

**EUROPEAN COMMUNITIES – MEASURES AFFECTING THE APPROVAL
AND MARKETING OF BIOTECH PRODUCTS**

Communication from the Chairman of the Panel

The following communication, dated 29 September 2006, from Christian Häberli, Chairman of the Panel, addressed to the Chairman of the Dispute Settlement Body, is circulated in accordance with Article 12 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes*.

On behalf of the Panel, it is my honour to provide you with our Reports in *European Communities - Measures Affecting the Approval and Marketing of Biotech Products*, WT/DS291, WT/DS292 and WT/DS293, which will be circulated to Members of the World Trade Organization today. In this connection, I would like to draw the attention of the DSB to two systemic issues encountered in this case that should be of concern to the Membership as a whole:

1. With the circulation of its Reports, the Panel is completing more than two and a half years of legal proceedings. This is an unusually long period of time for WTO panel proceedings, considering also that Article 3.3 of the DSU stresses the importance of the prompt settlement of disputes. But the number of claims and products involved in this case was unprecedented and the record before the Panel immense. An estimated 7-8 work years of professional Secretariat staff time (not including translation and support staff time) have gone into the preparation of these Reports, not counting the time invested by the Panellists. This quite simply means that panels are unable to complete proceedings concerning such disputes within the 6-9 month timeframe laid down in Article 12.9 of the DSU, without additional resources being made available to the Secretariat for this purpose.
2. The second point concerns the importance of parties maintaining the confidentiality of panel proceedings. Regrettably, a serious confidentiality breach occurred after the Panel's Interim Reports were circulated to the Parties. Failure to respect the confidentiality of interim reports, and indeed of all stages of the proceedings, makes it more difficult for parties to reach a mutually acceptable solution. It is worth recalling in this regard that Article 3.7 of the DSU characterizes mutually acceptable solutions as the preferred solution to disputes. Failure to respect the confidentiality of interim reports also has an adverse effect on the willingness of private parties to make available to the parties and panels business confidential information that may be critical to the resolution of a dispute. Finally, it may potentially expose panels or the Secretariat to political pressure as a result of public discussion of, and debate on, a panel's interim findings and conclusions, with possible consequences for the panel process neither intended nor desired by WTO Members. Given the serious breach which occurred in this case, the Panel provided the Parties with a confidential version of its Final Reports which

would have allowed it to trace back and attribute any leak to the Party responsible for it. Future panels may wish to consider adopting similar procedures, as appropriate.
