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"[T]here is an obvious inconsistency between the finding of the Panel that 'the 3 March Measure is no longer in existence' and the subsequent recommendation of the Panel that the DSB request that the United States bring its 3 March Measure into conformity with its WTO obligations. The Panel erred in recommending that the DSB request the United States to bring into conformity with its WTO obligations a measure which the Panel has found no longer exists." <sup>1</sup>

2. In *Chile – Price Band System*, the Panel refrained from making a recommendation on the grounds that the measures at issue were no longer in existence. The Panel considered that this fact did not preclude it from making findings on those measures. <sup>2</sup>

3. In *Dominican Republic – Import and Internal Taxation of Cigarettes*, the Panel found that the measure at issue during the appeal proceedings that could affect the existence of the measure. <sup>3</sup>

















that the United States had continued to apply its change-in-ownership methodology during the course of the dispute. It therefore suggested:

"[T]hat the United States takes all appropriate steps, including a revision of its administrative practices, to prevent the aforementioned violation of Article 10 of the SCM Agreement from arising in the future."<sup>32</sup>

31. In *Guatemala – Cement II*, the Panel suggested that Guatemala revoke its anti-dumping measure on imports of grey portland cement from Mexico. However, it declined Mexico's request that the Panel suggest to Guatemala that it should refund the anti-dumping duties:

"In respect of Mexico's request that we suggest that Guatemala refund the anti-dumping duties collected, we note that Guatemala has now maintained a WTO-inconsistent anti-dumping measure in place for a period of three and a half years. ... Mexico's request raises important systemic issues regarding the nature of the actions necessary to implement a recommendation under Article 19.1 of the DSU, issues which have not been fully explored in this dispute. Thus, we decline Mexico's request to suggest that Guatemala refund the anti-dumping duties collected."<sup>33</sup>

32.

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37. In EC – Export Subsidies on Sugar, after noting the concern of several developing countries with regard to their preferential access to the EC market for their sugar exports, the Panel suggested that:

"[I]n bringing its exports of sugar into conformity with its obligations under Article s ~~4.37~~ and ~~8.58~~ ~~4.37~~ ~~8.58~~

Because of the fundamental nature and pervasiveness of the inconsistencies we have found, we suggest that Pakistan implement our recommendation by withdrawing the anti-dumping measures it has imposed on BOPP film from the United Arab Emirates. We decline however to suggest that Pakistan refund the anti-dumping duties already paid. " <sup>45</sup>

### 1.2.2.3 Cases in which panels declined to make suggestions

42. Panels have declined to make suggestions pursuant to Article 19.1 in a number of cases, including but not limited to the cases summarized below.

43. In *India – Patents (US)*, the Panel declined the United States' request to the Panel to



Article 21.3 of the DSU gives the authority to decide the means of implementation, in the first instance, to the Member found to be in violation.<sup>59</sup> Many other panels have declined requests for suggestions as well.<sup>60</sup> In the few cases in which panels have made a suggestion in an anti-dumping dispute, the panels have focused on the conclusion that one of the violations found concerned initiation, and thus vitiated the entire proceeding, which should never have been initiated, or on the "fundamental and pervasive nature" of the violations, leading the panel to conclude that revocation was the only means of implementation.<sup>61 " 62</sup>

55. In *EU –Safeguard Measures on Steel (Turkey)*, Türkiye requested the Panel to suggest, pursuant to the second sentence of Article 19.1 of the DSU, that the European Union revoke the safeguard measures at issue. The Panel, after observing that some panels had made suggestions under Article 19.1 of the DSU while others had preferred to decline to do so, stated as follows (WT/DS400/R, paras. 7.100-7.101):



and cannot, therefore, take account of all circumstances in which implementation may occur.<sup>65</sup>

### 1.2.3 Relationship with other provisions

#### 1.2.3.1 Article 6.2 of the DSU

58. In *China – Raw Materials*, the Appellate Body touched upon the relationship between Articles 19.1 and 6.2 of the DSU:

"A panel is required, under Article 7 of the DSU, to examine the 'matter' referred to the DSB by the complainant in the request for the establishment of a panel, and to make such findings as will assist the DSB in making recommendations. The language in a complainant's panel request is therefore important because a panel's terms of reference



1.3 Article 19.2: "cannot add to or diminish the rights and obligations"

61. In *Chile – Alcoholic Beverages*, Chile claimed that through its findings, the Panel had added to the rights and obligations