

US – CONTINUED SUSPENSION CANADA – CONTINUED SUSPENSION¹ (DS320, 321)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	<i>European Communities</i>	DSU Arts. 22.8, 23.1, 23.2(a), 21.5 and 3.7, SPS Arts. 5.1 and 5.7	Establishment of Panel	27 February 2005
Respondents	<i>United States Canada</i>		Circulation of Panel Report Circulation of AB Report Adoption	31 March 2008 16 October 2008 14 November 2008

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** The continued suspension of WTO concessions by the United States and Canada resulting from the EC – Hormones disputes.²
- **Product at issue:** A number of products affected by the suspension of concessions by the United States and Canada.

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **DSU Arts. 23.1 (prohibition on unilateral determinations) and 3.7 read together with Art. 22.8 (duration of suspension):** The Appellate Body upheld the Panels' finding that the European Communities had not established a violation of DSU Arts. 23.1 and 3.7 as a result of a breach of Art. 22.8, because it was not established that the measure found to be inconsistent with the SPS Agreement in the EC – Hormones dispute had been removed.
- **DSU Arts. 23.1 and 23.2(a) (prohibition on unilateral determinations – maintaining suspension of concessions):** The Appellate Body reversed the Panels' finding that Canada and the United States had breached DSU Art. 23.1 by maintaining the suspension of concessions after the notification of Directive 2003/74/EC. It also reversed the Panels' finding that Canada and the United States had breached Art. 23.2(a) by making a unilateral determination that Directive 2003/74/EC is WTO-inconsistent.
- **DSU Art. 21.5 (review of implementation of DSB rulings):** The Appellate Body found that when the parties disagree whether the implementing measure achieves compliance, both parties have a duty to engage in WTO dispute settlement procedures, and that the proper procedure for this purpose is compliance proceedings under Art. 21.5.

3. OTHER ISSUES³

- **Risk assessment and provisional measure (SPS Arts. 5.1 and 5.7):** The Appellate Body reversed the Panels' findings that the import ban relating to oestradiol-17 β was not based on a risk assessment as required by Art. 5.1, and that the provisional import ban relating to the other five hormones did not meet the requirements of Art. 5.7. However, the Appellate Body was unable to complete the analysis and therefore made no findings as to the consistency or inconsistency of the definitive and provisional import bans with Arts 5.1 and 5.7.
- **Standard of review (DSU Art. 11):** The Appellate Body found that the Panels failed to comply with Art. 11 in the consultations with certain scientific experts.

¹ United States – Continued Suspension of Obligations in the EC – Hormones Dispute; Canada – Continued Suspension of Obligations in the EC – Hormones Dispute

² In particular, the European Communities challenged the continued suspension of concessions after notification to the DSB of Directive 2003/74/EC, amending Council Directive 96/22/EC concerning the prohibition on the use in stock-farming of certain substances having a hormonal or thyrostatic action and of beta-agonists.

³ Other issues addressed: DSU Art. 11 (standard of review); DSU Art. 21.5 (jurisdiction and burden of proof); DSU Art. 22.8 (removal of the inconsistent measure); SPS Art. 5.1 (misuse or abuse; specificity; quantification; and standard of review); SPS Art. 5.7 (sufficiency of the evidence; relationship with level of protection; and existence of international standard).