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on 19 December 2006

Chairman: Mr. Muhamad Noor Yacob (Malaysia)

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1. Surveillance of implementation of recommendations adopted by the DSB

(a) United States – Section 211 Omnibus Appropriations Act of 1998: Status report by the United States (WT/DS176/11/Add.49)

(b) United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.49)

(c) United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.24)

(d) Mexico – Definitive anti-dumping measures on beef and rice: Complaint with respect to rice: Status report by Mexico (WT/DS295/13)

1. The Chairman recalled that Article 21.6 of the DSU required that "unless the DSB decides otherwise, the issue of implementation of the recommendations or rulings shall be placed on the agenda of the DSB meeting after six months following the date of establishment of the reasonable period of time pursuant to paragraph 3 and shall remain on the DSB's agenda until the issue is resolved". He proposed that the four sub-items to which he had just referred be considered separately.

(a) United States – Section 211 Omnibus Appropriations Act of 1998: Status report by the United States (WT/DS176/11/Add.49)

2. The Chairman drew attention to document WT/DS176/11/Add.49, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US Section 211 Omnibus Appropriations Act of 1998.

3. The representative of the United States said that his country had provided a status report in this dispute on 7 December 2006, in accordance with Article 21.6 of the DSU. As noted in the report, during this past congressional session, the US Congress had been considering a number of legislative proposals that would implement the DSB's recommendations and rulings in this dispute. The US Congress had completed its work for this calendar year. A new Congress would convene in January, and the US administration would work with that Congress with respect to appropriate statutory measures to resolve this matter.

4. The representative of the European Communities said that in February 2002 Section 211 had been found WTO incompatible. But, once again, the United States could not do better than repeat that its administration was working with the US Congress to implement the DSB's rulings and recommendations. Due to the lack of any progress during almost five years since the WTO ruling had been made, the US statement sounded, unfortunately, as an empty promise. The United States might reassert its attachment to the TRIPS Agreement and to the strong protection of intellectual property rights at international level. The EC and other Members of the DSB were still waiting for the United States to match words with action and to finally put an end to its persisting violations of the TRIPS Agreement in this dispute as well as in the Section 110 dispute. Furthermore, the United States had again sent the wrong message by refusing, on foreign policy grounds, the specific licence that would have allowed the renewal of the registration of the Havana Club mark. The

renewal would not have granted ownership rights, but would have only preserved the status quo. This would have allowed US courts to decide, in pending proceedings, on who was the legitimate owner of that mark. Instead, by refusing the renewal, the US administration had made the court proceeding moot and had intervened, for political reasons, in a fight for the ownership of a mark. If the example set by this decision were to be followed by others, this would seriously undermine the efforts to promote rules-based protection of intellectual property rights worldwide. Ownership of intellectual property rights should be decided in courts on the basis of the rule of law and free from the interference of political considerations. Therefore, the EC invited the United States to reconsider its position in light of its seriously damaging effects. Finally, the EC urged the United States, the only WTO Member that consistently did not comply with panel rulings under the TRIPS Agreement, to bring itself into compliance.

5. The representative of Cuba said that the implementation of the DSB's rulings and recommendations in the Section 211 dispute had now been pending for four years and ten months. This was, clearly, one of the longest-standing disputes in the WTO. Meeting after meeting, month after month, the offending Member, namely the United States, continued to submit a status report – without changing a single comma – that rather qualified as a report on non-compliance. The total inertia of the United States in relation to the implementation of its obligations caused concern among Members since it called into question the rights and obligations established under the TRIPS Agreement and the DSU, the security and predictability of the dispute settlement mechanism, and the general balance of the multilateral trading system.

6. At the previous DSB meeting, Cuba had announced that it would respond to the US comments regarding the August 2006 decision by the US Patent and Trademark Office to deny a request for renewal of the registration of the Havana Club trademark, submitted by the Cuban company, which held that trademark. The United States wanted Cuba to believe that this decision was not related to the DSB's rulings and recommendations in this dispute. For more than a decade, after the success since 1993 by the Cuban-French joint venture, Havana Club International, in the commercialization of the genuine Cuban rum around the world, the Bacardi company had carried out countless actions to take ownership of the Havana Club trademark, particularly in the United States, and consequently to eliminate a competitor from the rum market that produced and marketed a product of high quality and of recognized international prestige. Among those actions, it was worth mentioning Bacardi's responsibility for the establishment of Section 211 and the use of the company's direct influence to adopt it by the US Congress in October 1998. It was no coincidence that Section 211 was well-known in the US Congress, the media and Wall Street as the Bacardi Law.

7. Although illegal Section 211 – which was an integral part of the illegal economic, commercial and financial blockade of the United States against Cuba – did not make any direct reference to any particular trademark, it had forced Cuban companies, wishing to register in the US territory a trademark nationalized by the Cuban Government, to seek the consent of original owners. This contradicted even the provisions on trademark abandonment established by US intellectual property laws. Bacardi stated that it had paid the Arechabala family for the rights to the Havana Club trademark. However, the truth was that that family no longer possessed those rights. The Havana Club Holding joint venture had demonstrated in different administrative processes, which had been held in the United States with regard to this particular trademark, that its former owner – the Arechabala family – had simply abandoned the trademark. Therefore, the Cuban enterprise CUBAEXPORT had registered in the United States a mark that had been abandoned by its former owner, who had failed to renew its US registration as any trademark owner, with an interest in that trademark, should have done.

8. The August 2006 decision by the US Patent and Trademark Office to prevent the Cuban enterprise CUBAEXPORT from renewing the registration of the mark, based on the illegal Section 211, had paved an illegal way for Bacardi's pretensions, ignoring the rulings and

recommendations adopted by the DSB in February 2002, as well as the letter and the spirit of the TRIPS Agreement and the principles on which the multilateral trading system and the intellectual property rights were based. The US Patent and Trademark Office maintained, in January 2004, that Bacardi's attempt to invalidate the registration of the Havana Club mark had no legal basis since the Cuban enterprise CUBAEXPORT had duly registered the mark in Cuba and had transferred its registration to the United States in 1976, three years after the Arechabala family had allowed its registration to lapse. Even more preoccupying was to justify this arbitrary and illegal decision by using legal pretexts to hide political motives with the aim of denying justice and the applicability of the law. As the EC had pointed out in recent statements, the renewal of the trademark would not have granted new rights to its holders, but it would have preserved the status quo.

9. It was regrettable that the United States maintained this situation to benefit, due to political and commercial interests, only one company – which was not even a US company – while placing in jeopardy hundreds of US companies that owned more than 4,000 trademarks in Cuba. Their rights had been scrupulously respected to date, but their situation could change in the future if the United States persisted indefinitely in ignoring international intellectual property law. He then asked the following questions: What was the use of having a system based on rules if those rules were not respected? What was the value of decisions made by the DSB if one Member could indefinitely ignore them with total impunity? What were the guarantees offered by the dispute settlement mechanism to Members, especially developing countries that must implement the rulings of the DSB while the powerful Members ignored them? Why to establish new WTO Agreements when those that dated back more than ten years were not being implemented or were being violated with total impunity? Cuba invited all Members, and in particular the United States, to reflect on these questions and consider their possible consequences. Cuba reiterated, once again, its request for unconditional and immediate implementation of the DSB's rulings and recommendations in this dispute by repealing Section 211.

10. The representative of Brazil said that his country thanked the United States for its status report and the statement made at the present meeting. Brazil wished, however, to reiterate its systemic concerns about the lack of compliance in this dispute. He noted that the DSB had adopted the panel and the Appellate Body reports almost five years ago. Despite this extremely long time-period, way beyond the limits foreseen in Article 21.3 of the DSU, no implementing action had been taken thus far. Nor could WTO Members discern a clear sign in the US statements that such an action would come in the near future. Brazil stated that in no way could this situation be reconciled with the principle of prompt settlement of disputes. Further, a protracted non-compliance by one of the major players in the WTO clearly undermined the credibility of the system and altered the balance of rights and obligations. Brazil, therefore, urged the United States to take urgent and necessary steps to implement the relevant DSB's rulings and recommendations.

11. The representative of the Bolivarian Republic of Venezuela said that first his country thanked Cuba for the statement made at the present meeting, which it fully supported. Cuba's claim was fair, as had been demonstrated by the DSB when it had adopted the conclusion that Section 211 was inconsistent with the WTO Agreement. His country noted the status report provided by the United States in which, once again, it had been clearly indicated how little interest the United States had in bringing its legislation into compliance with the DSB's rulings. As had categorically been stated on several occasions, his country was deeply concerned about the continued non-compliance of the DSB's recommendations and rulings by the United States, as well as by other Members. This not only had serious systemic implications, but also undermined the credibility of the DSB as well as the credibility of the WTO. It set a serious precedent, which could have a negative impact on any other Member in the future, in particular developing countries, which considered the DSB to be an essential element in providing security and predictability to the multilateral trading system. In addition to undermining the DSU, the US attitude also effected the basic pillars upon which the TRIPS Agreement was built as well as the foundations of the Appellate Body. The discretionary attitude

shown by the United States, to which his delegation had referred on several occasions in the DSB, made his country reluctant towards negotiating new commitments in the DSU negotiations as well as in the Doha Round negotiations. His delegation, once again, encouraged the parties to find a prompt solution to this dispute, which would respect the DSB's rulings and recommendations.

12. The representative of China said that, due to its systemic interest, his country, once again, wished to express its continued concerns about this dispute. China thanked the Unites States for its status report and its statement. However, China regretted that the US status report did not provide any new information as to when this matter would be resolved to the satisfaction of the parties to the dispute as well as to other WTO Members. Although all Members were aware of the possible difficulties involved in implementation, the undue delay regarding full implementation of the DSB's rulings caused systemic concerns about the functioning and efficiency of the dispute settlement system. As provided for in Article 21.1 of the DSU, prompt compliance with the DSB's recommendation or rulings was essential to ensuring effective resolution of disputes to the benefit of all Members. Therefore, China urged the United States to fully implement the decision of the DSB in this dispute.

13. The representative of Bolivia said that having listened to the report by the United States and noting, once again, the lack of progress in lifting the restrictions under Section 211, pursuant to the DSB's rulings and recommendations adopted in 2002, Bolivia wished, once again, to express its concern regarding the status of this dispute, which had been dragging on for more than four years. As Bolivia had stated in the past, for both Members and the public, this non-compliance undermined the DSB as well as the intellectual property agreements governing the multilateral trading system through the TRIPS Agreement. The failure to comply with the provisions of this WTO judicial body, which by its very nature had been intended to provide the multilateral trading system with certainty, was a matter of concern for Bolivia. For the above reasons, Bolivia, once again, urged the United States to comply with the DSB's rulings and recommendations and to make a renewed effort to ensure that the US authorities lift the restrictions imposed through Section 211 which caused direct injury to a developing country.

14. The representative of India said that his country wished to thank the United States for the situation report and its statement. However, India felt compelled yet again to stress that the principle of prompt compliance with the DSB's rulings and recommendations appeared to be missing in this dispute. This was a matter of great systemic concern, since almost five years had elapsed since the adoption of the recommendations and rulings in this case. India again urged the parties to this dispute to inform the DSB as to how they intended to fulfill the objective of prompt settlement.

15. The representative of the United States said that the EC's comments about the US commitment to intellectual property rights and to compliance with the recommendations and rulings of the DSB were as unwarranted and unfounded now as they had been at previous DSB meetings. For further details, the United States refered the EC, its member States, and other delegations to the statement made by the United States on 26 October 2006. Regarding the comment that had been made concerning a particular trademark registration, the United States would remind Members that none of the recommendations or rulings of the DSB in this proceeding related to the renewal of specific trademarks. That comment, therefore, did not relate to "the issue of implementation of DSB recommendations and rulings" in this matter.

16. The representative of Cuba said that his country regretted that the United States had reiterated its statement made on 26 October 2006, which in Cuba's view had no factual basis. As Cuba had stated previously, while Section 211 did not refer specifically to any brand or trademark, it involved all trademark registrations, including Cuban trademarks in the United States. Furthermore, it was clear that Bacardi had been involved in drafting and approval of Section 211 and had received direct benefits to the detriment of the interests of a joint French-Cuban enterprise and a prestigious brand of

truly Cuban rum – Havana Club. Cuba, therefore, considered that the statement made by the United States had been misplaced and referred Members to the statement that had been made by Cuba a moment ago, which would also be made available to all Members.

17. The DSB took note of the statements and agreed to revert to this matter at its next regular meeting.

(b) United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.49)

18. The Chairman drew attention to document WT/DS184/15/Add.49, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US anti-dumping measures on certain hot-rolled steel products from Japan.

19. The representative of the United States said that his country had provided a status report in this dispute on 7 December 2006, in accordance with Article 21.6 of the DSU. As of 23 November 2002, the US authorities had addressed the DSB's recommendations and rulings with respect to the calculation of anti-dumping margins in the hot-rolled steel anti-dumping duty investigation at issue in this dispute. Details were provided in document WT/DS184/15/Add.3. The US Congress had completed its work for this calendar year. A new Congress would convene in January, and the US administration would work with that Congress with respect to the recommendations and rulings of the DSB that had not already been addressed by the US authorities by 23 November 2002.

20. The representative of Japan said that his country had to express its great disappointment that the 109th US Congress had not passed legislation H.R. 2473 despite the statements in the US status reports, including the most recent one submitted on 7 December 2006. Japan wished to remind the United States that it retained its right to be granted the DSB's authorization to suspend concessions or other obligations, pursuant to Article 22.6 of the DSU at any future date, in accordance with the Understanding circulated in document WT/DS184/19 in July 2005. As Japan had repeatedly stated before the DSB, a full and prompt implementation of the DSB's recommendations and rulings was a principal element in ensuring the credibility of the WTO dispute settlement system. Japan wished to renew its strong hope that the United States would make further efforts to implement the DSB's recommendations and rulings as soon as possible.

21. The DSB took note of the statements and agreed to revert to this matter at its next regular meeting.

(c) United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.24)

22. The Chairman drew attention to document WT/DS160/24/Add.24, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning Section 110(5) of the US Copyright Act.

23. The representative of the United States said that his country had provided a status report in this dispute on 7 December 2006, in accordance with Article 21.6 of the DSU. The US Congress had completed its work for this calendar year. A new Congress would convene in January, and the US administration would work with that Congress, and confer with the EC, to reach a mutually satisfactory resolution of this matter.

24. The representative of the European Communities recalled that, at the previous DSB meeting, the EC had shown that its creativity in resolving this dispute was boundless – reciting what was

probably the first poem ever recited in a DSB meeting. However, reciting poetry in the DSB had not had an immediate effect. It had not brought about compliance in this dispute nor had it led to continuation of the temporary compensation which had been negotiated pending compliance. However, he underscored that the EC had always been prepared to work with the United States to seek a mutually satisfactory solution to this dispute. The EC hoped that the current climate was more favourable to resolving the dispute, and looked forward to discussing with the United States in detail how such a solution could be arrived at.

25. The DSB took note of the statements and agreed to revert to this matter at its next regular meeting.

(d) Mexico – Definitive anti-dumping measures on beef and rice: Complaint with respect to rice: Status report by Mexico (WT/DS295/13)

26. The Chairman drew attention to document WT/DS295/13, which contained the status report by Mexico on progress in the implementation of the DSB's recommendations in the case: "Mexico Definitive Anti-Dumping Measures on Beef and Rice: Complaint With Respect to Rice".

27. The representative of Mexico said that his country recognized the importance of the need to guarantee and maintain an effective dispute settlement system. Mexico, therefore, reiterated its total commitment, as a WTO Member, to full compliance with the DSB's recommendations even when these recommendations went against Mexico. He recalled that on 20 December 2005 the DSB had adopted the Reports of the Panel and the Appellate Body, which had found that the anti-dumping measure imposed by Mexico on imports of rice from the United States and various articles of Mexico's Foreign Trade Law (LCE) were inconsistent with certain provisions of the Anti-Dumping Agreement and the SCM Agreement. On 19 January 2006, Mexico had informed Members of its intention to comply with the DSB's rulings and recommendations. On 18 May 2006, the United States and Mexico had accordingly agreed on a reasonable period of time for compliance; i.e. eight months for the anti-dumping determination and 12 months for amendments to the LCE.

28. With regard to the anti-dumping investigation with respect to rice, the Ministry of the Economy had published in the Official Journal of 11 September 2006, the Final Resolution on review of the anti-dumping investigation on imports of long-grain white rice, classified under tariff heading 1006.30.01 of the Tariff established under the General Import and Export Duty Law, originating in the United States, irrespective of the country of provenance, on the basis of the conclusions and recommendations of the Panel and the Appellate Body. By means of this resolution, Mexico had abolished the countervailing duty applied on long-grain white rice and had complied with the first part of the DSB's recommendations and rulings in this case. Concerning the second part of the DSB's recommendations and rulings, the Initiative amending, supplementing and repealing certain provisions of the Foreign Trade Law had been tabled in the Senate on 24 October 2006. It had been approved by the Chamber of Senators on 23 November 2006 and by the Chamber of Deputies on 12 December 2006. Thus, the amendments to the LCE aimed at bringing the Law into conformity with the recommendations and rulings of the DSB had already been approved by Mexico's Legislature. As a result, Mexico was now taking the necessary steps for publication, in the Official Journal of the Decree amending, supplementing and repealing certain provisions of the Foreign Trade Law, which would enter into effect on the date following its publication. Mexico reiterated that its aim was to comply with the DSB's recommendations within the time-frame agreed for that purpose, and it, therefore, intended to publish the Decree within the agreed reasonable period of time. With the issuing of the Final Resolution of 11 September 2006 and the Legislature's approval of the Initiative for Amendments to the LCE, Mexico fully complied with the DSB's rulings and recommendations.

29. The representative of the United States said that his country thanked Mexico for its status report. The United States was pleased to acknowledge Mexico's revocation of the anti-dumping measure on rice, which had implemented the DSB's recommendations and rulings with respect to that measure. The United States was currently studying the amendments to the Foreign Trade Law. Based on its initial review, some of the amendments appeared to resolve the issues that the Panel and the Appellate Body had identified. The United States was less certain about some of the other amendments, and would be seeking further information from Mexico. The United States looked forward to working further with Mexico to resolve its concerns on this matter.

30. The DSB took note of the statements and agreed to revert to this matter at its next regular meeting.

2. European Communities – Measures affecting the approval and marketing of biotech products

(a) Implementation of the recommendations of the DSB

31. The Chairman recalled that in accordance with the DSU provisions, the DSB was required to keep under surveillance the implementation of recommendations and rulings of the DSB in order to ensure effective resolution of disputes to the benefit of all Members. In this respect, Article 21.3 of the DSU provided that the Member concerned shall inform the DSB, within 30 days after the date of adoption of the panel or Appellate Body report, of its intentions in respect of implementation of the recommendations and rulings of the DSB. He recalled that at its meeting on 21 November 2006, the DSB had adopted the Panel Reports pertaining to the disputes: "European Communities – Measures Affecting the Approval and Marketing of Biotech Products". He invited the EC to inform the DSB of its intentions in respect of implementation of the DSB's recommendations.

32. The representative of the European Communities said that the EC intended to ensure full implementation of the recommendations of the Panel Reports, as adopted by the DSB at its meeting on 21 November 2006, in a manner consistent with the EC's WTO obligations. The EC noted that it had already begun taking the necessary measures in this direction. Nevertheless, due to the complexity and sensitivity of the issues involved and the need for a satisfactory implementation, the EC needed a reasonable period of time for implementation. The EC stood ready to discuss an appropriate period of time for implementation with Argentina, Canada and the United States, in accordance with Article 21.3 (b) of the DSU.

33. The representative of the United States said that his country thanked the EC for its statement that it intended to implement the DSB's recommendations and rulings in this dispute. The United States believed that full implementation would not only remove an unjustifiable trade barrier, but would lift an impediment to the adoption of a technology that promised great benefits to farmers and consumers around the world. The United States was prepared to discuss with the EC a reasonable period of time for such implementation, under Article 21.3(b) of the DSU.

34. The representative of Canada said that his country thanked the EC for its statement that it intended to implement fully the DSB's recommendations and rulings. Canada stood ready to discuss with the EC what would constitute a reasonable period of time in which to do so.

35. The representative of Argentina said that his country wished to thank the EC for the statement in which it had expressed its intention to implement the DSB's recommendations and rulings. Argentina was ready to consider, together with the EC, the issue of the reasonable period of time for implementation of the recommendations with a view to reaching a mutually agreed solution that would provide for the possibility of prompt and full compliance with regard to both the moratorium

affecting products of particular interest to Argentina, and the safeguard measures applied by certain EC member States.

36. The DSB took note of the statements, and of the information provided by the European Communities regarding its intentions in respect of implementation of the DSB's recommendations.

3. Implementation by the European Communities of the recommendations and rulings of the DSB in relation to "European Communities – Regime for the Importation, Sale and Distribution of Bananas"[1] and related subsequent WTO proceedings

(a) Statements by Honduras, Nicaragua and Panama

37. The Chairman said that this item was on the agenda of the present meeting at the request of Honduras, Nicaragua and Panama and invited the representatives of the respective countries to speak.

38. The representative of Honduras said that his country, once again, referred to its previous statements on this matter. He recalled that Honduras had already engaged in Article 21.5 consultations regarding this matter in the period between 30 November 2005 to 30 January 2006. Those consultations had failed to resolve the matter. As an original complainant in the Bananas III dispute, and a country in a constant struggle against poverty, Honduras maintained a strong interest in full and fair access to the EC's market. Its banana sector provided direct and indirect employment for more than 80,000 workers. Honduras continued to consider that the EC's WTO-inconsistent measures, taken to comply with Bananas III recommendations, prevented full and fair access to Honduras' banana sector. Honduras welcomed Ecuador's request for consultations of 28 November 2006, pursuant to Article 21.5 of the DSU, with respect to this matter. The request referred to the same measures and made essentially the same claims as those raised by Honduras in its November 2005 request for consultations. If the EC now wished to negotiate an amicable solution within the 60-day period allowed under Article 21.5 consultations requested by Ecuador – and Honduras hoped that the EC would do so – Honduras would try to ensure that any solution took into account all its trading rights and interests resulting from the Bananas III dispute, related subsequent proceedings and other WTO provisions. Unless a solution satisfactory to Honduras were to be found in the remaining time-period pursuant to Ecuador's consultations, Honduras would continue to reserve its rights to a panel under Article 21.5 of the DSU and all other WTO rights on this matter.

39. The representative of Nicaragua said that her country too wished to refer to its earlier statements on this matter and would make a brief statement at the present meeting. Like Honduras and Panama, Nicaragua had already engaged in Article 21.5 consultations with the EC regarding the EC's failure to comply with the ruling in the Bananas III dispute. The EC had agreed that Nicaragua should participate in those consultations, thereby confirming that, under the DSU rules, Nicaragua's substantial interest in this dispute was well founded. The consultations had been held almost a year ago, but had failed to resolve the difference. Every meeting of the DSB had provided an opportunity for Nicaragua to make clear that it had a strong interest in this dispute. Now, like in the past, Nicaragua considered that Article 21.5 of the DSU required the matter to be fully and fairly resolved in the near future. Nicaragua welcomed Ecuador's recent request for Article 21.5 consultations and the support of the United States and Colombia in this regard. Nicaragua sincerely hoped that the current consultations would finally prompt the EC to make positive reforms. There was still time to settle the matter within the time-period of the most recent consultations before further recourse had to be taken. Whatever the arrangement found, it would not receive Nicaragua's endorsement unless it took into account Nicaragua's urgent need as a developing country to resume its banana shipments to the EC's market, to attract investment and to generate employment for its rural population. If a solution favourable to Nicaragua's industry was not reached in the near future, Nicaragua would

[1] WT/DS27.

reserve all its rights under Article 21.5 of the DSU and other WTO provisions to seek and support further legal remedies.

40. The representative of Panama said that, as had clearly emerged from the previous DSB meeting, there was growing dissatisfaction among the affected MFN countries regarding the EC's implementation in the bananas dispute. He further noted that dissatisfaction regarding this issue had been rising over the course of an entire year. At the end of November 2005, shortly after the EC had introduced its current banana regime – despite the objections raised by Latin American countries – Panama, Honduras and Nicaragua had submitted their requests for consultations under Article 21.5 of the DSU in an attempt to resolve the existing disagreement in the most expeditious and constructive way. Those consultations, which had been held in January 2006, had failed to lead to any improvements in terms of access to the EC's market. In the 11 months that had elapsed since then, the EC had been engaged in a protracted "statistical analysis" so as to avoid undertaking its reforms. The EC had refused to acknowledge the obvious distortions that were arising in trade relations between the Latin American and the ACP countries. In late November 2006, Ecuador had submitted its own request for consultations under Article 21.5 of the DSU, which referred to the same measures and made essentially the same claims as those raised in the requests for consultations submitted by Panama, Honduras and Nicaragua in November 2005. Since Panama and the other interested MFN countries did not foresee any realistic prospect of prompt reforms, they had requested to be joined in Ecuador's consultations. Considering various legal steps that had been taken to date, it was difficult to see how this process could be reversed without the EC making a substantial and prompt offer of a solution. It was not enough for the EC to speak of future reforms in the Doha context, or of the need to carry out further "statistical analyses". In the interests of Panama's leading crop and the 8,000 people working in the banana sector, Panama awaited concrete and immediate tariff reductions to be undertaken by the EC within the time that remained before the expiry of the time-period foreseen under Ecuador's consultations.

41. The representative of Brazil said that his country thanked Honduras, Nicaragua and Panama for bringing this matter to the DSB's attention. The systemic implications of this issue and the concerns raised were very well known to all Members, and not only those that had a direct trade interest. Brazil was particularly concerned about the current situation where a definitive tariff only regime for MFN bananas had not yet been established by the EC through Article XXVIII negotiations. Although a new tariff level for MFN bananas had been provisionally defined and applied, no new MFN tariff for that product had been rebound in the EC's Schedule. While it was not Brazil's intention to challenge preferential schemes of the EC for bananas, it understood that MFN suppliers were entitled to a clear and transparent set of rules that would provide predictability regarding the EC's market access conditions and future investment decisions. In that regard, Brazil urged the EC to take necessary actions in order to fully establish a definitive tariff only regime for bananas.

42. The representative of the European Communities said that the EC referred to its prior statements explaining why this matter was not an "implementation issue" covered by Article 21 of the DSU. The EC remained open to addressing the concerns of Latin American suppliers in relation to its import regime in the appropriate fora. The EC was well aware of the importance of the banana industry for Latin American countries, as well as ACP countries, and had always taken these interests into consideration. Even if the EC regretted the decision by Ecuador to request consultations under the DSU, the EC was quite satisfied with the constructive spirit of these consultations, which had been held in the past week. The EC wished to see this as an indication that a mutually agreed solution was still in sight and was ready to work closely with WTO Members concerned towards such a solution. The EC had always been and remained committed to maintaining access to the EC market for all banana supplying countries. According to the data on overall MFN imports available to date, the EC had succeeded in this. Those data gave no reason to believe that such access was not maintained. The

new EC tariff had, thus far, resulted in the increase in imports from both MFN and ACP suppliers as compared to previous years.

43. The representative of the United States said that this was, unfortunately, the longest-running dispute in the history of the WTO. In 2001, the EC had committed to shift to a tariff-only-regime by 1 January 2006. As one of the original complaining parties in the dispute that had led to the DSB's recommendations and rulings in the Bananas dispute, the United States had looked forward to the dispute finally being resolved at the start of the year. Instead, the United States had heard numerous reports that the new regime had caused significant difficulty for MFN suppliers and that market conditions for some were worsening. As Members were aware, Ecuador had filed a request for consultations with the EC regarding the WTO-consistency of its banana regime. The United States and other Members had joined these consultations, which had been held in the past week. The United States believed that the path to resolution of this long-standing dispute was through negotiations. The United States urged the EC and all interested Members to engage in a meaningful dialogue towards that end.

44. The DSB took note of the statements.

4. United States – Continued Dumping and Subsidy Offset Act of 2000: Implementation of the recommendations adopted by the DSB

(a) Statements by Canada, the European Communities and Japan

45. The Chairman said that this item was on the agenda of the present meeting at the request of Canada, the European Communities and Japan, and invited respective representatives to speak.

46. The representative of Canada said that his country appreciated the steps the United States had taken towards implementing the rulings and recommendations in this dispute. However, the United States had only prospectively repealed the Byrd Amendment. Anti-dumping and countervailing duties collected up to 30 September 2007 could still be disbursed to US producers under the terms of this legislation. As such, Canada believed that the US claim – made in its last status report from over ten months ago – that it had "taken the actions necessary to implement the rulings and recommendations" in this dispute was not accurate. Canada, therefore, called on the United States to resume the submission of status reports and to repeal the Byrd Amendment.

47. The representative of the European Communities said that on 30 November 2006, the US Customs and Border Protection had posted on its website the report with the details of the distribution of the anti-dumping and countervailing duties collected during the fiscal year 2006. This sixth distribution already exceeded US$380 million and US$39 million more might be distributed after resolution of pending litigation. This was the highest amount distributed thus far under the CDSOA and this even though anti-dumping and countervailing duties collected on goods from Canada and Mexico had not been distributed any longer. The amount distributed from duties collected on EC products had more than doubled compared to the previous year, which had already increased in comparison to the year before. The EC, therefore, asked if the United States could explain how this reconciled with its repeated assertion that it had taken all steps to implement the DSB's ruling condemning the CDSOA? The CDSOA had been found WTO-incompatible for transferring the anti-dumping and countervailing duties to the US complainants. These transfers should have stopped by 27 December 2003. However, three years later and the United States continued distributing the collected duties and would continue until at least fiscal year of 2010 starting on 1 October 2009 according to the US Congressional Budget Office. As long as those transfers continued, the United States would be in breach of Article 18.1 of the Anti-Dumping Agreement and Article 32.1 of the SCM Agreement and full implementation would still have to be delivered. The EC, therefore, asked the United States again if and what steps it intended to take to stop the transfer of anti-dumping and

countervailing duties without further delay. The EC also renewed its call on the United States to abide by its clear obligation under Article 21.6 of the DSU and to submit implementation reports in this dispute.

48. The representative of Japan said that on 30 November 2006, the US customs office had announced the distribution under the CDSOA for 2006. The total amount of the distribution was US$380 million, which was much more than the US$226 million of the previous year. The fact that the distribution had been conducted in spite of repeated requests by Japan and other co-complainants for the prompt and full implementation of the DSB's recommendations and rulings showed that the CDSOA did still exist and worked. The repeal of the CDSOA was just a formality and one could not admit the US claim that it had already implemented the DSB's recommendations and rulings. Furthermore, the total amount of the distribution had remarkably increased. Japan very much regretted this situation. Japan, with other complainants, once again urged the United States to comply fully with the DSB's recommendations and rulings as soon as possible.

49. The representative of Brazil said that his country wished to thank Canada, the EC and Japan for raising this issue once again. The more this issue had been discussed in the DSB, the clearer it became that the United States could but repeat, without any explanation, that compliance had been achieved through the "Deficit Reduction Omnibus Reconciliation Act", which established a prospective repeal for the Byrd Amendment. Nonetheless, hoping that the United States might now have a different, more elaborate approach, Brazil wished to pose again a simple question, which it had already addressed to the United States, together with several other Members: "In light of the DSB's recommendations in the present case, how could the respondent sustain that disbursements to be made until, at least, late 2007 – including more than US$380 million for fiscal year 2006 – are in compliance with the US obligations?".

50. The representative of China said that his country thanked and supported the EC, Canada and Japan for raising this matter at the present meeting. China shared the views expressed by previous speakers that the implementation issue had not been resolved in this dispute within the framework of Article 21 of the DSU. Implementation was critically important to the credibility and efficiency of the dispute settlement system. Should the prospective repeal of a WTO-inconsistent measure be treated as equal to immediate compliance, the legal basis of the DSU on prompt and full compliance with the DSB's recommendations and rulings would be greatly undermined. Therefore, China wished to join previous speakers in urging the United States to comply fully and promptly with the DSB's rulings and recommendations.

51. The representative of India said that his country wished to thank Canada, the EC and Japan for raising this issue in the DSB again. In spite of its exhortations expressed at past meetings, India was still awaiting a response from the United States to this long-standing question as to how it squared up its compliance obligations with the continuation of disbursement of collected anti-dumping and countervailing duties to their industry, almost fours years after this should have stopped. The latest data available in the CDSOA Annual Report of the US Customs and Border Protection for fiscal year 2006 only proved India's point that the United States was not in compliance with its obligations. In spite of this, all the United States had done was to re-iterate its indefensible position. Such unilateral action was regrettable as it undermined the WTO dispute settlement system. India, therefore, again urged the United States to inform the DSB of the steps it proposed to take to ensure full compliance with its WTO obligations and reiterated its request that the United States resume submitting status reports in this dispute.

52. The representative of Thailand said that, once again, his country wished to thank Canada, the EC, and Japan for bringing this item, once again, before the DSB. Since the previous regular DSB meeting, when the Byrd Amendment implementation had been discussed Thailand had become aware of some disappointing news. On 30 November 2006, the US Customs and Border Protection had

issued its CDSOA Annual Disbursement Report for fiscal year 2006. That meant that the United States continued to improperly disburse funds under the CDSOA, despite having declared to the DSB that it had already taken the actions necessary to implement the rulings and recommendations in this dispute. Thailand did not believe that the United States had brought itself into conformity with its obligations. In fact, it believed that continued CDSOA disbursements were in breach of the US obligations under the Anti-Dumping Agreement and the Subsidies Agreement. Therefore, Thailand repeated its call on the United States to cease these WTO-inconsistent disbursements, to repeal the Byrd Amendment with immediate practical effect, and to resume providing status reports until such actions were taken and this matter had been fully resolved.

53. The representative of the United States said that as his country had already explained at previous DSB meetings, the US President had signed the Deficit Reduction Act into law on 8 February 2006. That Act included a provision repealing the Continued Dumping and Subsidy Offset Act of 2000. Thus, the United States had taken all actions necessary to implement the DSB's recommendations and rulings in these disputes. With respect to comments regarding further status reports in this matter, as the United States had already explained, the United States had taken all steps necessary to implement the DSB's recommendations and rulings in these disputes. Those Members who had inscribed this item on the agenda of the present meeting were, of course, free to do so, but the United States failed to see what purpose would be served by further submission of status reports repeating the progress the United States had made in the implementation of the DSB's recommendations and rulings.

54. The DSB took note of the statements.

5. Mexico – Definitive countervailing measures on olive oil from the European Communities

(a) Request for the establishment of a panel by the European Communities (WT/DS341/2)

55. The Chairman drew attention to the communication from the European Communities contained in document WT/DS341/2, and invited the representative of the European Communities to speak.

56. The representative of the European Communities said that in May 2006 the EC had held DSU consultations with Mexico on its countervailing duties investigation and measures on EC exports of olive oil. Regrettably, these consultations and further bilateral contacts had not resolved the dispute and the EC continued to have serious concerns about the full compatibility of these measures with fundamental provisions of the WTO agreements. This case was of great importance for the EC given its economic significance, but also because it highlighted certain systemic problems of Mexican investigations, which affected market access to EC exporters. The EC had, on numerous occasions, invited Mexico to carry out a thorough investigation and to take due account of the substantiating information submitted by the EC and its exporters. However there was no movement on the Mexican side. The EC had also gone at length to demonstrate to Mexico its interest in arriving at a mutually satisfactory solution. Therefore, the EC was disappointed that thus far it had not been able to find a solution through negotiations. The EC did not see any other option than to take the next step and ask for the establishment of a panel. However, the EC continued to remain open to resolving the issue amicably. This was a first panel request and the EC urged the Mexican authorities to come forward as soon as possible with a concrete solution to quickly revoke these measures in order to avoid taking the issue any further.

57. The representative of Mexico said that his country regretted that the consultations held on 5 May had failed to produce a mutually agreed solution and that the EC had decided to request the establishment of a panel. Mexico maintained that the countervailing duties levied on olive oil from

the EC were determined in conformity with the SCM Agreement. In order to continue examining the matter in coordination with Mexico's authorities in the capital, Mexico opposed the establishment of a panel at the present meeting. Mexico, once again, assured the EC that it was open to dialogue with a view to finding a solution to this matter so as to avoid the establishment of a panel.

58. The DSB took note of the statements and agreed to revert to this matter.

6. United States – Subsidies on upland cotton

(a) Statement by Canada regarding interventions made in the DSB concerning panel composition in the Article 21.5 proceedings

59. The Chairman said that this item was on the agenda of the present meeting at the request of Canada and invited the representative of Canada to speak.

60. The representative of Canada said that his country noted the statements by Brazil and the United States made in the past two DSB meetings under "Other Business" regarding the panel selection process in the dispute "US – Cotton (Article 21.5)", and wished to express certain systemic concerns about developments regarding this matter. First, Canada recognized that there were unresolved tensions between Articles 21.5 and 8 of the DSU concerning panel composition. In Canada's view, allowing Members to veto, in Article 21.5 proceedings, panelists who had served in the original proceedings, did not contribute to the prompt resolution of the specific dispute, nor had it necessarily served the dispute settlement process more generally. Canada, therefore, encouraged Members to exercise great restraint in invoking Article 8 in respect of a panel composed under Article 21.5 of the DSU.

61. Second, Canada also noted unresolved tensions between the DSB's responsibility to oversee the operation of the DSU, and the diplomatic conventions that governed panel selection under the DSU. Where there were problems with the operations of the DSU, the DSB had a right to be seized of the matter, and a Member that had a concern must be given the chance to raise those concerns, in general terms, in the DSB. However, the confidentiality of the panel selection process must be maintained. No Member should ever have to worry that its preferences in a panel selection meeting might be aired in the DSB under any pretext. In this respect, nothing distinguished panel composition under Articles 21.5 of the DSU from the normal process under Article 8 of the DSU. Given the efforts underway under the leadership of the Chairman of the Special Session of the DSB to renew the negotiations to improve and clarify the DSU, Canada considered that the concerns raised by Brazil and the United States might usefully be addressed in the context of those negotiations during upcoming meetings of the Special Session of the DSB.

62. The representative of Japan said that his country wished to thank Canada for raising this issue at the DSB again. Japan recognized that this issue contained a problem of the interpretation and the administration of the DSU. The meaning of "wherever possible resort to the original panel" in Article 21.5 of the DSU was that it was better that the same panel considered the matter, rather than the parties having consultations for the composition of a new panel, for a prompt resolution of the disputes, which was one of the principal rules of the WTO dispute settlement system. Meanwhile "wherever possible" also indicated that there was flexibility in terms of resorting to the original panel. Therefore, Japan thought that the balance of these two aspects was important.

63. The representative of Brazil said that his country noted the statements made by Canada and Japan, which further confirmed Brazil's position that the issue raised by Brazil was systemically relevant. While Brazil valued Canada's time and effort to reflect upon the discussions stemming from the interventions alluded to by Canada, it considered that some of its points should be stressed. Brazil strongly disagreed with any assertion – direct or by implication – that it had not respected

confidentiality requirements by making its statement at the 26 October DSB meeting. Brazil was fully aware and respectful of its international obligations, including, in particular, the procedural ones. Brazil was also conscious of the high value of the credibility of the dispute settlement system for all those who did not have the power to impose their will on others. Based both on systemic and national interest considerations, Brazil would not, therefore, take any action that could jeopardize that credibility. Brazil did not believe that legitimate confidentiality rules could prevent Members from raising systemic concerns at the appropriate forum and in the applicable format. Brazil brought the matter to the body entrusted with the adequate power and to the legitimate audience. In this respect, Brazil recalled that, in the DSB, confidentiality bound all delegations and the WTO Secretariat. Moreover, Brazil found it illogical that a discussion on something the United States characterized as a legitimate right under the rules of panel composition might, according to the United States, represent an "extremely serious breach of confidentiality". Should the United States be truly convinced of the righteousness of its position in this dispute, there should be no fear or concern of being accountable before the DSB.

64. Brazil considered that Members should ask themselves the following questions: "Why should the fact that original panelists were available be confidential to other WTO Members? Why should the fact that the United States has not objected that the original panelists serve as arbitrator under Article 22.6 of the DSU be confidential?" This information was available even to the external public through the WTO's website (documents WT/DS267/24 and WT/DS267/28). One could also consider the situation where a party to a dispute disclosed (systematically or not) its own submissions to the public, and these submissions contained references to the other party's positions extracted from a document considered as confidential in its entirety (from the cover to the final period). Was this a breach of confidentiality? Would a panel's or Appellate Body's reference to parts (such as claims or arguments) of that confidential submission be, then, a breach of confidentiality? Finally, what course of action served best the purpose of ensuring the credibility of the dispute settlement system: to present clearly the whole picture of a systemic problem that might arise in similar situations in the future with other Members? Or, instead, to hide the problem under an artificial confidentiality rule and foreclose the appropriate discussions at the DSB? He again expressed Brazil's gratitude towards the members of the compliance panel in the Cotton dispute. Brazil had full confidence in their competence and capacity to perform the task they had been invited to.

65. The representative of the United States said that his country agreed with Canada on the importance of maintaining the confidentiality of the panel selection process. As the United States had stated at the 21 November DSB meeting, the integrity and credibility of the panel composition process served as the foundation of the integrity and reliability of the panel findings and the DSB's recommendations and rulings that resulted from that process. Public disclosure of positions taken in this process had the potential to undermine the ability of Members to agree upon panelists in an orderly fashion, in particular in cases where, as in this case, positions had been inaccurately disclosed. Further, there was no basis for criticizing, as had been done at the previous DSB meeting, the Director-General for following the rules of the DSU during the panel selection process. Brazil's contention that the United States had raised the issue of confidentiality because it was ashamed of its actions suggested that any Member that claimed that its submissions were confidential had something to hide. This, of course, was incorrect.

66. The representative of Brazil said that his delegation wished to react very quickly to the point made that the Director-General should not be criticized in this forum. He thought that there should be no reference to any statement made by Brazil in respect of this issue. He had already mentioned this point at the previous DSB meeting when the issue had been discussed. He could not see any reference in the statements made by Brazil that might even imply some criticism of the decision taken by the

WTO Director-General regarding the composition of the panel in the Cotton dispute. However, he would refrain from making any other comments on accuracy of statements made by Members in the DSB.

67. The DSB took note of the statements.

7. Proposed nominations for the indicative list of governmental and non-governmental panelists (WT/DSB/W/337)

68. The Chairman drew attention to document WT/DSB/W/337, which contained additional names proposed for inclusion on the indicative list of governmental and non-governmental panelists, in accordance with Article 8.4 of the DSU. Unless there was any objection, he proposed that the DSB approve the names contained in document WT/DSB/W/337.

69. The DSB so agreed.

8. European Communities – Selected customs matters

(a) Statement by the United States

70. The representative of the United States, speaking under "Other Business", said that his country noted that the EC had not yet provided its statement of intentions with regard to the DSB's recommendations and rulings in the "EC – Customs" dispute (DS315) adopted on 11 December 2006. The time period prescribed by Article 21.3 of the DSU would expire prior to the next DSB meeting, so the United States wished to remind the EC of its obligation to state its intentions concerning compliance. The United States had taken careful note of the EC's statement at the 11 December DSB meeting. For a number of reasons, the United States did not understand the EC's statement at the 11 December DSB meeting to have been a statement of intentions as required under Article 21.3 of the DSU. First, the EC had taken the position that Article 21.3 of the DSU prevented a statement of intentions to be made at the same DSB meeting as the one at which the recommendations and rulings at issue were adopted. Indeed, the EC had explained at the 19 February 2003 DSB meeting that, in its view, a statement made at the same DSB meeting as the one at which the DSB recommendations and rulings were adopted "would render Article 21.3 of the DSU a nullity" (WT/DSB/M/143, para. 38). If the EC had now changed its position, then that meant the EC had finally recognized that the United States was correct at that time that Article 21.3 of the DSU did not prevent a statement of intentions to be made at the same DSB meeting as the one at which the recommendations and rulings at issue were adopted. The United States would welcome such a reversal of position by the EC. At the same time, however, the EC statement at the last DSB meeting did not state what the EC's intentions were with respect to compliance, nor could it be understood to state that compliance had already occurred. In particular, the EC had referred to certain measures that "*inter alia*," in its view, would ensure uniform classification of LCD monitors with DVI. The phrase "*inter alia*" suggested that there were other such measures. The United States wondered whether the EC intended to identify those measures, so as to enable Members to make their own assessment of whether the EC had come into compliance with its WTO obligations.

71. Second, the EC had referred to an explanatory note that apparently had been "prepared" but had not yet been "published". The United States failed to see how the EC could assert that it was already in compliance with its WTO obligations by virtue of a measure that had not even come into force. In any event, the United States would ask the EC to provide the United States with a copy of this Explanatory Note that had been "prepared" but not "published". At the 11 December meeting, the EC had stated that its statement regarding compliance was analogous to the statement the United States made upon the adoption of the reports in the "US – Steel Safeguards" dispute. However, the situation was quite different. When the DSB had adopted the Reports in "US – Steel

Safeguards", on 10 December 2003, there was no disagreement among the disputing parties that termination of the safeguard measures at issue had brought the United States into compliance with its WTO obligations. Indeed, the EC had so acknowledged at the 10 December DSB meeting (WT/DSB/M/160, para. 19). By contrast, in the "EC – Customs" dispute, it was not at all clear what measures the EC alleged had brought it into compliance with its obligations, let alone that it was in compliance at all.

72. The representative of the European Communities said that the EC had already made its statement of intentions at the special DSB meeting held on 11 December, when the Panel and the Appellate Body Reports had been adopted. The EC was surprised by the approach suggested by the United States on this point. As already mentioned at the previous DSB meeting, in the past, the United States had proceeded similarly as the EC had done in this case. The United States had stated to be in compliance at the DSB meeting during which the Panel and Appellate Body Reports in the "US – Steel Safeguards" dispute (DS248) had been adopted (10 December 2003 DSB meeting). However, in the spirit of transparency, the EC could repeat its statement made at the previous meeting: "The EC is already in compliance with the Panel's finding on the tariff classification of LCD monitors with DVI. Uniform classification of this product in the EC is ensured *inter alia* by the adoption of Commission Regulation 2171/2005, which was followed by the repeal of the Dutch Decree and the German Binding Tariff Information (BTI) referred to in the Panel report in support of the Panel's findings of violation. Moreover, the Commission has prepared an Explanatory Note on the classification of LCD monitors which will be published before the end of the year."

73. The European Commission was keeping the situation regarding the tariff classification of LCD monitors under close review and was not aware of any lack of uniformity in this respect. The Commission also regularly checked the EC Binding Tariff Information Database and had not found any divergent classifications of this product in the EC. He noted that the adoption of the draft Explanatory Note on the classification of LDC monitors was not necessary from a legal perspective in order to ensure the uniform classification of this product across the EC. This Explanatory Note was merely intended to further clarify the situation for customs officials and economic operators.

74. The representative of Mexico said that his delegation had not intended to make a statement on this matter because it had not been aware that this item would be placed on the agenda of the present meeting. This raised a systemic concern because the issue under discussion, namely a statement of intentions pursuant to Article 21.3 of the DSU, was extremely important for all Members, such as the issue related to selection of panelists, which had been discussed under the previous agenda item. He, therefore, wished to request that Members ensure, to the extent possible, that any important matters be placed on the agenda of the DSB well in advance and that, as much as possible, the appropriate documentation be provided to enable Members to examine the matter.

75. The DSB took note of the statements.