Dispute Settlement Update
September 21, 2007

I. WTO

A. Proceedings in which the United States is a plaintiff

1. EC – Measures concerning meat and meat products (hormones) (WT/DS26, 48)

The United States and Canada challenged the EC ban on imports of meat from animals to which any of six hormones for growth promotional purposes had been administered. On July 2, 1996, the following panelists were selected, with the consent of the parties, to review the U.S. claims: Mr. Thomas Cottier, Chairman; Mr. Jun Yokota and Mr. Peter Palecka, Members. The panel found that the EC ban is inconsistent with the EC's obligations under the Agreement on the Application of Sanitary and Phytosanitary Measures ("SPS Agreement"), and that the ban is not based on science, a risk assessment, or relevant international standards. Upon appeal, the Appellate Body affirmed the panel's findings that the EC ban fails to satisfy the requirements of the SPS Agreement. The Appellate Body also found that while a country has broad discretion in electing what level of protection it wishes to implement, in doing so it must fulfill the requirements of the SPS Agreement. In this case the ban imposed is not rationally related to the conclusions of the risk assessments the EC had performed.

Because the EC did not comply with the recommendations and rulings of the DSB by May 13, 1999, the final date of its compliance period as set by arbitration, the United States sought WTO authorization to suspend concessions with respect to certain products of the EC, the value of which represents an estimate of the annual harm to U.S. exports resulting from the EC's failure to lift its ban on imports of U.S. meat. The EC exercised its right to request arbitration concerning the amount of the suspension. On July 12, 1999, the arbitrators determined the level of suspension to be $116.8 million. On July 26, 1999, the DSB authorized the United States to suspend such concessions and the United States proceeded to impose 100 percent *ad valorem* duties on a list of EC products with an annual trade value of $116.8 million. On May 26, 2000, USTR announced that it was considering changes to that list of EC products. While discussions with the EC to resolve this matter are continuing, no resolution has been achieved yet. On November 3, 2003, the EC notified the WTO of its plans to make permanent the ban on one hormone, oestradiol. As discussed in more detail below (DS320), on November 8, 2004, the European Communities requested consultations and a panel with respect to "the United States' continued suspension of concessions and other obligations under the covered agreements" in the *EC – Hormones* dispute.

2. EC – Protection of trademarks and geographical indications for agricultural products and foodstuffs (WT/DS174)

The United States first requested consultations regarding this matter on June 1, 1999 and, on April 4, 2003, requested consultations on the additional issue of the EC's national treatment obligations under the GATT 1994. Australia also requested consultations with respect to this

measure. When consultations failed to resolve the dispute, the United States requested the establishment of a panel on August 18, 2003. The DSB established a panel on October 2, 2003, to consider the complaints of the United States and Australia. On February 23, 2004, the Director General composed the panel as follows: Mr. Miguel Rodriguez Mendoza, Chair, and Mr. Seung Wha Chang and Mr. Peter Kam-fai Cheung, Members. On April 20, 2005, the DSB adopted the panel report, which found that the EC's regulation on food-related geographical indications (GIs), EC Regulation 2081/92, is inconsistent with the EC's obligations under the TRIPS Agreement and the GATT 1994. This finding results from the long-standing U.S. complaint that the EC GI system discriminates against foreign products and persons – notably by requiring that EC trading partners adopt an "EC-style" system of GI protection – and provides insufficient protections to trademark owners. The WTO panel agreed that the EC's GI regulation impermissibly discriminates against non-EC products and persons. The panel also agreed with the United States that Europe could not, consistent with WTO rules, deny U.S. trademark owners their rights; it found that, under the regulation, any exceptions to trademark rights for the use of registered GIs were narrow, and limited to the actual GI name as registered. The panel recommended that the EC amend its GI regulation to come into compliance with its WTO obligations. The EC, the United States, and Australia (which filed a parallel case) agreed that the EC would have until April 3, 2006, to implement the recommendations and rulings. On April 10, 2006, the EC announced that it had issued a new regulation, which came into force on March 31, 2006, that implements the DSB's recommendations and rulings. The United States is reviewing that regulation.

3. EC – Measures affecting the approval and marketing of biotech products (WT/DS291)

On May 13, 2003, the United States filed a consultation request with respect to the EC's moratorium on all new biotech approvals, and bans of six member states (Austria, France, Germany, Greece, Italy and Luxembourg) on imports of certain biotech products previously approved by the EC. The moratorium was not supported by scientific evidence, and the EC's refusal even to consider any biotech applications for final approval constituted "undue delay." The national import bans of previously EC-approved products appeared not to be based on sufficient scientific evidence. Consultations were held June 19, 2003. The United States requested the establishment of a panel on August 7, 2003, and the DSB established a panel on August 29, 2003. On March 4, 2003, the Director General composed the panel as follows: Mr. Christian Häberli, Chairman, and Mr. Mohan Kumar and Mr. Akio Shimizu, Members. The same Panel considered similar claims brought by co-complainants Argentina and Canada.

The Panel issued its report on September 29, 2006. The Panel agreed with the United States, Argentina, and Canada that the disputed measures of the EC, Austria, France, Germany, Greece, Italy, and Luxembourg are inconsistent with the obligations set out in the SPS Agreement. In particular:

- The Panel found that the EC adopted a de facto, across-the-board moratorium on the final approval of biotech products, starting in 1999 up through the time the panel was established in August 2003.

- The Panel found that the EC had presented no scientific or regulatory justification for the moratorium, and thus that the moratorium resulted in "undue delays" in violation of the EC's obligations under the SPS Agreement.

- The Panel identified specific, WTO-inconsistent "undue delays" with regard to 24 of the 27 pending product applications that were listed in the U.S. panel request.

- The Panel upheld the United States' claims that, in light of positive safety assessments issued by the EC's own scientists, the bans adopted by six EC member States on products approved in the EC prior to the moratorium were not supported by scientific evidence and were thus inconsistent with WTO rules.

The DSB adopted the panel report on November 21, 2006.

At the meeting of the DSB held on December 19, 2006, the EC notified the DSB that the EC intends to implement the recommendations and rulings of the DSB in these disputes, and stated that it would need a reasonable period of time for implementation. The United States, Argentina, and Canada agreed with the EC on a one-year period of time for implementation, which will end on November 21, 2007.

4. Mexico – Tax measures on soft drinks and other beverages (WT/DS308)

On March 16, 2004, the United States requested consultations with Mexico regarding its tax measures on soft drinks and other beverages that use any sweetener other than cane sugar. These measures apply a 20 percent tax on soft drinks and other beverages that use any sweetener other than cane sugar. Soft drinks and other beverages sweetened with cane sugar are exempt from the tax. Mexico's tax measures also include a 20 percent tax on the commissioning, mediation, agency, representation, brokerage, consignment, and distribution of soft drinks and other beverages that use any sweetener other than cane sugar. Mexico's tax measures work *inter alia* to restrict U.S. exports to Mexico of high fructose corn syrup, a corn-based sweetener that is directly competitive and substitutable with cane sugar. The United States considers these measures to be inconsistent with Mexico's national treatment obligations under Article III of the GATT 1994.

Consultations were held on May 13, 2004, but they failed to resolve the dispute. The United States requested the establishment of a panel on June 10, 2004, and the DSB established a panel on July 6, 2004. On August 18, 2004, the parties agreed to the composition of the panel as follows: Mr. Ronald Saborío Soto, Chair, and Mr. Edmond McGovern and Mr. David Walker, Members. On October 7, 2005, the panel circulated its report. The panel concluded that Mexico's beverage tax is inconsistent with Articles III:2 and III:4 of the General Agreement on Tariffs and Trade 1994 (GATT 1994) and rejected Mexico's defense that the tax is justified as necessary to secure U.S. compliance with the North American Free Trade Agreement. The panel found that the beverage tax discriminates against U.S. sweeteners, including high-fructose corn

syrup (HFCS), as well as U.S. soft drinks, by subjecting beverages made with any sweetener other than cane sugar to a 20 percent tax whereas beverages made with cane sugar are tax-exempt. The Panel rejected Mexico's argument that the tax was "necessary to secure compliance with law or regulations" under Article XX(d) of the GATT. Mexico had argued that the tax was necessary to secure U.S. compliance with certain provisions of the North American Free Trade Agreement (NAFTA).

Mexico appealed the Panel's report on December 6, 2005, and the Appellate Body circulated its report in the appeal on March 6, 2006. Appellate Body Members Yasuhei Taniguchi, Merit E. Janow, and Giorgio Sacerdoti served on the appeal. The Appellate Body found that Mexico's tax could not be justified under Article XX(d) of the GATT as a measure "necessary to secure compliance with laws or regulations." The Appellate Body found that the NAFTA is not a "law or regulation" and that it is "not the function" of WTO panels and the Appellate Body to adjudicate whether a WTO Member has breached a non-WTO agreement. Mexico did not appeal the Panel's findings that its tax discriminated against U.S. soft drink and HFCS exports. The DSB adopted the Appellate Body report and the Panel report as modified by the Appellate Body report on March 24, 2006.

On July 3, 2006, the United States and Mexico notified the DSB that they had agreed on a reasonable period of time of nine months and 8 days, expiring on 1 January 2007, or ten months and 7 days, expiring on 31 January 2007 if Mexico's Congress enacted legislation to repeal the tax between December 1 and December 31, 2006. Mexico repealed the tax effective January 1, 2007.

5. European Communities – Selected customs matters (WT/DS315)

On September 21, 2004, the United States requested consultations with the EC with respect to (1) lack of uniformity in the administration by EC member States of EC customs laws and regulations and (2) lack of an EC forum for prompt review and correction of member State customs determinations. On September 29, 2004, the EC accepted the U.S. request for consultations, and consultations were subsequently held on November 16, 2004. The panel was established on March 21, 2005. On May 27, 2005, the Director General composed the panel as follows: Mr. Nacer Benjelloun-Touimi, Chair, and Mr. Mateo Diego-Fernandez and Mr. Hanspeter Tschani, Members.

On June 16, 2006, the panel circulated its report. The panel found that an “as such” claim regarding the design and structure of the EC system of customs administration was beyond its terms of reference. However, it did find that in particular instances the EC administers its customs law in a non-uniform manner – in particular, with respect to the classification of certain liquid crystal display (LCD) monitors, the classification of blackout drapery lining, and the application of the “successive sales” rule for customs valuation. The panel also denied the U.S. claim regarding prompt review and correction of customs administrative decisions.

On August 14, 2006, the United States filed a notice of appeal. On August 28, 2006, the EC filed a notice of other appeal. On November 13, 2006, the Appellate Body issued its report. The Appellate Body reversed the panel's finding that the U.S. claim regarding the EC system of customs administration as a whole was outside its terms of reference. The Appellate Body also reversed the panel's finding that the measure at issue was the "manner of administration" of EC customs laws, rather than the laws themselves. The Appellate Body upheld the panel's finding of non-uniform administration with respect to the classification of LCD monitors. However, it reversed the panel's findings of other instances of non-uniform administration. The Appellate Body upheld the panel's finding regarding prompt review and correction of customs administrative decisions.

The Appellate Body report and the panel report as modified by the Appellate Body report were adopted at the December 11, 2006 meeting of the DSB. At that meeting, the EC stated that it is already in compliance with respect to the finding concerning the classification of LCD monitors. The EC reiterated this statement at the December 19, 2006 meeting of the DSB, when the United States questioned whether the EC had provided its statement of intentions with respect to the recommendations and rulings adopted by the DSB.

6. European Communities – Subsidies on large civil aircraft (WT/DS316)

On October 6, 2004, the United States requested consultations with the EC, as well as with Germany, France, the United Kingdom, and Spain, with respect to subsidies provided to Airbus, a manufacturer of large civil aircraft. The United States alleged that such subsidies violated various provisions of the SCM Agreement, as well as Article XVI:1 of the GATT 1994. Consultations were held on November 4, 2004. On January 11, 2005, the United States and the EC agreed to a framework for the negotiation of a new agreement to end subsidies for large civil aircraft. The parties set a three-month time frame for the negotiations and agreed that, during negotiations, they would not request panel proceedings.

The United States and the EC were unable to reach an agreement within the 90-day time frame. Therefore, the United States filed a request for a panel on May 31, 2005. The Panel was established on July 20, 2005. The U.S. request challenges several types of EC subsidies that appear to be prohibited, or actionable, or both. On February 13, 2006, the Deputy Director General composed the panel as follows: Mr. Carlos Pérez del Castillo, Chair, and Mr. John Adank and Mr. Thinus Jacobsz, Members.

The panel is expected to issue its report in late 2007.

7. Turkey – Measures affecting the importation of rice (WT/DS334)

On November 2, 2005, the United States requested consultations regarding Turkey's import licensing system and domestic purchase requirement with respect to the importation of rice. By (1) conditioning the issuance of import licenses to import at preferential tariff levels upon the purchase of domestic rice; (2) not permitting imports at the bound rate; and (3) implementing a

de facto ban on rice imports during the Turkish rice harvest, Turkey appears to be acting inconsistently with several WTO agreements, including the Agreement on Trade-Related Investment Measures (TRIMS), the General Agreement on Tariffs and Trade 1994, the Agreement on Agriculture, and the Agreement on Import Licensing Procedures. Consultations were held on December 1, 2005, but they failed to resolve the dispute. The United States requested the establishment of a panel on February 6, 2006, and the DSB established a panel on March 17, 2006. The panel was composed by the Deputy Director General on July 31, 2006 as follows: Ms Marie-Gabrielle Ineichen-Fleisch, Chair, and Messrs. Johann Frederick Kirsten and Yoichi Suzuki, Members. The final report was issued by the panel on June 8, 2007.

8. Canada – Corn (WT/DS338)

On March 17, 2006, the United States requested consultations with Canada regarding Canada's imposition of preliminary antidumping and countervailing duties on grain corn originating in, or imported from, the United States. The United States is concerned that the preliminary injury determination of the Canadian International Trade Tribunal ("CITT") failed to address certain required factors, declined expressly to address issues of causation, and otherwise was not based on an objective examination of positive evidence as required by Article 3 of the Antidumping Agreement and Article 15 of the SCM Agreement. Consultations were held on April 7, 2006. On April 18, 2006, the CITT issued a negative final determination of injury and all provisional duties were refunded. The CITT's negative final determination was upheld by Canada's Federal Court of Appeal on June 5, 2007.

9. China – Measures affecting imports of automobile parts (WT/DS/340)

On March 30, 2006, the United States requested consultations with China regarding China's treatment of motor vehicle parts, components, and accessories ("auto parts") imported from the United States. The EC and Canada requested consultations regarding the same matter. Although China's WTO commitments limit its tariffs on imported auto parts to rates that are significantly below China's tariffs on finished vehicles, China implemented regulations that impose a charge on imported auto parts equal to the tariff on complete automobiles, if the final assembled vehicle in which the parts are incorporated fails to meet certain local content requirements. These regulations appear inconsistent with several WTO provisions including Articles II and III of the GATT 1994 and Article 2 of the *Agreement on Trade-Related Investment Measures*, as well as specific commitments made by China in its WTO accession agreement.

The EC (WT/DS/339) and Canada (WT/DS/442) also initiated disputes regarding the same matter. The EC, Canada, and the United States requested the establishment of a panel on September 28, 2006, and a single panel was established on October 26, 2006 to examine the complaints. On January 29, 2007, the Director General composed the panel as follows: Mr. Julio LaCarte, Chair, and Mr. Ujal Singh Bhatia and Mr. Wilhelm Meier, Members.

10. China – Prohibited subsidies (WT/DS358)

On February 2, 2007, the United States requested consultations with China regarding subsidies provided in the form of refunds, reductions, or exemptions from income taxes or other payments. Because they are offered on the condition that enterprises purchase domestic over imported goods, or on the condition that enterprises meet certain export performance criteria, these subsidies appear to be inconsistent with several provisions of the WTO Agreement, including Article 3 of the *Agreement on Subsidies and Countervailing Measures*, Article III:4 of the *General Agreement on Tariffs and Trade 1994*, and Article 2 of the *Agreement on Trade-Related Investment Measures*, as well as specific commitments made by China in its WTO accession agreement. In March China repealed one of the subsidy programs challenged by the United States and adopted a new income tax law to take effect January 1, 2008. As a result, the United States requested supplemental consultations with China on April 27, raising similar concerns related to provisions of the new income tax law. The consultations held on March 20 and June 22 were unable to resolve the dispute. The United States therefore requested the establishment of a panel on July 24, and the WTO Dispute Settlement Body established a panel on August 31. Mexico has also initiated a dispute regarding the same matter.

11. India – Alcohol tariffs (WT/DS360)

On March 6, 2007, the United States requested consultations with the Government of India, regarding India's additional customs duty and extra-additional customs duty on imports from the United States. The dispute involves alcoholic beverages as well as a number of other products for which India imposes customs duties in excess of bound rates set forth in its Schedule to the GATT 1994. Specifically, in its WTO Schedule, India committed to maintaining ordinary customs duties 150 percent ad valorem or less, and that it would not impose other duties or charges on imports of alcoholic beverages. India, however, has imposed ordinary customs duties on imports of alcoholic beverages from the United States that result in ordinary customs duties on these imports as high as 550 percent. These duties, therefore, appear inconsistent with India's obligation under Article II:1(a) and (b) of the GATT 1994 not to apply ordinary customs duties or other duties or charges in excess of those set forth in its WTO Schedule or to accord less favorable treatment to imports than set forth in its WTO Schedule. India imposes these customs duties by levying an "additional customs duty" and an "extra-additional customs duty" in addition to and on top of a "basic customs duty" on imports of alcoholic beverages. The extra-additional customs duty also appears inconsistent with Article II:1(a) and (b) of the GATT 1994 with respect to a number of imports other than alcoholic beverages, likewise resulting in imposition of customs duties that exceed those set forth in India's WTO Schedule. These products include certain agricultural products such as milk, raisins and orange juice, as well as various other products.

The United States and India held consultations on April 13, 2007 in Geneva. The European Communities ("EC") were joined in the consultations. These consultations failed to result in a mutually satisfactory resolution to this dispute and on May 24, 2007, the United States requested the establishment of a panel. The DSB considered this request at its meetings of June 4 and June

20, 2007, and established the Panel on June 20 with standard terms of reference. Australia, Chile, the EC, Japan, and Vietnam have reserved third party rights in the dispute. On July 3, 2007, the parties agreed on the panelists, as follows: Luzius Wasescha, Chair, Mateo Diego-Fernandez, and Bruce McRae.

The establishment of the Panel in this dispute (WT/DS360) followed the establishment of a panel on April 24, 2007 to consider similar claims raised by the EC against the additional and extra-additional customs duties on imports of wine and distilled spirits (WT/DS352). On July 3, 2007, the United States along with the EC and India agreed to have the same panelists, working procedures and schedule for both disputes, but to have separate panel reports. However, on July 13, 2007, the EC requested, pursuant to DSU Article 12.12, that the panel in DS352 suspend its work and the panel granted that request on July 16, 2007. This did not affect the work of the panel requested by the United States.

12. China – Measures affecting the protection and enforcement of intellectual property rights (WT/DS362)

On April 10, 2007, the United States requested consultations with China regarding certain measures pertaining to the protection and enforcement of intellectual property rights in China. The issues of concern included: (1) the thresholds that must be met in order for certain acts of trademark counterfeiting and copyright piracy to be subject to criminal procedures and penalties; (2) the disposal by Chinese customs authorities of goods that infringe intellectual property rights and that have been confiscated by those authorities, in particular the disposal of such goods following removal of their infringing features; (3) the denial of copyright and related rights protection and enforcement to creative works of authorship, sound recordings, and performances that have not been authorized for publication or distribution within China; and (4) the scope of coverage of criminal procedures and penalties for unauthorized reproduction or unauthorized distribution of copyrighted works. The United States and China held consultations on June 7-8, 2007, but they did not resolve the dispute. On August 13, 2007, the United States requested the establishment of a panel with respect to issues (1) through (3) in the consultation request. The Chinese measures at issue appear to be inconsistent with China's obligations under several provisions of the *Agreement on Trade-Related Aspects of Intellectual Property Rights* (the TRIPS Agreement).

13. China – Services market (WT/DS363)

On April 10, 2007, the United States requested consultations with China regarding certain measures related to the import and/or distribution of imported films for theatrical release, audiovisual home entertainment products (*e.g.*, video cassettes and DVDs), sound recordings, and publications (*e.g.*, books, magazines, newspapers, and electronic publications). On July 10, 2007, the United States requested supplemental consultations with China regarding certain measures pertaining to the distribution of imported films for theatrical release and sound recordings.

Specifically, the United States is concerned that certain Chinese measures: (1) restrict trading rights (such as the right to import goods into China) with respect to imported films for theatrical release, audiovisual home entertainment products, sound recordings, and publications; and (2) restrict market access for, or discriminate against, imported films for theatrical release and sound recordings in physical form, and foreign service providers seeking to engage in the distribution of certain publications, audiovisual home entertainment products, and sound recordings.

The United States and China held consultations on June 5-6, 2007 and July 31, 2007. The Chinese measures at issue appear to be inconsistent with several WTO provisions, including provisions in the *General Agreement on Tariffs and Trade 1994* (GATT 1994) and *General Agreement on Trade in Services* (GATS), as well as specific commitments made by China in its WTO accession agreement.

14. European Communities – Regime for the importation, sale and distribution of bananas – Recourse to Article 21.5 of the DSU by the United States (WT/DS27)

On June 29, 2007, the United States requested the establishment of a panel under to Article 21.5 of the DSU to review whether the European Communities (EC) has failed to bring its import regime for bananas into compliance with its WTO obligations and the DSB recommendations and rulings adopted on September 25, 1997. The request relates to the EC's apparent failure to implement the WTO rulings in a proceeding initiated by Ecuador, Guatemala, Honduras, Mexico and the United States. That proceeding resulted in findings that the EC's banana regime discriminates against bananas originating in Latin American countries and against distributors of such bananas, including a number of U.S. companies. The EC was under obligation to bring its banana regime into compliance with its WTO obligations by January 1999. Ecuador and the United States have been authorized by the WTO once before to take action against the EC for its failure to implement the DSB rulings. The United States terminated that action after the EC committed to shift to a tariff-only regime for bananas no later than January 1, 2006. Despite these commitments, the banana regime implemented by the EC on January 1, 2006 includes a zero-duty tariff rate quota allocated exclusively to bananas from African, Caribbean, and Pacific countries. All other bananas do not have access to this duty-free tariff rate quota and are subject to a 176 euro per ton duty. The United States believes that this new regime is in violation of GATT Articles I:1 and XIII.

Ecuador requested the establishment of a similar compliance panel on February 23, 2007, and a panel was composed in response to that request on June 15. The panel in response to the United States request was established on July 12, 2007. On August 13, 2007, the Director General composed the panel as follows: Mr. Christian Häberli, Chair, and Mr. Kym Anderson and Mr. Yuqing Zhang, Members. Mr. Häberli and Mr. Anderson were members of the original panel in this dispute.

B. Proceedings in which the United States is a defendant

1. United States – Countervailing duty measures concerning certain products from the European Communities (WT/DS212)

On November 13, 2000, the EC requested WTO dispute settlement consultations concerning determinations made in various U.S. countervailing duty (CVD) proceedings covering imports from member states of the EC, all such determinations involving the Department of Commerce's "change in ownership" (or "privatization") methodology. Previously, the EC had successfully challenged Commerce's methodology in a WTO dispute concerning leaded steel products from the UK. Consultations were held December 7, 2000. Further consultations were requested on February 1, 2001, and held on April 3. Eventually, the EC requested the establishment of a panel with respect to determinations in 12 CVD determinations involving imported steel products from EC member states. The EC's challenged the continued application of the methodology at issue in the UK leaded steel products case, as well as the new methodology devised by Commerce to replace it. A panel was established on September 10, 2001, and at the request of the EC the Director General composed the panel on November 5, 2001, as follows: Mr. Gilles Gauthier, Chairman; Ms. Marie-Gabrielle Ineichen-Fleisch and Mr. Michael Mulgrew, Members.
In its final report, issued July 31, 2002, the panel found both the old and new Commerce privatization methodologies to be inconsistent with the WTO Subsidies Agreement. In addition, the panel found section 771(5)(F) of the Tariff Act of 1930 – the "privatization" provision in the CVD statute – to be WTO-inconsistent based on its conclusion that the provision precludes Commerce from acting in a WTO-consistent manner. The United States appealed the report on September 9, 2002. The Appellate Body issued its report on December 9, 2002. The Appellate Body affirmed the panel's finding that Commerce's methodology is inconsistent with the Subsidies Agreement, but disagreed with some of the panel's reasoning. In particular, the Appellate Body disagreed with the panel that an arm's length sale of a government-owned firm for fair market value always extinguishes prior subsidies. Instead, according to the Appellate Body, such a transaction creates merely a rebuttable presumption that prior subsidies are extinguished.

The DSB adopted the panel and Appellate Body reports on January 8, 2003. The United States stated its intention to implement the DSB recommendations and rulings on January 27, 2003. On April 10, 2003, the EC and the United States agreed that the reasonable period of time for implementation will expire on November 8, 2003. Commerce modified its methodology for analyzing a privatization in the context of the CVD law, and issued revised determinations under section 129 of the Uruguay Round Agreements Act, revoking two CVD orders in whole and one CVD order in part, and, in the case of five CVD orders, revising the cash deposit rates for certain companies. The United States stated that it had complied with the DSB recommendations and rulings at a DSB meeting on November 7, 2003.

On March 17, 2004, the EC requested consultations regarding the Department of Commerce's new change of ownership methodology. The EC contends that the Department countervails the entire amount of unamortized subsidies even if the price paid for the acquired firm was only $1 less than the fair market value. With respect to the Department of Commerce's revised determinations, the EC complains about the three sunset reviews in which the Department declined to address the privatization transactions in question on what essentially were "judicial economy" grounds. With respect to a fourth sunset review, the EC challenges the Department's analysis of the sale of shares to employees of the company in question. Consultations took place on May 24, 2004. A panel was established on September 27, 2004. The original three panelists agreed to serve on the compliance panel.

On August 17, 2005, the panel circulated its report. With respect to one determination, the panel did not find that Commerce's application of the privatization methodology was inconsistent with U.S. WTO obligations. The panel did find that Commerce should have applied the privatization methodology in two other determinations, where Commerce simply assumed the benefit of the subsidy was extinguished by the privatization; in addition, the panel found that Commerce should have taken into account new record evidence presented during the redetermination proceeding. The panel also found that the USITC was not obliged to redo its sunset determination on likelihood of injury. The DSB adopted the panel report on September 27, 2005, at which meeting the United States stated its intention to comply with the findings.

On May 26, 2006, the Department issued Section 129 determinations with respect to the two affected determinations (*Cut-to-Length Carbon Steel Plate from Spain* and *Cut-to-Length Carbon Steel Plate from the United Kingdom*). The Department revoked the countervailing duty orders in place with respect to *Cut-to-Length Carbon Steel Plate from Spain* and *Cut-to-Length Carbon Steel Plate from the United Kingdom* on October 4, 2006 and February 2, 2007, respectively.

2. United States – Final dumping determination on softwood lumber from Canada (WT/DS264)

On September 13, 2002, Canada requested consultations regarding the Department of Commerce's amended final determination of sales at less than fair value of certain softwood lumber from Canada, along with the antidumping duty order with respect to imports of the subject products. Canada contests the initiation of the investigation, arguing that the petition did not contain sufficient evidence to justify initiation and that the Byrd Amendment precludes an objective examination of the degree of support for the petition. Canada further asserts that Commerce, in calculating the margin of dumping, made improper comparisons between sales in the home market and sales in the U.S. market. Canada also challenges Commerce's conduct of the investigation, arguing that Commerce failed to issue timely decisions and provide reasonable briefing schedules. Consultations were held October 11, 2002.

Canada requested the establishment of a panel on December 6, 2002, and the DSB established a panel on January 8, 2003. On February 25, 2003, the parties agreed on the panelists, as follows:

Mr. Harsha V. Singh, Chairman, and Mr. Gerhard Hannes Welge and Mr. Adrian Makuc, Members. In its report, the panel rejected Canada's arguments: (1) that Commerce's investigation was improperly initiated; (2) that Commerce had defined the scope of the investigation (*i.e.*, the "product under investigation") too broadly; and (3) that Commerce improperly declined to make certain adjustment based on difference in dimension of products involved in particular transactions compared. The panel also rejected Canada's claims on company-specific calculation issues. The one claim that the panel upheld was Canada's argument that Commerce's use of "zeroing" in comparing U.S. price to normal value was inconsistent with Article 2.4.2 of the Antidumping Agreement.

On May 13, 2004, the United States filed a notice of appeal regarding the "zeroing" issue. Canada cross-appealed with respect to two company-specific issues (one regarding the allocation of costs to Abitibi, and the other regarding the valuation of an offset to cost of production for Tembec). The Appellate Body issued its report on August 11, 2004. The report upheld the panel's findings on "zeroing" and the Tembec issue. It reversed a panel finding regarding the Abitibi issue concerning interpretation of the term "consider all available evidence" in Article 2.2.1.1 of the AD Agreement; however, it declined to complete the panel's legal analysis. The panel and Appellate Body reports were adopted at the August 31, 2004 DSB meeting. The United States and Canada agreed that the reasonable period of time for implementation in this dispute would expire on April 15, 2005. On February 14, 205, by mutual agreement between the United States and Canada, the reasonable period of time was extended to May 2, 2005.

On May 2, 2005, Commerce issued a revised antidumping determination in which it established the existence of dumping using the transaction-to-transaction comparison methodology, rather than the average-to-average methodology. On May 19, 2005, Canada challenged the measure taken to comply under Article 21.5 of the DSU. Also on that date, Canada sought recourse to Article 22.2 of the DSU. On May 31, 2005, the United States objected to the level of suspension of concessions proposed by Canada pursuant to Article 22.2 and, accordingly, the matter was referred to arbitration under Article 22.6 of the DSU. On June 10, 2005, the United States and Canada jointly asked that the Article 22.6 arbitration be suspended pending conclusion of the Article 21.5 proceeding.

The DSB established an Article 21.5 panel on June 1, 2005. The panel was composed on June 3, 2005, consisting of the same members as the original panel. On August 26, 2005, the Director General appointed Dr. Toufiq Ali to serve as replacement panel chairman for Mr. Singh, who had been appointed to serve as Deputy Director General of the WTO. The panel report was circulated to WTO Members on April 3, 2006. The panel found that Commerce's establishment of the existence of dumping using transaction-to-transaction comparisons was not inconsistent with Articles 2.4 and 2.4.2 of the Antidumping Agreement and, therefore, rejected Canada's complaint.

On May 17, 2006, Canada filed a notice of appeal. The Appellate Body issued its report on August 15, 2006. The Appellate Body reversed the panel and found Commerce's revised antidumping determination to be inconsistent with the obligations of the United States under

Articles 2.4 and 2.4.2 of the Antidumping Agreement.

At its September 1, 2006 meeting, the DSB adopted the Appellate Body report and the report of the panel as reversed by the Appellate Body report.

On October 12, 2006, the United States and Canada jointly notified the DSB that they had reached a mutually agreed solution, in light of which Canada withdrew its request for authorization to suspend tariff concessions under Article 22.2 of the DSU and the United States withdrew its request for arbitration under Article 22.6 of the DSU.

On February 23, 2007, the United States and Canada jointly notified the DSB of an amendment to their mutually agreed solution.

3. United States – Subsidies on upland cotton (WT/DS267)

On September 27, 2002, the United States received from Brazil a request for consultations pursuant to Articles 4.1, 7.1 and 30 of the *Agreement on Subsidies and Countervailing Measures*, Article 19 of the *Agreement on Agriculture*, Article XXII of the *General Agreement on Tariffs and Trade 1994*, and Article 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes*. The Brazilian letter requests consultations pertaining to "prohibited and actionable subsidies provided to U.S. producers, users and/or exporters of upland cotton, as well as legislation, regulations, statutory instruments and amendments thereto providing such subsidies (including export credits), grants, and any other assistance to the U.S. producers, users and exporters of upland cotton [footnote omitted]." Brazil claims that these alleged subsidies and measures are inconsistent with U.S. commitments and obligations under the *Agreement on Subsidies and Countervailing Measures*, the *Agreement on Agriculture*, and the *General Agreement on Tariffs and Trade 1994*. Consultations were held December 3-4, 2002. A second round of consultations was held January 17, 2003. Brazil requested the establishment of a panel on February 6, 2003. The DSB established a panel on March 18, 2003. The Director General composed the panel as follows: Mr. Dariusz Rosati, Chairman, and Mr. Mario Matus and Mr. Daniel Moulis, Members.

On September 8, 2004, the panel circulated its report to all WTO Members and the public. The panel made some findings in favor of Brazil on certain of its claims and other findings in favor of the United States:

- The panel found that the "Peace Clause" in the WTO Agreement on Agriculture did not apply to a number of U.S. measures, including (1) domestic support measures and (2) export credit guarantees for "unscheduled commodities" and rice (a "scheduled commodity"). Therefore, Brazil could proceed with certain of its challenges.

- The panel found that export credit guarantees for "unscheduled commodities" (such as cotton and soybeans) and for rice are prohibited export subsidies. However, the panel also found that Brazil had not demonstrated that the guarantees for other "scheduled

commodities" exceeded U.S. WTO reduction commitments and therefore breached the Peace Clause. Further, Brazil had not demonstrated that the programs threaten to lead to circumvention of U.S. WTO reduction commitments for other "scheduled commodities" and for "unscheduled commodities" not currently receiving guarantees.

- Some U.S. domestic support programs (i.e., marketing loan, counter-cyclical, market loss assistance, and Step 2 payments) were found to cause significant suppression of cotton prices in the world market in marketing years 1999-2002 causing serious prejudice to Brazil's interests. However, the panel found that other U.S. domestic support programs (i.e., production flexibility contract payments, direct payments, and crop insurance payments) did not cause serious prejudice to Brazil's interests because Brazil failed to show that these programs caused significant price suppression. The panel also found that Brazil failed to show that any U.S. program caused an increase in U.S. world market share for upland cotton constituting serious prejudice.

- The panel did not reach Brazil's claim that U.S. domestic support programs threatened to cause serious prejudice to Brazil's interests in marketing years 2003-2007. The panel also did not reach Brazil's claim that U.S. domestic support programs *per se* cause serious prejudice in those years.

- The panel also found that Brazil had failed to establish that FSC/ETI tax benefits for cotton exporters were prohibited export subsidies.

- Finally, the panel found that Step 2 payments to exporters of cotton are prohibited export subsidies, not protected by the Peace Clause, and Step 2 payments to domestic users are prohibited import substitution subsidies because they were only made for U.S. cotton.

On October 18, 2004, the United States filed a notice of appeal with the Appellate Body; Brazil then cross-appealed. The Appellate Body circulated its report on March 3, 2005. The Appellate Body upheld the panel's findings appealed by the United States. The Appellate Body also rejected or declined to rule on most of Brazil's appeal issues. On March 21, 2005, the DSB adopted the panel and Appellate Body reports and, on April 20, 2005, the United States advised the DSB that it intends to bring its measures into compliance.

On June 30, 2005, the United States announced certain administrative changes relating to its export credit guarantee programs. Further, on July 5, the United States proposed legislation relating to the export credit guarantee and Step 2 programs. On July 5, 2005, Brazil requested authorization to impose countermeasures and suspend concessions in the amount of $3 billion. On July 14, 2005, the United States objected to the request, thereby referring the matter to arbitration. On August 17, 2005, the United States and Brazil agreed to suspend the arbitration. On October 6, 2005, Brazil made a separate request for authorization to impose countermeasures and suspend concessions in the amount of $1.04 billion per year in connection with the "serious prejudice" findings. The United States objected to Brazil's request on October 17, 2005, and that matter was also referred to arbitration. On November 21, 2005, the United States and Brazil

agreed to suspend the arbitration. On February 8, 2006, the President signed into law the Deficit Reduction Act of 2005. That Act includes a provision repealing the Step 2 program as of August 2006.

On August 18, 2006, Brazil requested the establishment of an Article 21.5 panel. At its meeting of September 1, 2006, the DSB deferred the establishment of the Article 21.5 panel. Further to a second request, the DSB on September 28, 2006, agreed, if possible, to refer the matter raised by Brazil to the original panel. Argentina, Australia, Canada, China, the European Communities, India, Japan and New Zealand reserved their third party rights. Subsequently, Chad and Thailand reserved their third party rights.

On October 18 and 20, 2006, Brazil and the United States respectively requested the Director-General to compose the Article 21.5 panel. On October 25, 2006, the Director-General composed the panel.

On January 9, 2007, the Chairman of the Panel informed the DSB that given the particular circumstances of this case and the schedule adopted after consultations with parties to this dispute, it was not possible for the Panel to complete its work within the 90-day period as foreseen in Article 21.5.

The Panel met with the parties to the dispute on February 27-28, 2007, and with third parties on February 28, 2007. The Panel submitted its interim report to the parties on July 27, 2007, and expects to issue its final report to the parties on October 1, 2007.

4. United States – Sunset review of anti-dumping measures on oil country tubular goods from Argentina (WT/DS268)

On October 7, 2002, Argentina requested consultations regarding DOC and ITC determinations in the sunset review of the antidumping duty order on oil country tubular goods from Argentina, as well as the DOC's determination to continue the order. Argentina also identifies as measures sections 751(c) and 752 of the Tariff Act of 1930, the URAA Statement of Administrative Action, the sunset review regulations of the DOC and the ITC, and the DOC Sunset Policy Bulletin. The specific concerns raised by Argentina are: (1) the DOC's evidentiary standard for initiating a sunset review; (2) the DOC's use of a 0.5 percent *de minimis* standard, as opposed to the 2 percent standard for investigations; (3) the DOC's application of the "likelihood" standard; (4) the U.S. standard for determining whether continued or recurring injury is "likely"; (5) the alleged failure by the ITC to conduct an "objective examination"; and (6) the statutory provisions addressing the time period within which the ITC is to assess the likelihood of continued or recurring injury. Argentina alleges violations of various provisions of the Antidumping Agreement, GATT 1994 and Article XVI:4 of the WTO Agreement. Consultations were held November 14, 2002.

Argentina requested the establishment of a panel on April 3, 2003. The DSB established a panel on May 19, 2003. On September 4, 2003, the Director General composed the panel as follows:

Mr. Paul O'Connor, Chairman, and Mr. Bruce Cullen and Mr. Faizullah Khilji, Members. In its report circulated July 16, 2004, the panel agreed with Argentina that the waiver provisions prevent the DOC from making a determination as required by Article 11.3 and that the DOC's Sunset Policy Bulletin is inconsistent with Article 11.3. The panel rejected Argentina's claims that the ITC did not correctly apply the "likely" standard and did not conduct an objective examination. Further, the panel concluded that statutes providing for cumulation and the time-frame for continuation or recurrence of injury were not inconsistent with Article 11.3.

On August 31, 2004, the United States filed a notice of appeal. The Appellate Body issued its report on November 29, 2004. The Appellate Body reversed the panel's finding against the Sunset Policy Bulletin and upheld the other findings described above. The DSB adopted the panel and Appellate Body reports on December 17, 2004.

Argentina requested arbitration in order to determine the reasonable period of time for the United States to implement the recommendations and rulings of the DSB. The arbitrator awarded the United States 12 months, until December 17, 2005. On August 15, 2005, Commerce published proposed regulations to implement the finding that the waiver provisions were inconsistent with Article 11.3. Commerce published the final regulations on October 28, 2005, effective October 31, 2005. On December 16, 2005, Commerce issued the redetermination of the sunset review in question, thus bringing the United States into compliance with the recommendations and rulings of the DSB. On March 6, 2006, Argentina requested the establishment of a panel to evaluate whether the United States complied with the recommendations and rulings of the DSB, and a panel was established on March 17, 2006. The original panelists were appointed to the compliance panel.

In its report circulated May 21, 2007, the panel agreed with Argentina that the waiver provisions remained inconsistent with Article 11.3 and that the redetermination was also inconsistent with a number of articles in the Antidumping Agreement. The panel agreed with the United States that the redetermination was not inconsistent with other articles in the Antidumping Agreement.

June 12, 2007, the United States filed a notice of appeal, challenging the panel's findings concerning the waiver provisions, as well as a procedural question. On April 12, 2007, the Appellate Body issued its report, agreeing with the United States that we had brought the waiver provisions into compliance. The Appellate Body disagreed with the United States regarding the procedural question.

On May 21, 2007, Argentina filed a request for authorization to suspend concessions under Article 22.2 of the DSU. On June 1, 2007, the United States objected to Argentina's request, referring the matter arbitration under Article 22 of the DSU. The original panelists agreed to serve as arbitrator.

As a result of the second sunset review on oil country tubular goods, the order was revoked. Therefore, on June 21, 2007, the United States and Argentina filed a joint request to suspend the arbitration proceeding, and on June 26, 2007, the arbitrator suspended the proceedings.

5. United States – Investigation of the International Trade Commission in softwood lumber from Canada (WT/DS277)

On December 20, 2002, Canada requested consultations with the United States on the USITC's final determination in its investigations concerning softwood lumber from Canada. The Commission determined that an industry in the United States is threatened with material injury by reason of imports from Canada found to be subsidized and sold in the United States at less than fair value. Canada alleges four flaws in the ITC's determination: (1) basing threat determination on "allegation, conjecture, and remote possibility"; (2) failing to establish that circumstances that would covert threatened injury into actual injury are "clearly foreseen and imminent"; (3) "failing to properly consider all factors relevant to determining the existence of a threat of material injury"; and (4) failing to properly consider the impact of dumped and subsidized imports on the domestic industry. More generally, Canada alleges that the ITC's report lacked "sufficient detail, relevant information and considerations, and proper reasons." Consultations were held January 22, 2003.

Canada requested the establishment of a panel on April 3, 2003, and the DSB established a panel on May 7, 2003. On June 19, 2003, the Director General composed the panel as follows: Mr. Hardeep Singh Puri, Chairman, and Mr. Paul O'Connor and Ms. Luz Elena Reyes De La Torre, Members. In its report circulated on March 22, 2004, the panel agreed with Canada's principal argument was that the ITC's threat of injury determination was not supported by a reasoned and adequate explanation, and agreed with Canada that the ITC had failed to establish that imports threaten to cause injury. However, the panel: declined Canada's request to find violations of certain overarching obligations under the Antidumping and Subsidies Agreements; rejected Canada's argument that a requirement that an investigating authority take "special care" is a stand-alone obligation; rejected Canada's argument that the ITC was obligated to identify an abrupt change in circumstances; agreed with the United States that, where the Antidumping and Subsidies Agreements required the ITC to "consider" certain factors, the ITC was not required to make explicit findings with respect to those factors; and rejected Canada's argument that the United States violated certain provisions of the applicable agreements that pertain to present material injury. The DSB adopted the panel report on April 26, 2004.

At the May 19, 2004 meeting of the DSB, the United States stated its intention to implement the rulings and recommendations of the DSB. On November 24, 2004, the ITC issued a new threat-of-injury determination, finding that the U.S. lumber industry was threatened with material injury by reason of dumped and subsidized lumber from Canada. On December 13, Commerce amended the antidumping and countervailing duty orders to reflect the issuance and implementation of the new ITC determination.

At the January 25, 2005 DSB meeting, the United States announced that it had come into compliance with the DSB's recommendations and rulings. Canada sought recourse to Article 21.5 of the DSU, and an Article 21.5 panel was established on February 25, 2005. The panel was composed on March 2, 2005, consisting of the same members as the original panel. Canada

also sought recourse to Article 22 of the DSU. The United States objected to the level of concessions that Canada proposed to suspend, and the matter accordingly was referred to arbitration under Article 22.6. The Article 22.6 arbitration was suspended pending the outcome of the Article 21.5 proceeding.

In its report circulated on November 15, 2005, the Article 21.5 panel rejected Canada's claim that the ITC's threat-of-injury determination was not supported by evidence and analysis such that an objective and unbiased investigating authority could have made that determination. On January 13, 2006, Canada appealed the panel report.

On April 13, 2006, the Appellate Body issued its report. The Appellate Body found that the panel acted inconsistently with its obligation under Article 11 of the DSU because it articulated and applied an improper standard of review of the ITC's revised threat-of-injury determination. Accordingly, the Appellate Body reversed the panel's finding that the ITC's revised determination is not inconsistent with U.S. obligations under the Antidumping Agreement and the SCM Agreement. However, the Appellate Body found that it was unable to complete the panel's analysis and, accordingly, made no recommendation to the DSB.

At its May 9, 2006 meeting, the DSB adopted the Appellate Body report together with the panel report as reversed by the Appellate Body.

On October 12, 2006, the United States and Canada jointly notified the DSB that they had reached a mutually agreed solution, in light of which Canada withdrew its request for authorization to suspend tariff concessions under Article 22.2 of the DSU and the United States withdrew its request for arbitration under Article 22.6 of the DSU.

On February 23, 2007, the United States and Canada jointly notified the DSB of an amendment to their mutually agreed solution.

6. United States – Anti-dumping measures on oil country tubular goods (OCTG) from Mexico (WT/DS282)

On February 18, 2003, Mexico requested consultations regarding several administrative determinations made in connection with the antidumping duty order on oil country tubular goods from Mexico, including the sunset review determinations of Commerce and the ITC. Mexico also challenges certain provisions and procedures contained in the Tariff Act of 1930, the regulations of Commerce and the ITC, and Commerce's Sunset Policy Bulletin, as well as the URAA Statement of Administrative Action. The focus of this case appears to be on the analytical standards used by Commerce and the ITC in sunset reviews, although Mexico also challenges certain aspects of Commerce's antidumping methodology. Consultations were held April 2-4, 2003. Mexico requested the establishment of a panel on July 29, 2003, and the DSB established a panel on August 29, 2003. On February 11, 2003, the following panelists were selected, with the consent of the parties, to review Mexico's claims: Mr. Christer Manhusen, Chairman; Mr. Alistair James Stewart and Ms. Stephanie Sin Far Man, Members.

On June 20, 2005, the panel circulated its report. The panel rejected Mexico's claim that certain aspects of the U.S. administrative review procedures are inconsistent with U.S. WTO obligations, as well as Mexico's claims regarding the USITC's laws and regulations regarding the determination of likelihood of injury and the likelihood determination itself. The panel did find that the Sunset Policy Bulletin and Commerce's likelihood determination itself were inconsistent with Article 11.3.

On August 4, 2005, Mexico filed a notice of appeal regarding the panel's findings on likelihood of injury. The United States appealed the panel's findings regarding the Sunset Policy Bulletin. On November 2, 2005, the Appellate Body issued its report. The report upheld the panel's findings rejecting Mexico's claims regarding likelihood of injury. In addition, the Appellate Body reversed the panel's findings that the Sunset Policy Bulletin breaches U.S. obligations. The DSB adopted the panel and Appellate Body reports on November 28, 2005. The United States and Mexico agreed to a reasonable period of time of six months.

To comply with the recommendations and rulings of the DSB, Commerce conducted a redetermination and concluded that dumping was likely to continue or recur. On August 21, 2006, Mexico filed a request seeking consultations with respect to the redetermination. On August 31, 2006, Mexico and the United States held consultations. On 2006, Mexico filed a request for the establishment of a panel.

As a result of the second sunset review on oil country tubular goods, the order was revoked. On July 5, 2007, Mexico filed a request pursuant to Article 12.2, in conjunction with Article 21.5, of the DSU to suspend the proceedings, and on July 11, 2007, the panel suspended the proceedings.

7. United States – Measures affecting the cross-border supply of gambling and betting services (WT/DS285)

On March 13, 2003, the United States received from Antigua & Barbuda a request for consultations regarding its claim that U.S. federal, state and territorial laws on gambling violate U.S. specific commitments under the GATS, as well as Articles VI, XI, XVI, and XVII of the GATS, to the extent that such laws prevent or can prevent operators from Antigua and Barbuda from lawfully offering gambling and betting services in the United States. Antigua & Barbuda revised its request for consultations on April 1, 2003. Consultations were held on April 30, 2003.

Antigua & Barbuda requested the establishment of a panel on June 12, 2003. The DSB established a panel on July 21, 2003. On August 25, 2003, the Director General composed the panel as follows: Mr. B. K. Zutshi, Chairman, and Mr. Virachai Plasai and Mr. Richard Plender, Members. The panel's final report, circulated on November 10, 2004, found that the United States breached Article XVI (Market Access) of the GATS by maintaining three U.S. federal laws (18 U.S.C. §§ 1084, 1952, and1955) and certain statutes of Louisiana, Massachusetts, South Dakota, and Utah. It also found that these measures were not justified under exceptions in Article XIV of the GATS.

The United States filed a notice of appeal on January 7, 2005. The Appellate Body issued its report on April 7, 2005, in which it reversed and/or modified several panel findings. The Appellate Body found that the three U.S. federal gambling laws at issue "fall within the scope of 'public morals' and/or 'public order'" under Article XIV. To meet the requirements of the Article XIV chapeau, the Appellate Body found that the United States needs to clarify an issue concerning Internet gambling on horse racing.

The DSB adopted the panel and Appellate Body reports on April 20, 2005. The United States stated its intention to implement the DSB recommendations and rulings on May 19, 2005. On August 19, 2005, an Article 21.3(c) arbitrator determined that the reasonable period of time for implementation will expire on April 3, 2006.

At the DSB meeting of April 21, 2006, the United States informed the DSB that the United States was now able to show that relevant U.S. law did not discriminate against foreign suppliers of remote gambling on horse racing, and thus that the United States was in compliance with the recommendations and rulings of the DSB in this dispute. On June 8, 2006, Antigua requested consultations with the United States regarding U.S. compliance with the DSB recommendations and rulings. The parties held consultations on June 26, 2006. On July 5, 2006, Antigua requested the DSB to establish a panel pursuant to Article 21.5 of the DSU, and a panel was established on July 19, 2006. The Chairperson of the original panel and one of the panelists were unavailable to serve. The parties agreed on their replacements, and the panel was composed as follows: Mr. Lars Anell, Chairperson, and Mr. Mathias Francke and Mr. Virachai Plasai, Members.

The report of the Article 21.5 panel, which was circulated on March 30, 2007, found that the United States had not complied with the recommendations and rulings of the DSB in this dispute. The DSB adopted the report of the Article 21.5 panel on May 22, 2007.

On June 21, 2007, Antigua & Barbuda submitted a request, pursuant to Article 22.2 of the DSU, for authorization from the DSB to suspend the application to the United States of concessions and related obligations of Antigua and Barbuda under the GATS and the TRIPS. On July 23, 2007, the United States referred this matter to arbitration under Article 22.6 of the DSU. The arbitration will be carried out by the three panelists who served on the Article 21.5 panel.

8. United States – Laws, regulations and methodology for calculating dumping margins ("zeroing") (WT/DS294)

On June 12, 2003, the European Communities requested consultations regarding the use of "zeroing" in the calculation of dumping margins. Consultations were held July 17, 2003. The EC requested further consultations on September 8, 2003. Consultations were held October 6, 2003. The EC requested the establishment of a panel on February 5, 2004, and the DSB established a panel on March 19, 2004. On October 27, 2004, the panel was composed as follows: Mr. Crawford Falconer, Chair, and Mr. Hans-Friedrich Beseler and Mr. William Davey, Members. The panel issued its report on October 31, 2005, finding that Commerce's use of "zeroing" in antidumping investigations is inconsistent with U.S. obligations, but rejecting the

EC's claims that zeroing in other phases of antidumping proceedings is also inconsistent. On January 17, 2006, the EC appealed the panel report.

On April 18, 2006, the Appellate Body circulated its report, finding that zeroing in other phases of antidumping proceedings is inconsistent with the Antidumping Agreement. The United States and the EC agreed to a reasonable period of time of 11 months. To comply, he Department of Commerce announced that it would no longer engage in zeroing in average-to-average comparisons in investigations. The Department of Commerce also issued revised determinations in the specific investigations that were part of this dispute.

On July 9, 2007, the EC requested consultations with the United States concerning its compliance with the recommendations and rulings of the DSB. The EC and the United States held consultations on July 30, 2007. On September 13, 2007, the EC requested the establishment of a panel.

9. United States – Reviews of countervailing duty on softwood lumber from Canada (WT/DS311)

On April 14, 2004, Canada requested consultations concerning what it termed "the failure of the United States Department of Commerce (Commerce) to complete expedited reviews of the countervailing duty order concerning certain softwood lumber products from Canada" and "the refusal and failure of Commerce to conduct company-specific administrative reviews of the same countervailing duty order." Canada alleged that the United States had acted inconsistently with several provisions of the SCM Agreement and with Article VI:3 of the GATT 1994. Consultations were held on June 8, 2004.

On September 12, 2006, the United States and Canada signed the Softwood Lumber Agreement. On October 12, 2006, the United States and Canada informed the DSB that they had resolved the issues in the disputes WT/DS236, WT/DS247, WT/DS257, WT/DS264, WT/DS277 and WT/DS311.

10. United States – Subsidies on large civil aircraft (WT/DS317)

On October 6, 2004, the European Communities requested consultations with respect to "prohibited and actionable subsidies provided to U.S. producers of large civil aircraft." The EC alleged that such subsidies violated several provisions of the SCM Agreement, as well as Article III:4 of the GATT. Consultations were held on November 5, 2004. On January 11, 2005, the United States and the EC agreed to a framework for the negotiation of a new agreement to end subsidies for large civil aircraft. The parties set a three-month time frame for the negotiations and agreed that, during negotiations, they would not request panel proceedings. These discussions did not produce an agreement. On May 31, 2005, the EC requested the establishment of a panel to consider its claims. The EC filed a second request for consultations regarding large civil aircraft subsidies on June 27, 2005. This request covered many of the measures covered in the initial consultations, as well as many additional measures that were not

covered. A panel was established with regard to the October claims on July 20, 2005. On October 17, 2005, the Deputy Director General established the panel as follows: Ms. Marta Lucía Ramírez de Rincón, Chair, and Ms. Gloria Peña and Mr. David Unterhalter, Members. The EC requested establishment of a panel with regard to its second panel request on January 20, 2006. That panel was established on February 17, 2006. That panel was established on February 17, 2006. Its proceedings were labeled "*United States – Subsidies on large civil aircraft (Second Complaint) (WT/DS353)*, and are discussed in further detail under that heading.

11. United States – Continued suspension of obligations in the EC – Hormones dispute (WT/DS320)

As noted above (DS26, 48), on November 8, 2004, the European Communities requested consultations with respect to "the United States' continued suspension of concessions and other obligations under the covered agreements" despite the adoption of a directive on September 22, 2003 that the EC claims implements the recommendations and rulings of the DSB in the *EC – Hormones* dispute. Consultations were held on December 16, 2004. The EC requested the establishment of a panel on January 13, 2005, and the panel was established on February 17, 2005. Australia, Canada, China, Mexico, and Chinese Taipei reserved their third-party rights. On June 6, 2005, the Director General composed the panel as follows: Mr. Mr Tae-yul Cho, Chairman, and Ms. Claudia Orozco and Mr. William Ehlers, Members.

The panel, in a communication dated August 1, 2005, granted the parties' request to open the substantive meetings with the parties to the public via a closed-circuit television broadcast. The panel's meetings with the parties took place September 12-15, 2005 and the meeting with third parties, which was closed, took place on September 14, 2005. On October 20, 2005, the panel announced that it would seek the advice of experts in its deliberations. The identities of the selected experts were announced on March 24, 2006 and later amended by the panel on April 12, 2006. A meeting between the panel and the experts, which was open to the public, took place in the presence of the parties on September 27-28, 2006 and the second substantive meeting between the panel and the parties took place October 2-3, 2006. The panel issued its interim report to the parties on July 31, 2007.

12. United States – Measures relating to zeroing and sunset reviews (WT/DS322)

On November 24, 2004, Japan requested consultations with respect to: (1) the Department of Commerce's alleged practice of "zeroing" in antidumping investigations, administrative reviews, sunset reviews, and in assessing the final antidumping duty liability on entries upon liquidation; (2) in sunset reviews of antidumping duty orders, Commerce's alleged irrefutable presumption of the likelihood of continuation or recurrence of dumping in certain factual situations; and (3) in sunset reviews, the waiver provisions of U.S. law. Japan claims that these alleged measures breach various provisions of the AD Agreement and Article VI of the GATT 1994. Consultations were held on December 20, 2004. On April 15, 2005, the Director-General composed the panel as follows: David Unterhalter, Chair, and Simon Farbenbloom and Jose Antonio Buencamino, Members.

The panel circulated its report on September 20, 2006. The panel found zeroing in average-to-average comparisons in investigations to be inconsistent with the Antidumping Agreement, but found zeroing to be permissible in administrative reviews. On October 11, 2006, Japan appealed the panel's findings regarding administrative reviews. In a report circulated January 9, 2007, the Appellate Body reversed the panel's finding regarding zeroing in administrative reviews. Although Japan requested arbitration to determine the reasonable period of time, the United States and Japan subsequently agreed to a reasonable period of time of 11 months.
As a result of a separate proceeding, the Department of Commerce announced that it would no longer engage in zeroing in average-to-average comparisons in investigations.

13. United States – Antidumping measure on shrimp from Ecuador (WT/DS335)

On November 17, 2005, Ecuador requested consultations with respect to the Department of Commerce's imposition of definitive antidumping duties on certain frozen warmwater shrimp from Ecuador. Specifically, Ecuador has alleged that Commerce's use of a "zeroing" methodology is inconsistent with Article VI of the GATT 1994 and several provisions of the AD Agreement. Consultations were held on January 31 and March 3, 2006.

On June 8, 2006, Ecuador requested the establishment of a panel. The parties agreed to the following panelists: Alberto Dumont, Chair, Deborah Milstein, and Stephanie Sin Far Man. On October 20, 2006, the United States and Ecuador submitted a procedural agreement providing, *inter alia*, that the United States would not contest Ecuador's claim on specified grounds. On January 30, 2007, the panel circulated its report, finding the use of zeroing in that particular investigation to have breached the Antidumping Agreement. Neither party appealed. The Department of Commerce recalculated the margins, which were below *de minimis.* Commerce revoked the order.

14. United States – Shrimp Bonding (Thailand) (WT/DS343)

On April 24, 2006, Thailand requested consultations with respect to certain issues relating to the imposition of antidumping measures on shrimp from Thailand. Thailand has alleged that the Department of Commerce's use of "zeroing" in the antidumping investigation of shrimp from Thailand is inconsistent with various provisions of the AD Agreement. Furthermore, Thailand has alleged that the United States has imposed on importers a requirement to maintain a continuous entry bond in the amount of the anti-dumping duty margin multiplied by the value of imports of subject shrimp imported by the importer in the preceding year, and that this action breached several provisions of the GATT 1994 and the AD Agreement. Consultations were held August 1, 2006. Thailand requested the establishment of a panel on September 15, 2006, and the DSB established a panel on October 26, 2006. On January 26, 2007, the panel was composed as follows: Mr. Michael Cartland, Chair, and Mr. Graham Sampson and Ms. Enie Neri de Ross, Members.

15. United States – Final antidumping measures on stainless steel from Mexico (WT/DS344)

On May 26, 2006, Mexico requested consultations with respect to the Department of Commerce's alleged use of "zeroing" in an antidumping investigation and five administrative reviews involving stainless steel sheet and strip coils from Mexico. Mexico claims that these alleged measures are "as such" and "as applied" inconsistent with Articles 1, 2.1, 2.4, 2.4.2, 9, and 18 of the AD Agreement, Articles VI:1 and VI:2 of the GATT 1994, and Article XVI:4 of the WTO Agreement. On October 12, 2006, Mexico requested the establishment of a panel, which was established on October 26, 2006. On December 15, 2006, the Director General composed the panel as follows: Mr. Alberto Juan Dumont, Chair, and Mr. Bruce Cullen and Ms. Leora Blumberg, Members. The panel is due to issue its report by late November 2007.

16. United States – Shrimp Bonding (India) (WT/DS345)

On June 6, 2006, India requested consultations with respect to certain issues relating to Customs Bond Directive 99-3510-004, as amended by the Amendment to Bond Directive 99-3510-004 (July 9, 2004) and clarifications and amendments thereof. India has alleged that the United States has imposed on importers a requirement to maintain a continuous entry bond in the amount of the anti-dumping duty margin multiplied by the value of imports of subject shrimp imported by the importer in the preceding year, and that this action breached several provisions of the GATT 1994, the AD Agreement, and the SCM Agreement. Consultations were held July 31, 2006 and September 18, 2006. India requested the establishment of a panel on October 13, 2006, and the DSB established a panel on November 21, 2006. On January 26, 2007, the panel was composed as follows: Mr. Michael Cartland, Chair, and Mr. Graham Sampson and Ms. Enie Neri de Ross, Members.

17. United States – Acindar AD (Argentina) (WT/DS346)

On June 20, 2006, Argentina requested consultations with the United States concerning an administrative review of oil country tubular goods. Specifically, Argentina challenged the Department of Commerce's consideration of one company's home sales, the calculation of constructed normal value, and other particular aspects of the review. Argentina also challenged certain procedural aspects of the review, as well as the amount of the duties assessed.

18. United States – Zeroing II (EC) (WT/DS350)

On October 2, 2006, the European Communities requested consultations regarding the continued use of "zeroing" in original investigations, administrative reviews, and sunset reviews in the calculation of dumping margins. On October 9, 2006, the European Communities, in a further request for consultations, identified additional administrative reviews in which the US Department of Commerce applied the "zeroing" methodology in calculating the margin of dumping, and requested that those cases be added to the list.

On October 10, 2006, Japan requested to join the consultations, on October 12, 2006, Thailand requested to join the consultations, and on 13 October 2006, Brazil and India requested to join the consultations. The United States and EC held consultations on November 14, 2006 and February 28, 2007 without third-party participation. On May 10, 2007, the European Communities requested the establishment of a panel. At its meeting on June 4, 2007, the DSB established a panel. Chinese Taipei, India, and Japan reserved their third-party rights. Subsequently, Brazil, China, Egypt, Korea, Norway and Thailand reserved their third-party rights. On June 29, 2007, the European Communities requested the Director-General to compose the Panel, and on July 6, 2007, the Director-General composed the Panel. The Panel expects to issue its report to the parties on June 30, 2008.

19. United States – Subsidies on large civil aircraft (Second Complaint) (WT/DS353)

The steps leading to the establishment of this panel are discussed under the heading "*United States – Subsidies on large civil aircraft (WT/DS317).* On November 23, 2006, the Deputy Director General constituted the panel as follows: Mr. Crawford Falconer, Chair, and Mr. Francisco Orrego Vicuña and Mr. Virachai Plasai, Members. The panel granted the parties' request to open the substantive meetings with the parties to the public via a screening of a videotape of the public session. The session of the panel meeting that involves business confidential information and the panel's meeting with third parties are closed.

20. United States – Agriculture Subsidies (Canada) (WT/DS357)

On January 8, 2007, Canada requested consultations with the United States alleging (1) serious prejudice to the interests of Canada within the meaning of Articles 5 and 6 of the SCM Agreement in that subsidies to U.S. corn producers had caused price suppression for corn in Canada; (2) that certain U.S. export credit guarantee programs confer export subsidies in contravention of the SCM Agreement and the Agreement on Agriculture, and (3) that the U.S. exceeded its commitments regarding the Total Aggregate Measurement of Support in favor of domestic producers of agricultural products in several years from 1999 to 2005. Consultations were held on February 7, 2007. Canada requested a panel with respect to points (2) and (3) on June 7, 2007.

21. United States – Corn Subsidies (Brazil) (WT/DS365)

On July 11, 2007, Brazil requested consultations with the United States alleging (1) that the U.S. exceeded its commitments regarding the Total Aggregate Measurement of Support in favor of domestic producers of agricultural products in several years from 1999 to 2005 and (2) that certain U.S. export credit guarantee programs confer export subsidies in contravention of the SCM Agreement and the Agreement on Agriculture. Consultations were held on August 22, 2007.

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