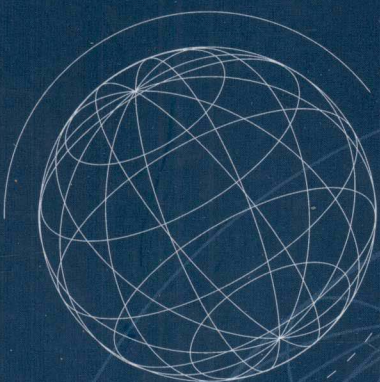




WORLD TRADE
ORGANIZATION

Dispute Settlement Reports 2008
Volume XV: Pages 5755 to 6186

2008



CAMBRIDGE

WORLD TRADE ORGANIZATION

Dispute Settlement Reports

2008

Volume XV

Pages 5755-6186



CAMBRIDGE
UNIVERSITY PRESS

TABLE OF CONTENTS

	<i>Page</i>
Canada – Continued Suspension of Obligations in the EC – Hormones Dispute (WT/DS321)	
Report of the Panel	5757
Cumulative List of Published Disputes	6167

CANADA – CONTINUED SUSPENSION OF OBLIGATIONS IN THE EC – HORMONES DISPUTE

Report of the Panel

WT/DS321/R

*Adopted by the Dispute Settlement Body
on 14 November 2008
as Modified by Appellate Body Report*

TABLE OF CONTENTS

	Page
I. INTRODUCTION	5774
A. Request for Consultations and Request for the Establishment of a Panel	5774
B. Establishment and Composition of the Panel	5775
C. Panel Proceedings.....	5775
II. FACTUAL ASPECTS.....	5776
A. History of the Dispute	5776
B. Measure at Issue	5778
III. PARTIES' REQUESTS FOR FINDINGS AND RECOMMENDATIONS.....	5778
IV. ARGUMENTS OF THE PARTIES	5779
A. Introduction	5779
B. Parties' Requests and Arguments on Opening the Panel Meeting for the Public Observation	5779
1. Arguments of the European Communities	5779
2. Arguments of Canada.....	5782
C. First Written Submission of the European Communities	5784
1. Introduction	5784
2. Factual aspects	5784
3. Legal arguments: Part I – Violation of Articles 23, 21.5, 22.8 and 3.7 of the DSU and Articles I and II of the GATT 1994.....	5784

4.	Legal arguments: Part II – Conditional claim in the event that the Panel does not find any violation of Article 23 of the DSU as set out in Part I	5793
D.	First Written Submission of Canada	5795
1.	Introduction.....	5795
2.	Background to the dispute	5795
3.	Legal arguments.....	5796
E.	Oral Statement of the European Communities During the First Substantive Meeting	5805
1.	Introduction.....	5805
2.	Seeking redress – Article 23.1	5805
3.	Article 23.2(a) of the DSU in conjunction with Article 21.5 of the DSU	5806
4.	Article 23.1 in conjunction with Articles 22.8 and 3.7 of the DSU	5807
5.	Concluding statement of the European Communities...	5810
F.	Oral Statement of Canada During the First Substantive Meeting	5813
1.	Introduction.....	5813
2.	Since the EC is not presumed to have complied, Canada has not acted inconsistently with its obligations under the DSU.....	5814
3.	The actual compliance of the EC's measure with the recommendations and rulings of the DSB	5816
4.	Conclusion	5818
5.	Concluding statement of Canada	5819
G.	Second Written Submission of the European Communities	5821
1.	Introduction.....	5821
2.	PART 1: Violation of Articles 23.1, 23.2(a), 21.5 and 22.8 of the DSU (systemic issues)	5821
3.	PART 2: The WTO-consistency of the EC compliance measure.....	5826
H.	Second Written Submission of Canada.....	5832
1.	Introduction.....	5832
2.	The EC's claim under the DSU	5832
3.	The EC's compliance in EC – Hormones.....	5835
4.	Conclusion	5842
I.	Oral Statement of the European Communities on Experts Opinions During the Second Substantive Meeting	5842

J.	Oral Statement of Canada on Experts Opinions During the Second Substantive Meeting	5849
1.	Introduction.....	5849
2.	The EC's risk assessments	5850
3.	The nature of assessing risk	5851
4.	Specific scientific issues.....	5853
5.	Issues related to good veterinary practice	5854
6.	Conclusion	5855
K.	Oral Statement of the European Communities on Legal Issues During the Second Substantive Meeting	5855
1.	Introduction.....	5855
2.	Article 5.1 of the SPS Agreement	5855
3.	Article 3.3 of the SPS Agreement	5857
4.	Article 5.7 of the SPS Agreement	5858
5.	Article 5.5 of the SPS Agreement	5858
6.	Conclusion on the SPS Agreement	5858
7.	Concluding statement of the European Communities ...	5859
L.	Oral Statement of Canada on Legal Issues During the Second Substantive Meeting	5865
1.	Introduction.....	5865
2.	The EC has not demonstrated that the relevant international standards are insufficient to meet its appropriate level of protection	5867
3.	The EC has not demonstrated that its permanent ban on oestradiol-17 β is based on a risk assessment appropriate to the circumstances	5867
4.	The EC has not, and cannot, demonstrate that there is insufficient evidence to conduct a risk assessment on the five other hormones.....	5870
5.	The EC has not demonstrated that the failure to follow good veterinary practice results in increased risk of adverse effects.....	5871
6.	Conclusion	5871
7.	Concluding statement of Canada.....	5871
V.	ARGUMENTS OF THE THIRD PARTIES	5872
A.	Australia	5872
1.	Introduction.....	5872
2.	Opening Panel meetings for observation by the public.....	5872

	3.	Whether the DSB authorization remains in effect	5873
	4.	Article 21.5 of the DSU	5873
B.		Brazil	5875
	1.	Introduction.....	5875
	2.	Opening Panel meetings for observation by the public	5875
	3.	Whether the DSB authorization remains in effect	5876
	4.	Article 21.5 of the DSU	5877
	5.	Burden of proof.....	5877
C.		China	5878
	1.	Introduction.....	5878
	2.	Opening Panel meetings for observation by the public	5878
	3.	The current status of the DSB authorized suspension of concessions.....	5878
	4.	Article 21.5 of the DSU and burden of proof	5880
	5.	Article 23.2 of the DSU	5882
D.		India	5883
	1.	Introduction.....	5883
	2.	Opening Panel meetings for observation by the public	5884
E.		Mexico	5885
	1.	Introduction.....	5885
	2.	Opening Panel meetings for observation by the public	5885
	3.	Whether the DSB authorization remains in effect	5886
	4.	Article 21.5 of the DSU	5887
F.		New Zealand	5887
	1.	Introduction.....	5887
	2.	Opening Panel meetings for observation by the public	5887
	3.	Whether the DSB authorization remains in effect	5888
	4.	Articles 21.5, 22.8 and 23 of the DSU	5888
	5.	Burden of proof.....	5890
	6.	Article 5.7 of the SPS Agreement.....	5891
	7.	Article 5.1 of the SPS Agreement.....	5893
G.		Norway.....	5895

1.	Opening Panel meetings for observation by the public.....	5895
2.	Whether the DSB authorization remains in effect.....	5896
3.	Article 21.5 of the DSU	5897
H.	Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu	5899
1.	Introduction.....	5899
2.	Opening Panel meetings for observation by the public.....	5899
3.	Whether the DSB authorization remains in effect.....	5900
4.	Article 21.5 of the DSU	5901
5.	The relationship between Article 22.8 and Article 23 of the DSU	5902
I.	United States.....	5904
1.	Introduction.....	5904
2.	Opening Panel meetings for observation by the public.....	5904
VI.	INTERIM REVIEW	5904
A.	Introduction	5904
B.	Parties' Comments on the Descriptive Part.....	5905
C.	Parties' Comments Regarding the Findings of the Panel.....	5907
1.	Preliminary remarks	5907
2.	Parties' requests for review related to aspects of the report on procedural issues.....	5908
3.	Comments of the parties regarding the Panel's findings of violation of Article 23.2(a) read together with Articles 21.5 and 23.1 of the DSU and on the EC claims on Article 23.1, read together with Articles 22.8 and 3.7 of the DSU	5914
4.	Comments of the parties on the compliance of the EC ban on meat and meat products treated with the six hormones at issue for growth promotion purposes with the SPS Agreement in relation to the Panel's findings on the EC claims on Article 23.1, read together with Articles 22.8 and 3.7 of the DSU	5918
VII.	FINDINGS	5952
A.	Procedural Issues	5952
1.	Opening of the Panel meetings with the parties and experts for public observation	5952

2.	Panel's decisions relating to the consultation of individual scientific experts and international organizations	5963
3.	Other procedural issues.....	5975
4.	Scope of the Panel's mandate.....	5986
5.	Approach of the Panel on the basis of its mandate	5991
B.	First Series of EC Claims: Violation of Article 23.2(a) Read Together with Articles 21.5 and 23.1	5992
1.	Summary of the main arguments of the parties	5992
2.	Reasoning of the Panel	5997
3.	Conclusion	6009
C.	Second Series of EC Claims: Violation of Article 23.1, Read Together with Articles 22.8 and 3.7 of the DSU	6009
1.	Summary of the main arguments of the parties	6009
2.	Approach of the Panel	6017
3.	Violation of Article 22.8 of the DSU.....	6020
4.	Violation of Articles 23.1 and 3.7 of the DSU	6163
D.	Violation of Article I:1 and Article II of the GATT 1994.....	6163
E.	Conditional Claim of Violation of Article 22.8 of the DSU Made in the Alternative.....	6164
F.	Conclusion	6164
VIII.	RECOMMENDATIONS	6165

LIST OF ANNEXES

ANNEX A

CORRESPONDENCE FROM THE PANEL TO THE PARTIES AND WORKING PROCEDURES

Contents	
Annex A-1	Letter to the Parties dated 1 August 2005 on the Panel Decision on Open Hearings for Public Observation
Annex A-2	Working Procedures for the Panel
Annex A-3	Letter to the Parties dated 20 October 2005 on the Panel Decision on Consulting Scientific and Technical Experts
Annex A-4	Letter to the Parties dated 25 November 2005 on the Panel Decision on Certain Issues concerning the Experts' Working Procedures
Annex A-5	Working Procedures for Consultations with Scientific and/or Technical Experts

ANNEX B

REPLIES OF THE PARTIES TO QUESTIONS POSED BY THE PANEL AND OTHER PARTIES AFTER THE FIRST SUBSTANTIVE MEETING

Contents	
Annex B-1	Replies of the European Communities to questions posed by the Panel after the first substantive meeting (3 October 2005)
Annex B-2	Replies of Canada to questions posed by the Panel after the first substantive meeting (3 October 2005)
Annex B-3	Replies of Canada to questions posed by the European Communities after the first substantive meeting (3 October 2005)

ANNEX C

REPLIES OF THE PARTIES TO QUESTIONS POSED BY THE PANEL AND OTHER PARTIES AFTER THE SECOND SUBSTANTIVE MEETING AND COMMENTS BY THE PARTIES ON THE OTHER PARTIES' REPLIES

Contents	
Annex C-1	Replies of the European Communities to questions posed by the Panel after the second substantive meeting (18 October 2006)
Annex C-2	Comments by the European Communities on the replies of the United States and Canada to questions posed by the Panel and other parties after the second substantive meeting (31 October 2006)
Annex C-3	Replies of Canada to questions posed by the Panel after the second substantive meeting (18 October 2006)
Annex C-4	Replies of Canada to questions posed by the European Communities after the second substantive meeting (18 October 2006)
Annex C-5	Comments by Canada on the replies of the European Communities to questions posed by the Panel after the second substantive meeting (31 October 2006)

ANNEX D

REPLIES OF THE SCIENTIFIC EXPERTS TO QUESTIONS POSED BY THE PANEL

ANNEX E

REPLIES OF THE CODEX ALIMENTARIUS COMMISSION, THE JOINT FAO/WHO JECFA SECRETARIAT AND THE INTERNATIONAL AGENCY FOR RESEARCH ON CANCER TO CERTAIN QUESTIONS POSED BY THE PANEL TO INTERNATIONAL ORGANIZATIONS

Contents	
Annex E-1	Replies of the Codex Alimentarius Commission to certain questions posed by the Panel to international organizations
Annex E-2	Replies of the Joint FAO/WHO JECFA Secretariat to certain questions posed by the Panel to international organizations
Annex E-3	Replies of the International Agency for Research on Cancer to certain questions posed by the Panel to international organizations

ANNEX F

COMMENTS BY THE PARTIES ON THE REPLIES OF THE SCIENTIFIC EXPERTS, CODEX, JECFA AND IARC TO QUESTIONS POSED BY THE PANEL AND COMMENTS BY THE PARTIES ON THE OTHER PARTIES' COMMENTS

Contents	
Annex F-1	Comments by the European Communities on the replies of the scientific experts to questions posed by the Panel (30 June 2006)
Annex F-2	Comments by the European Communities on the replies of Codex, JECFA and IARC to questions posed by the Panel (30 June 2006)
Annex F-3	Comments by the European Communities to the comments by the United States and Canada on the replies of the scientific experts to questions posed by the Panel (12 July 2006)
Annex F-4	Comments by Canada on the replies of the scientific experts, Codex, JECFA and IARC to questions posed by the Panel (30 June 2006)
Annex F-5	Comments by Canada to the comments by the European Communities on the replies of the scientific experts, Codex, JECFA and IARC to questions posed by the Panel (12 July 2006)

ANNEX G

TRANSCRIPT OF THE PANEL'S JOINT MEETING WITH SCIENTIFIC EXPERTS ON 27-28 SEPTEMBER 2006

TABLE OF WTO CASES CITED IN THIS REPORT

Short Title	Full Case Title and Citation
<i>Argentina – Footwear (EC)</i>	Appellate Body Report, <i>Argentina – Safeguard Measures on Imports of Footwear</i> , WT/DS121/AB/R, adopted 12 January 2000, DSR 2000:I, 515
<i>Argentina – Footwear (EC)</i>	Panel Report, <i>Argentina – Safeguard Measures on Imports of Footwear</i> , WT/DS121/R, adopted 12 January 2000, as modified by Appellate Body Report, WT/DS121/AB/R, DSR 2000:II, 575
<i>Australia – Salmon</i>	Appellate Body Report, <i>Australia – Measures Affecting Importation of Salmon</i> , WT/DS18/AB/R, adopted 6 November 1998, DSR 1998:VIII, 3327
<i>Australia – Salmon</i>	Panel Report, <i>Australia – Measures Affecting Importation of Salmon</i> , WT/DS18/R and Corr.1, adopted 6 November 1998, as modified by Appellate Body Report, WT/DS18/AB/R, DSR 1998:VIII, 3407
<i>Australia – Salmon (Article 21.5 – Canada)</i>	Panel Report, <i>Australia – Measures Affecting Importation of Salmon – Recourse to Article 21.5 of the DSU by Canada</i> , WT/DS18/RW, adopted 20 March 2000, DSR 2000:IV, 2031
<i>Canada – Aircraft (Article 21.5 – Brazil)</i>	Appellate Body Report, <i>Canada – Measures Affecting the Export of Civilian Aircraft – Recourse by Brazil to Article 21.5 of the DSU</i> , WT/DS70/AB/RW, adopted 4 August 2000, DSR 2000:IX, 4299

Short Title	Full Case Title and Citation
<i>Canada – Aircraft (Article 21.5 – Brazil)</i>	Panel Report, <i>Canada – Measures Affecting the Export of Civilian Aircraft – Recourse by Brazil to Article 21.5 of the DSU</i> , WT/DS70/RW, adopted 4 August 2000, as modified by Appellate Body Report, WT/DS70/AB/RW, DSR 2000:IX, 4315
<i>Canada – Aircraft Credits and Guarantees</i>	Panel Report, <i>Canada – Export Credits and Loan Guarantees for Regional Aircraft</i> , WT/DS222/R and Corr.1, adopted 19 February 2002, DSR 2002:III, 849
<i>Canada – Dairy (Article 21.5 – New Zealand and US II)</i>	Appellate Body Report, <i>Canada – Measures Affecting the Importation of Milk and the Exportation of Dairy Products – Second Recourse to Article 21.5 of the DSU by New Zealand and the United States</i> , WT/DS103/AB/RW2, WT/DS113/AB/RW2, adopted 17 January 2003, DSR 2003:I, 213
<i>Canada – Dairy (Article 21.5 – New Zealand and US II)</i>	Panel Report, <i>Canada – Measures Affecting the Importation of Milk and the Exportation of Dairy Products – Second Recourse to Article 21.5 of the DSU by New Zealand and the United States</i> , WT/DS103/RW2, WT/DS113/RW2, adopted 17 January 2003, as modified by Appellate Body Report, WT/DS103/AB/RW2, WT/DS113/AB/RW2, DSR 2003:I, 255
<i>Canada – Periodicals</i>	Appellate Body Report, <i>Canada – Certain Measures Concerning Periodicals</i> , WT/DS31/AB/R, adopted 30 July 1997, DSR 1997:I, 449
<i>Canada – Periodicals</i>	Panel Report, <i>Canada – Certain Measures Concerning Periodicals</i> , WT/DS31/R and Corr.1, adopted 30 July 1997, as modified by Appellate Body Report, WT/DS31/AB/R, DSR 1997:I, 481
<i>Canada – Wheat Exports and Grain Imports</i>	Appellate Body Report, <i>Canada – Measures Relating to Exports of Wheat and Treatment of Imported Grain</i> , WT/DS276/AB/R, adopted 27 September 2004, DSR 2004:VI, 2739
<i>Canada – Wheat Exports and Grain Imports</i>	Panel Report, <i>Canada – Measures Relating to Exports of Wheat and Treatment of Imported Grain</i> , WT/DS276/R, adopted 27 September 2004, upheld by Appellate Body Report, WT/DS276/AB/R, DSR 2004:VI, 2817

Short Title	Full Case Title and Citation
<i>Chile – Alcoholic Beverages</i>	Appellate Body Report, <i>Chile – Taxes on Alcoholic Beverages</i> , WT/DS87/AB/R, WT/DS110/AB/R, adopted 12 January 2000, DSR 2000:I, 281
<i>Chile – Alcoholic Beverages</i>	Panel Report, <i>Chile – Taxes on Alcoholic Beverages</i> , WT/DS87/R, WT/DS110/R, adopted 12 January 2000, as modified by Appellate Body Report, WT/DS87/AB/R, WT/DS110/AB/R, DSR 2000:I, 303
<i>EC – Approval and Marketing of Biotech Products</i>	Panel Report, <i>European Communities – Measures Affecting the Approval and Marketing of Biotech Products</i> , WT/DS291/R, WT/DS292/R, WT/DS293/R, Corr.1 and Add.1, 2, 3, 4, 5, 6, 7, 8 and 9, adopted 21 November 2006
<i>EC – Asbestos</i>	Appellate Body Report, <i>European Communities – Measures Affecting Asbestos and Asbestos-Containing Products</i> , WT/DS135/AB/R, adopted 5 April 2001, DSR 2001:VII, 3243
<i>EC – Asbestos</i>	Panel Report, <i>European Communities – Measures Affecting Asbestos and Asbestos-Containing Products</i> , WT/DS135/R and Add.1, adopted 5 April 2001, as modified by Appellate Body Report, WT/DS135/AB/R, DSR 2001:VIII, 3305
<i>EC – Bananas III</i>	Appellate Body Report, <i>European Communities – Regime for the Importation, Sale and Distribution of Bananas</i> , WT/DS27/AB/R, adopted 25 September 1997, DSR 1997:II, 591
<i>EC – Bananas III (Article 21.5 – EC)</i>	Panel Report, <i>European Communities – Regime for the Importation, Sale and Distribution of Bananas – Recourse to Article 21.5 of the DSU by the European Communities</i> , WT/DS27/RW/EEC and Corr.1, 12 April 1999, unadopted, DSR 1999:II, 783
<i>EC – Bananas III (US) (Article 22.6 – EC)</i>	Decision by the Arbitrators, <i>European Communities – Regime for the Importation, Sale and Distribution of Bananas – Recourse to Arbitration by the European Communities under Article 22.6 of the DSU</i> , WT/DS27/ARB, 9 April 1999, DSR 1999:II, 725

Short Title	Full Case Title and Citation
<i>EC – Bed Linen (Article 21.5 – India)</i>	Appellate Body Report, <i>European Communities – Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India – Recourse to Article 21.5 of the DSU by India</i> , WT/DS141/AB/RW, adopted 24 April 2003, DSR 2003:III, 965
<i>EC – Bed Linen (Article 21.5 – India)</i>	Panel Report, <i>European Communities – Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India – Recourse to Article 21.5 of the DSU by India</i> , WT/DS141/RW, adopted 24 April 2003, as modified by Appellate Body Report, WT/DS141/AB/RW, DSR 2003:IV, 1269
<i>EC – Commercial Vessels</i>	Panel Report, <i>European Communities – Measures Affecting Trade in Commercial Vessels</i> , WT/DS301/R, adopted 20 June 2005
<i>EC – Hormones</i>	Appellate Body Report, <i>EC Measures Concerning Meat and Meat Products (Hormones)</i> , WT/DS26/AB/R, WT/DS48/AB/R, adopted 13 February 1998, DSR 1998:I, 135
<i>EC – Hormones (Canada)</i>	Panel Report, <i>EC Measures Concerning Meat and Meat Products (Hormones), Complaint by Canada</i> , WT/DS48/R/CAN, adopted 13 February 1998, as modified by Appellate Body Report, WT/DS26/AB/R, WT/DS48/AB/R, DSR 1998:II, 235
<i>EC – Hormones (US)</i>	Panel Report, <i>EC Measures Concerning Meat and Meat Products (Hormones), Complaint by the United States</i> , WT/DS26/R/USA, adopted 13 February 1998, as modified by Appellate Body Report, WT/DS26/AB/R, WT/DS48/AB/R, DSR 1998:III, 699
<i>EC – Hormones</i>	Award of the Arbitrator, <i>EC Measures Concerning Meat and Meat Products (Hormones) – Arbitration under Article 21.3(c) of the DSU</i> , WT/DS26/15, WT/DS48/13, 29 May 1998, DSR 1998:V, 1833
<i>EC – Hormones (Canada) (Article 22.6 – EC)</i>	Decision by the Arbitrators, <i>European Communities – Measures Concerning Meat and Meat Products (Hormones), Original Complaint by Canada – Recourse to Arbitration by the European Communities under Article 22.6 of the DSU</i> , WT/DS48/ARB, 12 July 1999, DSR 1999:III, 1135