

## 2. WTO DISPUTES: CANADA AS DEFENDANT

### a) *Canada – Patent Protection of Pharmaceutical Products*

By way of exception to patent protection, Canada allows companies to experiment with patented drugs and to manufacture and stockpile generic versions of those drugs during the patent term. These exceptions allow generic drugs to enter the market on a commercial scale immediately after the relevant patents expire. The EU alleges that these exceptions violate the universal minimum standards for intellectual property protection required by the TRIPS Agreement. Canada claims that its patent exceptions are limited, do not unduly conflict with the exploitation of a patent, and are therefore allowable under the limited exceptions provision of the TRIPS Agreement (Art. 30). On January 5, 1998, the EU requested consultations, which were held on February 13, 1998 and June 12, 1998. A panel was established in March 1999. The first and second meetings of the Panel were held in June and July 1999. The descriptive portion of the draft panel report was issued on September 15, 1999.

### b) *Canada – Patent Protection Term*

The TRIPS Agreement (Art. 33) requires a minimum term of patent protection of 20 years from the filing date. At the effective date of the TRIPS Agreement (1 January 1996), there were a number of patents in Canada that had been issued for a term of 17 years from the date of grant, which was the required term under Canada's legislation prior to 1 October 1989. The question in this case is whether the term of those patents must be altered retroactively in order to comply with the TRIPS obligations. A panel was established at the request of the United States on September 22, 1999 to determine this issue.

### c) *Canada – Certain Measures Affecting the Automotive Industry*

On July 3, 1998, Japan requested consultations with Canada concerning measures taken in the implementation of the Canada-United States Automotive Products Trade Agreement, better known as the Auto Pact. Japan alleged that the measures violate Articles I, III and XXIV of the GATT, Articles II, VI and XVII of the GATS, Article 2 of the TRIMs Agreement and Article 3 of the SCM Agreement. Canada agreed to hold consultations under Articles XXIII of the GATT on August 27, 1998. The EC requested consultations on August 18. Those consultations took place on September 21. The panel was established on February 1, 1999. Two written submissions and two oral hearings with the panel took place.

The descriptive part of the report was released to the parties on August 6, 1999. The interim panel report is expected to be released to the parties on a confidential basis in early October for comments from the parties and the final report is scheduled to be released to the parties in mid-November. The final panel report will likely be released to all members and the public by December.