

a. Canada has raised properly non-violation nullification or impairment

88. As noted in its first oral submission, Canada raised nullification or impairment in its request for consultations dated May 19, 1995 (WT/DS/7/1), and in its request for the establishment of a panel dated July 7, 1995 (WT/DS/7/7). For example, in its request for consultations, after referring to nullification or impairment following a statement that the Order could not be justified under the WTO Agreement, Canada specifically noted that:

De plus, le dommage économique important que l'Arrêté cause au Canada, par rapport à ses attentes raisonnables, constitue également une annulation et une réduction.

89. Also, Canada raised generally all of its legal claims, including its claim of nullification or impairment, in its request for the establishment of a panel. The EC misinterprets of the meaning of the word "and" in subparagraph (iii) of Canada's request for the establishment of a panel. If Canada had intended to state that it was only raising nullification or impairment in respect of the presumption arising from the Order's inconsistency with the WTO Agreement, it would have stated so precisely. Rather, in keeping with Article 6(2), Canada provided a brief summary of the legal basis of the complaint -- namely, that the Order is inconsistent with GATT Articles I and III, Article 2 of the TBT Agreement, and nullifies or impairs benefits accruing to Canada under the WTO Agreement.

90. In any event, there is nothing in the DSU that requires non-violation nullification or impairment to be raised separately from nullification or impairment generally in consultations or in the request for the establishment of a panel. Similarly, there is nothing in the DSU requiring that non-violation nullification or impairment must be argued in the alternative.⁶³

91. Moreover, Article 7(2) of the DSU provides that panels must address the "relevant provisions" in any covered agreement "cited by the parties to the dispute". Clearly, Canada

⁶³ To the contrary, Article 4(4) of the DSU provides that requests for consultations

... shall give the reasons for the request, including identification of the measures at issue and *an indication* of the legal basis for the complaint.

Similarly, Article 6(2) of the DSU provides that requests for the establishment of a panel:

... indicate whether consultations were held, identify the specific measures at issue and provide a *brief summary* of the legal basis of the complaint sufficient to present the problem clearly.