

**European Communities – Measures Affecting the Approval and Marketing of Biotech
Products**

(WT/DS291, 292, and 293)

**Response of the United States to the
Questions by the Panel Pertaining to the
Request of the European Communities for a Preliminary Ruling**

March 29, 2004

2. *With reference to para. 41 of the European Communities' request, could the United States provide its views as to whether it is clear from its panel request which provisions have been violated by which measure?*

1. The United States submits that its panel request is clear in alleging which provisions of the WTO Agreement have been violated by which EC measure. In particular, the panel request alleges that each of the listed EC measures violates each of the provisions of the WTO Agreement cited in the panel request.

2. The second paragraph of the U.S. panel request describes the measures covered by the request:

“The measures affecting biotech products covered in this panel request are:

(1) as described above, the suspension by the EC of consideration of applications for, or granting of, approval of biotech products;

(2) as described above, the failure by the EC to consider for approval applications for the biotech products mentioned in Annexes I and II to this request; and

(3) national marketing and import bans maintained by member States, as described in Annex III to this request.”

The following paragraph of the U.S. panel request then states: “These measures appear to be inconsistent with the following provisions,” and proceeds to list the relevant provisions of the WTO Agreement. The United States submits that this language is clear in tying the covered measures to the claimed violations of the WTO Agreement.

3. The United States expects that during the course of this proceeding, not all violations of the WTO Agreement alleged in the U.S. panel request will receive the same level of attention.¹ Furthermore, the EC itself acknowledges that “several of those provisions [cited in the panel requests] are either mutually exclusive – such as those contained in the SPS and in the TBT Agreements – or subordinated – such as those of the GATT 1994 in relation to the ones contained in the other agreements.” (EC Request, para. 40.) Nonetheless, in order to preserve the legal rights of the United States in this proceeding, the U.S. panel request had to be comprehensive in listing the provisions of the WTO Agreement violated by the EC measures.

3. *With reference to footnote 15 of the United States' comments, could the United States explain its reference to Annex C(1)(b), specifically why it did not find it necessary to identify specific obligations?*

4. Subparagraph (1)(b) of Annex C of the SPS Agreement contains five clauses establishing related transparency obligations with respect to ensuring the fulfilment of SPS measures. The

¹ Indeed, the United States currently does not intend to pursue its claims that the procedures used in the adoption of the national marketing and import bans violate the EC's WTO obligations.

specific clauses within subparagraph C(1)(b) were not identified separately because the United States considers the EC measures to be inconsistent with each of these clauses.

5. In addition, the United States is unaware of any panel or Appellate Body report faulting a panel request for not citing to specific subclauses within a subparagraph. To the contrary, the United States notes that the level of specificity in its panel request is comparable to, or greater than, the level of specificity in the panel requests in the three completed SPS panels. *See Australia - Measures Affecting Importation of Salmon*, WT/DS18/2 (10 March 1997) (citing “Articles 2, 3, and 5” of the SPS Agreement); *Japan - Measures Affecting Agricultural Products*, WT/DS76/2 (6 Oct. 1997) (citing “Articles 2, 4, 5, 7 and 8” of the SPS Agreement); *Japan - Measures Affecting the Importation of Apples*, WT/DS245/2 (8 May 2002) (citing “Articles 2.2, 2.3, 5.1, 5.2, 5.3, 5.5, 5.6, 6.1, 6.2 and 7 and paragraphs 5, 6, and 8 of Annex B” of the SPS Agreement). For example, the *Japan-Apples* panel request, like the U.S. panel request in this dispute, cites to paragraph 5 of Annex B of the SPS Agreement as a whole, without further listing of individual subparagraphs.