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Dispute Settlement Body
20 December 2005

MINUTES OF MEETING

Held in the Centre William Rappard
on 20 December 2005

Chairman: Mr. Eirik Glenne (Norway)

Subjects discussed: Page

1. Implementation of the recommendations of the DSB

(a) United States – Anti-dumping measures on oil country tubular goods (OCTG) from Mexico

(b) Korea – Anti-dumping duties on imports of certain paper from Indonesia

1. 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 that 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 then proposed that the two sub-items to which he had just referred be considered separately.

(a) United States – Anti-dumping measures on oil country tubular goods (OCTG) from Mexico

2. The Chairman recalled that at its meeting on 28 November 2005, the DSB had adopted the Appellate Body Report pertaining to the dispute: "United States – Anti-Dumping Measures on Oil Country Tubular Goods (OCTG) from Mexico" and the Panel Report on the same matter, as modified by the Appellate Body Report. He invited the United States to inform the DSB of its intentions in respect of implementation of the DSB's recommendations pertaining to this dispute.

3. The representative of the United States said that his country intended to implement the recommendations and rulings of the DSB in a manner that respected US WTO obligations. The United States had already begun discussions as to how to do that. The United States would need a reasonable period of time in which to implement. The United States stood ready to consult with Mexico regarding a reasonable period of time to implement.

4. The DSB took note of the statement and of the information provided by the United States regarding its intentions in respect of implementation of the DSB's recommendations.

(b) Korea – Anti-dumping duties on imports of certain paper from Indonesia

5. The Chairman recalled that at its meeting on 28 November 2005, the DSB had adopted the Panel Report pertaining to the dispute: "Korea – Anti-Dumping Duties on Imports of Certain Paper from Indonesia". He then invited Korea to inform the DSB of its intentions in respect of implementation of the DSB's recommendations.

6. The representative of Korea said that at the 28 November 2005 meeting, the DSB had adopted the recommendations and rulings in the dispute on anti-dumping duties imposed by Korea on imports of certain paper from Indonesia. As stated at that meeting, Korea intended to fully implement these recommendations and rulings. However, in order to undertake the necessary steps, Korea would need a reasonable period of time. In accordance with Article 21.3(b) of the DSU, Korea was ready to enter into discussions with Indonesia on the appropriate duration of that reasonable period of time.

7. The representative of Indonesia said that his country thanked Korea for the statement made at the present meeting regarding its intentions in respect of the implementation of the DSB's recommendations and rulings in the "Korea – Paper" dispute. Indonesia noted that proper implementation in this case would require termination of the measures at issue. Indonesia would consider Korea's statement carefully in this regard. Indonesia noted that the DSU called for immediate implementation of the DSB's recommendations and rulings, and if this was impracticable, for a reasonable period of time in which to do so. Indonesia looked forward to entering into bilateral discussions regarding such a reasonable period of time, and noted that immediate implementation appeared to be appropriate in this case. In the meantime, Indonesia reserved its rights under Articles 21 and 22 of the DSU.

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

2. Mexico – Definitive anti-dumping measures on beef and rice: Complaint with respect to rice

(a) Report of the Appellate Body (WT/DS295/AB/R) and Report of the Panel (WT/DS295/R)

9. The Chairman drew attention to the communication from the Appellate Body contained in document WT/DS295/8 transmitting the Appellate Body Report on: "Mexico – Definitive Anti-Dumping Measures on Beef and Rice: Complaint with Respect to Rice", which had been circulated

on 29 November 2005 in document WT/DS295/AB/R, in accordance with Article 17.5 of the DSU. He reminded delegations that the Appellate Body Report and the Panel Report pertaining to this dispute have been circulated as unrestricted documents. He recalled that Article 17.14 of the DSU required that: "An Appellate Body report shall be adopted by the DSB and unconditionally accepted by the parties to the dispute unless the DSB decides by consensus not to adopt the Appellate Body report within 30 days following its circulation to Members. This adoption procedure is without prejudice to the right of Members to express their views on an Appellate Body report".

10. The representative of the United States said that his country wished to begin by thanking the Panel, the Appellate Body, and the Secretariat for their hard work in this dispute. Turning to the substance of the Reports before the DSB at the present meeting, he noted that these were solid and well-reasoned Reports, and the United States fully supported their adoption. The United States was pleased that the Panel and the Appellate Body had found that both the anti-dumping measure on long-grain white rice and certain provisions of Mexico's law were inconsistent with WTO rules in numerous ways. For example, the United States welcomed the finding that Mexico had acted inconsistently with the Anti-Dumping Agreement when it had based its injury determination on a period of investigation that ended more than 15 months before the initiation of the investigation. As the Panel had correctly found, a Member conducting an anti-dumping investigation must, to the extent possible, examine the most recent information available.

11. The United States also welcomed the finding that Mexico had breached the Anti-Dumping Agreement when it limited its injury analysis to only six months of each of the three years in the period of investigation. Mexico had taken that approach because the petitioning industry had asked it to examine only the period of each year when imports were at their highest. A Member must examine all relevant information before it, and not just that portion of the information that would lead to the result it sought. The United States was also pleased by the finding that Mexico had acted inconsistently with Article 5.8 of the Anti-Dumping Agreement by refusing to terminate the investigation of two US exporters that were not dumping and by failing to exclude those exporters from the application of the anti-dumping measure. If an investigating authority examined an exporter and found that it was not dumping, there was no basis to include the exporter in the anti-dumping measure.

12. The United States also welcomed the finding that Mexico had acted inconsistently with Article 6.8 and Annex II of the Anti-Dumping Agreement. Mexico had applied the facts available to numerous US exporters and producers, even though it had never given them notice of the information that they needed to provide. The Anti-Dumping Agreement did not allow an investigating authority to use the facts available in such cases. Finally, the United States also welcomed the findings that six provisions of Mexico's Foreign Trade Act were inconsistent "as such" with the Anti-Dumping Agreement and the Subsidies Agreement. Several of those provisions had codified the WTO-inconsistent methodologies that Mexico had used in the rice investigation. Another required Mexico to fine companies if they imported products that were the subject of anti-dumping investigations. The Anti-Dumping Agreement and the Subsidies Agreement did not permit such actions.

13. There was one aspect of the Appellate Body's Report that caused the United States some concern and that it wanted to bring to Members' attention. The finding that new legal claims in a panel request must "evolve from" the legal claims in the consultation request was troubling. This test was inherently subjective. The result of the additional exchange of views in consultations might be to bring to the complaining party's attention a claim that was not previously apparent. The United States asked: "Why should the complaining party be constrained from following up on this claim in any panel proceedings?". Any other result would appear to undercut the reason for and value of consultations.

14. Nevertheless, overall, the United States considered this to be a strongly reasoned Report. The United States looked forward to Mexico bringing its anti-dumping measure and law into conformity with its WTO obligations.

15. The representative of Mexico said that his delegation welcomed the opportunity at the present meeting to present Mexico's views on the outcome of this dispute under consideration, and thanked the Panel, the Appellate Body and the Secretariat for their work. Mexico's purpose in its statement to be made at the present meeting was not to go back over the details of its arguments, but to emphasize the essential points which, in Mexico's view, should be considered by the DSB when adopting the Reports of the Panel and the Appellate Body. The Appellate Body had held that to read the legal basis set out in the panel request as being limited to what had been indicated in the request for consultations would ignore an important rationale behind the requirement to hold consultations, namely the exchange of information necessary to refine the contours of the dispute. It had also held that the addition of provisions in the panel request must not have the effect of changing the essence of the complaint. Mexico considered that this point of view did not fully reflect the rationale behind consultations as envisaged in the DSU. While it was true that an exchange of information had taken place during consultations, that exchange was not aimed at refining the contour of the dispute so as to improve the way in which they had been presented in the panel request. If that were the only function of consultations, the country which applied the measure would obviously be encouraged to provide absolutely no information in the consultations, in violation of its obligation to seek an agreed settlement.

16. Consultations had a much broader purpose, as provided in the DSU. They constituted the stage at which the parties should attempt to achieve a satisfactory settlement, and only if no such settlement was achieved the establishment of a panel might be requested. In that connection, Mexico did not see how it was possible to achieve a mutually acceptable settlement if the complaining party had not identified all the articles allegedly violated and the reasons. It was not humanly possible to resolve a dispute if the claims and the alleged violations of WTO Agreements were not known.

17. With regard to the anti-dumping investigation on imports of long-grain white rice from the United States, Mexico disagreed with the findings of the Panel and the Appellate Body with regard to the injury determination. Mexico did not agree with the Appellate Body's finding that the Panel had not exceeded its terms of reference. In Mexico's opinion, the Panel had not confined itself to the matter referred to it and had undertaken an analysis that had gone beyond what was requested by the United States, reconstructing that country's argument in a manner different from the original argument, thereby clearly exceeding its terms of reference. However, the Appellate Body had confirmed those findings.

18. It should also be pointed out that no provision of the Anti-Dumping Agreement indicated which period of investigation was to be used or how remote that period should be. Accordingly, the remoteness of an investigation period could not be considered *per se* to imply a violation of Article 3.1 of the Anti-Dumping Agreement. There were no defensible grounds for the Appellate Body to determine – despite the absence of any US claim to the effect that the data used by the investigating authority did not in themselves constitute positive evidence – that the investigation period was inconsistent with the WTO Agreements because of its remoteness. Moreover, the Appellate Body had found that the Panel had not exceeded its terms of reference when it had concluded that Mexico acted inconsistently with the Anti-Dumping Agreement in calculating a facts available-based dumping margin for a US firm. In that connection, the Appellate Body had failed to deal with Mexico's argument that the United States had not claimed that the calculation was in breach of the Anti-Dumping Agreement. Indeed, according to the US claim, the Panel should have determined whether the calculation of that dumping margin on the basis of the facts available – and not on Article 9.4 of the Anti-Dumping Agreement – was in breach of the Anti-Dumping Agreement, regardless of how the facts available were applied, since that was not the matter under its

consideration.[1] However, the Panel had exceeded its terms of reference and had found that the application of the facts available was inconsistent with the Anti-Dumping Agreement, and that had been confirmed by the Appellate Body. For these reasons, Mexico could not agree with the Appellate Body's findings.

19. Furthermore, the Appellate Body's determination that the United States had established a prima facie case of violation of the WTO Agreements by the challenged articles of the Foreign Trade Act (FTA) was unsustainable in Mexico's view. Mexico did not understand how it could be argued that it was enough for the United States to present the text of the challenged FTA articles in order for it to be held that the United States had established a prima facie case, even though – as had been pointed out repeatedly – the very text of the FTA (Article 2) provided that all the other articles of that Act shall apply when they were not inconsistent with the WTO Agreements. In other words, Mexico failed to see how it could be determined that the text of the articles was sufficient to establish a prima facie case of violation, despite the fact that the text of the FTA stated that the Articles in question were not mandatory. The United States should have presented other evidence to support its claim, such as evidence of their application, interpretations by domestic courts etc, as required by the Appellate Body itself in other disputes.

20. With regard to the importance of Article 2 of the FTA in terms of the meaning of the articles challenged by the United States, Mexico wished to make the following observations: (i) The Appellate Body had found that it could not agree with Mexico's claim that the Panel had disregarded Article 2 of the FTA. However, it had also found that Mexico did not challenge the fact that the Panel had rejected the importance of the above-mentioned Article. Mexico, therefore, questioned how it was possible to state that Mexico had claimed that the Panel had disregarded Article 2, and at the same time to argue that, when the Panel had refused to take that article into account, Mexico had not challenged that refusal. This was incomprehensible; (ii) Mexico understood the importance of specifying the articles that constituted grounds for a claim, but considered it to be going too far for the Appellate Body, merely because they were not mentioned, to avoid considering them and definitively decide not to rule on the subject, even though these were key aspects of the dispute. This was in marked contrast with the way in which the Appellate Body had held that a prima facie case had been established that the articles of the FTA were inconsistent with the WTO Agreements. Mexico considered it utterly unjustifiable for the Appellate Body, on the basis of a mere technicality, to avoid looking into an essential aspect of a dispute.

21. Mexico considered that neither the Panel nor the Appellate Body had taken into account the fact that the articles of the FTA were to be interpreted in accordance with Article 2 of that Act, inasmuch as the latter article determined the scope of all the other articles of the FTA. Thus, the Appellate Body had taken no account of the fact that the FTA articles challenged by the United States were not mandatory rules and nevertheless had held that they were inconsistent as such with the WTO Agreements. Mexico considered that the Appellate Body had failed to take into account the fact that, as was established in the final Panel report in "US – Certain EC Products", the elements of legislative provisions that were challenged were frequently inextricably linked and should not be interpreted in isolation. Furthermore, Mexico noted that, as explained in its appellant submission, the United States had argued that the challenged articles of the FTA were inconsistent with the WTO Agreements

[1] Mexico observed that the Panel had correctly rejected the US claim that the "all others" margin should have been calculated in accordance with Article 9.4 of the Anti-Dumping Agreement. In rejecting that claim, it should have found that the US argument was groundless and that it could not therefore be determined that Mexico had breached the Anti-Dumping Agreement in the manner alleged by the United States. However, the Panel had gone beyond its terms of reference by considering whether Mexico had calculated the dumping margin for producers of rice in accordance with Article 6.8 and Annex II of the Anti-Dumping Agreement, which had not been claimed by the United States.

because they were mandatory. Thus, in accordance with its terms of reference, the Panel should have examined whether those articles were really mandatory, a task which it had not adequately performed.

22. Similarly, the Appellate Body had failed to take into account the standard applied in the final Report in the case referred to above and had not considered it necessary to ascertain whether those articles were really mandatory, pursuant to Article 2 of the FTA, even though this was a crucial element of the dispute, and a key aspect of the Panel's terms of reference. Mexico had submitted numerous arguments on that point to the Panel but the latter, in its Report, merely "took note" of those arguments and referred to them in a footnote without duly analysing them. Mexico had raised the entire matter with the Appellate Body, claiming that the Panel had disregarded its arguments; but the Appellate Body's only response – and a surprising one – was to hold that on the basis of those very brief references, the Panel had had in fact taken account of Mexico's arguments. This was incomprehensible. The Panel's analysis was virtually non-existent and if it had given any additional consideration to the matter, it had done so only in its own mind, since that had not been reflected in the Report. Mexico did not understand how the Appellate Body could argue that by merely "taking note" of Mexico's arguments the Panel had taken them into account and had analysed them in their entirety. Similarly, as was explained in Mexico's written submission, on the basis of its actual content and irrespective of Article 2 of the FTA, each and every one of the articles challenged by the United States should in Mexico's view be considered to be consistent with the WTO Agreements. For the above reasons, Mexico did not agree with the findings and conclusions of the Panel and the Appellate Body. Nevertheless, Mexico associated itself with other Members at the present meeting in adopting the Reports of the Panel and the Appellate Body.

23. The representative of the European Communities said that the EC welcomed the Panel's and the Appellate Body's findings that the investigating authority did not have a boundless discretion in the selection of the investigation period. If data from a past period might be used to draw conclusions on the present, clearly too outdated data could not a priori provide a reliable basis for imposing an anti-dumping measure. The purpose of such measure was not to punish exporters for past dumping, but to offset or prevent dumping that was occurring. And, there must, consequently be a limit on the time gap that might exist between the end of the investigation period and the initiation of the original investigation.

24. The EC also fully supported the Panel's and the Appellate Body's conclusions that the investigating authority might not make selective use of the information gathered and thus produce an inaccurate picture of the situation it was due to investigate. If an investigating authority had identified a certain period as relevant to its determination, it could not subsequently take the position that some segments of that period or some information pertaining to that perk were no longer relevant. The selective use of data without reason duly justified in regards of the Anti-Dumping Agreement ran against the investigating authority's obligation to establish the facts in a fair and unbiased manner.

25. Finally, the EC wished to mark its disagreement with two conclusions reached in the present dispute. The first concerned the finding that Article 5.8 of the Anti-Dumping Agreement required terminating the investigation respect of every exporter found not to dump or to dump below de minimis level. The EC would not repeat the arguments it had presented before the Panel and the Appellate Body, but would stress again that Article VI of GATT 1994 as well several provisions of the Anti-Dumping Agreement all supported that the investigation was country-wide. There was nothing like several investigations specific to each exporter that would have to be terminated on finding of *de minimis* dumping level.

26. The Appellate Body had accepted that there was a single investigation and yet it had concluded that Article 5.8 applied at exporter level because it would require termination of that investigation in respect of individual exporter or producer with *de minimis* levels of dumping. The EC did not see how this was supported by the text of Article 5.8. Article 5.8 did not say that the

investigating authority had to terminate "an investigation in respect of". What shall be terminated was "an investigation", i.e. an investigation that was single and country-wide. In the EC's opinion, that simply meant that Article 5.8 only required such termination *vis-à-vis* the country when the country-wide dumping margin was *de minimis*.

27. Further, on a practical aspect, the exclusion of certain exporters from the scope of the measure and of reviews that might be pursued later created a potential loophole and, it was not clear to the EC how such a situation could effectively be remedied. The EC was also puzzled by the Appellate Body's finding that the investigating authority might not use facts available *vis-à-vis* exporters that were unknown to the investigating authority. By definition, the investigating authority did not have any information on those exporters. In such circumstances, what else than facts available could be used?

28. The representative of Hong Kong, China said that her delegation wished to thank the Appellate Body, the Panel and the Secretariat for their work pertaining to this dispute. Hong Kong, China welcomed the Appellate Body's and the Panel's decisions as useful in clarifying certain obligations when conducting an anti-dumping investigation under the Anti-Dumping Agreement (ADA), including in respect of the following: (i) that "positive evidence" required evidence to be relevant and pertinent with respect to the issue to be decided, and "objective examination" required the investigation process establishing the facts to be objective and unbiased; (ii) that the requirement to conduct an "objective examination" required the injury analysis to be based on data which provided an accurate and unbiased picture of what was being examined; (iii) that the use of "facts available" against an exporter who was not given notice of the information required by the investigating authority, was contrary to Article 6.8 and paragraph 1 of Annex II of the ADA. Hong Kong, China further noted the Panel's statement that Article 6.8 of the ADA was not intended to operate as punishment; that the last sentence of paragraph 7 of Annex II merely stated the obvious; and that "facts available" must nevertheless be the most appropriate information and best suited to replacing the missing data (para. 7.238 of the Panel Report); and (iv) that the right to a review under Articles 9.3 and 11.2 of the ADA, could not be conditioned on a requirement to show "representative" volume of export sales during the relevant period.

29. The practice and interpretation subject to the dispute under consideration was not specific to this case, but had been shared by a number of other users of the anti-dumping instrument. Hong Kong, China believed that the Panel and the Appellate Body Reports would provide useful guidance to all Members in ensuring the fair and proper conduct of anti-dumping investigations. With these observations, Hong Kong, China supported the adoption of the Panel and the Appellate Body Reports.

30. The DSB took note of the statements, and adopted the Appellate Body Report contained in WT/DS295/AB/R and the Panel Report contained in WT/DS295/R, as modified by the Appellate Body Report.

3. United States – Final countervailing duty determination with respect to certain softwood lumber from Canada: Recourse by Canada to Article 21.5 of the DSU

(a) Report of the Appellate Body (WT/DS257/AB/RW) and Report of the Panel (WT/DS257/RW)

31. The Chairman drew attention to the communication from the Appellate Body contained in document WT/DS257/24 transmitting the Appellate Body Report on: "United States – Final Countervailing Duty Determination with Respect to Certain Softwood Lumber from Canada: Recourse by Canada to Article 21.5 of the DSU", which had been circulated on 5 December 2005 in document WT/DS257/AB/RW, in accordance with Article 17.5 of the DSU. He reminded delegations that, the Appellate Body Report and the Panel Report pertaining to this dispute had been circulated as

unrestricted documents. He recalled that Article 17.14 of the DSU required that: "An Appellate Body report shall be adopted by the DSB and unconditionally accepted by the parties to the dispute unless the DSB decides by consensus not to adopt the Appellate Body report within 30 days following its circulation to Members. This adoption procedure is without prejudice to the right of Members to express their views on an Appellate Body report".

32. The representative of Canada said that his country wished to thank the Panel, the Appellate Body, and the Secretariat for their work to resolve this ongoing dispute between Canada and the United States concerning the US final countervailing duty determination on softwood lumber. Canada welcomed the Panel and the Appellate Body's findings that the United States had failed to properly implement the DSB's rulings and recommendations and, therefore, continued to presume subsidization in violation of its obligation under the GATT 1994 and the SCM Agreement to conduct a pass-through analysis. As a result of these Article 21.5 DSU proceedings, the Panel had also concluded, and the Appellate Body had agreed, that the United States might not use its domestic "administrative review" proceedings as a means to avoid compliance with the DSB's recommendations and rulings.

33. He noted that over three years had passed since the United States first imposed countervailing and anti-dumping duties on Canadian softwood lumber exports. The US failure to respect its international trade obligations regarding these duties was not inconsequential. In fact, the Canadian lumber industry had paid over Can$5 billion (over US$4 billion) in cash deposits to the United States to date. These illegal duties had nullified and impaired benefits accruing to Canada under the WTO Agreement, causing a tremendous negative impact on hundreds of companies, thousands of workers and hundreds of communities across Canada. Canada called on the United States to bring its measures into conformity with its WTO obligations. Finally, Canada requested that the DSB adopt the Panel and the Appellate Body Reports in this matter and recommend that the United States bring its measures into conformity.

34. The representative of the United States said that his country wished to thank the Panel, the Appellate Body, and the Secretariat for their efforts in this dispute. By way of background, he recalled that on 17 February 2004, the DSB had adopted the recommendations and rulings in this dispute that had rejected, in all major respects, Canada's claims that the United States acted inconsistently with the Subsidies Agreement and the GATT 1994 in finding that Canada had provided countervailable subsidies to its softwood lumber industry. Referring to one minor aspect of the subsidy calculation, however, the DSB had ruled that the United States should have investigated whether there had been a "pass-through" of subsidies between unrelated companies through the arm's length sale of logs. The United States had implemented that ruling on 10 December 2004, with a new countervailing duty determination. It was this implementation that was the subject of the Reports before the DSB at the present meeting.

35. The United States had two comments. First, in implementing the DSB's recommendations and rulings, the United States had followed the words of the Appellate Body's findings exactly, conducting a pass-through analysis for log sales between unrelated parties that it had found to be at arm's length. Nevertheless, the Article 21.5 compliance panel had found that, despite the fact that the DSB had adopted the Panel report as modified by the Appellate Body Report, the United States should have followed the panel's wording and conducted a "pass-through" analysis for all unrelated party sales, and not just for those found to be at "arm's length". The Article 21.5 compliance panel had acknowledged what it called a "significant ambiguity" in the recommendations and rulings, and had stated that it understood that the United States was simply giving meaning to the Appellate Body's use of the term "arm's length." However, the Panel had found that a different reading – one that ignored the explicit reference to "arm's length" in the recommendations and ruling – was the appropriate one. The United States had not appealed that finding. However, the United States noted that this dispute illustrated the value of clarity in recommendations and rulings. This was one of the reasons that the

United States had proposed that there be an opportunity to seek clarification of proposed findings and recommendations.

36. Second, the United States was disappointed that the Appellate Body had found that a separate assessment review was properly within the compliance panel's jurisdiction under Article 21.5 of the DSU. The United States would not repeat all of its arguments at this point, but it failed to follow the Appellate Body's reasoning. The Appellate Body first noted that the question of existence or consistency of measures taken to comply might be affected by measures other than the one declared to be the one taken to comply. This seemed unremarkable. However, from this the Appellate Body had then progressed to say that, therefore, measures that were sufficiently linked to those taken to comply were within the scope of Article 21.5 of the DSU. Yet the Appellate Body had not explained how this followed – it had not clearly articulated how the "linkage" it had found had an effect on the consistency or existence of a measure taken to comply. The Appellate Body's reasoning, therefore, risked being interpreted as a re-write of Article 21.5 to read "measures taken to comply or measures linked to measures taken to comply." There would be no textual basis for that conclusion.

37. The United States also wished to note the importance of two aspects of that finding. The first was that both the compliance Panel and the Appellate Body had found only that a specific, discrete component of the first assessment review, and not the review in its entirety, fell within the scope of the Article 21.5 proceeding. The second was the Appellate Body's emphasis that its reasoning applied only to the first assessment review and that it was not finding that any other measure should be within the jurisdiction of an Article 21.5 compliance panel. Article 21.5 proceedings were expedited proceedings that were limited to the existence and consistency of measures taken to comply, and great care must to be taken to ensure that panels did not exceed this jurisdictional limitation.

38. The representative of the European Communities said that the EC welcomed particularly the Panel and the Appellate Body's findings that the assessment review conducted by the United States might be referred to a compliance panel in the application of Article 21.5 of the DSU. This was the correct reading of Article 21.5. Furthermore, from a systemic point of view, accepting the US position that the results of such reviews were separate measures that could only be challenged in a new proceeding would have created a loophole seriously affecting the efficiency of the dispute settlement system. Indeed, by the time that proceeding could have resulted in a new DSB ruling and an implementing measure, another assessment review would have overtaken the results of any re-determination, obliging to start a new proceeding against the review and making compliance proceeding on the implementing measure a pointless exercise. Retrospective systems of duty assessment would have become moving targets that could largely escape from countervailing/anti-dumping duty disciplines. This would have led the dispute settlement system in an endless succession of disputes and turned it into a theoretical exercise unable to solve the issue at the heart of the dispute.

39. The representative of Canada said that his delegation had not had the benefit of reviewing the US statement prior to the present meeting and, therefore, it had not had a chance to provide Members with its considered views on that statement. Nevertheless, having listened carefully to what the United States had stated, he noted that there was an inherent tension in the position of the United States in its criticism of the Appellate Body's reasoning. On the one hand the United States warned of the serious consequences or potential serious consequences of what the Appellate Body had done in respect of Article 21.5 of the DSU suggesting that the Appellate Body had read the words "sufficient link" into the express terms of Article 21.5 of the DSU. It then had gone on, in the next breath to identify that the findings of the Appellate Body were in fact, given the factual circumstances of the case, quite narrow and the Appellate Body had gone to some lengths to underline that its findings were narrow. It seemed that the better way to look at that, was very simple. There was no expansion of the scope of Article 21.5 of the DSU. There was no reading into the terms of Article 21.5 words that were not there. There was simply the fact and that was found by the Panel and endorsed by the Appellate Body, that the United States had a measure that it had alleged was the measure to

implement and no less than ten days later, the assessment review had undone the effects of the measure that, according to the United States, was the alleged measure to implement. In such circumstances, to suggest that the assessment review was somehow beyond the scope of Article 21.5 of the DSU was indeed to read the words "existence of the measure to comply" out of the terms of Article 21.5.

40. The DSB took note of the statements, and adopted the Appellate Body Report contained in WT/DS257/AB/RW and the Panel Report contained in WT/DS257/RW, as upheld by the Appellate Body Report.

4. United States – Sunset reviews of anti-dumping measures on oil country tubular goods from Argentina

(a) Statement by the United States

41. The representative of the United States, speaking under "Other Business", said that his country was pleased to report that it had implemented the DSB's recommendations and rulings in the dispute: "United States – Sunset Reviews of Anti-Dumping Measures on Oil Country Tubular Goods from Argentina" (DS268). He recalled that on 15 August 2005, the US Department of Commerce (the DOC) had issued draft regulations to amend the provisions for waiving participation in sunset reviews. The amendments provided that any finding of company-specific likelihood of continuation or resumption of dumping was to be based on information provided by that company. The amendments also clarified that a respondent might request a hearing in an expedited sunset review. After providing an opportunity for comments, the DOC had issued final regulations effective 31 October 2005. After amending the regulations, the DOC had conducted a redetermination of the specific sunset review at issue. On 16 December 2005, the DOC had issued the redetermination.

42. The representative of Argentina welcomed the information provided by the United States on the measures adopted to implement the DSB's recommendations and rulings in the above-mentioned dispute and expected further details on those measures. Despite the short period of time that had elapsed since the adoption by the United States of some of the measures, particularly those designed to comply with the recommendations concerning inconsistencies in the dumping determination effected by the Department of Commerce (DOC) on the basis of the information already available, Argentina was in a position to affirm that the measures adopted by the United States did not comply with the DSB's recommendations and rulings. In particular, Argentina disagreed, among other measures, with the re-determination effected by the DOC under Section 129, whereby it continued to find that revocation of the measure would have been likely to lead to continuation or recurrence of dumping. Taking into account the existing disagreement under the terms of Article 21.5 of the DSU, Argentina would, in due course, take the necessary steps to safeguard its rights and interests under the DSU, including if necessary recourse to the provisions of Articles 21.5 and 22 of the DSU.

43. The DSB took note of the statements.