WORLD TRADE ORGANIZATION

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Dispute Settlement Body
20 January 2006

MINUTES OF MEETING

Held in the Centre William Rappard
on 20 January 2006

Chairman: Mr. Eirik Glenne (Norway)

Prior to the adoption of the Agenda, the Chairman said that before turning to the adoption of the agenda of the present meeting, he wished to note with great sadness the unfortunate passing away of one of the Appellate Body members, Mr. John Lockhart of Australia, and asked delegations to join him in a minute of silence as a mark of respect and tribute to Mr. Lockhart. Subsequently, in the course of the meeting, delegations expressed condolences at the passing away of Mr. Lockhart. The representative of Australia thanked the Chairman and delegations for the expression of loss and sympathy on the passing of Mr. Lockhart and said that he would pass on the sentiments expressed at the present meeting to Mr. Lockhart's family and friends in Canberra.

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.38)

(b) United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.38)

(c) United States – Continued Dumping and Subsidy Offset Act of 2000: Status report by the United States (WT/DS217/16/Add.23 – WT/DS234/24/Add.23)

(d) United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.13)

(e) European Communities – Protection of Trademarks and Geographical Indications for Agricultural Products and Foodstuffs: Status report by the European Communities (WT/DS174/25 – WT/DS290/23)

1. The Chairman said 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/Add.38)

2. The Chairman drew attention to document WT/DS176/11/Add.38, 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 as noted in the US status report, several legislative proposals relating to Section 211 that would implement the DSB's recommendations and rulings had been introduced 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 in this dispute.

4. The representative of the European Communities said that it had now been over three years since the United States was originally due to bring Section 211 in conformity with its obligations under the TRIPS Agreement. He noted that the implementation period, which had been extended several times, had expired more than six months ago, but, once again, the US status report did not constitute a report on progress in the implementation of the recommendation or rulings, but rather a report on "non-progress". The passivity of the United States in this dispute as well as in the Section 110 dispute did not only affect the specific interests at stake in these disputes. It also undermined the authority and credibility of the TRIPS Agreement as an effective tool for the protection of intellectual property rights worldwide. Such protection was essential for the development of international trade and the shared objective of the EC and the United States. Repealing bills were pending in the US Congress. Their adoption would remove a discriminatory legislation that had been driven by specific interest and bring a satisfactory solution to this dispute in conformity with this shared objective.

5. The representative of Cuba said that almost four years had passed since the DSB had adopted, in February 2002, the Appellate Body Report which had concluded that Article 211(a)(2) and (b) of the US Omnibus Appropriation Act had infringed both the principle of national treatment, recognized in the Paris Convention for the Protection of Industrial Property and the TRIPS Agreement as well as the most-favoured-nation treatment, recognized in the TRIPS Agreement. The Appellate Body had also requested that the United States bring its WTO-inconsistent measure into conformity with its obligations under the TRIPS Agreement. This dispute was about the intended usurpation by Bacardi Co. under Section 211, created in its own image, of the right to use the Havana Club rum trademark in the United States. Section 211 was part of the vast and draconian system of unilateral measures of the economic, commercial and financial blockade, which had been imposed by the US Government for the past 47 years against Cuba that among other measures reinforcing the extraterritorial nature of the blockade, had established sanctions against countries, companies or individuals granting economic assistance, trading or maintaining relations with Cuba.

6. He recalled that in April 2002, a first reasonable period of time had been granted to the United States, which had then expired in January 2003. Since then, subsequent reasonable time-periods for the United States to implement the DSB's rulings and recommendations demanding legislative measures by its Congress had been renewed on several occasions. During the past four years the US administration had repeatedly reported that it was working with the US Congress to modify its legislation. This was not true. To date, the US administration had neither presented nor promoted any bill in this regard. On the contrary, the US administration and its allies in the US Congress had manoevred to avoid the consideration of some bills aimed at correcting this violation of international law and WTO rules that had not even been debated in the US Congress. Four years of reasonable periods of time had not served to facilitate the US implementation of the DSB's rulings and recommendations. On the contrary, they had acted as a mechanism to deliberately postpone the compliance with legal obligations and to evade decisions taken by the DSB.

7. On 20 July 2005, the EC and the United States had informed the DSB of their Understanding, which was vague, imprecise and had been negotiated in a non-transparent way. As stated in that Understanding the EC was not going to request "at this stage" authorization to suspend concessions *vis-à-vis* the United States until the EC "at some future date decided to request the DSB authorization to suspend concessions..." The so-called understanding constituted an indefinite postponement of US compliance with the DSB's rulings and recommendations, its legal obligations under the WTO

Agreements and dispute settlement. The perpetuation of this shameful situation cast doubt on the efficacy and credibility of the DSB, the security and predictability of the multilateral trading system and the appropriate balance between rights and obligations of WTO Members, objectives foreseen in the DSU. This postponement set a dangerous and systemic precedent which might affect other Members in future, in particular developing-country Members.

8. Once again, the United States, using its economic and commercial power, had set itself above international law and WTO bodies and had unilaterally reserved to itself a special treatment and additional benefits, contrary to the letter and spirit of WTO Agreements, and which had gone beyond the benefits enjoyed by other WTO Members. Cuba called again on WTO Members to enforce multilateral trade agreements as well as their own decisions and to demand that the US Government abolish Section 211, thus complying immediately, unconditionally and without further delay with the DSB's rulings and recommendations in order to settle this dispute as soon as possible.

9. The representative of Brazil said that, as his delegation had stressed at previous DSB meetings, in Brazil's view compliance with the DSB's recommendations, together with mutually satisfactory solutions, constituted the most faithful measure of the effectiveness of the dispute settlement system. The fuller and faster a Member brought its measure into compliance with its multilateral obligations, the more effective and, consequently, the more credible the system would be. This was valid for all WTO Members, but especially for major players. With this systemic consideration in mind, Brazil encouraged the parties to the dispute – in fact the two major players in the WTO dispute settlement system – to give full meaning and effect to the essential objective of prompt compliance. As Brazil had already stated, the DSB's decision of 20 July 2005 should not be read as a license for indefinite continuation of non-compliance, which lasted for too long in the dispute under consideration, as stated by Cuba.

10. The representative of the Bolivarian Republic of Venezuela said that his country supported the statements made by Cuba and Brazil. At the present meeting, his country wished to reiterate its position regarding this matter, which had already been placed on the record of the three previous DSB meetings. As far as his country was concerned, the lack of compliance in this situation was very uncomfortable and set a bad example in relation to compliance with the TRIPS Agreement as well as the application of the DSU provisions. He noted that the understanding reached between the EC and the United States in 2005 affected WTO negotiations, not just the TRIPS negotiations, as well as the DSU and other WTO Agreements. Furthermore, the lack of compliance had an impact on the climate of negotiations in general and contradicted the objectives of the DSU.

11. The representative of China said that his delegation had made a statement regarding this item at the previous regular DSB meeting and wished to add a few words at the present meeting. 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, a withdrawal of the illegal measure would be the most desired outcome. China noted that the measure taken by the United States in this dispute had nullified not only the interest of the EC under the covered agreements of the WTO, but also interests of other Members, such as Cuba. Although every Member had the right to have recourse to the dispute settlement mechanism, it was definitely a heavy burden for developing countries to do so, especially for developing countries that lacked human and financial resources. It was quite understandable for Cuba to expect to benefit from the full implementation of the DSB's ruling in this dispute, and to pay attention to the status of implementation. 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, including the relevant recommendations. These Reports had concluded that Section 211 was not consistent with the national treatment and MFN treatment obligations under the TRIPS Agreement. 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.

12. The representative of India said that his country had not participated as a third party in the dispute under consideration. However, it wished to note with concern that this matter had been on the DSB agenda for a very long time. More than six months had passed since even the extended reasonable period of time for implementation had ended, but there was still no indication when the matter would be resolved even to the satisfaction of the parties. Such delays caused systemic concerns about the efficacy of the dispute settlement system. As stated in Article 21.1 of the DSU: "prompt compliance with the recommendations and rulings of the DSB is essential in order to ensure effective resolution of disputes to the benefit of all Members", hence all Members had an interest in an early resolution of the matter in this dispute.

13. 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.38)

14. The Chairman drew attention to document WT/DS184/15/Add.38, 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.

15. The representative of the United States said that 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 this dispute. The United States 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 US Congress and hoped to obtain legislation to implement the DSB's recommendations and rulings when the Congress returned at the end of January 2006.

16. The representative of Japan said that at the first DSB meeting in 2006, his country wished to reaffirm its commitment to and confidence in the WTO dispute settlement system, and to recall that a full and prompt implementation of the DSB's recommendations and rulings was a principal factor for the credibility of the system. Bearing this point in mind as well as the pledge by the United States regarding its intention to implement the DSB's recommendations and rulings in this case, Japan strongly hoped for the final resolution of this dispute through the US compliance with its obligations under the WTO at the earliest possible opportunity.

17. 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.23 – WT/DS234/24/Add.23)

18. The Chairman drew attention to document WT/DS217/16/Add.23 – WT/DS234/24/Add.23, 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.

19. The representative of the United States said that his country was pleased to report that, on 21 December 2005, the US Senate had voted to approve the Deficit Reduction Act of 2005, which included a provision repealing the Continued Dumping and Subsidy Offset Act of 2000. The US House of Representatives had voted to approve that legislation before the Senate voted. The Senate had modified a provision unrelated to CDSOA repeal. The Senate bill would go back to the House of Representatives and the United States hoped that the House would approve it. The US administration

would continue to work with the US Congress on this legislation, and to confer with the complaining parties in these disputes, in order to reach mutually satisfactory resolutions.

20. The representative of the European Communities recalled that in December 2005, the US House of Representatives and the US Senate had passed provisions that would repeal the Byrd Amendment as part of the "Deficit Reduction Act of 2005". The EC warmly welcomed these votes, but regretted that a transition clause would postpone the repeal of the Byrd Amendment until at least 30 September 2007. Despite the passage by both Chambers, there was also still some way to go. The EC understood that another vote by the House of Representatives was now needed since the versions of the "Deficit Reduction Act of 2005" passed by the House and the Senate differed regarding some other provisions. However, December votes were very encouraging signs. The EC hoped that the US House would follow on these significant steps and called on the US Congress and the US administration to build on that momentum and to complete the legislative process to repeal the Byrd Amendment.

21. The representative of Canada said that his country thanked the United States for its most recent status report regarding the Continued Dumping and Subsidy Offset Act of 2000, or the "Byrd Amendment". For several years now, the international community had been calling for the repeal of this illegal measure. The adverse impact of the Byrd Amendment on international trade had been recognized when the DSB had determined that this measure contravened the WTO obligations of the United States. In this context, Canada welcomed the recent steps taken by the US Congress towards repeal of the Byrd Amendment and would continue to monitor the progress of the budget reconciliation package (H.R.4241), which included a provision for prospective repeal. Canada viewed these steps as a very positive development, nevertheless, it had to register its concerns regarding the prospective implementation of that repeal. The DSB had held that disbursements made under the Byrd Amendment were inconsistent with the WTO obligations of the United States. Prospective repeal, however, would allow duties collected prior to October 2007 to be still disbursed under the Byrd Amendment. Furthermore, disbursements of duties under the Byrd Amendment could occur after the effective date of repeal. With these concerns in mind, Canada encouraged the United States to proceed with the legislative steps necessary to repeal the Byrd Amendment and would continue to monitor Canadian interests in this regard.

22. The representative of Japan said that his delegation had noted the status report by the United States, especially the part detailing the most recent actions within the US Congress over the past month or so. Japan welcomed the fact that the Deficit Reduction Act of 2005, which included the provision to repeal the CDSOA, had been voted for by the Senate on 21 December 2005 as this was a significant step forward. Japan, the other co-complainants, the United States and the whole WTO Membership were currently at a critical moment before the final approval by the House of Representatives of that legislation. Japan was keen that the US Congress would approve the Deficit Reduction Act of 2005 at the earliest opportunity. At the same time, to Japan's knowledge, the legislation stipulated that the distribution under the CDSOA would be continued for goods that entered into the United States prior to 1 October 2007. Japan strongly hoped that the United States would keep addressing the issue of immediate termination of the distribution under the CDSOA, in addition to its repeal by virtue of the Deficit Reduction Act of 2005.

23. The representative of Brazil said that his country had taken note of the twenty-third status report provided by the United States regarding the present dispute and thanked the United States for its statement. This had given the sense that the highly expected and long overdue repeal of the Byrd Amendment would eventually be passed into law soon. Brazil wished to express its satisfaction with such a development. Compliance with the DSB's recommendations by every WTO Member, and particularly by a major player, was definitely central for the effectiveness and credibility of the dispute settlement system. By acknowledging the relevance of the legislation that would put an end to the serious breach of the multilateral rules represented by the Byrd Amendment, Brazil was not,

however, endorsing the timing for implementation of the DSB's recommendations in this case. He recalled that the reasonable period of time of 11 months for implementation had expired on 27 December 2003, more than two years ago. Although it was not indicated in the US status report, the repeal which was about to be approved by the US Congress would only produce actual effects from 1 October 2007. That meant that distributions under the Byrd Amendment would continue for almost another two years. Thus, the United States would effectively have nearly five years – from the beginning of the reasonable period of time – to bring its measure into conformity with its obligations under the WTO. In Brazil's view, with all due respect to the alleged internal contentiousness of the measure at issue, such a protracted implementation should be strongly regretted as a delay that ran counter to the central objective of prompt compliance. Brazil expected that the final passage of the law repealing the Byrd Amendment would take place in the very near future, thus removing this major violation to the multilateral rules. Brazil also hoped that, except for the delay, this example would inspire the United States to step up its efforts to give full implementation to the DSB's recommendations in other disputes in which the United States was a respondent.

24. The representative of India said that his country wished to thank the United States for the status report just presented. India noted that some progress had finally been made in the US legislative processes intended to repeal the Byrd Amendment, although it had been unduly delayed. However, contents of the proposed changes did not provide delegations with much comfort as it was understood and had been pointed out by several delegations at the present meeting, that duties collected on imports entering the United States until 1 October 2007 would continue to be governed by the existing Byrd Amendment Law, which the DSB had ruled as being inconsistent with WTO rules. India urged the US administration to take steps to remedy continuation of all such illegal payments. As it had been stated earlier, India preferred full compliance by the United States with the DSB's decision to India's suspension of concessions and other obligations under the authority obtained by India from the DSB. For India, inducing compliance was a basic objective of the DSU provisions allowing retaliation. India reserved all its rights under the DSU.

25. The representative of Korea said that his country had recognized that several congressional steps had been taken in 2005. In particular, Korea noted the last steps taken in December 2005, which had put the United States at the finishing line of this long-standing implementation. Korea hoped that United States would shortly complete the implementation process.

26. The representative of Chile said that in the case under consideration the main issue was the observance of standards under the circumstances where compliance had dragged on longer than necessary. It had taken two years for the dispute to be resolved and now there was a delay regarding the application of international law. The statement made by the United States was encouraging, but nevertheless this case constituted a bad precedent. Chile hoped that efforts would be made so that in 2007 the measure be removed and that this case would not become an example for the compliance with the findings and rulings of panels in the future.

27. The representative of Hong Kong, China said that his delegation had participated as a third party in this case, and had since followed the implementation process with close interest. While Hong Kong, China welcomed the votes by the US Senate and the US House of Representatives to repeal the Continued Dumping and Subsidy Offset Act (CDSOA), it was greatly disappointed by the transitional provision, which had provided for the repeal of the CDSOA to take effect only from October 2007, that was almost five years after the CDSOA had been found by the Appellate Body to be inconsistent with the WTO provisions. Such delay in implementation greatly discredited the WTO dispute settlement system. Hong Kong, China urged the United States to take all necessary steps to ensure that all illegal payments were remedied, and to repeal the CDSOA at the earliest opportunity.

28. 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.13)

29. The Chairman drew attention to document WT/DS160/24/Add.13, 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.

30. The representative of the United States said that, as the US status report indicated, the US administration was working closely with the US Congress, and conferring with the EC, on a mutually satisfactory resolution of this matter.

31. The representative of the European Communities said that thus far as this dispute was concerned, 2006 did not seem to have brought any changes in the increasingly worrying situation of non-compliance by the United States. Indeed, five and a half years after the adoption of the Panel Report, the United States obstinately maintained legislation that violated intellectual property rights and hurt the interests of music creators. This regrettable attitude of the United States was in sharp contrast with its worldwide efforts to enhance intellectual property protection, and also with its bilateral commitment with the EC to pursue a zero tolerance approach to piracy and counterfeiting on a global scale. The EC believed that any successful initiative on intellectual property must be anchored in a rigorous application of international rules both at home and abroad. 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 hoped that the US administration would invest more resources in 2006 than in 2005 in order to find a solution together with the US Congress, in order to repair the damage done to EC right holders and to finally apply at home the same high standards that the United States pursued abroad. Finally, the EC wished to recall that it had reserved its right to reactivate, at any point in time, the arbitration on retaliation.

32. 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 – WT/DS290/23)

33. The Chairman drew attention to document WT/DS174/25 – WT/DS290/23, 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.

34. The representative of the European Communities recalled that on 19 May 2005, the EC had confirmed its intention to implement fully the recommendations and rulings of the DSB in this dispute. On 23 December 2005, the European Commission had proposed to the Council of the European Union a new regulation on geographical indications which would, *inter alia*, amend and clarify the conditions and procedures for registration of geographical indications relating to areas outside the territory of the EC. As stated in the EC's status report, this proposal was currently under discussion within the Council of the European Union and the European Parliament.

35. The representative of the United States said that his country thanked the EC for its status report concerning its proposed revised GI regulation and appreciated its efforts there. The United States had only had time to do an initial review of the proposed regulation, but it had two concerns. First, it seemed to the United States that the proposed regulation appeared to give EC persons – but not non-EC persons – opportunities to object to the recognition of a GI. Therefore, the proposed regulation might raise national treatment concerns, which were at the heart of this dispute.

Second, the DSB had found that the EC's GI Regulation was inconsistent with trademark obligations under Article 16 of the TRIPS Agreement, and had found that this inconsistency was justified only because the EC regulation had met narrow exceptions permitted under Article 17 of the TRIPS Agreement. It was a matter of concern to the United States that some of the very provisions of the EC regulation relied upon by the Panel to justify its Article 17 analysis had been omitted from the proposed regulation. These were preliminary observations. The United States looked forward to a further examination of the proposed regulation and an opportunity to discuss this proposal with the EC.

36. The representative of Australia said that his country thanked the EC for its first status report relating to this dispute. Australia was carefully studying the proposed new GI regulation, and noted that implementing rules to give effect to a number of its provisions were still to be issued. Nevertheless, Australia would like to flag two areas of potential concern at the present meeting. First, the Panel had found that the EC's requirement that a prior trademark co-existed with a later GI was justified as a limited exception under Article 17 of the TRIPS Agreement. That finding was explicitly based on certain key provisions of the existing GI regulation, but one of those key provisions was not repeated in the proposed regulation. Second, a trademark owner not resident or established in an EC member State proposing to nominate a term for registration as a GI did not seem to have a right of objection at the nominating member State level. Australia trusted that the EC would carefully review the proposed regulation, and the associated implementing rules, to ensure their consistency with the EC's GATT and TRIPS Agreement obligations, including in relation to trademark rights acquired at the EC member State level.

37. The representative of Canada said that his country thanked the EC for its status report on implementing the recommendations and rulings of the DSB in this case. Canada noted with interest that a revised regulation had been proposed and was currently under discussion. Canada looked forward to further information on how the proposed regulations were expected to implement the DSB's recommendations and rulings and was interested in participating in any ensuing discussions.

38. The representative of New Zealand said that her country had participated as a third party in this dispute because it had a significant systemic interest in ensuring that the WTO disciplines applicable to intellectual property rights were respected. New Zealand thanked the European Commission for notification that it had proposed a Council Regulation that purported to bring Council Regulation 2081/92 into conformity with the TRIPS Agreement and the GATT 1994 pursuant to the conclusions of the Panel. New Zealand would be studying this proposal closely and looked forward to having the opportunity to discuss any questions with the EC.

39. The representative of Argentina said that his country, which had participated as a third party to this dispute, wished to highlight its interest in ensuring that the DSB's recommendations and rulings were properly implemented. Argentina wished to receive more details regarding the content of the revised regulation proposed to the Council by the European Commission.

40. 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 and Nicaragua

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

42. The representative of Honduras said that on 1 January 2006, the EC had taken the regrettable decision to introduce a new regime for the importation of bananas, which was inconsistent with the DSB's rulings and recommendations resulting from the dispute: "EC – Regime for the Importation, Sale and Distribution of Bananas" and related subsequent WTO proceedings. It was for that reason that Honduras had to request the DSB to keep this inconsistent regime under the closest scrutiny, and to work with the developing countries to achieve a WTO-consistent outcome as soon as possible. As a way of background, he said that many Members were familiar with the essential facts of this case, which had been discussed over a long period of time, and which could be summarized as follows: (i) This was an unprecedented case of non-compliance by the EC. Since 1992, 11 sets of proceedings had been held to remedy illegal EC actions, under the GATT and the WTO; (ii) In the 1997 case, Bananas III, in which Honduras was a complainant, it had been found that the EC banana import regime was responsible for numerous violations, and the EC had expressly been called upon to bring its banana import regime into conformity with its GATT and GATS obligations; (iii) That decision had given rise to an understanding in 2001, to which Honduras was not a party; (iv) That understanding in turn had led to the 2001 Ministerial Decision, under which a waiver had been approved, and the maintenance of total market access for MFN suppliers upon introduction of a tariff-only regime was guaranteed. All this had been made subject to strict multilateral controls; (v) In 2005, as a result of those multilateral controls, two conclusive awards had been issued against the EC. The first had found against the EC proposal to impose a tariff of €230 per metric tonne, whilst the second had condemned the tariff of €187 per metric tonne and the expanded quota that the EC had proposed for the benefit of ACP suppliers; (vi) At the end of November 2005, having conducted no negotiations whatsoever with Latin America, the EC Council had hastily approved a new tariff of €176 per metric tonne which was a mere 11 digits lower than the tariff condemned under the arbitration award. Moreover, that figure was more than double the tariff level that the EC had been applying to bananas from Latin America since 1995. In that and other ways, the EC had extended its preferential treatment of ACP countries, thereby violating its WTO commitments; and (vii) The EC had then presented the new WTO-inconsistent measures, as a *fait accompli*, which were now in force.

43. With regard to the EC non-compliance, he said that the EC maintained that it had "rectified the matter". If the EC was stating that it had brought itself into compliance with the WTO rulings and recommendations, Honduras had to differ with that statement. The WTO-inconsistencies of this new regime were perfectly obvious. The waivers under Articles I and XIII of GATT 1994 granted to the EC could not now continue in effect, and for that reason the EC could not go on granting discriminatory access of any kind, to the detriment of Latin American suppliers. The EC was clearly aware of this, as it had formally submitted a request for a waiver.

44. With respect to developing country interests, he noted that under Article 21 of the DSU, the DSB was required to pay particular attention to the impact of non-compliance on the economies of the developing-country Members whose rights were being infringed. He emphasized that every single one of the countries that were now being subjected to this discriminatory tariff by the EC – which, as he had already pointed out, was more than double the EC tariff level previously applied – was a

[1] WT/DS27.

developing country. There existed studies conducted by economists who believed that in future, those measures would severely affect the region by curtailing annual access for Latin America by over a million tonnes. Honduras was finding it much more difficult than many to cope with an impact of such proportions. Its per capita income was a mere US$704, which was considerably lower than the GDP of 32 ACP countries. The situation was alarming, as the banana industry was an indispensable source of income, employment and growth for Honduras, more particularly in the country's most impoverished rural areas.

45. With regard to prompt compliance, he said that Bananas III was the first trade dispute in which Honduras had become involved after joining the WTO. Honduras in fact regarded that case as a chance to demonstrate how much it valued its WTO membership. Now, eight years after obtaining that favourable ruling, Honduras found with regret that the new regime put in place by the EC was again subjecting Honduras to the same illegalities that had been condemned by the Panel in Bananas III. Honduras found that it was now subject to a regime that was in fact more injurious than the system it had challenged. Clearly, this was in no way consistent with the provisions of Article 21 of the DSU regarding "prompt compliance" and the "effective resolution of disputes".

46. In the light of the WTO-inconsistency and the economic implications of this case, Honduras wished to make an urgent appeal to the DSB. Honduras called on the DSB to exercise its monitoring function, to examine this matter with the seriousness and diligence that it deserved with a view to restoring the rights of the Latin American countries that were being harmed. Furthermore, Honduras again called on the EC to work together towards a negotiated settlement of this matter. Thus, if the EC negotiated in good faith, Honduras would have no need to resort to the expedited procedures available under the system, the EC producers and operators would consequently be spared greater legal uncertainty and this matter would also cease to be an impediment to progress in the Doha Round.

47. The representative of Nicaragua said that her country had decided to be associated with the Honduran initiative to request that this matter be placed on the DSB agenda so that the DSB could look into the illegal measures adopted by the EC with respect to its banana import regime, and thus discharge its function of surveillance. With respect to Nicaragua's interest, she said that her country was deeply concerned that the EC was still refusing to implement the rulings and recommendations set out in the Reports of the Panels that had examined the matter in the WTO. As many Members were aware, Nicaragua was the second-poorest country in the Western Hemisphere. Its banana industry did enjoy competitive advantages. Indeed, it generated thousands of jobs for Nicaragua's people and Nicaragua was now making new investments in technology in order to spur economic growth.

48. Yet Nicaragua's banana industry would not be able to prosper without fair access to the EC market, which was the largest and most profitable market for bananas. While it was true that over many years, the EC import regime had eroded both Nicaragua's share of that market and that of many other Latin American suppliers, what was most regrettable was that as of 1 January 2005 the situation had become even more difficult. The new tariff introduced by the EC was more than twice as high as the tariff previously applied to bananas from Nicaragua, and her country was sure that that had destroyed the access that Nicaragua had hoped to enjoy in the future.

49. Concerning the issue of protecting the Community interest, she said that the object and purpose of this new EC regime was even more objectionable. There was no doubt that it was designed to protect EC producers as well as to safeguard the US$300 million in subsidies that they received each year. In other words, the EC had introduced a high tariff to ensure that the EC producers would be able to continue to benefit from an uncompetitive product at profitable prices. The EC internal subsidies had, therefore, nullified Nicaragua's competitive advantage as well as the EC's obligation to bring its regime into conformity with WTO rules.

50. With regard to the EC non-compliance, she said that although the EC had chosen to ignore several WTO decisions, Nicaragua would continue to strive to have its rights restored. On behalf of its banana industry and other sectors in his country that were following this case with great concern, she wished to request the support of the DSB in ensuring that the EC complied promptly and fully with its WTO obligations. It was crucial for Nicaragua and other poor countries in Latin America to have a chance to compete on fair terms.

51. The representative of Panama said that his country wished to be associated with the statements made by Honduras and Nicaragua. Panama also regretted that the EC should have introduced its new and illegal banana import regime and considered that the matter should be closely monitored by the DSB. With regard to the issue of the inconsistent measures, he said that the EC had introduced a series of measures which made it obvious why Panama was concerned: (i) MFN bananas were currently subject to a discriminatory "autonomous" tariff of €176/mt, 135 per cent higher than the tariff applied to its bananas over the past eleven years; (ii) on the other hand, ACP bananas now enjoyed an expanded quota, to which only they had access, at zero tariff, added to which they had unlimited access to any volume that exceeded that quota, and those volumes were subject to the MFN tariff; (iii) For the moment, there was no waiver or exemption that legitimated either the tariff or the quota. Consequently, the violations of Articles I and XIII were more than obvious.

52. With regard to Panama's principal supplying interest, he said that his country had unquestionably a lot to lose, and was, therefore, justified in seeking the restoration of the rights that had been violated by this illegal measure. His country was a principal supplier to the EC market, and the discriminatory regimes imposed by the EC had affected Panama more than many other suppliers. He then illustrated this with a few figures. Since 1994, shipments of bananas from Panama had fallen by practically half. The export value of Panamanian bananas had decreased by no less than US$100 million. Employment had decreased by half, and the number of hectares cultivated by one third. The new measures, including the new MFN tariff cost of more than US$2 per box, served merely to fuel this decline. Panama's fear was also that the damage would be felt more acutely in the rural areas, where there was no alternative production and poverty levels were at about 95 per cent.

53. He noted that the matter was being "raised by a developing country", Panama therefore joined in the appeal issued by other Latin American countries for prompt compliance as stipulated in Article 21 of the DSU – indeed, such prompt compliance was essential to his country. In order to secure proper compliance with Article 21 of the DSU, Panama would ask the DSB to consider carefully how to proceed in order to ensure that the EC bring its illegal measures into conformity with WTO provisions as expeditiously as possible. He concluded his statement by stressing that deferred compliance could only unduly prolong a discriminatory situation which had already gone on for too long, with the unnecessary risk of causing irreparable damage to Panama's developing economies.

54. The representative of the United States said that his country had been monitoring closely developments surrounding the EC's implementation in the bananas dispute and had concerns about the EC's new tariff level and strongly questioned whether it did in fact maintain total market access for MFN banana suppliers, as the EC was committed to do in a tariff-only regime. And the United States also had concerns about the fact that the EC would retain a special, preferential tariff-rate quota and allocate it to some suppliers but not others. The United States noted that Honduras, Nicaragua, and Panama had filed requests for consultations with the EC. The United States urged the EC to work with interested Members to reach a mutually satisfactory resolution.

55. The representative of the European Communities said that the EC had listened to the statements by Honduras and Nicaragua on this matter with interest. Nevertheless, the EC noted its disagreement with the categorization of this matter as an "implementation issue" relevant to Article 21 of the DSU. The EC agreed to hold consultations with both Honduras and Nicaragua as well as Panama on the new EC's banana import regime, reserving its position on the legal basis invoked in

their respective requests. These consultations had been held on 19 January 2006. On that occasion, the issues raised at the present meeting by Honduras and Nicaragua had been discussed at length. In addition, as indicated at the meetings held in the context of the WTO Ministerial Conference in Hong Kong, the EC continued to be engaged in discussions with all interested parties and was ready to continue these discussions with the assistance of the Minister Støre (Norway). Therefore, the EC remained ready to address the issues raised at the present meeting and any other issues related to the new EC's bananas import regime in the appropriate fora.

56. The DSB took note of the statements.

3. Brazil – Measures affecting imports of retreaded tyres

(a) Request for the establishment of a panel by the European Communities (WT/DS332/4)

57. The Chairman recalled that the DSB had considered this matter at its meeting on 28 November 2005 and had agreed to revert to it. He drew attention to the communication from the EC contained in document WT/DS332/4, and invited the representative of the EC to speak.

58. The representative of the European Communities said that at the present meeting, the EC had re-tabled its request for the establishment of a panel in this long-standing dispute with Brazil. The request, which had been presented for the first time at the 28 November DSB meeting, had been blocked by Brazil at that meeting. Rather than repeating the same arguments at the present meeting, he wished to refer to the statement made by the EC at the November meeting in order to introduce and explain the EC's panel request. Suffice it to say that fundamental rules of the GATT 1994 had been and continued to be breached, and the EC, therefore, had no choice but to ask for a panel to rule on this matter.

59. The reason for the continuation of this dispute was the fact that, due to internal pressures, Brazil had been unable to revoke the import ban and discriminatory measures at stake. As he had predicted at the previous meeting, Brazil had stated that its measures were compatible with WTO disciplines and that they were justified notably for the protection of the environment and public health. Possibly, similar allegations would be made at the present meeting. There was little point to go into the details of Brazil's statement made at the previous DSB meeting and to explain how and why Brazil had erred. These were matters of substance and the EC would discuss them soon and at length before the panel.

60. However, he had to stress again that the EC would certainly not challenge measures that were justified by concerns of public health or environmental protection. But the present measures were not of that kind and were also unnecessary and even ineffective for that purpose. At the November DSB meeting, Brazil had also made the blunt statement that the EC was trying to dump products on other countries. This was completely unfounded. The EC was doing no more and no less than insisting on the respect of international trade rules. EC exporters were entitled to the export opportunities enshrined in those rules, just like the EC respected the right of other countries to export retreaded tyres to the EC.

61. The EC strongly contested the Brazilian allegation that retreaded tyres were short lifespan products. It was internationally recognized that retreaded tyres were equivalent to new tyres in terms of durability and safety, if manufactured according to the international standards as they existed both in the EC and since recently in Brazil. The EC also contested Brazil's allegation that the importation of retreaded tyres resulted in an accelerated accumulation of waste tyres in Brazil. As he had stated this would be discussed in details before the panel, which the EC requested that it be established at the present meeting.

62. The representative of Brazil said that his country regretted that the EC had decided to re-introduce its request for the establishment of a panel in this dispute. He noted that Article 6.1 of the DSU mandated that the panel be established at the present meeting regardless of the merits of Brazil's position. Brazil did not need to reiterate the considerations contained in its statement before the DSB at its meeting on 28 November. However, it believed that some important points should be stressed. Brazil considered as an undisputed fact the severe risks to human health and the environment resulting from the ever-growing generation of waste tyres. That was why so many WTO Members – including the EC and its member States – had adopted relevant and specific regulations to address the problem of the rubber waste stream.

63. In examining this matter, what surprised Brazil was the remarkable difference between the EC's rules and disciplines and its practices in this particular case. The more one learned about the nature and the scope of the EC's regulations regarding the management of waste tyres, the less one understood how the EC could have disregarded Brazil's reasons to adopt measures to protect its own environment and the health of its population.

64. The EC was quite clear when it had stated in the "Waste Incineration Directive" that "waste prevention should be the first priority of any rational waste policy in relation to minimizing waste production and the hazardous properties of waste"[2]. Also according to the EC, "the generation of waste must be avoided as much as possible"[3]. By challenging the Brazilian import ban, the EC simply did not recognize Brazil's right to avoid the generation of extra amounts of undesired rubber wastes in its territory. The EC was also very assertive when it had recommended that an adequate network of disposal installations be established so as to "enable the Community as a whole to become self-sufficient in waste disposal"[4] and to ensure that "wastes are not exported to non-EC countries"[5]. In the EC's view, however, the so-called "self-sufficiency principle" seemed not to be applicable to retreaded tyres, in spite of the fact that they were composed of at least 70 per cent of waste and that they would generate wastes in short time to be disposed of in the importing countries.

65. Another of the guiding principles of the EC's environmental regulations was the "proximity principle", according to which "waste intended for disposal should be treated as close as possible to the place of its generation"[6]. The EC also considered that wastes must "be disposed of in one of the nearest appropriate installations, by means of the most appropriate methods and technologies in order to ensure a high level of protection for the environment and public health"[7]. Regarding waste tyres, however, the EC seemed much more interested in turning them into retreaded tyres and in exporting the resulting short lifespan product to third countries, than in disposing these wastes where they had been first generated. Moreover, the EC was not interested in Brazil's assertion that no method for disposal of large quantities of waste tyres had proved to be thus far simultaneously environmentally sound and technically and economically viable.

66. The EC was aware of the risks related to the accumulation of waste tyres in landfills and in storage sites for it adopted a Directive to expressly ban whole, cut or shredded tyres from landfills. Additionally, the EC had enacted the "End of Life Vehicle Directive", which required dismantlers to remove tyres from vehicles bound for destruction with the express purpose of ensuring that they will not end up in landfills. The millions of waste tyres currently disposed of in European landfills,

[2] Directive 2000/76/EC of the European Parliament and of the Council of 4 December 2000 on Incineration of Waste – Recital 8.

[3] Directive 2000/53/EC of the European Parliament and of the Council of 18 September 2000 on End of Life Vehicles – Recital 4.

[4] Sixth Community Environment Action Programme – Decision No, 1600/2002/EC – Article 8.1.

[5] Community Strategy for Waste Management – COM(96)399Final – Paragraph 63.

[6] Decision No. 1600/2002/EC of the European Parliament and of the Council of 22 July 2002 laying down the Sixth Community Environment Action Programme – Article 8.1.

[7] Directive of 15 July 1975 on Waste (75/442/EEC), Article 5.2.

therefore, would have to find another destination. The EC, however, would not be concerned if these wastes, transformed into retreaded tyres, would find their final disposal place in Brazilian landfills or storage sites.

67. Finally, the EC was concerned with the emissions resulting from co-processing of wastes in kilns and incinerators – one of the most commonly used disposal methods of waste tyres – by adopting the cited "Waste Incineration Directive", which introduced new and more stringent emission levels of toxic substances like dioxins, heavy metals and furans. Thousands of tonnes of waste tyres would not be allowed to be burned in kilns and incinerators when this Directive is fully applied. He then asked: " Why not burn these wastes in kilns and incinerators of third countries like Brazil?".

68. By insisting on requesting a panel, the EC demonstrated that it was still pursuing the strategy to guarantee markets in the developing world to dump a short lifespan product – retreaded tyres – broadly rejected by European consumers. The EC seemed to count on Brazil to help it to get rid of large volumes of unwelcome rubber wastes in a cheap and efficient manner. Brazil hoped that the WTO dispute settlement system would not endorse such a misuse of the multilateral legal instruments.

69. The representative of Cuba said that his delegation wished to reiterate its statement made at the previous DSB meeting. As had been stated on that occasion, Cuba shared Brazil's legitimate concerns regarding used and re-treaded tyres. Both product categories contained highly combustible and pollutant materials, they generated large quantities of waste at the end of their life cycle, and were extremely difficult to recycle owing to the technical features of the devulcanization process; they were difficult to eliminate not only because of the cost of treating such waste, but also because they entailed serious environmental risks and their full elimination was not guaranteed. Used and re-treaded tyres generated waste faster than new tyres, and their importation, therefore, clearly aggravated the environmental problems of the importing countries. In reality, exports of used and re-treaded tyres represented a transfer to other countries – mainly developing countries – of the social, economic and environmental burden involved in eliminating the waste generated by those products. Cuba believed that Members were all entitled to adopt the measures they deemed necessary to mitigate the harmful effects of the steadily growing quantity of discarded tyres on the environment and on human health, in the same way that each country must bear the burden of eliminating the waste generated on its territory. Cuba, therefore, recognized as legitimate the restrictions being placed by Brazil on imports of used and re-treaded tyres in order to avoid the premature generation of waste on its territory, and shall be following this dispute with interest.

70. The representative of Argentina said that his country wished to express its concern and interest with respect to the issues under discussion. As pointed out by Brazil in its statement, tyres were not ordinary products. Owing to the special characteristics of these products, in particular the fact that they were composed of highly pollutant and combustible materials, countries were faced with the problem of their "final disposal", since improper management could result in irreparable damage to human health and the environment. This situation was even more serious in developing countries, as structural shortcomings placed them at a disadvantage when it came to shouldering the costs of eliminating wastes of this kind. The problems directly associated with tyres at the end of their life cycle were no secret to anyone. To mention but a few examples, their incineration caused smoke pollution (monoxide and polyaromatic hydrocarbon emissions); their partial chemical decomposition posed stability problems and favoured the proliferation of vectors such as mosquitoes, and the spread of diseases and epidemics such as dengue fever. Consequently, Argentina would wish to participate in this dispute as a third party.

71. The DSB took note of the statements and agreed to establish a panel in accordance with the provisions of Article 6 of the DSU with standard terms of reference.

72. The representatives of Argentina, Australia, Japan, Korea and the United States reserved their third-party rights to participate in the Panel's proceedings.

4. Chile – Price band system and safeguard measures relating to certain agricultural products

(a) Recourse to Article 21.5 of the DSU by Argentina: Request for the establishment of a panel (WT/DS207/18)

73. The Chairman drew attention to the communication from Argentina contained in document WT/DS207/18, and invited the representative of Argentina to speak.

74. The representative of Argentina said that his country was grateful for the opportunity to be able to introduce at the present meeting the matter of disagreement concerning measures adopted by Chile to implement the DSB's recommendations and rulings in this dispute. As this matter had a long history, Argentina did not wish to repeat the content of its request for the establishment of a panel under Article 21.5 of the DSU, as set out in WT/DS207/18, or to go over the details of the background to the dispute. Argentina would merely recall that this matter concerned Chile's proper implementation of its WTO commitments in the light of the rulings and recommendations adopted by the DSB on 23 October 2002 in respect of this dispute.

75. Despite the assurances given by Chile to the DSB during the nine regular meetings held between October 2003 and June 2004, and the time it had had at its disposal, Chile had implemented the DSB's recommendations only with respect to edible vegetable oils, which had now been removed from the price band system. However, Chile had not properly applied those recommendations and rulings to wheat and wheat flour, as these two products were still subject to specific duties under that system. He recalled that the relevant Reports by the Panel and the Appellate Body had upheld Argentina's complaints regarding the inconsistency of Chile's price band system with Article 4.2 of the Agreement on Agriculture. Indeed, the Appellate Body had upheld the Panel's finding that Chile's price band system was a border measure similar to variable import levies and minimum import prices. Argentina believed that the only way for the DSB's recommendations in this matter to be implemented in a manner consistent with the WTO Agreements was for imports of the products concerned to be subject only to ordinary customs duties.

76. Argentina's repeated and prolonged efforts to achieve a satisfactory settlement had yielded no results. Even with the changes that had been made to its price band system, Chile was still in violation of WTO rules since the system continued to constitute a border measure that was similar to variable import levies and minimum import prices. The consultations had also failed to resolve the matter. Under the circumstances, after protracted and continuous efforts to find a solution to this dispute, Argentina had no choice, but to resort to Article 21.5 of the DSU and, in the light of the bilateral Understanding between the two countries regarding procedures under Articles 21 and 22 of the DSU, to request that the matter be referred to the original Panel so that a decision be taken with respect to compliance with the DSB's recommendations and rulings, in the hope that such a decision would put a definitive end to this long-standing dispute.

77. The representative of Chile said that his country noted Argentina's recourse to Article 21.5 of the DSU. Although Chile had informed the DSB at the end of 2003 of the changes made to the price band system by means of Law No. 19.897 and the subsequent Regulation thereto, and remained convinced that those changes complied in both the form and the substance with the DSB's rulings and recommendations, Chile kept open a channel for constructive dialogue with Argentina with a view to seeking an agreement that would make it unnecessary to resort to this forum. Regrettably, despite his country's efforts, no such agreement had been reached.

78. At the end of 2003, Chile and Argentina had also signed and notified to the WTO an understanding regarding procedures under Articles 21 and 22 of the DSU (WT/DS207/16), which as Chile understood, would apply to the proceedings in question without prejudice to the general and supplementary rules contained in the DSU. Chile considered that Argentina's request, before the DSB at the present meeting, did not appear to meet the DSU requirements as interpreted by the Appellate Body. In this connection, no "measure taken to comply" had been specified, given that the regulation identified by Argentina as serving the purpose of compliance with the recommendations and rulings of the DSB was Law 19.897. However, that law covered a range of topics, including the changes made to the price band system for wheat and wheat flour, and it also dealt with other matters that stood outside the scope of this dispute – such as aspects of the regime applicable to sugar – and which, therefore, did not constitute "measures taken to comply". Similarly, Argentina's request failed to state what aspects of the changes made by Chile were still considered questionable in the light of the DSB's recommendations and rulings. It confined itself instead to mentioning just two elements, stating that the "changes do not alter the [price band system] in its essence".

79. Mechanisms such as the price band system resulted from the need to deal with significant international market distortions for the products in question, also present in Argentina, which prevented efficient producers such as those in Chile from competing on an equal footing. The scant progress made in multilateral negotiations intended to eliminate such distortions merely underscored the urgency and necessity of maintaining such mechanisms. In this case, Chile's price band system was fully WTO-consistent as Chile would demonstrate before the Panel. Finally, pursuant to paragraph 3 of the procedures under Articles 21 and 22 of the DSU, which had been concluded on 23 December 2003, Chile accepted the establishment of a panel at the present meeting.

80. The representative of Argentina said that since Chile had stated its view about Argentina's panel request, namely, that Argentina had not clearly identified the measure designed to comply with the DSB's recommendations, he wished to state that Argentina believed that the terms of reference of its panel request were clear regarding its legal claims. In Argentina's view, the request for the establishment of a panel was consistent and met the requirements of both Article 6.1 of the DSU and the bilateral understanding.

81. The DSB took note of the statements and agreed, pursuant to Article 21.5 of the DSU, to refer to the original Panel, if possible, the matter raised by Argentina in document WT/DS207/18. The Panel would have standard terms of reference.

82. The representatives of Australia, Colombia, the European Communities and the United States reserved their third-party rights to participate in the Panel's proceedings.

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

83. The Chairman drew attention to document WT/DSB/W/306, 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/306.

84. The DSB so agreed.

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

(a) Statement by Mexico

85. The representative of Mexico, speaking under "Other Business", said that having reached an agreement with the United States, his country had informed the DSB in writing of its intentions with respect to the implementation of the recommendations and rulings of the DSB in the dispute under consideration. This was done by a letter dated 19 January 2006 (WT/DS295/10). Mexico was pleased to reaffirm at the present meeting that it intended to comply with its WTO obligations and to implement the DSB's recommendations and rulings. Mexico had begun to look at various possible ways of doing this. Mexico would need a reasonable period of time for that purpose and was prepared to examine this matter with the United States in conformity with Article 21.3(b) of the DSU.

86. The representative of Norway said that Article 21.3 of the DSU provided that at a DSB meeting held within 30 days after the date of adoption of a panel or Appellate Body report, the Member concerned shall inform the DSB of its intentions in respect of implementation recommendations and rulings of the DSB. Furthermore, footnote 11 which was related to that paragraph provided that if a meeting of the DSB was not scheduled during such a period, a meeting of the DSB shall be held for this purpose. It had now gone 31 days. Mexico, as had just been stated, had sent a letter to the DSB and to the United States in respect of its intentions regarding implementation. Norway, of course, had no problem with the content of the letter nor with the substance of the intention of Mexico. But the systemic issue was that the time-limit had passed and Mexico had sent the letter, but the information regarding the matter had been provided under "Other Business", whereas this should have normally been a regular item on the main agenda of the DSB meeting. Therefore, while Norway had no problem with the substance of the matter as to what Mexico had just stated in respect of its intentions, it believed that this should not set a precedent and that Members should systemically continue to follow the provisions of Article 21.3 of the DSU to the letter.

87. The representative of the United States said that his country thanked Mexico for its statement made at the present meeting as well as for its written notification to the DSB of its intentions with respect to implementation of the recommendations and rulings that the DSB had adopted in this dispute. The United States looked forward to prompt implementation by Mexico of those recommendations and rulings, and looked forward as well to an early discussion with Mexico concerning the period of time in which it would do so. Regarding Norway's point, the United States was pleased that the United States and Mexico had been able to reach agreement to allow Mexico to provide a written statement of its intentions to the DSB, thereby avoiding the scheduling of an unnecessary meeting. While the United States appreciated the sentiment behind Norway's statement, it considered that it was unnecessary to have a brief meeting, particularly that Members were early in the year when many delegates were returning to Geneva.

88. The DSB took note of the statements.

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

(a) Statement by the European Communities

89. The representative of the European Communities, speaking under "Other Business", said that the EC would have welcomed if the United States had submitted a status report in this case this time. For the information of Members, the EC wished to add that the United States 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 three questionnaires from the US authorities. The EC trusted that the United States would report this exercise to the DSB, and was confident that the US authorities would implement the 21.5 Panel's findings by repealing these very old, unjustified and WTO incompatible measures without undue delay.

90. The representative of the United States said that his country thanked the EC for its statement. The United States would convey the EC's comments to capital, but could inform Members that 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.

91. The DSB took note of the statements.

8. Selection process for appointment of a new Appellate Body member

(a) Statement by the Chairman

92. The Chairman, speaking under "Other Business", said that WTO Members were now faced with the sad necessity of filling a position in the Appellate Body, which had just become vacant suddenly and tragically. He said that he felt that he was obliged to raise this issue at the present meeting for the benefit of all Members and the smooth functioning of the Appellate Body. He said that it was his intention to propose at the 17 February DSB meeting, which was the next regular meeting, that the DSB agree to launch the process for selecting a new Appellate Body member to replace the late Mr. John Lockhart for the remainder of his term, in accordance with Article 17.2 of the DSU. Also at that meeting, he would propose that the DSB agree to establish a Selection Committee consisting of the Director General and the 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. It was, therefore, his intention to revert to this matter at the 17 February DSB meeting and, of course, if any delegation would wish to offer views on the procedures that he had just outlined, his door was open and he would be happy to receive such views.

93. The DSB took note of the statement.