2018. A meeting with the parties took place 11-13 February 2019.

The decision of the WTO arbitrator was issued on 2 October 2019.

According to the decision, "the level of countermeasures commensurate with the degree and nature of adverse effects determined to exist" amount to USD 7,5 bn [EUR 6,9 bn] and therefore the US may request authorisation from the DSB to take countermeasures with respect to the EU and certain member States at a level not exceeding, in total, USD 7,5 bn annually. These countermeasures may take the form, *inter alia*, of suspension of tariff concessions.

The EU Commissioner for Trade issued a statement upon the publication of the decision **(**https://trade.ec.europa.eu/doclib/press/index.cfm?id=2068**)**

On the day of the publication of the WTO arbitrator's decision, the USTR announced that it intends to apply countermeasures on the EU worth $7.5 billion annually, and it released a final product list. USTR has opted to apply a 10% tariff on all Airbus models. No tariffs are imposed on imports of aircraft parts. A tariff of 25% is applied on a wide range of products of all EU MS, both Airbus and non-Airbus Member States, predominantly agricultural products.

On 14 October, the US received authorisation from DSB and the additional tariffs started applying on 18 October 2019.

For more background: *http://trade.ec.europa.eu/wtodispute/show.cfm?id=268&code=2*

On 14 February 2020, USTR released a revision of the retaliatory measures. The revised tariffs are effective as of 18 March 2020, and comprise an increase in the additional duty rate imposed on aircraft imported from the EU from 10% to 15%, and "minor modifications" in other areas. There were no increases or major adjustments in the tariffs in place on agricultural and processed agricultural products.

A second revision of the retaliatory measures was released by the USTR on 12 August with minor modifications.

4) DS559 – EU Additional Duties on Certain Products from the United States

Procedural stage: panel proceedings

This dispute concerns the additional import duties which the EU levies on various imports from the US since 22 June 2018, in response to the US steel and aluminium duties which the EU considers to be safeguard measures. The US considers these duties to be in breach of Articles I and II of the GATT 1994, and not justified by Article 8 of the Agreement on Safeguards. On 16 July 2018, the US requested dispute settlement consultations with the EU, which were held with on 28 August 2018 in Geneva. The US has parallel ongoing disputes against four other WTO Members (China, India, Russia and Turkey) on the same grounds. (The disputes with Canada and Mexico were settled in May 2019.) The panel proceedings are ongoing. The first hearings, with both the parties and the third parties, in all the five cases, took place between 19 September 2019 and 4 October 2019. In view of the public health situation, the panel postponed the second hearing until a physical meeting can take place in Geneva. The hearings in this case are public.

Part 2 – Cases under bilateral agreements

I – Korea

LABOUR COMMITMENTS

On 17 December 2018 the European Union requested government consultations under the TSD Chapter of the EU Korea FTA. It focuses on two obligations in the TSD Chapter: i) the obligation to make continuous and sustained efforts to ratify pending fundamental ILO Conventions and ii) obligation to respect in law and practice the core ILO principles of freedom of association and right to collective bargaining.

Regarding i) Korea has still not ratified 4 out of 8 fundamental ILO Conventions (C87 and C98 on the freedom of association and the right to collective bargaining and C29 and C105 on forced labour). Regarding ii) we raised concerns regarding certain provisions in the Korean law which appear to limit the freedom of association, to allow interference in collective bargaining agreements and criminal prosecution of trade union members participating in peaceful strikes.

Government consultations took place on 21 January 2019. The Korean government engaged constructively but the consultations were not able to resolve all the issues. While Korea has made progress on some of the points we had raised during the consultations (criminal prosecution of trade union members, interference in collective bargaining agreements), other points (narrow definition of workers excluding certain categories of self-employed workers and all dismissed workers from the freedom of association, administrative discretion to certify trade union) remain unresolved.

Further political efforts (including Commissioner Malmström travelling in April 2019 to Seoul) could not provide sufficient assurance that Korea will ratify the 4 outstanding Fundamental ILO Conventions and amend the Korean legislation so that it fully complies with the ILO fundamental principles. Therefore the European Union requested on 4 July 2019 the establishment of a Panel of Experts pursuant to Article 13.15 of the EU Korea FTA.

The panel of expert has been formally established on 30 December 2020.[6] The panel **was originally** composed of Professor Laurence Boisson de Chazournes (selected by the EU) and Professor Jaemin Lee (selected by Korea), as well as Mr Thomas Pinansky, selected by them as a chairperson. Sadly, Mr Pinansky passed away in April 2020**. The Parties and the remaining panellists have selected Professor Jill Murray as the new Chairperson of the panel of experts**.

An organisational meeting between the Parties and the Panel took place in January 2020. In the first half of January interested parties had the opportunity to submit *amicus curiae* submissions. First written submissions have been exchanged in January and February 2020.

Originally the Parties had agreed on holding a hearing mid-April in the WTO premises in Geneva which would be open to the public. This meeting could not take place given that travel restrictions were in place and access to the WTO premises is limited due to the ongoing public health situation. **The Parties and the Panel of Experts therefore decided to hold an oral hearing in a virtual format on 7 to 8 October 2020.**

The Parties will publish a written report of the hearing on their respective websites, to inform interested persons about the hearing. The key steps in the procedure are published on the DG TRADE website (https://ec.europa.eu/trade/policy/accessing-markets/dispute-settlement/bilateral-disputes/).

II – Ukraine

WOOD EXPORT BAN

Since 2005, Ukraine applies an export prohibition for a number of wood species in the form of unprocessed wood and sawn wood. The product scope of this export prohibition was extended in 2015, and this for a period of 10 years, to cover the export of all unprocessed wood other than pine wood. As of 2017, the temporary export prohibition for unprocessed wood has been also extended to pine wood.

The export restrictions applied by Ukraine appear to be incompatible with Article 35 of the Association Agreement that prohibits export restrictions and measures having an equivalent effect. The restrictions on the export of wood enforced by Ukraine have led to a substantial reduction of trade between the European Union and Ukraine with regard to the covered products.

As political efforts failed to resolve the issue, the Commission decided on 22 November 2018 to start dispute settlement proceedings under the bilateral Association Agreement by holding consultations with Ukraine. The consultations took place in Kiev on 7 February 2019. They failed to resolve the issue but confirmed that the export prohibition for unprocessed wood is incompatible with Article 35 of the Association Agreement.

[6] See press release at https://trade.ec.europa.eu/doclib/press/index.cfm?id=2095

On 20 June 2019, the European Union requested the establishment of an arbitration panel to examine the matter.

The panel has been formally established on 28 January 2020 and is composed of: Christian Häberli (Switzerland/Chairperson), Giorgio Sacerdoti (EU) and Victor Muravyov (Ukraine). The key steps and documents in the procedure are published on the DG TRADE website (https://ec.europa.eu/trade/policy/accessing-markets/dispute-settlement/bilateral-disputes/). The **panel hearing,** initially scheduled for 30-31 March in Kyiv (Ukraine), had to be postponed due to public health restrictions. It was **ultimately held as a fully virtual meeting on 22/23 September 2020. The parties are to provide the panel with supplementary answers in writing to the oral questions posed at the hearing**.

III – Southern African Customs Union

SAFEGUARD MEASURE ON POULTRY

On 14 June 2019, the European Union formally requested consultations with the Southern African Customs Union (SACU), comprising South Africa, Botswana, Lesotho, Namibia and Eswatini, under Part III – Dispute avoidance and settlement of the bilateral Economic Partnership Agreement between the EU and the Southern African Development Community (EU-SADC EPA). The request concerns the imposition in September 2018 of a safeguard measure on exports of frozen bone-in chicken cuts from the EU.

The safeguard measure takes the form of increased tariff duties, subject to progressive reduction over a period of four years. The safeguard was set at 35.3% for the first 6 months, which were reduced to 30% in March 2019. Yearly reductions will follow in March 2020 to 25% and in March 2021 to 15%. The safeguard will expire on 11 March 2022.

The Commission believes that the safeguard measure was adopted in violation of the principles of Article 34 of the EU-SADC EPA, which sets the rules for the imposition of safeguard measures.

Consultations took place on 13 September 2019 in Gaborone, Botswana with a view to reaching a mutually satisfactory solution. While SACU engaged in the consultations constructively, they insisted on the full compatibility of the measure with the provisions of the EU-SADC EPA. Although not customary during consultations, SACU also asked the EU delegation questions. The EU tried as much as possible to reply to such questions in a comprehensive way, in other to show willingness to engage with SACU in a constructive manner. The consultations confirmed the EU position that the safeguard measure is not in line with the provisions of the EU-SADC EPA. **On 21 April 2020 the EU sent SACU a request to establish an arbitration panel. The process of selection of the arbitrators has not yet begun.** The key steps in the procedure are published on the DG TRADE website (https://ec.europa.eu/trade/policy/accessing-markets/dispute-settlement/bilateral-disputes/).

IV – Algeria

SEVERAL TRADE-RESTRICTIVE MEASURES

In 2015, Algeria started imposing a series of import restrictive measures affecting imports from all countries. Given the importance of bilateral trading relations, these measures have had a disproportionate impact on the EU's exports to the country. It is estimated that these restrictive measures have fundamentally contributed to the decrease in EU exports to Algeria amounting to a decline of around €5 billion (or -22%) from €21.8 billion in 2015 to €16.9 billion 2019. During the same period, the combined impact of the main restrictive measures (i.e. import ban on cars, additional import duties or DAPS, separate duty hikes,), the EU exports of the affected products dropped even more dramatically than the overall EU exports, i.e. by 50.5% (or in value terms by €1.373 billion) in other words from €2.722 billion in 2015 to €1.348 billion in 2019.

These measures, taken without any prior consultation with the EU, are in clear breach of the Association Agreement particularly Article 17, which among other things forbids the introduction of new customs duties on imports and of charges having equivalent effect to custom duties, the increase of existing duties and the introduction of new quantitative restriction on imports.

In view of the above, the EU side made repeated and consistent attempts to resolve these outstanding issues in a pragmatic way. Commissioner Malmström had also raised the issues in several letters sent to her Algerian counterparts in 2018. In addition, the Joint Declaration of the EU-Algeria Association Council of May 2018 invited the Parties to resolve the matter as soon as possible. A dedicated high-level working group with Algeria was established in 2018 and met four times but no progress could be achieved.

Therefore, on 10 February 2020 the Commission decided to initiate a dispute settlement procedure with Algeria pursuant to Article 100 of the Association Agreement with a view of referring the matter to the Association Council for a possible decision.

The Commission formally referred the matter to the EU-Algeria Association Council on 24 June 2020 and intends to pursue the consultative process foreseen under the EU-Algerian Association Agreement to resolve these outstanding issues. The key steps in the procedure will be published on the DG TRADE website (https://ec.europa.eu/trade/policy/accessing-markets/dispute-settlement/bilateral-disputes/).

Part 3 – Cases under the Trade Barriers Regulation

I – Canada

PROSCIUTTO DI PARMA

The issue was raised at the EU-Canada Trade and Investment Sub-Committee ('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. In essence, Canada indicated that it could not anticipate any of the decisions that 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 – Korea

PHARMACEUTICALS

Latest developments:

The Korean authorities 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 there-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.

IV – Saudi Arabia

CERAMIC TILES

The European ceramic tiles industry (Cerame-Unie) lodged a TBR complaint on 23 April 2020 on two new technical regulations adopted by Saudi Arabia in 2019 and their implementation.

The industry claims that they have been facing major obstacles to their exports of ceramic tiles to Saudi Arabia since the introduction of new Saudi technical regulations last year and that all efforts for removing the obstacles were until now unsuccessful.

The issues raised in the complaint have made access to the market of Saudi Arabia difficult (drop of EU exports to close to zero in the months following the entry into force of the new technical regulations) and substantially increased the cost of compliance with the required SQM conformity assessment. According to the complaint, the Saudi measures breach WTO rules, and in particular a number of provisions from the TBT Agreement.

By Decision C(2020)3506 final of 3 June 2020, the Commission decided to initiate an examination procedure. The notice of initiation was published in the Official Journal on 24 June 2020 (OJ C 210, 24.6.2020, p.30).

V – Mexico

TEQUILA GEOGRAPHIC INDICATION

On 8 June 2020 the European Commission received a complaint by an industry association regarding an obstacle to the import into the European Union of ‘Tequila’ spirits from Mexico.

The complaint submits that, on 7 February 2020, the Mexican Consejo Regulador del Tequila (CRT) announced it would no longer grant export certificates to Tequilas del Señor, a company producing and exporting 'Tequila' to France Boissons, an affiliate of Heineken NV. The complainant submits that the grounds for refusal is the claim from CRT that Heineken's Desperados beer - a beer with an added 'Tequila' flavour - violates the Mexican technical standard applicable to the use of the geographical indication (GI) 'Tequila'.

The complaint alleges that the Mexican refusal to issue an export certificate for 'Tequila' destined for the European Union is inconsistent with Article XI of GATT 1994 and the 1997 EU-Mexico Spirits Agreement.

By Decision C(2020) 5090 final of 23 July 2020, the Commission decided to initiate an examination procedure. The notice of initiation was published in the Official Journal on 13 August 2020 (OJ C 265, 13.8.2020, p.3)**.**

Annex A List of pending WTO dispute settlement cases involving the EU as complainant or defendant

Trading partner	EU offensive case	EU defensive case
Argentina	Measures affecting the importation of goods (DS438)	TRQ on garlic (DS349)
		Certain measures concerning the importation of biodiesel (DS443)
		Certain EU and Member States measures concerning biodiesels (DS459)
Brazil	Measures affecting imports of retreaded tyres (DS332)	Generic medicines in transit (DS409)
	Certain measures concerning taxation and charges (DS472)	
Canada	Continued suspension of obligations in the Hormones dispute (DS321)	Hormones (DS48)
China	Provisional Anti-Dumping Duties on Fasteners from the EU (DS407)	Certain measures affecting the renewable energy generation sector (DS452)
	Duties and other Measures concerning the Exportation of Certain Raw Materials (DS509)	
	Certain Measures on the Transfer of Technology (DS549)	
Colombia	Measures Concerning Imported Spirits (DS502)	
	AD Duties on Frozen Fries (DS591)	
India	AD measures on certain products from the EC and/or MS (DS304)	AD and CVD measures on PET (DS385)
	Certain taxes and other measures on imported wines and spirits (DS380)	Generic medicines in transit (DS408)
	ICT Products (DS582)	

Indonesia	Measures relating to raw materials (DS592)	Certain measures concerning palm oil and oil palm crop-based biofuels (DS593)
Philippines	Discriminatory taxation of spirits (DS396)	
Russia	Recycling Fee on Motor Vehicles (DS462)	Cost Adjustment Methodologies and Certain Anti-dumping Measures (DS474)
	Measures on pigs, pork and certain pig products concerning African Swine Fever (DS475)	Third energy package (DS476)
		Cost Adjustment Methodologies and Certain Anti-Dumping Measures on Imports from Russia — (Second complaint) (DS494)
		Anti-Dumping Measures on Certain Cold-Rolled Flat Steel Products from Russia (DS521)
Thailand	Customs valuation of certain products from the EC (DS370)	
Turkey	Pharmaceuticals (DS583)	Safeguard measures on certain steel products (DS595)
United States	"Byrd amendment" (DS217)	Hormones (DS26)
	Section 110(5) of the US Copyright Act (“Irish Music”) (DS160)	Measures affecting the approval and marketing of biotech products (GMOs) (DS291)
	Section 211 of the Omnibus Appropriations Act (Havana Club) (DS176)	Aircraft – Airbus (DS316 and DS347)
	Aircraft – Boeing (DS317 and DS353)	Banana import regime (DS27)
	Continued suspension of obligations in the Hormones dispute (DS320)	Poultry (DS389)
	Certain Measures on Steel and Aluminium Products (DS548)	Additional Duties on Certain Products from the United States (DS559)

	AD/CVD on Ripe Olives from Spain (DS577)	