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Dispute Settlement Body
17 February 2006

MINUTES OF MEETING

Held in the Centre William Rappard
on 17 February 2006

Chairman: Mr. Eirik Glenne (Norway)

Subjects discussed: Page

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.39)

(b) United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.39)

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

(d) United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.14)

(e) European Communities – Protection of trademarks and geographical indications for agricultural products and foodstuffs: Status report by the European Communities (WT/DS174/25/Add.1 – WT/DS290/23/Add.1)

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 five 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.39)

2. The Chairman drew attention to document WT/DS176/11/Add.39, 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 February 2006, 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 more than four years ago the United States had been found in breach of its obligations under the TRIPS Agreement. Furthermore, the United States had failed to bring its legislation in conformity with its obligations by 30 June 2005, as had been required, and this was despite having benefitted from several extensions of the time-period for implementation. And again, this month, the United States could not do better than to reprint a status report which, except for the date, had not changed over the course of one year and should rather be called a status report on non-implementation. He noted that 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 interest.

5. The representative of Cuba said that the dispute under consideration was one of the most long-standing matters under item 1 of the DSB's agenda. He recalled that the Appellate Body Report had been adopted four years ago on 1 February. During that period, the United States had been granted, five times, generous deadlines to implement the DSB's recommendations. The last deadline had expired on 30 June 2005. Nevertheless, the United States had not yet implemented the DSB's decisions. Its repetitive reports to the DSB had become reports on non-progress, as one delegation had pointed out at the previous DSB meeting. The underlying problem was, as that delegation should also acknowledge, the "acceptance" of a vague and imprecise "understanding" between the parties, which had been announced in July 2005.

6. During the four years, the United States had merely made a mockery, time and again, of the DSB, postponing compliance with decisions indefinitely, with false promises that it was working with the US Congress to amend its legislation. The US Government and its allies in Congress had in fact been manoeuvring to prevent consideration of the bills aimed at remedying the breach of international law, so that such bills had not been even debated in the US Congress. He underlined that Section 211 as well as the need to benefit a company with the main interests in the United States although it was located elsewhere, were aimed at pursuing broader aims thus hindering foreign investments in Cuba, which was associated with the international marketing of Cuban products that enjoyed worldwide prestige.

7. This provision of the law extended to the sphere of intellectual property the "draconian" economic, commercial and financial blockade against Cuba, a policy which had been condemned by an overwhelming majority in 14 consecutive Sessions of the US General Assembly because of its unlawful extraterritorial and intimidating nature, which established sanctions against countries, companies or individuals that granted economic assistance to, traded or maintained relations with Cuba, as a means of discouraging foreign investment in Cuba among other things. Despite the hostile policy that the United States had implemented against Cuba for the past 47 years, the intellectual property rights of US right-holders had always been scrupulously observed by Cuba and they enjoyed the same protection in Cuba as other right-holders elsewhere in the world. It was striking that along this dispute, three other disputes were being discussed under this agenda item, where recommendations were awaiting compliance by the United States. Oddly enough, one of them was related to intellectual property rights. Historically, the United States had held itself up as the champion and international custodian of these rights when it came to challenging underdeveloped countries or strengthening intellectual property provisions in the interests of its transnational monopolies. Obviously, the US conduct had implicit double standards, and was beginning to show a consistent pattern of disregard for the multilateral agreements and the WTO. This had serious systemic implications. Persistent conduct of this kind set a dangerous precedent that might affect other Members in future, particularly underdeveloped countries. The US conduct cast doubts on and eroded the foundations underlying not only the TRIPS Agreement, but all the WTO Agreements, namely, the principles of national treatment and most-favoured-nation treatment. Members were in danger of sending the wrong message to the world. One had to insist that WTO rules must be applied not only to small nations, but also to the major trading powers. Cuba reiterated its appeal to Members to take prompt and effective action to secure observance of the letter of multilateral trade agreements and their own decisions by demanding that the United States comply immediately, unconditionally and without further delay with all the DSB's rulings and recommendations, in particular those pertaining to this dispute by repealing Section 211, which was unjust and discriminatory.

8. The representative of China said that, at the previous DSB meeting, his delegation had made a statement regarding this matter under agenda item 1 and, at the present meeting, wished to make some further comments. He noted that almost four years of the reasonable period of time had passed since February 2002, when the DSB had adopted both the Panel and the Appellate Body Reports, and had endorsed their recommendations. The Reports had concluded that Section 211 had infringed the US obligations regarding the principles of national treatment and most-favored-treatment under the

TRIPS Agreement as well as the Paris Convention for the Protection of Intellectual Property. China noted that the measure taken by the United States had 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 definitely a heavy burden for developing countries to do so. It was quite understandable for Cuba to expect to benefit from the full implementation of the DSB's ruling in this dispute, and to monitor the status of pending implementation. China always attached great importance to the protection of intellectual property rights. China believed that the WTO dispute settlement system was an effective and efficient system for peaceful resolution of trade disputes, which brought a degree of security and predictability in international trade to all Members and their citizens. Once again, China wished to join the EC and Cuba in urging the United States to implement the decision of the DSB in this dispute as soon as possible.

9. The representative of Brazil said that, in view of its systemic interest, his country continued to express concerns about the persistence of non-compliance in respect of this dispute. Prompt and full implementation of the DSB's rulings and recommendations was one of the major means to keep the rules-based multilateral trading system credible and vibrant. Conversely, if long periods of non-implementation with apparent lack of any progress were to become something as given – a fact of life – the strength of the system would be negatively affected. These considerations made Brazil to urge, once again, the parties to the dispute to take the necessary and urgent steps to implement the relevant DSB's rulings and recommendations.

10. The representative of India said that, as stated by his country at the previous DSB meeting, it was a matter of concern that this item had been on the DSB agenda for a very long time and there was still no indication when the matter would be resolved even to the satisfaction of the parties. Members needed to reflect upon the systemic concerns about efficacy of the dispute settlement system of the WTO if, in spite of the DSU provisions relating to prompt compliance, monitoring and surveillance of implementation there was no resolution of the matter.

11. The representative of the Bolivarian Republic of Venezuela said that his delegation wished to be fully associated with the statement made by Cuba because Section 211 of the Omnibus Appropriations Act of 1998 was inconsistent with the WTO. His country was concerned that, thus far, the DSB had received no reliable indication that the United States seriously intended to rectify its non-compliance. His country was likewise concerned at the EC's failure to seek authorization to suspend concessions to the United States. The EC's failure to act undermined the effectiveness of the TRIPS Agreement and generated uncertainty. This persistent non-compliance by the United States had unquestionably cast doubts once again on the credibility of the DSU and the WTO Agreements. Furthermore, as had been pointed out at the two previous DSB meetings, it provoked a legitimate reluctance on the part of Members to assume new commitments under the DSU negotiations or the Doha Round negotiations. His country urged the United States to seek an appropriate solution to this matter, in line with the WTO Agreements.

12. The representative of the United States said that his delegation had taken note of the statements by some delegations that had unfortunately commented unfavourably on the understanding reached between the United States and the EC in this dispute. In that connection, he reiterated that the United States would continue to work with the other party to the dispute in seeking to resolve it, in accordance with the DSB's rules.

13. The representative of the European Communities said that the EC considered that the comments regarding the agreement reached with the United States were groundless. That agreement affected in no way the ability of Cuba or any other WTO Member to defend their interests, if they believed that they were affected by Section 211, notably via recourse to the dispute settlement system. In any event, the DSB had endorsed unanimously that agreement at its meeting of 20 July 2005.

14. 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.39)

15. The Chairman drew attention to document WT/DS184/15/Add.39, 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.

16. The representative of the United States said that his country had provided a status report in this dispute on 6 February 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 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. The US administration would continue to work with the Congress to enact legislation to implement the DSB's recommendations and rulings.

17. The representative of Japan noted that, in February 2006, Members had witnessed a remarkable development in the status of implementation by the United States in relation to one dispute, which would be discussed shortly in the course of the present meeting. However, Japan was still waiting for further actions to take place towards the implementation of the DSB's recommendations and rulings in this dispute. Japan was concerned about bill H.R.2473, which had been put before the current US Congress in May 2005. Japan wished to have detailed information on the state of play of that legislation within the US Congress and urged the United States to make further efforts to pass the legislation promptly.

18. 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.24 – WT/DS234/24/Add.24)

19. The Chairman drew attention to document WT/DS217/16/Add.24 – WT/DS234/24/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 the US Continued Dumping and Subsidy Offset Act of 2000.

20. The representative of the United States said that the United States had provided a status report on 6 February 2006, in accordance with Article 21.6 of the DSU. The United States was pleased to report that, on 1 February 2006, the US Congress had approved the Deficit Reduction Act, which included a provision repealing the Continued Dumping and Subsidy Offset Act of 2000 ("CDSOA"). On 8 February 2006, the President had signed the Act into law. Thus, the United States had taken the actions necessary to implement the recommendations and rulings in these disputes.

21. The representative of the European Communities said that the EC warmly welcomed the action taken by the US Congress. The adoption of provisions to repeal the Byrd Amendment was a very significant step forward to bring the United States into compliance with its obligations under the WTO Agreements and to solve a serious trade problem. However, the EC could not agree with the statement made by the United States that it had now taken the actions necessary to implement the DSB's rulings and recommendations in these disputes. The repeal of the Byrd Amendment would not have immediate effect, but was postponed by a transition clause. Duties imposed on goods imported

into the United States up to 30 September 2007 would still be distributed to certain US companies after their collection, which in turn, under US practice, could take place several years after the imports had taken place. That meant that the Byrd Amendment would remain in operation until at the very least 30 September 2007, and even thereafter for a number of years. The EC recalled that the WTO originally had given the United States a reasonable period of time for implementation until 27 December 2003. Thus the effect for the immediate future could already be quantified. The budget of the US Government for the fiscal year of 2007 forecasted the next two distributions at US$249 million and US$1,93 billion respectively. The Byrd Amendment had been found WTO-incompatible for transferring the anti-dumping and countervailing duties collected on imported products to the US companies. As long as these distributions continued, the WTO-incompatibility would persist. Consequently, the EC called on the United States to continue submitting implementation reports in this dispute.

22. The representative of Canada said that his country noted the latest status report by the United States regarding the Continued Dumping and Subsidy Offset Act of 2000, or the Byrd Amendment. On 8 February 2006, the US President had signed into law the Deficit Reduction Act of 2005, which included a provision to prospectively repeal the Byrd Amendment. Canada welcomed this important, though first, step towards the full implementation of the DSB's rulings and recommendations. This was only a first step for two reasons. First, the Act provided only for prospective repeal; it stipulated that the effective date of repeal of the Byrd Amendment was 1 October 2007, almost two years from now. Second, under the Act, payments under the Byrd Amendment would not cease on that date, or on any other specific date. Rather, duties currently collected, and those that would be collected up to 30 September 2007, would remain subject to disbursement under the Byrd Amendment long after the date of repeal. In that context, Canada could not agree with the statement made by the United States in its most recent status report that: "[o]nce the President signs this Act into law, the United States will have taken the actions necessary to implement the rulings and recommendations in these disputes". Canada recalled the finding of the Panel, as confirmed by the Appellate Body, that "imposition of anti-dumping/countervail orders with the bestowal of offset payment subsidies in very particular circumstances [...] constitutes specific action against dumping/subsidization and therefore a violation of Articles 32.1 of the SCM Agreement and 18.1 of the AD Agreement."

23. However, under the "repeal provisions", Byrd Amendment payments would continue to be made in conjunction with the orders in question for many years to come. For that reason, the United States had not yet complied with the DSB's rulings and recommendations. And until such time as disbursements were fully and completely ceased, the United States would remain in violation of its WTO obligations. The prospective repeal of the Byrd Amendment and the continuation of the payments well past the date of repeal, also raised systemic questions. The DSU required Members to bring inconsistent measures into compliance with the WTO Agreement promptly; and where this was not possible, a Member had a reasonable period of time in which to do so. In this case, the reasonable period of time had ended over two year ago. Now the United States proposed to prospectively repeal the Byrd Amendment on 1 October 2007, as regards the duties collected after that date. 1 October 2007 was almost four years after the end of the reasonable period of time, and the US repeal measure would continue to permit illegal payments long thereafter. This was contrary to the predictability and security of the world trading order, which was one of the objectives of dispute settlement mechanism negotiated and agreed by all Members.

24. The representative of Mexico said that his country welcomed the steps taken by both the US Congress and the US administration regarding compliance. Mexico was grateful for the efforts made by its trading partner. Since the amounts collected by the United States before 1 October 2007 would continue to be distributed under the so-called Byrd Amendment, Mexico was of the view that compliance had not been achieved in this case and reserved its right to continue to apply measures in accordance with the WTO Agreement. Mexico also reserved the right to have its say regarding the consistency of any disbursements made after the repeal of the Act. Mexico again urged the United States to repeal the Act and to ban forthwith any disbursements pursuant to that Act.

25. The representative of Chile said that his country thanked the United States for its status report. The approval and signing of the Deficit Reduction Omnibus Reconciliation Act, with the provision on the Byrd Amendment, was undoubtedly the first step towards actually abolishing the Amendment. Such progress was highly significant for Chile. His country, therefore, was satisfied with the efforts made by the US administration towards fulfilment of its WTO commitments. Nonetheless, Chile pointed out that it could not consider that the United States had complied with the DSB's rulings and recommendations as long as the United States maintained the Amendment, which had been declared to be WTO-inconsistent, and continued to give money to US companies competing with Chilean exporters in a manner that had been found by the DSB to be in breach of the US WTO obligations. Although the United States had, at the present meeting, announced the repeal of the Byrd Amendment, this would not be effective until 1 October 2007. Compliance was thus postponed and the measure found to be WTO-inconsistent was still in force. Consequently, the overall objective of the dispute settlement mechanism had been obstructed because a withdrawal of the measures found to be inconsistent with the covered agreements had not been secured, as required by Article 3.7 of the DSU. Chile, therefore, asked the United States to reply to the following questions: "(i) When does the United States think that it will actually comply with the recommendations? and (ii) What is to happen to any monies collected up to 1 October 2007 which go undistributed because of administrative reviews or judicial proceedings? Will it be possible for such monies to be distributed even beyond that date?" Like other co-complainants, Chile welcomed the recent progress made by the United States. At the same time, Chile wished to express its concern about the fact that the Byrd Amendment was still in force and, three years after being declared WTO-inconsistent, continued to adversely affect trade and to impair the founding principles of the WTO.

26. The representative of Brazil said that his country thanked the United States for both the status report and the statement made at the present meeting regarding the dispute in question. These confirmed that, finally, the repeal of the Byrd Amendment had been passed into law. Brazil welcomed that development, which constituted a significant step in the direction of compliance with WTO obligations in an economically and systemically important case. At the same time, Brazil stressed again its dissatisfaction with the timing for implementation of the DSB's recommendations. It had now been more than three years since the United States had informed the DSB of its intention to comply with those recommendations, and more than two years since the end of a long reasonable period of time. More importantly, the repeal of the Byrd Amendment would only produce actual effects from 1 October 2007, adding almost two more years to this protracted process of implementation. During that additional period, distributions under that illegal measure would amount to US$249 million and US$1.93 billion for 2006 and 2007, respectively, according to estimates by the US President's 2007 budget. Moreover, given the characteristics of the US trade remedy system, it might be the case that Byrd Amendment disbursements related to duties collected up to 30 September 2007 could still occur many years after the repeal had effectively entered into force.

27. Under these circumstances, Brazil disagreed with the US statement that with the mere passing into law of a prospective repeal of the Byrd Amendment, "the United States will have taken the actions necessary to implement the rulings and recommendations in this dispute". In Brazil's view, there would be no full compliance on the part of the United States until and unless all disbursements under the Byrd Amendment were to stop. In other words, all rights conferred by the DSU on the co-complainants with respect to this situation of non-compliance would remain as valid as they were before the adoption of the Deficit Reduction Omnibus Reconciliation Act.

28. The representative of Thailand said that his country wished to join previous speakers in welcoming the US status report on the Continued Dumping and Subsidy Offset Act of 2000, or the Byrd Amendment. Thailand viewed the Congressional repeal of the Byrd Amendment, coupled with the President's signing of the Deficit Reduction Omnibus Reconciliation Act into law, as a major step forward by the United States towards fulfilling its WTO obligations to implement the DSB's rulings and recommendations in this dispute. As large a step as these actions might comprise, Thailand

believed that more steps would be required to bring the United States into full compliance. Regrettably, full compliance would not be achieved unless and until duty collections and disbursements under the Byrd Amendment were completely terminated. To that end, Thailand reaffirmed 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. Therefore, recalling that the reasonable period of time for implementation in this dispute had expired, more than two years ago, on 27 December 2003, Thailand strongly urged the United States to bring its actions into full conformity with the DSB's rulings and recommendations in this dispute as soon as possible. Until such time, and until this matter had been fully resolved, Thailand also urged the United States to continue providing status reports in DSB meetings.

29. The representative of India said that his country thanked the United States for its status report. India noted with satisfaction that finally, on 1 February 2006, the United States had completed the legislative processes to repeal the CDSOA. India also noted from the additional information provided by the United States at the present meeting that the US President had signed the Deficit Reduction Omnibus Reconciliation Act into law, which included the repeal of the CDSOA. India welcomed these steps taken by the United States. However, India noted that duties collected on imports entering the United States, and those to be collected up to 30 September 2007 would remain subject to disbursements under the repealed CDSOA, a law which the DSB had ruled as being inconsistent with the US obligations under the WTO rules. Thus, the United States would remain in violation of its WTO obligations until such time as disbursements under the CDSOA had fully and completely ceased. It was also clear that the matter had not been resolved in terms of Article 21.6 of the DSU. As India had stated many times on previous occasions that it preferred full compliance by the United States with the DSB's decision to taking retaliatory measures under the authority obtained from the DSB. India, therefore, continued to reserve all its rights under the DSU, including the right to suspend the application *vis-à-vis* the United States of concessions or other obligations under the covered agreements.

30. The representative of Korea said that his country welcomed the latest development and extended appreciation to the US Congress and the US administration for their actions to repeal the CDSOA or the Byrd Amendment. This case might be the best example of "better late than never." However, as far as the implementation of the DSB's rulings and recommendations was concerned, it was always "better early than late", as explicitly stipulated in Article 21.1 of the DSU. As had been pointed out by previous speakers, the repeal of the Byrd Amendment would not take effect until 1 October 2007 by virtue of a transition clause, and disbursements of collected duties would continue to occur even thereafter. Under these circumstances, Korea found it difficult to agree with the US statement in its status report that: "Once the President signs this Act into law, the United States will have taken the actions necessary to implement the rulings and recommendations in these disputes." The full implementation would only be completed when the repeal of the Act were to take actual effect and disbursements stopped functioning. As a co-complainant in this case, Korea wished to join other co-complainants in expressing its concerns about the lack of full compliance by the United States with the DSB's rulings and recommendations.

31. The representative of Japan said that his country thanked the United States for its most recent status report. Japan welcomed the fact that the Deficit Reduction Omnibus Reconciliation Act, which included provisions to repeal the CDSOA, had been adopted by the US Congress at long last and had been signed into law by the US President. This was, in fact, a significant step forward as mentioned by previous speakers. Japan wished to congratulate and pay respect to those who had exerted themselves to pass the legislation and had supported the actions taken by the US Congress and the US administration. Nevertheless, Japan was obliged to express its concerns since the repealing provisions of the CDSOA stipulated that, in spite of the repeal of the CDSOA itself, duties collected for imports prior to 1 October 2007 would continue to be distributed to the US domestic industries. That meant that up to until September 2007 at the latest, the WTO-inconsistent CDSOA would be kept in force. Japan was concerned about that situation and called on the United States to secure the repeal once and

for all by stopping the distribution as well. In that regard, as with previous speakers, Japan was not convinced that the United States had completed the necessary steps to implement the DSB's recommendations and rulings. Japan wanted to know on what basis the United States could claim to be in compliance with the DSB's recommendations and rulings despite the fact that the CDSOA in its substance would remain in force for some time by virtue of the transitional clause. Japan also would like to know how future distributions under the CDSOA would be effectuated.

32. The representative of Australia said that his country thanked the United States for the status report in this dispute and welcomed the steps taken by the US Congress and the US administration towards the implementation of the rulings of the DSB in this dispute. However, Australia also noted the concerns that had been raised by other co-complainants regarding the extent to which these steps would implement fully the rulings in this dispute, including the possibility that dispute disbursements would continue even beyond the 1 October 2007 and accordingly, as with other co-complainants, Australia would continue to reserve its rights in respect of this dispute.

33. The representative of Hong Kong, China welcomed the passing of the Deficit Reduction Omnibus Reconciliation Act by the US Congress and its signing into law by the President of the United States, thus securing the repeal of the Continued Dumping and Subsidies Offset Act (CDSOA). However, we remain concerned about the fact that the repeal of the CDSOA would take effect only from October 2007. That meant that illegal payments under the CDSOA would continue for a further period of some 20 months, delaying the repeal of the CDSOA for some five years after the Act had been found by the Appellate Body to be WTO-inconsistent. As Members moved towards the conclusion of this Round of negotiations, it was especially important that they demonstrated their commitment to the multilateral trading system through prompt compliance with the DSB's rulings. Hong Kong, China strongly urged the United States to take further necessary steps to stop the illegal disbursements of duties with immediate effect. In the meantime, Hong Kong, China requested that this item be kept on the agenda of the DSB so that Members could effectively monitor the implementation progress.

34. The representative of Indonesia said that, like other speakers, his country welcomed the US status report on the Continued Dumping and Subsidy Offset Act of 2002. Indonesia had a bilateral agreement with the United States regarding this case. Nevertheless, Indonesia strongly wished that the United States implement the DSB's decision by repealing CDSOA as soon as possible.

35. The representative of the United States said that he wished to make a few of points with respect to the interventions that had just been made. First, he thanked those Members who had welcomed the US action that he had reported a few moments ago. Second, with respect to the requests made by some Members, the EC, Thailand and some others; i.e. with respect to specific US actions on this dispute in future, he would refer those requests back to capital for consideration. With respect to the question by Japan regarding the distribution of duties, he would also refer that question to capital for review. Finally, he had taken note of the fact that a couple of Members had stated in their interventions that they had reserved their rights to adopt measures or suspend concessions. His delegation was perplexed by that. Indeed in the course of these disputes, Members had made clear that the purpose of suspending concessions was to induce compliance. He recalled what had been stated a few moments ago, namely, that the United States had taken all the necessary steps to comply with the DSB's rulings and recommendations. The United States failed to see how the continued suspension of concessions could further that purpose. In any event, the United States would be reviewing carefully measures taken by Members. He recalled that, as it had been discussed previously, the DSB only authorized suspension of concessions or other obligations, as provided in the awards of the arbitrators.

36. The representative of the European Communities said that as had just been explained, the EC could not agree with the United States that the enactment of a repeal, which would not come into

operation for at best two years, had now brought the United States into compliance with its obligations under the WTO Agreements. As long as distributions of anti-dumping and countervailing duties to certain US companies continued, the WTO-incompatibility persisted. Therefore, the EC did not have any obligation to stop the retaliatory measures. In fact, given that the retaliatory measures were precisely based on the actual amount of WTO illegal distributions, they would disappear at the same rhythm as the Byrd Amendment, and would naturally stop when the United States had fully complied with the recommendations. This was not just about principles. A large variety of EC industries were seriously affected by the illegal distributions under the Byrd Amendment, and would continue to sustain damaging effects for years. As mentioned earlier the forecasted amounts for the next two distributions were far from being negligible. The EC had partners in this dispute and would consult with them before taking any decision.

37. The representative of Canada said that there might have been a bill signed into law, but the principle of the Byrd Amendment still remained. Disbursements of the duties had not yet seized. In fact, the Act had not been repealed. It would be repealed on 1 October 2007, but it still remained in force. As long as the disbursements of duties collected on imports continued to occur, the United States would continue to violate the DSB's rulings and recommendations and remained out of compliance with the WTO Agreement. His delegation failed to see how the United States could claim that it had brought itself into compliance merely by the signing of a prospective appeal. Canada would continue to review all options and would consult with the co-complainants in this regard.

38. The representative of Japan said that his country wished to know on what basis the United States could claim the full implementation in this dispute. As it had already been stated, Japan was not convinced that the United States had fulfilled its obligation regarding the implementation of the DSB's recommendations and rulings. After examining the relevant explanations provided by the United States and the information on the application of the transitional clause, Japan would like to consider all its options. In that process, Japan would work closely with other co-complainants in this case.

39. The DSB took note of the statements.

(d) United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.14)

40. The Chairman drew attention to document WT/DS160/24/Add.14, 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.

41. The representative of the United States said that his country had provided a status report in this dispute on 6 February 2006, in accordance with Article 21.6 of the DSU. As noted in the report, the US administration was working closely with the US Congress, and conferring with the European Communities, in order to reach a mutually satisfactory resolution of this matter.

42. The representative of the European Communities said that the EC deeply regretted the slow progress shown by the United States in solving this dispute. Indeed, five and a half years after the adoption of the Panel Report, the United States had obstinately maintained legislation that violated intellectual property rights and hurt the interests of music creators. This regrettable attitude did no service to the United States as regards its stated goal, namely, to enhance intellectual property protection worldwide. The EC, therefore, called upon the United States to take the necessary action to end this situation of non-compliance that had already lasted for too long. The EC had received assurances from the United States that the US administration was actively discussing with the US Congress possible solutions to this dispute. In that regard, the EC hoped to get more detailed information on the concrete initiatives of the US administration, including at what level these

initiatives were being undertaken. Finally, the EC wished to recall that it had reserved its right to reactivate, at any point in time, the arbitration proceedings on retaliation.

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

(e) European Communities – Protection of trademarks and geographical indications for agricultural products and foodstuffs: Status report by the European Communities (WT/DS174/25/Add.1 – WT/DS290/23/Add.1)

44. The Chairman drew attention to document WT/DS174/25/Add.1 – WT/DS290/23/Add.1, which contained the status report by the European Communities on progress in the implementation of the DSB's recommendations in the case concerning protection of trademarks and geographical indications for agricultural products and foodstuffs.

45. The representative of the European Communities recalled that at the 20 January 2006 DSB meeting, the EC had provided information to the effect that the European Commission had proposed to the Council of the European Union a new Regulation on geographical indications, which would implement the findings and recommendations of the DSB in this dispute. As stated in the status report submitted before the DSB, that proposal was still under discussion within the Council of the European Union and the European Parliament. The EC was confident that the proposal would be adopted within the agreed reasonable period of time. With regard to the concerns raised, in a preliminary manner by certain Members at the 20 January 2006 DSB meeting, he wished to make some clarifications. First, concerns had been expressed that certain provisions regulating the relationship between geographical indications and trademarks, used in the Panel's analysis under Articles 16 and 17 of the TRIPS Agreement, appeared to have been omitted from the proposed Regulation. That concern appeared to rest on a misunderstanding. The provisions in question had been moved to a different section of the Regulation and their substance had been fully maintained. Second, concerns had been expressed in relation to the right under the proposed Regulation for persons, which were not EC nationals or residents to object to the proposed registration of geographical indications. The proposed regulation distinguished between two procedural phases in the registration of geographical indications. The initial procedural phase had taken place before the member State applying for registration was aimed at resolving objections of persons resident or established in that member State only. The subsequent procedural phase, before the European Commission, was aimed at resolving objections of persons resident or established in other EC member states or third countries, and the proposed regulation allowed such objections to be submitted directly to the European Commission.

46. The representative of the United States said that his country thanked the EC for its status report concerning its proposed revised GI regulation. As the United States had mentioned at the previous meeting, the initial review of the proposed regulation caused the United States some concern; more thorough review since that time had only heightened those concerns. In particular, there were a number of respects in which the proposed GI regulation appeared to introduce further encroachments on TRIPS-protected trademark rights beyond those in the current GI regulation. This was of serious concern because the DSB had found that the current GI regulation's inconsistency with Article 16 of the TRIPS Agreement was justified only by the narrow exceptions permitted under Article 17. The DSB had made this finding based on EC representations with respect to the current GI regulation, concerning the criteria for registering GIs, the scope of the protection for registered GIs, and the safeguards in place to minimize the possible conflict with trademarks. Proposed amendments in these areas, therefore, were worrisome, especially considering that they appeared unnecessary as a response to the DSB's recommendations and rulings.

47. In addition, there appeared to be a number of ways in which non-EC nationals would not have the same access to the EC GI system as EC nationals, with respect both to the registration and protection of GIs and objections to the registration of EC GIs. This was a general summary of US concerns thus far. The United States thanked the EC for its comments on some of these matters. However, as it had been stated in January 2006, the United States would welcome the opportunity to discuss the proposed regulation in more detail with the EC.

48. The representative of Australia said that his country thanked the EC for its status report in this dispute. Australia had undertaken a careful analysis of the EC's proposed new GI regulation. Australia's analysis confirmed that there were uncertainties about the regulation's consistency with the EC's national treatment obligations under the GATT 1994 and the TRIPS Agreement with regard to inspection bodies and the rights of trademark owners. The analysis also confirmed that there were uncertainties concerning the regulation's consistency with the EC's obligations in respect of the rights required to be granted to trademark owners and under the TRIPS Agreement. Australia continued to trust that, before the expiry of the reasonable period of time in this dispute on 3 April 2006, the EC would ensure that the proposed regulation and the associated implementing rules were fully consistent with the EC's obligations under the GATT 1994 and the TRIPS Agreement and like the United States, Australia would welcome the opportunity to further discuss the regulations and the implementation.

49. The representative of Chinese Taipei said that the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu had participated in this dispute as a third party and had been closely monitoring the issue of GIs. His delegation thanked the EC for its status report and noted with keen interest the revised regulation proposed on 23 December 2005. He recalled that at the previous DSB meeting, both the United States and Australia had raised questions regarding co-existence. It was his delegation's intention to review carefully this issue and the response given by the EC at the present meeting, as well as the overall implementation pursuant to the DSB's recommendations. His delegation looked forward to participating in future discussions.

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

2. 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

51. The Chairman said that the above-mentioned item was on the agenda of the present meeting at the request of Honduras, Nicaragua and Panama. He then invited the representatives of the respective countries to speak.

52. The representatives of Honduras recalled that in January 2006 when this item had first appeared on the DSB's agenda, Nicaragua, Panama and Honduras had provided a brief description of the EC's new and unlawful regime for the importation of bananas. For the sake of brevity, Honduras would not repeat that description, but wished to note that the new unbound tariff and the discriminatory quota established by the EC did not comply with the rulings and recommendations issued in the Bananas – III case. That dispute had given rise to a ruling in favour of Honduras and other Members since it had expressly stated that the EC had to bring its measures into conformity with the GATT 1994 and the GATS. The EC had chosen to do the opposite. The EC had introduced a regime which was obviously discriminatory since it was no longer covered by the Article I waiver or the Article XIII waiver. At the same time, the EC had neither consulted with Honduras and other Members that qualified as suppliers under Article XXVIII regarding a tariff that was more than

[1] WT/DS27.

double the one applied to Honduras previously, nor had given so much as an indication of the new bound tariff rate. These were the reasons for the request that Honduras had made in January 2006 that the DSB carry out its surveillance function regarding this matter.

53. Unfortunately, there was nothing new to report because no progress had been made. On the contrary, far from resolving the regime's WTO-inconsistencies, the EC had informed Honduras that it would not even entertain its concerns unless Latin American countries managed to demonstrate in the future with positive evidence that its access had been impaired. In other words, in the EC's view the favourable ruling in the Bananas – III case, an outcome to which Honduras had undoubtedly contributed, and the rulings in two rounds of the waiver arbitration should be set aside and be replaced by a new standard of "injury" to be defined and judged by the EC at some future point in time. Such an approach would entirely relieve the EC of its compliance obligations; and Honduras as well as other MFN suppliers would have the burden of convincing the EC – the offending party – that it deserved something better. This was not the way Honduras construed the "prompt compliance" with the Bananas – III rulings, as required under Article 21 of the DSU. There was obviously a "disagreement" between Honduras and the EC "as to the existence or consistency with a covered agreement of measures taken to comply with the recommendations and rulings" of the DSB, and that situation fell within Article 21 of the DSU, including paragraph 5.

54. Honduras had informed the DSB that Article 21 of the DSU must be applied to the EC's regime introduced in 2006. As indicated in the minutes of the DSB meeting held in the beginning of 2002, some of the complainants in the Bananas – III case, including Honduras, had expressed concern as to whether the "single tariff" that the EC planned to introduce was consistent with the rulings and recommendations in the Bananas – III case. Honduras in particular had expressed concern that the EC would "impose a prohibitive tariff that would make it impossible for Honduran bananas to enter the EC". For that reason, Honduras and other Members had informed the DSB that they had reserved their rights under Article 21 of the DSU regarding the EC arrangement for 2006, and had made it plain that they would exercise those rights, if necessary. Pursuant to that express Article 21 reservation, Honduras was now examining its paragraph 5 rights in consultation with other interested Members, as it was not prepared to tolerate unlawful measures. While Honduras was engaged in this task, it requested the DSB to keep the offending EC measures under the closest possible surveillance, as provided for under Article 21.6 of the DSU. He also asked the DSB to work with Honduras to get its rights restored promptly, because the measures were causing irreparable harm to his country's economy. Until a lasting and satisfactory solution was found, Honduras would have no choice, but to continue to request the inclusion of this item on the DSB agenda, as necessary.

55. The representatives of Nicaragua said that even after the EC had refused to consult with the Latin American countries before approving its illegal banana import regime in November 2005, Nicaragua had continued to support constructive dialogue with the EC on this matter. In concert with other Latin American suppliers, Nicaragua had reached out to the EC before and during the Hong Kong Ministerial Conference as well as in the previous month for the purpose of seeking a mutually acceptable solution. Nicaragua had done so with the sincere hope that the EC's banana import policy would not require further recourse to legal procedures after so many successful challenges that had already been undertaken on this matter. Unfortunately, these consultation initiatives had not been fruitful. Despite its repeated efforts, Nicaragua had been unable to elicit assurances, or even input, from the EC on any of the issues central to securing a positive solution. The EC would not provide information as to how it derived its €176 rate per tonne. It would not explain how Latin American access would be maintained into the future under an applied tariff 140 per cent higher than the €75 per tonne in effect for the past decade. The EC was unwilling to tell Nicaragua what was the new bound MFN rate. It would not indicate if ACP advantages would be further expanded in the coming months. It would neither indicate what it intended to do with its Article XIII waiver request. The EC would not clarify the circumstances, if any, under which it would be willing to lower its exorbitant tariff. It would not confirm whether it had a negotiating mandate to alter the current MFN measures.

According to certain Commission officials, the EC would not even share its monitoring statistics if Nicaragua exercised its legal rights. Nicaragua could only conclude from these various responses, and the EC's unilateral actions of November 2005, that the EC was not prepared to alter its current arrangement. Accordingly, Nicaragua wished to join Honduras and Panama in stating that additional legal steps would need to be taken before a satisfactory adjustment of this matter could be found. Because of the economic risks at issue for Nicaragua's banana industry and its fragile economy, Nicaragua believed that those legal steps would need to be pursued on an urgent and expedited basis. Honduras was now coordinating with other Members towards that end.

56. The representatives of Panama said that his country fully shared the concerns expressed by Honduras. The EC had developed, announced, and defended this new discriminatory regime through irregular means that could not be reconciled with the compliance obligations under Article 21 of the DSU or even basic principles of fairness. He then briefly reviewed some of those irregularities. After losing twice in arbitration, the EC had made only a minor adjustment to its invalidated measures, had never consulted with Latin American countries, and had rushed the new arrangement through its internal enactment procedures. Now that the new arrangement was in force, the EC had informed Panama that it could not be "rushed" to consider changes. In fact, the EC had stated it would not even consider Panama's concerns unless it could "prove" specific harm after an extended period of time had passed, likely a year or more. According to the EC, even though all of its previous 2006 proposals were subject to strict arbitral review under which the EC bore the heavy burden of demonstrating that Latin American access would at least be maintained in the future, its GATT obligations had now been lifted. It its view, the EC was free to pick whatever arrangement it wanted and had no responsibility to consider Panama's concerns unless it could statistically persuade the EC that changes should be made. Panama had been told by the EC that if it tried to assert its legal rights, it would not even be allowed to have access to monitoring data. Panama had been told, moreover, that while the EC was free to withdraw its tariff concessions, it did not need to clarify to any country what the new bound rate of duty was. Indeed, according to the EC, it had no obligation even to consult with its Article XXVIII suppliers about the new applied rate of €176 per tonne before their bindings were withdrawn. These and other EC's actions made clear to Panama that the EC would not bring its banana measures into conformity with the GATT 1994 absent additional action. Like Honduras, Panama was consulting with Members on the most expedited means of ensuring full compliance. Until the EC met its obligations on this matter or a mutually satisfactory solution was found Panama, too, would be asking that the DSB keep this illegal regime under close surveillance.

57. The representative of the European Communities said that the EC had, once more, listened carefully to the statements made by Honduras, Nicaragua and Panama on this matter. However, the EC had to insist on two points that had been raised at the 20 January 2006 DSB meeting. First, the EC did not consider the DSB meeting to be an appropriate forum to discuss this matter. The issues being raised at the present meeting had already been discussed at length with Honduras, Nicaragua and Panama in the consultations under the DSU provisions held on 19 January, pursuant to their request. The EC was ready to engage in further discussions with the complainants in that context, if necessary. In addition, the EC had agreed to continue discussions with all interested MFN suppliers with the assistance of Minister Støre (Norway) and on the basis of the information drawn from the monitoring of the impact of the new MFN tariff. A meeting on this matter had taken place on 16 February 2006. The EC regretted that Honduras, Nicaragua and Panama had thus far opted for the litigation "route" rather than a dialogue. Second, the EC had to note once more its disagreement with the categorization of this matter as an "implementation issue" relevant to Article 21 of the DSU. The EC had already made its objection clear in the context of the WTO consultations, held on 19 January. The matter under discussion could not be considered an issue of "implementation of DSB recommendations and rulings" in the sense of Article 21 of the DSU for two main reasons. First, the EC had already amended the regime found inconsistent with the DSB's recommendations and rulings in the so-called EC – Bananas III case (DS27), according to the recommendations of the Article 21.5 Panel requested by Ecuador. The new EC bananas import regime introduced by Council Regulation 1964/2005 and in force since 1 January 2006 was therefore not "a measure taken to comply with"

those recommendations and rulings. In addition, the EC noted that Nicaragua and Panama had not been even parties to the EC – Bananas III proceedings. Second, the arbitration awards referred to by Honduras, Nicaragua and Panama had been issued pursuant to an "ad hoc" arbitration agreed in the context of the adoption of the Doha Waiver on the Cotonou Agreement, and not pursuant to WTO DSU proceeding, and, therefore, the EC's reaction to those awards was not a question of implementation of the DSB's rulings and recommendations. That being said, the EC remained ready to address the issues raised at the present meeting and any other issues related to the new EC bananas import regime in the appropriate fora.

58. The representative of the United States said that as delegations had heard both at the previous DSB meeting as well as at the present meeting, some Members had serious concerns about the EC's bananas regime. The United States reiterated that it too had concerns about that regime. The bananas issue was a matter of great importance for many Members. Honduras, Nicaragua, and Panama had filed requests for consultations with the EC in this regard. In light of this, the United States, again, urged the EC to work with interested Members to reach a mutually satisfactory resolution of this dispute as expeditiously as possible.

59. The representative of Canada said that he wished to make a statement relating to the procedural point raised by the EC. As it had previously been stated under the Byrd Amendment item, in Canada's view, the DSB must monitor the matter until the issue "is resolved" between the disputing parties. If there had been a dispute and if there was a dispute and if the parties to that dispute considered that the issue was not resolved, indeed the DSB was the forum for the matter to be raised and that was why Canada urged the United States to continue to make statements in relation to the implementation in the Byrd Amendment case because the issue in that case remained to be resolved.

60. The representative of Honduras drew attention to document WT/DSB/M/119, in which Honduras had expressed its reservation to be able to continue to discuss the banana issue and had asked the EC to be mindful of its obligations and to respect the rights of other Members granted by the WTO. With regard to the point made by the EC concerning any other parallel processes under way, Honduras did not think that this was the right forum to discuss these matters.

61. The representative of Ecuador said that, like Honduras, her country was concerned about the unilateral establishment by the EC of the regime for the importation of bananas, which had come into effect on 1 January 2006, and which did not comply with the EC's commitments either towards Ecuador or to the WTO. As Members were aware, Ecuador had been involved in a number of panels as well as two arbitration procedures in 2005, which had found in favour of Ecuador, and the EC had thus far failed to establish a banana import regime that was consistent with the decisions and the basic principles of the WTO such as non-discrimination and MFN treatment. This was why Ecuador fully sympathized with the frustration of a number of Latin American countries at the lack of political will which had compelled them to seek relief under WTO law. Ecuador was participating in the good offices procedure with the Foreign Minister of Norway, but such a process did not preclude recourse to the rights and obligations of WTO membership. Ecuador trusted that the EC was interested in resolving the matter once and for all without further recourse to dispute settlement. Ecuador, therefore, encouraged the EC to show true commitment to the development dimension with regard to those countries which, although competitive, were nonetheless developing countries, by seeking mutually satisfactory solutions. Otherwise it would be difficult to avoid further decisions like those of the Central American countries, which had made statements at the present meeting.

62. The representative of the United States said that he would communicate to his authorities the request made by Canada regarding the matter discussed under the previous agenda item.

63. The DSB took note of the statements.

3. United States – Countervailing measures concerning certain products from the European Communities

(a) Statement by the European Communities

64. The Chairman said that this item was on the agenda of the present meeting at the request of the EC and he invited the representative of the European Communities to speak.

65. The representative of the European Communities said that the EC could not, but deplore again the fact that the United States had not submitted the required status report this time either. During the 20 January 2006 DSB meeting, the EC had expressed its disappointment over that fact, but apparently to no avail. There was no question that this practice did not promote the objectives of Article 21 of the DSU, namely, to allow the DSB and the WTO Members to monitor the implementation of the relevant DSB's findings and recommendations. While deploring the US unwillingness to submit detailed status reports, the EC, at the DSB meeting of 28 November 2005, had submitted a number of questions and had hoped to receive replies to those questions. At that meeting, the US representative had stated that his delegation was not in a position to address the questions and that it would refer them all to capital for review. Unfortunately, no replies or clarifications had been received thus far. The EC reiterated that the USTR had re-opened the Section 129 proceeding in the DS212 case on 29 November 2005 and had given itself 180 days to complete the process. EC firms and governments had already received and had replied to four questionnaires from the US authorities. In connection to the proceeding, the EC would very much appreciate receiving certain clarifications concerning in particular the estimate time-table regarding the issuance of preliminary findings from the Department of Commerce. In addition, the EC wished to receive more detailed information on the expected dates for the issuance of final findings in these proceedings. Furthermore, the EC would be interested to know what other procedural steps would be envisaged in the new 129 proceeding in this particular case. The EC hoped that the United States would provide the necessary clarification at the present meeting. Furthermore, the EC trusted that the United States would report on this exercise at each DSB meeting, and was confident that the US authorities would implement the Article 21.5 Panel's findings by repealing these very old, unjustified and WTO incompatible measures without undue delay.

66. The representative of the United States said that, as his delegation had indicated at the 20 January 2006 DSB meeting, on 29 November 2005 the US Trade Representative had requested that the Department of Commerce issue, "as quickly as possible," revised determinations with respect to the sunset reviews involving Spain and the United Kingdom. Shortly thereafter the Department of Commerce had initiated proceedings. As part of that process, the Department of Commerce had issued questions to the respondents in the two proceedings. The Department of Commerce had received responses to those questions, and currently was in the process of analyzing them. With respect to the EC's specific questions regarding these proceedings, the United States would be happy to refer those questions to capital. With respect to the EC's comments at the present meeting about possible US status reports, by way of background, he recalled that the United States had made a statement at the meeting of 27 September when the DSB had adopted the Report of the Article 21.5 panel in this dispute. At the meeting held on 28 November 2005, the United States had followed up on that statement with a report to the DSB on the status of US implementation. And, in that connection, Members would recall that the second sentence of Article 21.6 of the DSU provided that "the issue of implementation of the recommendations or rulings may be raised at the DSB by any Member at any time following their adoption." The United States would be happy to discuss with the EC their views on this issue.

67. The DSB took note of the statements.

4. United States – Measures affecting trade in large civil aircraft

(a) Request for the establishment of a panel by the European Communities (WT/DS317/5)

68. The Chairman recalled that the DSB had considered this matter at its meeting on 2 February 2006 and had agreed to revert to it. At the present meeting, he wished to draw attention to the communication from the EC contained in document WT/DS317/5, and invited the representative of the EC to speak.

69. The representative of the European Communities said that the EC had requested, for the second time, the establishment of a panel in this matter to help resolve a number of procedural imbroglios that had arisen in this dispute, with a view to reaching a positive solution thereto. That situation of procedural limbo, which the EC had described at the previous meeting, needed to be resolved quickly, since the US non-cooperation in the Annex V process had deprived the EC of access to documents relevant to the dispute, in particular regarding NASA and the Department of Defence subsidies. At the same time, the United States had submitted a supplementary consultation request in the DS316 case, which had largely the same purpose as the EC request; i.e. to explicitly list measures which were contained in the US panel request, but not explicitly in the consultation request. The EC and the United States had already engaged in discussions on how to efficiently follow up on this request. While it would have been preferable to come to a solution before the present meeting, the EC was still willing to fully engage in this endeavour in good faith with a view to reaching a pragmatic solution to this dispute. Finally, the EC also noted that, as requested in WT/DS317/5, the DSB, together with the establishment of the panel, shall initiate the procedures for developing information concerning serious prejudice under Annex V of the SCM Agreement. The EC also noted that the DSB had already designated, pursuant to paragraph 4 of Annex V of the SCM Agreement, Mr. Mateo Diego-Fernández to serve as a facilitator in the information-gathering process.

70. The representative of the United States said that his country regretted that the EC had requested the establishment of a panel at this time. The United States considered that the best approach would be for the parties to this dispute to reach agreement on the relationship of this panel request to the Panel established on 20 July 2005 (DS317). Although the United States and the EC had made substantial progress in this regard since the previous DSB meeting, they had not achieved an understanding. Therefore, while a panel would be established at the present meeting, the United States was not in a position to agree to any additional steps regarding the relationship between the panel established at the present meeting and that established on 20 July 2005. However, the United States remained ready to continue discussions with the EC on the relationship between these panels.

71. The United States was also not in a position to agree to the EC's request concerning an information-gathering process under Annex V of the SCM Agreement. In that regard, the United States recalled the point made by the EC at several DSB meetings in 2005 that the Annex V process could not begin until the parties had mutually agreed on initiation and on modalities. For example, the EC had expressed this view at the 3 August 2005 DSB meeting.[2] The United States noted again that the parties had not been able to reach agreement on procedures in this dispute. In this connection, the United States noted that the previous Annex V procedures were inadequate, with the EC simply ignoring many of the rules to which it had agreed. For example, in the dispute regarding aircraft subsidies by the EC and certain member States (DS316), which had the same rules, the EC had simply refused to submit information on programs that had been explicitly covered by both the consultations and the panel requests. Furthermore, inasmuch as the EC considered this to be part of the same dispute, there had already been a lengthy Annex V process. The United States saw no basis for the EC to seek a second Annex V process.

[2] WT/DSB/M/195, para. 24.

72. The representative of the European Communities said that the position of the United States was surprising to say the least. Only in 2005, the United States had stressed at several DSB meetings the importance of the Annex V process: "The procedures for developing information provided for in Annex V are an important part of a dispute concerning actionable subsidies under the SCM Agreement. It provides a way for both parties as well as the Panel to have access to relevant information." (31 August 2005 DSB meeting). The United States had not provided essential information during the Annex V process for various procedural reasons. Despite disagreement about the relevance of those reasons or the justification for the US refusals to provide information, the EC had acted to remove the procedural flaws perceived by the United States. The EC was now taking the United States by its word and requested that the United States engage promptly and constructively in this process.

73. The DSB took note of the statements and agreed to establish a panel in accordance with the provisions of Articles 4.4 and 7.4 of the SCM Agreement and Article 6 of the DSU with standard terms of reference.

74. The representatives of Australia, Brazil, Canada, China and Japan reserved their third-party rights to participate in the Panel's proceedings.

75. The Chairman said that with regard to the issue of the procedures for developing information concerning serious prejudice under Annex V of the SCM Agreement, which the EC had requested to be initiated pursuant to paragraph 2 of Annex V of the SCM Agreement, he proposed that the DSB take note of the statements made by the parties to the dispute regarding this matter.

76. The DSB took note of the statements.

5. Mexico – Anti-dumping duties on steel pipes and tubes from Guatemala

(a) Request for the establishment of a panel by Guatemala (WT/DS331/2)

77. The Chairman drew attention to the communication from Guatemala contained in document WT/DS331/2, and invited the representative of Guatemala to speak.

78. The representative of Guatemala said that his country regarded the DSB as one of the main underpinnings of the multilateral trading system and an indispensable tool for ascertaining Members' compliance with their obligations. Naturally, this enabled countries such as Guatemala, in situations like the one to be outlined, to secure the benefits they expected from participation in the WTO. On 17 June 2005, Guatemala had requested consultations with Mexico pursuant to Article 4 of the DSU, Article XXIII:1 of the GATT 1994, and Article 17 of the Agreement on Implementation of Article VI of the GATT 1994, regarding the definitive anti-dumping measures imposed by Mexico on imports of certain steel pipes and tubes from Guatemala. Guatemala and Mexico had held consultations on this matter on 15 July, 26 August and 28 September 2005. Despite being highly useful and serving to exchange views and information, those consultations had regrettably failed to resolve the dispute. Mexico was one of Guatemala's most important trading partners both on account of its geographical proximity and the complementarity of their markets. Much of Guatemala's leading and most competitive exports had gone to the Mexican market. It was, therefore, of interest to Guatemala that all measures put in place by that country should be consistent with its obligations under the WTO Agreements. Accordingly, Guatemala had respectfully requested, pursuant to Article 6 of the DSU and Article 17.4 of the Anti-Dumping Agreement, that the DSB establish a panel with the standard terms of reference contained in Article 7.1 of the DSU to examine this matter on the basis of the complaints outlined in the request it had submitted for the establishment of a panel. Finally, he stated that as a small economy, Guatemala had every confidence in the multilateral trading system and, even while availing itself of its legitimate right to resort to the dispute settlement mechanism, it kept the door open to dialogue, with a view to finding a mutually acceptable solution to this matter at any time.

79. The representative of Mexico said that his delegation regretted that two Latin American countries were obliged to resort to the DSB to settle their differences. Mexico further regretted that the consultations held with Guatemala in July, August and September 2005 had failed to produce a satisfactory outcome with respect to Guatemala's complaints over the anti-dumping duties levied by Mexico on steel pipes and tubes originating in that country, and that Guatemala had decided to file its request for the establishment of a panel. Mexico opposed the establishment of a panel requested by Guatemala at the present meeting given, *inter alia*, the details outlined in the panel request submitted on 6 February to enable the authorities in capitals to continue to examine the matter. Mexico reiterated that it was open to dialogue with a view to finding a solution to this problem without the need to establish a panel.

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

6. Turkey – Measures affecting the importation of rice

(a) Request for the establishment of a panel by the United States (WT/DS334/4)

81. The Chairman drew attention to the communication from the United States contained in document WT/DS334/4, and invited the representative of the United States to speak.

82. The representative of the United States said that it was with regret that his delegation had had to ask the DSB to establish a panel at the present meeting in this dispute. As outlined in its panel request, Turkey maintained a number of restrictions on the importation of rice. For example, Turkey operated tariff-rate quotas (TRQs) for rice imports that included a domestic purchase requirement. That was, Turkey required importers first to purchase specified quantities of domestic rice in order to be permitted to import specified quantities of rice under the TRQs. Moreover, under its import regime for rice, Turkey required an import license to import rice. However, Turkey did not grant import licenses without domestic purchase. As a result of these measures, US exports of rice to Turkey had plummeted, from nearly 300,000 metric tons in 2000 to 58,000 metric tons in 2004. Indeed, according to Turkey's own State Institute of Statistics, total rice imports from all sources into Turkey in 2004 had fallen 60 per cent from 2003. Turkey's measures appeared to be inconsistent with several provisions of the WTO Agreements, including Articles X and XI:1 of the GATT 1994, Article 4.2 of the Agreement on Agriculture, Article 2.1 and paragraph 1(a) of Annex 1 of the TRIMs Agreement, and several provisions of the Import Licensing Agreement. The United States had discussed these issues with Turkey during dispute settlement consultations as well as bilaterally over the course of the past three years. Regrettably, consultations had not resolved this dispute. The United States, therefore, requested that the DSB establish a panel at the present meeting.

83. The representative of Turkey said that regarding the US panel request on Turkey's import regime on rice, the parties to the dispute had held one round of consultation in December 2005 and another meeting in February 2006. Turkey had attempted to answer the US questions and had provided the relevant data in those meetings. Turkey believed that the consultations had not yet been concluded. At this stage, Turkey objected to the establishment of a panel and wished to continue with the consultations in the course of which it sincerely believed that a mutually satisfactory solution could be found.

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

7. Selection process for appointment of an Appellate Body member

85. The Chairman said that the untimely passing of the Appellate Body member, Mr. John Lockhart, on 13 January 2006 had left the Appellate Body with one vacancy that needed to be filled at the earliest opportunity. As had been announced at the 20 January 2006 DSB meeting, he

wished to propose at the present meeting that the DSB agree to launch the process for selecting an Appellate Body member to replace the late Mr. John Lockhart for the remainder of his term, until 11 December 2009, in accordance with Article 17.2 of the DSU. He also wished to propose that the DSB agree to establish a Selection Committee consisting of the Director General and the 2006 Chairpersons of the General Council, the Goods Council, the Services Council, the TRIPS Council and the DSB, in accordance with the procedures set out in document WT/DSB/1. In that context, he wished to propose that nominations of candidates, together with their curricula vitae, be submitted by WTO Members no later than 5 p.m. on 31 March 2006. As it had been done in the past, nominations together with curricula vitae of candidates, which should be addressed to the Chairman of the DSB in care of the Council and TNC Division, would be circulated as Job Documents to all WTO Members. The Selection Committee would begin its work shortly after the deadline of 31 March 2006 in order to be able to present its recommendation to the DSB at the earliest possible opportunity thereafter. As in the past, the Selection Committee would interview candidates and would make itself available to hear the views of interested WTO Members. The objective, in any event, would be to allow the new Appellate Body member to begin his or her term by the early part of the summer, at the latest. He hoped that this was agreeable to all delegations.

86. The representative of the European Communities said that the late John Lockhart was a lawyer of the highest standing. This was also why in selecting his successor the quality of candidates was of the utmost importance.

87. The Chairman thanked the EC for the statement, which he believed all delegations could support. He said that since there was no objection to proceed along the lines that he had just outlined, he would proposed that the DSB agree to his proposal regarding the selection process for appointment of an Appellate Body member that had just been outlined.

88. The DSB took note of the statements and agreed to the Chairman's proposal regarding the selection process for appointment of an Appellate Body member.

8. Proposed nomination for the indicative list of governmental and non-governmental panelists

89. The Chairman drew attention to document WT/DSB/W/310, 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 proposed that the DSB approve the name contained in document WT/DSB/W/310.

90. The DSB so agreed.

9. United States – Subsidies on upland cotton

(a) Statement by the United States

91. The representative of the United States, speaking under "Other Business", said that the United States was very pleased to report that, on 2 February 2006, the US Congress had completed steps to repeal the Step 2 program that was a subject of the DSB's recommendations and rulings in the Cotton dispute. The President had signed the legislation on 8 February 2006.

92. The representative of Brazil thanked the US delegation for the information regarding this very important case. Brazil would have preferred that the repeal of the Step 2 as well the repeal of all the other measures found to be WTO-inconsistent had occurred within the deadlines prescribed by the DSB. Even though that had not been possible, Brazil considered that the repeal by the United States of the Step 2 programme was a very important step towards compliance in this case. He noted that the repeal approved by the US Congress was due to take place starting from 1 August 2006, while in

the US administration's proposal the repeal would take effect immediately upon approval of the legislation. Brazil was carefully examining the measures and the actions taken by the United States in the context of the implementation of this case. Once Brazil had a firm view on this matter it would inform the DSB of any actions that it would take in respect of this case.

93. The DSB took note of the statements.

10. Election of Chairperson

94. The Chairman recalled that, at its meeting on 8 February 2006, the General Council had taken note of the consensus on a slate of names for Chairpersons to a number of WTO bodies, including the DSB. On the basis of the understanding reached by the General Council, he proposed that the DSB elect by acclamation Ambassador Muhamad Noor Yacob (Malaysia) as Chairperson of the DSB.

95. The DSB so agreed.

96. The outgoing Chairman recalled that on 17 February 2005, he had been elected as the Chair of the DSB. Since then he had had the pleasure to chair quite a few DSB meetings. At every meeting there had been a cordial, but serious atmosphere once the meeting had commenced, as was required of a DSB meeting. This was not only because Members were dealing with very important matters in economic terms, but also because the DSB was the central pillar of the multilateral trading system or the jewel in the crown. He said that it had been a great pleasure to have had the opportunity to chair the DSB, which had made him to fully recognize the uniqueness of the DSB. He expressed his sincere gratitude to all Members for their friendly cooperation through his tenure as Chair, and had asked them to extend the same spirit of cooperation to his successor. He said that his work as chair would not have been possible without Members' support and the very able assistance of the Secretariat who deserved thanks. He also thanked interpreters for their tireless and fantastic work to the benefit of all. When considering their tasks, he reminded himself of the moral in the ancient Greek tale of the turtle and the rabbit and wondered if others had been reminded too: "It is not always the speed with which you talk or read that is the most decisive factor in getting the message across." Finally, before giving the gavel to his close friend and esteemed colleague, Ambassador Muhamad Noor Yacob, he wished to congratulate him on his election as Chair of the DSB, and wished him the best of luck with this very important assignment.

97. The incoming Chairman thanked the outgoing Chairman for his very kind words. He also thanked Members for having elected him to this position. He said that this was an honour for Malaysia and in particular for the Malaysian Mission. He looked forward to the same co-operation, which had been extended to the outgoing Chairman by all Members, the Secretariat and the interpreters.

98. The DSB took note of the statements.