WORLD TRADE ORGANIZATION

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Dispute Settlement Body
18 October 2005

MINUTES OF MEETING

Held in the Centre William Rappard
on 18 October 2005

Chairman: Mr. Eirik Glenne (Norway)

Subjects discussed:

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.36)

(b) United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.36)

(c) United States – Continued Dumping and Subsidy Offset Act of 2000: Status report by the United States (WT/DS217/16/Add.21 – WT/DS234/24/Add.21)

(d) United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.11)

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.36)

2. The Chairman drew attention to document WT/DS176/11/Add.36, 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 6 October 2005, in accordance with Article 21.6 of the DSU. As noted in the report, several legislative proposals relating to Section 211 that would implement the DSB's recommendations and rulings in this dispute had been introduced in the current Congress, both in the US Senate and the US House of Representatives. The US administration was working with the US Congress to implement the DSB's recommendations and rulings.

4. The representative of the European Communities recalled that on 30 June 2005, the United States had missed yet another deadline for implementation of the DSB's ruling and recommendation to bring itself into compliance with its obligations under the TRIPS Agreement. This stood in sharp contrast with the US commitment to promote effective and non-discriminatory protection of intellectual property rights worldwide. This double standard weakened not only the credibility of the US action, but also more generally that of the TRIPS Agreement. Yet four bills were pending in the US Congress to repeal Section 211. Adoption of such bills would bring a satisfactory solution to this dispute by removing a discriminatory legislation driven exclusively by specific interests.

5. The representative of Cuba said that, through Section 211, the United States had extended to the area of intellectual property the illegal economic, commercial and financial blockade that it had been imposing on Cuba for more than 45 years. The intention was to appropriate, in US territory, Cuban trademarks of renowned international prestige protected under international conventions and treaties to which the United States was also a party. This was what the dispute under consideration was about: the attempted appropriation by Bacardi, under Section 211 – which was tailor-made for it – of the right to use the trademark Havana Club in the United States. The report by the US delegation that Members had just heard was practically a repetition of what Members had been hearing for more than three and a half years. The United States continued to openly violate the recommendations adopted by the DSB on 1 February 2002. At the previous DSB meeting, Members had been reminded

that, as stated in Article 3.7 of the DSU: "[t]he aim of the dispute settlement mechanism is to secure a positive solution to a dispute, and a solution mutually acceptable to the parties and consistent with the covered agreements is clearly to be preferred." Cuba did not question that provision. However, the understanding that the EC and the United States had disclosed on 20 July 2005 was not a solution to this dispute. Indeed, surveillance of implementation of the DSB's recommendations on this matter was still on the agenda of the regular DSB meetings. The fact was that the EC/US understanding had left the issue of US compliance with the DSB's recommendations and rulings in a sort of legal limbo by failing to fix a new reasonable period of time for implementation, as stipulated in Article 21.3 of the DSU. This was without precedent in the history of the WTO. Thus, Cuba appealed to Members to consider the serious systemic implications of "understandings" of that nature. Article 3.2 of the DSU stated that "[t]he dispute settlement system of the WTO is a central element in providing security and predictability to the multilateral trading system … " and " … serves to preserve the rights and obligations of Members under the covered agreements … ". Paragraph 3 of the same Article recognized that the prompt settlement of disputes was essential to the effective functioning of the WTO. His delegation wondered how one could speak of security, predictability, or prompt settlement when one of the most powerful Members of the WTO systematically failed to comply with the DSB's recommendations, and was indeed responsible for non-compliance with recommendations in the four disputes being considered under this agenda item. For the sake of the multilateral trading system, Cuba demanded, once again, that a prompt solution be found to this dispute through the revocation by the United States of its Section 211 Omnibus Appropriations Act of 1998.

6. The representative of China said that, at the previous DSB meeting, his delegation had made a statement under this agenda item and, at the present meeting, wished to only add a few words. While recognizing that the parties to dispute had the right to settle the procedural issues by mutual agreement, China believed that the full implementation of the DSB's rulings, namely withdrawal of the illegal measure, was the best desired result. China noted that the US measure nullified not only the interest of the EC under the WTO covered agreements, but also the interests of other WTO Members, such as Cuba. Although every WTO Member had the right to have recourse to the dispute settlement mechanism, it was a heavy burden for developing countries to do so, especially for those developing countries that lacked human and financial resources. It was quite understandable that Cuba expected to benefit from the full implementation of the DSB's ruling in this dispute and to closely monitor the status of implementation. Once again, China wished to join the EC and Cuba in urging the United States to implement the DSB's decision in this dispute as soon as possible.

7. The representative of Venezuela said that his delegation wished to be fully associated with the statement made by Cuba on this matter. Venezuela considered that the indefinite postponement of compliance with the DSB's recommendations and rulings was merely a way to continue to apply Section 211, which the Appellate Body had found to be inconsistent with WTO rules. Venezuela was concerned about systemic implications that this issue raised such as the lack of transparency, and the fact that the complaining party had apparently abandoned its claims regarding the implementation of the recommendations and rulings – an unprecedented development in the WTO. Finally, Venezuela urged the United States to make every possible effort to modify the challenged legislation as quickly as possible and to comply with WTO rules.

8. The representative of Brazil said that his country had not participated as a third party in the dispute under consideration. However, given the relevance of what Members had been witnessing in respect of implementation, Brazil wished to raise some systemic considerations. He said that, by stating twice – in Articles 3.3 and 21.1 of the DSU – that prompt compliance was essential for the proper functioning of the WTO and the maintenance of a proper balance between the rights and obligations of Members, the DSU negotiators had not taken that obligation lightly. This was not only because of the number of times references had been made to it in the DSU, but also, and more importantly, due to the weight Members attached to that obligation. It was, thus, clear that prompt compliance, which was qualified twice as essential, was one of the cornerstones of the DSU. Brazil also recalled that Article 3.7 of the DSU determined that, in the absence of a mutually agreed solution,

the first objective of the dispute settlement mechanism was usually to secure the withdrawal of the measures concerned if these were found to be inconsistent with the provisions of any of the covered agreements. The procedural arrangement between the United States and the EC in the present dispute did not constitute a mutually agreed solution. Brazil was not taking issue with the procedural agreement. The DSB had been notified of, and had taken a decision regarding this matter on 20 July 2005. Brazil only noted that the DSB's decision should not be read as a licence for indefinite continuation of the non-compliance situation, which had lasted for too long in the present dispute. Brazil urged the parties to the dispute to take advantage of the positive momentum that had led to the bilateral agreement on procedures: i.e. either to reach a mutually satisfactory solution consistent with the multilateral rules and beneficial to all Members, or to develop ways towards an expedited withdrawal of the illegal measure.

9. The representative of Mexico said that his delegation noted the statements made by previous speakers. Mexico was aware that Cuba had a trade interest in this dispute and, therefore, understood Cuba's frustration at the failure to resolve this matter within the reasonable period of time. Ideally, the matter should be settled without the need for Cuba to initiate its own case. Mexico did, however, consider that Cuba's rights under the DSU were still valid.

10. The representative of the United States said that his delegation thanked those delegations who had recognized that the parties to this dispute had notified their procedural agreement to the DSB, and that the DSB had taken a decision on this matter after the parties had explained that it would assist the parties to resolve this dispute. The United States reiterated that it would continue to work with the other party to this dispute in seeking to resolve it.

11. 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.36)

12. The Chairman drew attention to document WT/DS184/15/Add.36, 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.

13. The representative of the United States said that his country had provided a status report in this dispute on 6 October 2005, 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. He noted that details were provided in document WT/DS184/15/Add.3. The US administration continued to support specific legislative amendments that would implement the DSB's recommendations and rulings with respect to the US anti-dumping duty statute, and was working with the US Congress to pass these amendments. In that connection, on 19 May 2005, legislation had been introduced in the US House of Representatives (H.R. 2473) that would implement the DSB's recommendations and rulings with respect to the US anti-dumping duty statute. The US administration would continue to work with the US Congress to enact legislation to implement the DSB's recommendations and rulings.

14. The representative of Japan said that his country noted the statement made by the United States as well as its most recent status report that the US administration would continue to work with the US Congress to enact legislation H.R. 2473. As Japan had previously stated before the DSB, the implementation of the recommendations and rulings by the Member concerned in an adequate and prompt manner was essential for the effective functioning of the dispute settlement system. Japan strongly urged the US administration and the US Congress to intensify their efforts toward securing the passage of that bill at the earliest possible opportunity.

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

(c) United States – Continued Dumping and Subsidy Offset Act of 2000: Status report by the United States (WT/DS217/16/Add.21 – WT/DS234/24/Add.21)

16. The Chairman drew attention to document WT/DS217/16/Add.21 – WT/DS234/24/Add.21, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning the US Continued Dumping and Subsidy Offset Act of 2000.

17. The representative of the United States said that his country had provided a status report on 6 October 2005, in accordance with Article 21.6 of the DSU. As noted there, the US administration had proposed repeal of the CDSOA in its budget proposal for fiscal year 2006. In addition, legislation that would repeal the CDSOA had been introduced in the US House of Representatives. On 9 September 2005, an amendment to appropriations legislation had been filed in the US Senate. The amendment would prohibit the distribution of CDSOA funds unless distribution of such funds would not be inconsistent with US WTO obligations. The US administration would continue to work with the US Congress to enact legislation, and to confer with the complaining parties in these disputes, in order to reach mutually satisfactory resolutions of these matters.

18. The representative of the European Communities said that on 1 October 2005, a new round of distribution under the CDSOA had started. This was the fifth distribution since the enactment of this legislation, and the second after the date on which the United States had been required to bring its legislation into conformity with its WTO obligations. This would add to more than US$1 billion distributed thus far, and would cause further damage not only to the EC or other complainants, but also to the whole WTO Membership. The EC recognized the recent initiatives taken in an effort to bring a solution to this dispute: (i) the invitation by the US House Ways and Means Sub-Committee on Trade to interested parties to comment on the inclusion in a miscellaneous trade bill of a bill repealing the Byrd Amendment; an invitation which had triggered more comments in favour of repeal than against; and (ii) a proposal in the Senate that would provide at least a temporary solution to this dispute. These were welcome positive signs especially after a long period of apparent total lack of interest in the US Congress. But, these should not be hollow promises. Concrete steps should now follow to repeal the Byrd Amendment without further delay.

19. The representative of Brazil said that his country noted the status report provided by the United States in the context of the present dispute. Brazil wished to reiterate its concerns about the absence of meaningful progress in the implementation of the DSB's rulings and recommendations, in particular as one were to approach December, which would be the second anniversary of the expiration of the rather long reasonable period of time for implementation in this dispute. Brazil also wished to note that, at the request of the US Congress, the US General Accounting Office (GAO) had issued a report in September 2005 entitled: "Issues and Effects of Implementing the Continued Dumping and Subsidy Offset Act of 2000". The report made clear that payments under the Byrd Amendment benefited only a very small number of companies in the United States while breaching the multilateral rules. In accordance with the GAO's report, only five (out of 770) companies had received about 50 per cent of the more than US$1 billion distributed from 2001 through 2004 fiscal years. Brazil was not saying that, were the United States to concentrate less its disbursements under the CDSOA, the measure would be less WTO-inconsistent or less harmful. The figures in the said report showed, however, how groundless was the argument supporting the lack of compliance based on the allegedly widespread positive effects of the Byrd Amendment to US industries and workers. Finally, even putting aside all the other relevant elements at stake in this matter, which – he stressed – were of paramount importance for the credibility of the system, these numbers alone – US numbers, not the complainants' numbers – should convince the United States of the urgency of stepping up the efforts to repeal the Byrd Amendment.

20. The representative of Canada said that his country noted the most recent status report of the United States on the Continued Dumping and Subsidy Offset Act of 2000. As previously stated, Canada was disappointed that US inaction had required Canada and other WTO Members to impose trade restrictive measures in order to induce US compliance with its WTO obligations. Canada welcomed the inclusion of the bill to repeal the Byrd Amendment (Ramstad Bill HR 1121) in the Miscellaneous Trade Legislation, currently being considered in the US Congress. The US House Ways and Means Sub-Committee on Trade had received numerous submissions from a broad range of stakeholders calling for the repeal of the Byrd Amendment. Canada urged the Committee to consider these submissions carefully, including Canada's letter to the Committee, in order to expedite the repeal of the Byrd Amendment. Canada was encouraged by the recent release of a report published by the US General Accounting Office on the Byrd Amendment. The report made note of the retaliatory measures taken by some of the US most important trading partners as a direct result of the US failure to comply with the WTO ruling. Quite tellingly, the report had also found that the Byrd Amendment served to undermine the effectiveness of trade remedies generally, a position that had been stated, and re-stated, by many Members in the WTO. The report was only one of several reports released by different US agencies on the Byrd Amendment. He recalled that the US Congressional Budget Office had released a report in March 2004 stating that the distributions mandated by the Byrd Amendment encouraged the filing of more trade remedy cases; subsidized the firms receiving the payments; increased the cost of operating the trade laws; and discouraged the settlement of cases by US firms. These were only some of the compelling reasons, as expressed by US agencies themselves, as to why the Byrd Amendment must be repealed. Canada, once again, wished to take this opportunity to call upon the United States to end this dispute and to repeal the Byrd Amendment.

21. The representative of Japan said that it was regrettable that the persistent failure of the United States to implement the DSB's recommendations and rulings in this dispute had made it imperative for Canada, the EC, Mexico and Japan to resort to a last-resort remedy, provided for under Article 22 of the DSU. As a result, the suspension of concessions or other obligations by these four Members remained in place. Japan noted the status report by the United States that there had been a few new movements in and around the US Congress over the past several months. At the same time, Japan was worried about another round of illegal disbursements under the WTO-inconsistent CDSOA with detriment to the legitimate rights and interests of Japan and other Members. Japan was eager to see more reliable and tangible signs toward the repeal of the CDSOA and Japan, once again, called on the United States, in this case as well, to intensify its efforts toward securing the implementation of the DSB's recommendations and rulings.

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

(d) United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.11)

23. The Chairman drew attention to document WT/DS160/24/Add.11, 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.

24. The representative of the United States said that his country had provided a status report in this dispute on 6 October 2005, in accordance with Article 21.6 of the DSU. As noted in the report, the US Administration continued to work with the US Congress, and to confer with the EC, in order to reach a mutually satisfactory resolution of this matter.

25. The representative of the European Communities said that the dispute on Section 110(5) of the US Copyright was the last issue under the first item on the agenda of the present meeting, which had exclusively been devoted to the US inability or unwillingness to implement the DSB's recommendations and rulings. However, that last issue was also the oldest one: indeed, more than

five years after the adoption of the Panel Report, the EC and all other Members had still not seen the slightest prospect for compliance. The EC feared that the United States was not effectively working on the enhancement of copyright protection within its jurisdiction, thereby affecting the rights and expected benefits of other Members. And, strikingly, the maintenance of substandard intellectual property legislation in the United States affected first and foremost its own citizens and creators. The EC urged the United States to put an end to a situation that had lasted for too long. As a first step, the EC would expect that the United States describe, in its next status report, the actual initiatives that had been or that would be undertaken in order to comply with the DSB's recommendations and rulings. Finally, the EC wished to recall that it had reserved its right to reactivate, at any point in time, the arbitration proceeding on retaliation in this dispute.

26. The representative of the United States said that his delegation regretted that the EC was again making unfounded comments on the US record on intellectual property rights, and wished to refer delegations to the comments made at recent DSB meetings in that regard. In that connection, the United States had also noted the EC's comment made at the previous DSB meeting that, judging from two disputes, the United States seemed impotent to live up to its TRIPS obligations, and the EC's question: "what lesson should the other Members of this Organisation draw from this fact?" In that connection, the United States wished to recall several disputes involving findings against the EC: Sugar, Bananas, Beef, Frozen Chicken, Butter, Poultry, and Geographical Indications for Agricultural Products. The United States also recalled the EC's request, in the previous week, for an extension of its waiver in the Bananas dispute, in which the EC had failed to comply with the DSB's recommendations and rulings for eight years. It would seem, based on the EC's logic, that it was impotent to live up to its WTO obligations in the area of agriculture. He then asked "What lesson should other Members of this Organization draw from this fact?"

27. The representative of the European Communities said that his delegation wished to understand better whether the US intention was to seek a waiver in order to comply with the recommendations in the dispute under consideration.

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

2. European Communities – Customs classification of frozen boneless chicken cuts

(a) Implementation of the recommendations of the DSB

29. 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 recall that at its meeting on 27 September 2005, the DSB had adopted had the Appellate Body Report pertaining to the disputes on: "European Communities – Customs Classification of Frozen Boneless Chicken Cuts" and the Panel Reports on the same matter, as modified by the Appellate Body Report. He then invited the EC to inform the DSB of its intentions in respect of implementation of the DSB's recommendations.

30. The representative of the European Communities recalled that at the DSB meeting on 27 September 2005, the EC had explained its concerns regarding the systemic implications of the Appellate Body Report and the Panel Reports, which did not need to be repeated again. At the present meeting, the EC wished to indicate that it intended to implement the relevant DSB's rulings and recommendations in an appropriate manner. In view of the various highly technical issues involved, the EC was unable to proceed to immediate implementation and, therefore, needed a reasonable period of time. In the coming days, the EC would contact the complainants in order to

explore ways to agree on a mutually acceptable period of time, in accordance with Article 21.3(b) of the DSU.

31. The representative of Brazil said that his country had noted the EC's statement regarding its intention to implement the DSB's recommendations in the present dispute. As observed by Brazil at the 27 September 2005 DSB meeting – when the Reports of the Panel and the Appellate Body had been adopted – the process of implementation of the DSB's rulings by the EC should be an expedited procedure. The condemned measures – Regulation No. 1223/2002 and Decision 2003/97/EC – had been enacted by the European Commission. Therefore, the accomplishment of the DSB's recommendations should be a rather simple and straightforward process. There was no reason why the EC could claim that it could not promptly implement the DSB's decisions. The best way to comply with those recommendations was by immediately withdrawing the inconsistent measures and by ensuring that subsequent legislation did not impede the classification of the product under heading 02.10. Brazil expected the EC to abide by the DSB's rulings in the shortest possible period of time, which would be a clear indication that the EC remained attached to its multilateral commitments under the WTO Agreements. Brazil stood ready to consult with the EC at the earliest opportunity on a reasonable period of time for implementation.

32. The representative of Thailand said that his country had noted the statement made by the EC at the present meting and welcomed the EC's intention to comply with the DSB's decisions and recommendations. Thailand recalled that Article 21.1 of the DSU provided that prompt compliance with the DSB's recommendations or rulings was "essential in order to ensure effective resolution of disputes to the benefit of all Members." Thailand also recalled that Article 21.3 of the DSU called for immediate compliance with such recommendations and rulings, and thus regretted that the EC had indicated that it would not immediately comply in this instance. However, as the EC had moved expeditiously in the past to adopt amendments to its Combined Nomenclature, Thailand remained hopeful that the EC could – and would take prompt and effective action to adopt the required changes to implement the DSB's rulings in this case. Accordingly, the EC should implement the DSB's rulings as promptly and expeditiously as possible. Therefore, despite the EC's disappointment with the lack of immediate compliance by the EC, Thailand stood ready to discuss with the EC a reasonable period of time for implementation that reflected the shortest period possible within the EC's legal system. Thailand also looked forward to discussing with the EC the modalities for prompt implementation in these circumstances.

33. 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. United States – Subsidies on upland cotton

(a) Recourse to Article 7.9 of the SCM Agreement and Article 22.2 of the DSU by Brazil (WT/DS267/26)

34. The Chairman drew attention to the communication from Brazil contained in document WT/DS267/26, and invited the representative of Brazil to speak.

35. The representative of Brazil recalled that on 21 March 2005, the DSB had adopted the Reports of the Panel and the Appellate Body in this dispute. Since that date, the United States had been under the obligation to withdraw the subsidies found to cause serious prejudice to the interests of Brazil or remove their adverse effects, pursuant to Article 7.8 of the SCM Agreement. The subsidies at issue included marketing loan assistance payments, user marketing (Step 2) payments, market loss payments and counter-cyclical payments to upland cotton. The adopted Panel and Appellate Body Reports had concluded that these subsidies caused serious prejudice to Brazil by means of significant suppression of international prices, in violation of Articles 5 and 6.3(c) of the SCM Agreement.

Regrettably, the United States had not withdrawn or modified these subsidies within six months following the adoption of the Reports: i.e. by 21 September 2005, as required by Article 7.9 of the SCM Agreement. In light of the situation just described, Brazil had decided to reserve its rights by requesting authorization to take countermeasures in the annual amount of US$1.037 billion until such time as the United States withdraw the above-mentioned subsidies or remove their adverse effects, as explained in document WT/DS267/26. Brazil hereby requested that the DSB approve the authorization, as set out in its request.

36. As stated in Brazil's request, these countermeasures, in principle, would take the form of suspension of tariff concessions and related obligations under the GATT 1994 by means of the imposition of additional import duties on a list of products imported from the United States, to be defined by Brazil. However, it was not practicable or effective to suspend concessions or other obligations with respect to the same sector/agreement as that in which the Panel and the Appellate Body had found the violations. Brazil also believed that the circumstances were serious enough to justify the suspension of concessions or obligations under the TRIPS Agreement and the GATS, as indicated in its request.

37. He said that it was worth noting that the present request related to actionable subsidies, and did not invalidate or supersede Brazil's request of July 2005 concerning prohibited subsidies, which should have been withdrawn by 1 July 2005.

38. He recalled that at the 15 July 2005 DSB meeting, Brazil had signalled its expectations that the United States would take the necessary steps to withdraw the illegal measures in question or remove their adverse effects within the prescribed deadline. Brazil had also acknowledged that measures taken and the announcements made by the United States with reference to the prohibited subsidies in this case had constituted a positive step towards the resolution of this dispute. Furthermore, Brazil had expressed its hope that the US Congress would follow up with concrete and timely actions that could enable a mutually satisfactory resolution of this dispute. Brazil was still hopeful that the actual application of retaliatory measures might not be necessary. Brazil's own estimates indicated that US subsidies on cotton in marketing year 2004, however, might have been the largest ever, over US$4 billion. This was far from being an encouraging sign not only to Brazil, but also to all those who supported the end of trade-distorting subsidies in agriculture. In conclusion, Brazil regretted the lack of compliance by the United States with the DSB's recommendations, and noted, once again, that full implementation was essential for the credibility of the multilateral trading system. Even more so when additional rights and obligations to promote the reform of agriculture were being negotiated under the Doha Round.

39. The representative of the United States said that by letter, dated 17 October 2005, the United States had notified the DSB that it objected to Brazil's request for authorization to suspend concessions or other obligations pursuant to Article 22.2 of the DSU and Article 7.9 of the SCM Agreement. Under the terms of the DSU (and, consequently, Article 7.10 of the SCM Agreement), the filing of such an objection automatically resulted in the matter being referred to arbitration, and no further action was required by the DSB. Indeed, Article 22.6 of the DSU did not refer to any decision by the DSB. Consequently, the matter was already being referred to arbitration. Nevertheless, the United States had no objection if the DSB wished to take note of that fact and confirm that it may not, therefore, consider Brazil's request for authorization, which was on the agenda of the present meeting. Although the United States had registered its objections to Brazil's request, and had thereby commenced the arbitration process, the United States believed that further proceedings were not necessary.

40. He recalled that at the 21 April 2005 DSB meeting, the United States had announced its intention to implement the DSB's recommendations and rulings in this dispute and had taken appropriate steps to do so. For example, on 5 July 2005, the US administration had announced a legislative proposal to repeal the user marketing Step 2 cotton programme. Repeal of the Step 2

programme would mitigate the price effects found to be caused by certain measures in this dispute. The US administration had been working actively with the US Congress to get this legislation enacted. In addition, reductions in payments under other domestic support programs, including those that were being discussed in the dispute, had been proposed by the US administration as part of its budget proposal and were being considered by the US Congress. The United States was confident that this dispute could be resolved without need for further proceedings.

41. The representative of the European Communities said that the EC had participated as a third party in this dispute and continued to follow with great interest the developments in terms of implementation. In that respect, the EC would be interested to obtain further information on two points. First, he recalled that, in July 2005, the United States and Brazil had concluded an understanding regarding the procedures under Articles 21 and 22 of the DSU and Article 4 of the SCM Agreement. That "sequencing agreement" only covered the prohibited subsidies and the related request for the authorization of countermeasures presented by Brazil at the DSB meeting on 15 July 2005. The EC, therefore, wished to know whether there would be another "sequencing agreement" that would cover actionable subsidies and the present request for authorization of countermeasures. Second, the EC wished to know whether, and if so how, Brazil had sought to, or would, ensure that there was no overlap between the amount of countermeasures presented to the DSB in July 2005 and the amount presently requested in terms of the specific US measures against which these countermeasures were directed.

42. The representative of Brazil said that the questions raised by the EC would be duly conveyed to his capital.

43. The representative of the United States said that his delegation would also refer the EC's questions to capital.

44. The DSB took note of the statements and it was agreed that the matter raised by the United States in document WT/DS267/27 is referred to arbitration, as required by Article 22.6 of the DSU.

4. Adoption of the 2005 draft Annual Report of the DSB (WT/DSB/W298 and Add.1)

45. The Chairman said that, in pursuance of the procedures for an annual overview of WTO activities and for reporting under the WTO contained in document WT/L/105, he was submitting for adoption the draft text of the 2005 Annual Report of the DSB contained in document WT/DSB/W/298 and Add.1. The report covered the work of the DSB since the previous annual report contained in document WT/DSB/37 and Add.1. For practical purposes, the overview of the state of play of WTO disputes covering the period from 1 January 1995 to 30 September 2005, prepared by the Secretariat on its own responsibility, was included in the addendum to this report. He proposed that after the adoption of the Annual Report at the present meeting, the Secretariat be authorized to update this Report under its own responsibility in order to include actions taken by the DSB at the present meeting. The updated Annual Report of the DSB would then be submitted for consideration by the General Council at its meeting on 1 December 2005

46. The DSB took note of the statement and adopted the draft Annual Report of the DSB contained in WT/DSB/W/298 and Add.1 on the understanding that it would be further updated by the Secretariat.[1]

[1] The Annual Report was subsequently circulated in document WT/DSB/39 and Add.1.

5. Proposed nomination for the indicative list of governmental and non-governmental panelists (WT/DSB/W/299)

47. The Chairman drew attention to document WT/DSB/W/299, which contained an additional name 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 wished to propose that the DSB approve the name contained in document WT/DSB/W/299.

48. The DSB so agreed.

6. Panama – Tariff classification of certain milk products

(a) Statement by Mexico

49. The representative of Mexico, speaking under "Other Business", said that his delegation was pleased to inform Members that Mexico and Panama had reached a mutually agreed solution in the dispute: "Panama – Tariff Classification of Certain Milk Products". That solution had been notified to the DSB and had subsequently been circulated on 6 October 2005 in document WT/DS329/2. Mexico thanked Panama for its work and said that its endeavours, good faith and prompt responses had allowed this dispute to be settled in a favourable and positive manner. Mexico reiterated its commitment to continue working with Panama, an important trading partner, and hoped that their relations would remain constructive. Finally, Mexico underlined that it had reached mutually satisfactory settlements in virtually all disputes with its Latin American trading partners. Mexico hoped to be able to continue working in this vein.

50. The DSB took note of the statement.