WORLD TRADE ORGANIZATION

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CANADA – CERTAIN MEASURES AFFECTING THE RENEWABLE ENERGY GENERATION SECTOR

CANADA – MEASURES RELATING TO THE FEED-IN TARIFF PROGRAM

Communication from the Panels

The Panels have asked the Chairperson of the Dispute Settlement Body ("DSB") to circulate to the Members for their information, the following communication dated 23 May 2012 from the Chairperson of the Panels to the Chairperson of the DSB.

On 4 November 2011, Canada submitted to the Panel in DS412 a request for a preliminary ruling concerning the consistency of Japan's request for the establishment of a Panel (WT/DS412/5) with Article 6.2 of the Dispute Settlement Understanding ("DSU").

On 20 January 2012, a Panel was established in DS426 pursuant to the European Union's request for the establishment of a Panel (WT/DS426/5). On 24 January 2012, a Panel was constituted in DS426, with the same members serving as the Panel in DS412 (WT/DS426/6/Rev.1). Following consultations with the parties, the Panels in the two disputes decided to harmonize their timetables to the greatest extent possible, in accordance with Article 9.3 of the DSU.

On 14 February 2012, Canada submitted to the Panel in DS426 a request for a preliminary ruling concerning the consistency of the European Union's request for the establishment of a Panel (WT/DS426/5) with Article 6.2 of the DSU.

On 11 May 2012, the Panels issued the enclosed preliminary rulings to the parties. The preliminary rulings will become an integral part of the Panel's final report, subject to any changes that may be necessary in the light of comments received from the parties during Interim Review.

After consulting the parties to the disputes, the Panels decided to inform the DSB of the content of its preliminary rulings. Therefore, I would be grateful if you would circulate the body of this letter and the enclosed preliminary rulings as document WT/DS412/8-WT/DS426/7.

PRELIMINARY RULINGS BY THE PANELS

1. Arguments of the Parties

(i) Canada

1. Canada asks the Panel to make a preliminary ruling on the consistency of the separate panel requests ("Panel Requests" collectively, and "Panel Request" individually) presented by Japan and the European Union ("the Complainants") in DS412 and DS426 with the standards of clarity set out in Article 6.2 of the Dispute Settlement Understanding ("DSU"). According to Canada, the claims under the SCM Agreement described in the two Panel Requests fail to provide a "brief summary of the legal basis" that is "sufficient to present the problem clearly", and should therefore be struck out of the Panel's terms of reference.[1]

2. Canada argues that the Complainants' Panel Requests do not identify the requisite legal bases in a manner sufficient to present the problem clearly because they fail to properly describe the nature and type of the alleged subsidy that is being challenged. In particular, Canada observes that although a measure cannot breach Article 3 of the SCM Agreement unless a subsidy has been found to exist, the description found in the respective Panel Requests of the Complainants' claims under Articles 3.1(b) and 3.2 of the SCM Agreement "does not identify the constituent elements of the alleged 'subsidy' … and does not even cite the specific sub-paragraphs of Article 1.1" upon which those claims are based.[2] Thus, Canada asserts that the Panel Requests do not identify the particular "financial contribution" that is at issue, "what government or public body and, if relevant, private body was involved in the financial contribution, and how and to whom a benefit was thereby conferred."[3] According to Canada, such specific information about the nature and type of an alleged subsidy that is being challenged in WTO dispute settlement proceedings has been clearly identified in panel requests pertaining to a number of previous disputes.[4]

3. Canada explains that, pursuant to the due process requirement present in Article 6.2 of the DSU, a defending party is entitled to know what case it has to answer, and what violations have been alleged so that it can begin preparing its defence.[5] In this regard, Canada notes that the Appellate Body reiterated in *China – Raw Materials* that the legal summary required by Article 6.2 of the DSU must "explain succinctly *how* or *why* the measure at issue is considered by the complaining Member to be violating the WTO obligation in question".[6] In Canada's view, the Complainants' Panel Requests, by merely alleging that "the measures are subsidies", do not allow Canada to understand the

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[1] Canada, Request for a Preliminary Ruling (DS412), paras. 2 and 25; Canada, First Written Submission (DS412), paras. 102-113; Canada, Letter to the Panel of 14 February 2012 (DS426); and Canada, First Written Submission (DS426), paras. 48-50.

[2] Canada, Request for a Preliminary Ruling (DS412), para. 8; Canada, Letter to the Panel of 14 February 2012 (DS426).

[3] Canada, Request for a Preliminary Ruling (DS412), paras. 2, 10, 14, and 18; Canada, Letter to the Panel of 14 February 2012 (DS426).

[4] Canada, Request for a Preliminary Ruling (DS412), paras. 11-13, referring to *EC and Certain Member States – Large Civil Aircraft*; *US – Large Civil Aircraft*; *Korea – Commercial Vessels*; *US – Agriculture Subsidies*; *China – Taxes*; Canada, Letter to the Panel of 14 February 2012 (DS426).

[5] Canada, Request for a Preliminary Ruling (DS412), paras. 15-18, quoting the Appellate Body Report, *Thailand – H-Beams*, para. 88, and Panel Reports, *Canada – Wheat Exports and Grain Imports*, para. 6.10, subpara. 28, and *Japan – DRAMs (Korea)*, para. 7.9; Canada, Letter to the Panel of 14 February 2012 (DS426).

[6] Canada, Letter to the Panel of 14 February 2012 (DS426).

legal bases of their claims, leaving Canada to guess what the alleged "subsidy" might be.[7] Thus, Canada submits that the Complainants' deficient Panel Requests have prejudiced its ability to prepare a defence to their claims.[8]

(ii) Japan

4. Japan submits that Canada's arguments are "deeply flawed" because they effectively read Article 6.2 of the DSU as requiring not only a "brief summary of the legal basis of the complaint", but also a summary of the arguments supporting the claim being made in a panel request. According to Japan, the latter is not intended to be the purpose of a panel request, but is instead the subject of the detailed submissions beginning with the complaining party's first written submission.[9] Relying on certain statements made by panels in previous disputes, Japan argues that Canada's request for a preliminary ruling blurs the distinct and well recognized roles of a panel request, on the one hand, and the parties' detailed written and oral submissions, on the other hand.[10]

5. Moreover, in demanding that a panel request must clearly identify the elements of a subsidy, namely, the financial contribution and the benefit, Canada is, according to Japan, confusing the "significant difference" that the Appellate Body has explained exists "between the *claims* identified in the request for the establishment of a panel, which establish the panels terms of reference under Article 7 of the DSU, and the *arguments* supporting those claims".[11] In this light, Japan argues that the information Canada asserts must be included in Japan's Panel Request is, in effect, the details of Japan's argument about why the measures at issue meet the definition of "subsidy". However, Japan sees such information to constitute an *argument*, not a legal *claim*, as no legal claim arises independently from satisfying the terms of Article 1.1 of the *SCM Agreement*. Japan recalls that the Appellate Body explained that "arguments" constitute the details of what a complaining party adduces "to demonstrate that the responding party's measure does indeed infringe upon the identified treaty provision".[12] Japan points out that, in the present dispute, its *claim* is that there is a violation of Articles 3.1(b) and 3.2 of the SCM Agreement. To establish this claim, Japan argues that it must demonstrate that the measure qualifies as a "subsidy" within the meaning of Article 1.1 of the SCM Agreement. In Japan's view, this latter factor is part of the argument necessary to demonstrate the legal claim under Articles 3.1(b) and 3.2. According to Japan, it is not an independent claim, and therefore cannot be part of the legal basis of its complaint.[13]

6. In any case, Japan argues that a reading of its Panel Request as a whole makes evident that: (i) a "financial contribution" within the meaning of any of the sub-paragraphs of Article 1.1(a)(1) or "any form of income or price support" within the meaning of Article 1.1(a)(2) results from the "guaranteed, long-term pricing" under the province of Ontario's FIT Programme; (ii) the entities involved in providing that "financial contribution" or "income or price support" include the government of Canada, the government of Ontario, the OPA, and the IESO; and (iii) the "financial contribution" or "income or price support" confer terms more advantageous than available on the market to "renewable

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[7] Canada, Request for a Preliminary Ruling (DS412), paras. 8, 14, and 18; Canada, Letter to the Panel of 14 February 2012 (DS426).

[8] Canada, Request for a Preliminary Ruling (DS412), paras. 15-16; Canada, Letter to the Panel of 14 February 2012 (DS426).

[9] Japan, Response to Canada's Request for a Preliminary Ruling, para. 4.

[10] Japan, Response to Canada's Request for a Preliminary Ruling, para. 11, referring to Panel Reports, *Australia – Apples*, para. 7.929; *EC – Trademarks and Geographical Indications (US)*, para. 7.2.20.

[11] Appellate Body Report, *Thailand – H-Beams*, fn. 36, quoted in Japan, Response to Canada's Request for a Preliminary Ruling, para. 16.

[12] Appellate Body Report, *US – Oil Country Tubular Goods Sunset Reviews*, para. 162 (quoting Appellate Body Report, *Korea – Dairy*, para. 139).

[13] Japan, Response to Canada's Request for a Preliminary Ruling, para. 21.

energy generation facilities". Thus, Japan asserts that its panel request identifies that "the measures are subsidies within the meaning of Article 1.1 of the SCM Agreement".[14]

7. Finally, Japan submits that because its Panel Request both "identif[ies] the specific measures at issue" and "provide[s] a brief summary of the legal basis of the complaint sufficient to present the problem clearly", there is no basis for the Panel to find that Canada has been prejudiced in preparing its defence.[15]

(iii) European Union[16]

8. The European Union asks the Panel to reject Canada's request for a preliminary ruling, arguing that it is "entirely without merit".[17]

9. The European Union does not share Canada's view that the only manner to present the problem clearly in accordance with Article 6.2 of the DSU in a dispute where a measure is alleged to be a subsidy under Article 1.1 of the SCM Agreement is by providing details about each of the elements included therein. The European Union explains that the word "subsidy" is a defined term, and no consequences arise from a measure falling within that definition. According to the European Union, it is only when a "subsidy" is deemed to be prohibited or causes adverse effects that the subsidy in question can be considered to violate the SCM Agreement. The European Union argues that the moment a Member identifies a measure as being a "subsidy" under the SCM Agreement, it alerts the allegedly subsidizing Member that a particular measure can be deemed as a subsidy and may violate Articles 3 or 5 of the SCM Agreement. Thus, the European Union submits that the "problem" is presented clearly when a panel request specifies that the measure that is considered to be a subsidy violates the obligations contained in Articles 3 or 5 of the SCM Agreement.[18]

10. In any event, the European Union states that it fails to understand the basis for Canada's request for a preliminary ruling. Even assuming that an obligation exists to specify how the measure at issue can be characterised as a subsidy, the European Union alleges that its Panel Request was not in this respect deficient. In particular, the European Union points out that its Panel Request explained that the measure at issue provides guaranteed, above-market long-term pricing for the output of certain renewable energy generation facilities (wind and solar) – or, in other words, that there is price support/financial contribution ("guaranteed… pricing"), which confers a benefit ("above-market") to the recipients (i.e., the FIT Generators). In addition, the European Union notes that its Panel Request identifies the entity providing the subsidy, i.e., the Government of Ontario ("Canadian province of Ontario").[19]

11. Finally, the European Union questions to what extent any alleged lack of clarity in its Panel Request could have caused any prejudice to Canada in the present dispute. In this regard, the European Union argues that in view of the similarities between DS412 and DS426, by the time the European Union requested the establishment of the Panel in DS426, Canada had already exchanged

[14] Japan, Response to Canada's Request for a Preliminary Ruling, para. 15.
[15] Japan, Response to Canada's Request for a Preliminary Ruling, para. 35.
[16] The European Union's arguments in response to Canada's Request for a Preliminary Ruling in DS426 were set out in its own separate submission (European Union, Response to Canada's Request for a Preliminary Ruling), and incorporated Japan's response to Canada's Request for a Preliminary Ruling in DS412, as well as the arguments the European Union made in this regard as a third party in DS412. See European Union, Response to Canada's Request for a Preliminary Ruling, para. 3.
[17] European Union, Response to Canada's Request for a Preliminary Ruling, para. 3.
[18] European Union, Response to Canada's Request for a Preliminary Ruling, para. 11.
[19] European Union, Response to Canada's Request for a Preliminary Ruling, para. 12.

first written submissions with Japan and was aware of the European Union's views as a third party in that dispute.[20]

2. Arguments of the Third Parties

(i) European Union

12. As a third party in DS412, the European Union agrees with Japan that Canada's request for a preliminary ruling in DS412 is unwarranted. The European Union argues that the identification of a measure within the meaning of Article 6.2 of the DSU need only be framed with sufficient particularity so as to indicate the nature of the measure and the gist of what is at issue. Moreover, the European Union submits that a brief summary of the legal basis of the complaint required by Article 6.2 of the DSU aims to explain succinctly how or why the measure at issue is considered by the complaining Member to be violating the WTO obligation in question. This brief summary must be sufficient to present the problem clearly. In both respects, the European Union considers that, when read "as a whole", Japan's Panel Request identified the specific measures at issue and provided a brief summary of the legal basis of the complaint, as required by Article 6.2 of the DSU.[21]

(ii) Japan

13. Relying on essentially the same arguments it presented as a party in DS412, Japan submits, as a third party in DS426, that Canada's request for a preliminary ruling in DS426 has no merit.[22] Moreover, in Japan's view, the European Union's Panel Request clearly identifies the "problem" with respect to the SCM Agreement that is caused by the enumerated measures relating to the FIT Programme – that is, the FIT measures are "subsidies" as defined in Article 1.1 of the SCM Agreement, that are "provided contingent upon the use of domestic over imported goods", and thereby are inconsistent with Articles 3.1(b) and 3.2 of the SCM Agreement. According to Japan, Canada's citation of the Appellate Body in *China – Raw Materials* – that the legal summary required by Article 6.2 of the DSU must "explain succinctly *how* or *why* the measure at issue is considered by the complaining Member to be violating the WTO obligation in question" – must be read in context of the facts in that dispute, and that when it is so read it supports a finding in DS426 that the European Union's Panel Request satisfies the requirements of Article 6.2 of the DSU.[23]

(iii) Korea

14. Korea submits that Canada has not presented a sufficient basis for dismissing Japan's claims under the SCM Agreement in DS412. Korea recalls that the Appellate Body has previously held that, in the absence of prejudice to the defending party, a simple listing of measures and relevant treaty provisions may in some cases be sufficient to satisfy the requirements of Article 6.2 of the DSU.[24] Moreover, Korea observes that the Appellate Body has stated that the "procedural rules of WTO dispute settlement are designed to promote, not the development of litigation techniques, but simply

[20] European Union, Response to Canada's Request for a Preliminary Ruling, footnote 6.
[21] European Union, Third Party Written Submission (DS412), paras. 9-12.
[22] Japan, Third Party Written Submission (DS426), para. 3.
[23] Japan, Third Party Written Submission (DS426), paras. 10-11.
[24] Korea, Third Party Written Submission (DS412), para. 9, referring to Appellate Body Report, *Korea – Dairy*, paras. 124 and 127.

the fair, prompt and effective resolution of trade disputes".[25] Korea "does not believe that allowing Japan's claims under the SCM Agreement to go forward would be inconsistent with that goal."[26]

(iv) Mexico

15. Mexico considers that the Complainants' Panel Requests in DS412 and DS426 comply with the requirements of Article 6.2 of the DSU in that they each identify the government authority responsible for granting the alleged subsidy (the government of Canada or the province of Ontario), the financial contribution at issue (in the form of guaranteed, long-term prices for electricity produced from renewable generators), and the benefit (the guaranteed prices). Mexico observes that there have been requests for panels to make preliminary rulings on the consistency of panel requests with Article 6.2 in a number of recent disputes, and cautions that such requests should not be used as a litigation tactic to gain procedural advantages.[27]

(v) United States

16. The United States considers that the Complainants' Panel Requests in DS412 and DS426 satisfy the standard of clarity that is required by Article 6.2 of the DSU. The United States explains that the Complainants' Panel Requests provide a brief summary of the legal bases of their complaints by setting forth their view that the measures violate provisions of the WTO Agreement "because they constitute a prohibited subsidy, and also discriminate against equipment for renewable energy generation facilities produced outside Ontario", identifying the specific provisions of the WTO Agreement that they believe are violated. The United States agrees with the Complainants that Article 6.2 of the DSU does not require them to set out their arguments as to why the measures meet the definition of subsidy. Rather, according to the United States, all that the Complainants are required to state is the legal bases of their complaints, which in its view, they have done. [28]

3. Analysis

17. The focus of Canada's request for a preliminary ruling in both disputes is the alleged lack of clarity in the *legal bases* supporting the Complainants' subsidy complaints, as presented in the respective Panel Requests. Importantly, Canada does not take issue with the Complainants' descriptions of the relevant measures, nor their references to Articles 3.1(b) and 3.2 of the SCM Agreement. Thus, Canada does not question the clarity of the Complainants' allegations that the measures at issue are inconsistent with Articles 3.1(b) and 3.2 of the SCM Agreement. Rather, Canada's concern relates to the lack of detail with which the Complainants' have chosen to describe these allegations, and in particular, the statement made in both Panel Requests that the measures at issue are inconsistent with Articles 3.1(b) and 3.2 of the SCM Agreement, because they are "*subsidies within the meaning of Article 1.1 of the SCM Agreement* that are provided contingent upon the use of domestic over imported goods".[29] According to Canada, this description of the Complainants' claims is overly general and provides little, if any, valuable insight into the constituent elements of the subsidies being challenged, as defined in Article 1.1 of the SCM Agreement. In Canada's view, whenever a claim is made under Articles 3.1(b) and 3.2 of the SCM Agreement, such information must be found in a panel request in order for it to "explain succinctly *how* or *why* the measure at issue

[25] Korea, Third Party Written Submission (DS412), para. 9, referring to Appellate Body Report, *Thailand – H-Beams,* para. 97.
[26] Korea, Third Party Written Submission (DS412), para. 9.
[27] Mexico, Third Party Written Submissions (DS412 & DS426), paras. 5-15.
[28] United States, Third Party Written Submissions (DS412 & DS426), paras. 23-24.
[29] Japan, Panel Request, p. 3 (emphasis added); European Union, Panel Request, p. 3 (emphasis added).

is considered by the complaining Member to be violating the WTO obligation in question",[30] and for it to thereby comply with the requirement in Article 6.2 of the DSU to provide a "brief summary of the legal basis of the complaint sufficient to present the problem clearly".

18. Canada submits that the Complainants' Panel Requests should have contained information about the constituent elements of the alleged subsidies at issue. Canada does not dispute the position taken by the Complainants that Article 1.1 of the SCM Agreement is a purely definitional provision, upon which it is impossible to base an independent claim of violation of the SCM Agreement. Rather, the essence of Canada's submission is that because the notion of subsidy is integral to the establishment of the Complainants' claims under Articles 3.1(b) and 3.2 of the SCM Agreement, the definition of a subsidy contained in Article 1.1 must form part of the *legal basis* of the respective complaints, and therefore, its constituent elements must be clearly identified in the respective Panel Requests in order to "present the problem clearly". As Canada puts it: "… a Member cannot breach its obligation in Article 3.1(b) unless it has provided a subsidy. Consequently, a Complaining Member cannot provide the 'legal basis of the claim' based on 'subsidies contingent […] upon the use of domestic over imported goods' unless it identifies from Article 1.1(a) which form of subsidy has been provided".[31]

19. In our view, Canada's interpretation of the scope of Members' obligations under Article 6.2 of the DSU confuses the distinction between *claims* made in a panel request and the *arguments* that must be made in support of those claims in subsequent submissions during the course of a proceeding.

20. It is well established that the requirement in Article 6.2 of the DSU to provide a "brief summary of the legal basis of the complaint sufficient to present the problem clearly" refers to the description found in a panel request of the nature of a party's *claims*, not its arguments.[32] A "claim" is an allegation "that the respondent party has violated, or nullified or impaired the benefits arising from, an identified provision of a particular agreement".[33] On the other hand, an "argument" comprises the statements made in support of a claim to demonstrate that a responding party's measure infringes an identified treaty provision. These are "set out and progressively clarified in the first written submissions, the rebuttal submissions and the first and second panel meetings with the parties".[34]

21. In the present instance, the Complainants allege that Canada has acted inconsistently with Articles 3.1(b) and 3.2 of the SCM Agreement. We accept the proposition that, in order to establish a breach of Articles 3.1(b) and 3.2 of the SCM Agreement, a complainant must first demonstrate that a subsidy exists within the meaning of Article 1 of the SCM Agreement. However, we do not consider this to mean that all elements of Article 1 need to be specifically identified and articulated in order to

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[30] Canada, Letter to the Panel of 14 February 2012 (DS426), referring to Appellate Body Report, *European Communities – Selected Customs Matters*, para. 130; and Appellate Body Report, *China – Raw Materials*, para. 226.

[31] Canada, First Written Submission (DS412), para. 111; and Canada, Letter to the Panel of 14 February 2012 (DS426).

[32] Appellate Body Report, *Guatemala – Cement I*, para. 72 ("the legal basis of the complaint" could also be referred to as "the claims"); and Appellate Body Report, *EC – Bananas III*, paras. 141-143 ("Article 6.2 of the DSU requires that the *claims*, but not the *arguments*, must all be specified sufficiently in the request for the establishment of a panel in order to allow the defending party and any third parties to know the legal basis of the complaint"). Similar statements can be found in Appellate Body Report, *EC – Selected Customs Matters*, para. 153; and Appellate Body Report, *India – Patents (US)*, para. 88; Appellate Body Report, *Korea – Dairy*, para. 139; and Appellate Body Report, *Dominican Republic – Import and Sale of Cigarettes*, para. 121.

[33] Appellate Body Report, *Korea – Dairy*, para. 139. *See also* Panel Report, *Egypt – Steel Rebar*, para. 7.58.

[34] Appellate Body Report, *Korea – Dairy*, para. 139. *See also* Panel Report, *Egypt – Steel Rebar*, para. 7.58.

"present the problem clearly". Article 1 of the SCM Agreement is a definitional provision, which implies that it cannot be the legal basis for a *claim of violation* of the SCM Agreement. Indeed, the mere fact that a Member may provide subsidies that fall within the scope of Article 1 does not place that Member in contravention of the SCM Agreement. The violation – if there be one – will emanate from a breach of Article 3.1(b) or 3.2 of the SCM Agreement.

22. Moreover, in the same way that a breach of Articles 3.1(b) and 3.2 cannot be established without demonstrating the existence of a subsidy, so too is it necessary to show, for example, that any particular subsidy has been: (i) granted or maintained; (ii) contingent upon; (iii) the use of domestic over imported goods. Thus, in terms of making out a case of inconsistency with Articles 3.1(b) and 3.2, establishing the existence of a subsidy within the meaning of Article 1 is only *one of several* "requirements" or "conditions" that must be satisfied. In this light, Canada's line of argument, when taken to its logical conclusion, implies that in order to comply with Article 6.2 of the DSU, a panel request that contains a complaint made under Articles 3.1(b) and 3.2 of the SCM Agreement must provide an explanation about not only the type of subsidy at issue, but also the granting or maintaining of that subsidy, the use of domestic over imported goods, and the notion of contingency. However, as we see it, information about each of these elements – elements that are equally critical to demonstrating a violation of Article 3.1(b) and 3.2 of the SCM Agreement – will be the precise subject matter of the *arguments* that must be made in support of such a claim in subsequent submissions to the panel.

23. In addition, we observe that the Complainants' Panel Requests do contain contextual information about the subsidies that are alleged to exist and which further clarifies the foundations of their complaints. Each refers to the allegation that "prohibited *subsidies*" exist. Each describes the nature of the alleged subsidy as involving "guaranteed, long-term pricing for the output of renewable generation facilities" effected through the FIT Programme as well as the FIT and microFIT contracts, with the European Union additionally describing such pricing as "above-market". The government entity involved in the provision of the alleged subsidies is identified as "the Canadian province of Ontario", and the recipients of the alleged subsidies can also easily be ascertained by virtue of the reference to the individual FIT and microFIT contracts.

24. Furthermore, each of the Panel Requests identifies the various laws, rules, contracts, forms, documents and other descriptive materials said to constitute the measures. As we have already mentioned, they are specifically described by each of the Complainants in their Panel Requests as "prohibited subsidies". Having been directed precisely towards the measures, and by setting out the legal basis of the complaint in terms of the claims that are being made about those measures, we believe that the Panel Requests do present the problem sufficiently clearly. Canada had the necessary reference points to understand what Japan and the European Union will have to establish in order to prevail in their claims, and to prepare itself for the detailed first written submissions from the Complainants which will necessarily follow.

25. Thus, in the light of the above discussion, we cannot agree with Canada's arguments concerning the lack of clarity in the Complainants' Panel Requests, and in particular, the allegation that they fail to provide a "brief summary of the legal basis of the complaint sufficient to present the problem clearly". In our view, the *legal basis* of the complaints made under Articles 3.1(b) and 3.2 of the SCM Agreement is described with sufficient clarity in the respective Panel Requests to "present the problem clearly" in compliance with the standards of Article 6.2 of the DSU. It enables the responding Party to properly prepare for the case attending the first submissions of the complaining Parties. We therefore dismiss Canada's requests for preliminary rulings.