

cited Article XXIII:1 in its request for consultations and in its request for the establishment of a panel.

92. The two cases cited by the EC in support of its position do not contradict Canada's view. First, the panel in *EC - Imposition of Anti-dumping Duties on Imports of Cotton Yarn from Brazil*, in finding that Brazil had not "specified" one of its claims, noted that the claim was not expressly referred to *anywhere* in the request for the establishment of a panel.<sup>64</sup> Similarly, in *United States - Imposition of Anti-dumping Duties on Imports of Fresh and Chilled Atlantic Salmon from Norway*, the panel noted the complete absence of any reference to an allegation of a denial of national treatment in the document referring the matter to the panel.

93. In each case it was the total absence of any reference whatsoever to the claims subsequently made before the panel that led to a determination that the claims was not within the panel's terms of reference. In this case, however, Canada referred to its nullification or impairment claim in its request for consultations and its request for the establishment of a panel. As confirmed by the Panel in *EC - Imposition of Anti-dumping Duties on Imports of Cotton Yarn from Brazil*, Canada did not have to advance individually all arguments to be made in respect of nullification or impairment in order to make specific arguments in respect of that claim in its first written and oral submissions.<sup>65</sup>

***b. Canada has satisfied the conditions of non-violation nullification or impairment***

94. In response to the EC's assertion that Canada should provide a more detailed non-violation nullification or impairment complaint, Canada has already stated in its first written submission that there are three basic conditions for determining whether a case of "non-violation" nullification or impairment exists, including:

- i. existence of a concession or other obligation e.g. the negotiation of a tariff concession;
- ii. the subsequent introduction of a government measure that upsets the competitive relationship between the domestic product with regard to like or directly competitive imported product; and

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<sup>64</sup> Report of the Panel dated 4 July 1995, ADP/137.

<sup>65</sup> The EC conceded that "not all arguments made in support of claims identified in the document requesting the establishment of a panel had to be identified in the document requesting the establishment of a panel." *Ibid.*, paragraph 454.