WORLD TRADE ORGANIZATION

RESTRICTED

WT/DSB/M/268
13 July 2009

(09-3410)

Dispute Settlement Body
20 May 2009

MINUTES OF MEETING

Held in the Centre William Rappard
on 20 May 2009

Chairman: Mr. John Gero (Canada)

Prior to the adoption of the Agenda[1]

Subjects discussed: Page

[1] See page 2.

Prior to the adoption of the Agenda, the item concerning the adoption of the Panel Report in the case on: "United States – Measures Relating to Zeroing and Sunset Reviews: Recourse to Article 21.5 of the DSU by Japan" was removed from the proposed Agenda, following the US decision to appeal the Report.

Also, prior to the adoption of the Agenda, the representative of Uruguay said that his country would like to make a statement, under "Other Business", on the announced agreement between the EC and the United States regarding the Hormones dispute.

The representative of the United States said that his country was not aware that Uruguay was going to make a statement relating to the Hormones dispute and asked for a short break so that the United States and the EC could be informed, informally, by Uruguay regarding the issue to be raised under "Other Business", pursuant to the DSB rules of procedure.

The DSB agreed to suspend the meeting.

Following the resumption of the meeting, the Chairman said that it was becoming apparent that the subject raised by Uruguay might turn out to be a much more substantive discussion than one would have anticipated and that it could not really be dealt with under "Other Business". The item would, therefore, not be discussed at the present meeting under "Other Business". However, delegations were free to place this matter on the Agenda of the next regular DSB meeting for discussion.

The DSB took note of the statements and adopted the Agenda, as amended.

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.78)

(b) United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.78)

(c) United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.53)

(d) European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Communities (WT/DS291/37/Add.16 – WT/DS292/31/Add.16 – WT/DS293/31/Add.16)

(e) European Communities – Regime for the importation, sale and distribution of bananas: Second recourse to Article 21.5 by Ecuador: Status report by the European Communities (WT/DS27/96/Add.4)

(f) Brazil – Measures affecting imports of retreaded tyres: Status report by Brazil (WT/DS332/19/Add.2)

1. The Chairman recalled that Article 21.6 of the DSU required that, unless the DSB decided 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 and shall remain on the DSB's Agenda until the issue was resolved. He proposed that the six sub-items under Agenda item 1 be considered separately.

(a) United States – Section 211 Omnibus Appropriations Act of 1998: Status report by the United States (WT/DS176/11/Add.78)

2. The Chairman drew attention to document WT/DS176/11/Add.78, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US Section 211 Omnibus Appropriations Act of 1998.

3. The representative of the United States said that his country had provided a status report in this dispute on 7 May 2009, in accordance with Article 21.6 of the DSU. As noted in that status report, a number of legislative proposals that would implement the DSB's recommendations and rulings in this dispute had been introduced in the current Congress, which convened in January 2009. The US administration was working with Congress to implement the DSB's recommendations and rulings.

4. The representative of the European Communities said that, at the present meeting, the United States was presenting its seventy-eighth status report on its lack of progress in the implementation of the DSB's ruling in this dispute. The EC understood that there were now three bills before the House of Representatives that could lead to a solution to this long-standing dispute. The EC hoped that the new US authorities would now take steps to finally implement the DSB's ruling.

5. The representative of Cuba said that more and more cases had been dealt with under the item on surveillance of implementation of recommendations adopted by the DSB, and at every DSB meeting discussions were longer with no concrete results. The fact that in some cases no progress had been made for years was a very negative sign. Yet the respondent claimed to be a compliant Member stating that it had implemented most of the decisions and was working on complying with the rest. Cuba saw no evidence of any action by the United States to implement the DSB's decisions. The United States had not even indicated any time-frame for implementation. It was common knowledge that those who benefited most from the dispute settlement system were developed countries. They had the greatest commercial interest and were in a better position to participate in the system in terms of costs and legal capacity, and they were best placed to detect breaches of the Agreements. Furthermore, they could effectively apply retaliatory measures. It was, therefore, surprising that the United States undermined that system even though it was in line with its interests. The DSU provisions were clear and unambiguous: prompt compliance with the DSB's recommendations was the way to ensure effective settlement of disputes to the benefit of all Members. In the present case, after more than seven years, this principle had been totally ignored by the infringer. To undermine this principle was to undermine not only the objectives pursued by the multilateral trading system, but also the effectiveness of the system. The reasonable periods of time for implementation in this dispute had been extended many times and the last one had expired years ago, without the US administration taking a single step in the right direction. The parties to this dispute must realize that the status quo set a dangerous precedent that could lead to prolonged non-compliance. The 2008 Interbrand Report came as no surprise to Cuba. The respondent Member owned the most valuable brands worldwide. Of the ten most valuable trademarks in the world, eight belonged to US companies. It was no coincidence that the United States was one of the promoters of the TRIPS Agreement. Intense efforts had gone into establishing a multilateral framework of principles, rules and disciplines for international property rights. So how could that Member had failed for more than seven years to implement a decision of the Appellate Body, which had found Section 211 to be in breach of the principles of national treatment and most-favoured-nation treatment laid down in the WTO Agreement? In its words and in some of its deeds, the respondent Member purported to be concerned at the effects of counterfeit goods on international trade. But in this case, as elsewhere, it applied double standards. The US authorities allowed Bacardi to sell in its territory products with the HAVANA CLUB trademark, thus encouraging trade in counterfeit goods. Any doubts about Bacardi's intentions could be allayed by consulting the database of the US Patent and Trademark Office. Bacardi had applied for the HAVANA CLUB trademark to designate rum and rum-based

beverages. The number of the application was 74572667 Y and it had been filed on 12 September 1994. To date, the trademark had not been granted and it was to be hoped that it never would be. To grant it would be an unacceptable infringement amounting to encouragement by the US authorities to engage in the most unfair practices in international trade. Cuba, once again, urged the parties to take immediate steps to find a proper settlement to this long-standing dispute.

6. The representative of the Bolivarian Republic of Venezuela said that his country noted the US status report and echoed what many other delegations had been stating over the past four decades about the need for an end to the economic, commercial and financial blockade imposed by the United States on Cuba, including the application of what was known as the Helms-Burton Act. In politics it was generally thought that any time gained for solving a problem could be useful and beneficial. Quite the opposite was true in trade, where time passing by resulted in losses and situations that were adverse to human beings, for whom everyday products grew scarce, more expensive and were very difficult to afford. In the present case, the United States had, since 2008, been citing as grounds for postponing compliance with the DSB's decision the fact that there were to be presidential elections and that the decision would be a matter for the new government. Seven months had elapsed since the elections, and the United States had now changed and argued it was awaiting a decision from Congress. Clearly, in this case the United States had gained the time and Cuba had suffered the commercial losses and their consequences. The situation was the more worrying since recently on Monday, 11 May, at the GRULAC meeting with the US Trade Representative, when the Cuban delegation asked him what the new US administration would do in this case, his only response was that the United States had complied with the DSB's decisions in a large percentage of cases. Not only was the response evasive, but furthermore appeared to be conveying the message that it was enough to comply with a few decisions in order to fulfil the commitment undertaken in the WTO, which was not the case: all the decisions must be implemented and no Member was entitled to choose which ones to comply with and which ones to ignore. In a financial crisis, which was affecting trade and would affect it even more, the US maintenance of its stance on Cuba would compound the damage already done if the above-mentioned Act remained in force. Far from strengthening the WTO, which had been given a vote of confidence in the midst of the economic turmoil, it would affect the Organization systemically, detracting from its image, because of a decision by some Members not to comply with its rules. Venezuela urged the United States to immediately take the necessary steps to comply with its obligations under the TRIPS Agreement and to repeal Section 211.

7. The representative of Ecuador said that his country thanked the United States for its status report and supported the statements made by Cuba and other Members on this issue. Article 21 of the DSU expressly referred to prompt compliance with the DSB's recommendations or rulings, in particular with regard to the issues of interest to developing countries. Ecuador recalled that the United States closely monitored compliance by all WTO Members with their obligations and had expressed, in the different WTO Councils and Committees, its systemic concerns with regard to certain commitments undertaken by Members. Thus, if the United States wished to promote coherence in this Organization, it should be setting an example. Ecuador, once again, urged the United States to comply with the DSB's recommendations and rulings and to promptly repeal Section 211.

8. The representative of Bolivia said that her country was again concerned that no progress had been made in the case under consideration and was concerned about consequences of non-compliance with the DSB's recommendations for the Organization. The United States must comply with the DSB's rulings and recommendations and lift the restrictions imposed under Section 211, which was contrary to the rules of international law. In so doing, the United States would ensure the integrity of the WTO system. Bolivia thanked Cuba for its statement and supported all the other statements made by previous speakers.

9. The representative of Brazil said that his country thanked the United States for its status report. Brazil believed that full implementation had not yet been achieved and encouraged the United States to continue to pursue the necessary actions in this regard, so as to bring its measures into conformity with the DSB's recommendations.

10. The representative of China said that his country thanked the United States for the status report and its statement, but was, once again, concerned that the US Congress had not adopted any concrete implementation action pertinent to this case despite the endeavours of the US administration and the appeals of other WTO Members. As China had stated many times, the situation of non-compliance was seriously damaging the authority of the TRIPS Agreement and the credibility of the WTO dispute settlement system. China, therefore, supported the statements made by the EC and Cuba, and urged the United States to implement the DSB's decision without further delay.

11. The representative of Thailand said that his country joined previous speakers in thanking the United States for its status report. Thailand remained positive on this item, and urged the United States to take all necessary steps to comply with its obligations applicable to this dispute as soon as possible.

12. The representative of Costa Rica said that his country thanked the United States for its status report. As had been stated by Costa Rica at the previous meeting, Costa Rica considered that it was important to comply with the first paragraph of Article 21 of the DSU, which emphasized that prompt compliance with the DSB's recommendations and rulings was essential. Costa Rica hoped that the United States would rapidly find a solution to this issue with the Congress, as indicated in the US status report.

13. The representative of India said that her country thanked the United States for its status report and its statement. India continued to be concerned about the non-compliance situation in this dispute. The situation undermined the credibility of the WTO dispute settlement system. India, therefore, urged the United States to fully implement the DSB's recommendations in this dispute.

14. The representative of Viet Nam said that his country thanked the United States for its status report. Like in previous meetings, Viet Nam wanted to express its concern about the implementation of the DSB's rulings and recommendations in this dispute. Viet Nam believed that the United States would comply with the DSB's rulings and recommendations soon.

15. The representative of Chile said that his country thanked the United States for the status report and its statement. Chile wanted to express its systemic concern and discouragement with the lack of compliance in this dispute. Just as it happened with the two following disputes on this item of the Agenda, Chile thought that a long period of time without full implementation was a very bad sign. Once again, Chile appealed to the United States to promptly comply with the DSB's rulings and recommendations.

16. The representative of Argentina said that his country joined the request made by previous speakers for a definitive solution to this matter. The lack of effective implementation of the recommendations adopted by the DSB had a negative impact on the system and should be closely monitored by all Members. Argentina encouraged the parties, especially the United States, to take the necessary steps to ensure that this matter would be definitively solved and that it be consequently removed from the DSB's Agenda.

17. The representative of Nicaragua said that, at the 17 November 2008 DSB meeting, her country had stated that it had hoped that the new administration would take effective measures to bring its legislation into conformity with the WTO Agreements. However, that had not happened, and when questioned on this subject during his recent visit to Geneva, the US Trade Representative had

given no signal to this effect. Members could not simply choose whether or not to comply with the DSB's rulings depending on the case. Non-compliance should not be tolerated. Any prolonged and unjustified non-compliance undermined the credibility of the dispute settlement system. Nicaragua believed that all the cases considered under Agenda item 1 of the present meeting had to be monitored closely by Members, and all must redouble efforts to find a solution.

18. The representative of the United States said that in response to the statements by some Members that this dispute raised concerns for the credibility of the dispute settlement system, the United States did not believe that those concerns were well-founded. He said that first, the United States reiterated its intention to implement the DSB's recommendations and rulings and made monthly status reports to this end. This showed a commitment to the dispute settlement system. Second, the United States would expect assertions of systemic concerns would be grounded in the facts; however, the facts were that the record of compliance for WTO Members generally, and for the United States in particular, was good. For example, the United States had announced compliance in two disputes at the last DSB meeting. Third, if the situation in this particular dispute was having systemic consequences, one would expect WTO Members to be demonstrating less interest in bringing disputes to the WTO, but the facts did not bear this out. In fact, since last summer, Members had filed 15 consultation requests, which would not seem to reflect a weakening in the confidence that Members had in the dispute settlement system.

19. The representative of Cuba said that his delegation wished to make some comments on the US statement. First, Cuba was wondering how many more years one would have to wait before the United States understood that the concerns of the majority of Members had to be respected. Seven years had already passed. The United States had stated that the status reports demonstrated the US commitment to comply with the DSB's recommendations, but this did not seem to be the case. In practice over the past seven years, the United States had presented status reports on non-compliance with the DSB's recommendations. The new US administration was now dealing with this case and nothing had happened. The draft bills had not been adopted, but had been discarded. As other Members had stated, the DSB's decisions were not like a shopping list. If, as stated by the United States, 15 new cases had been submitted to the DSB in the recent past, it was because there were many problems in international trade. It was clear that there was a concern shared by many Members of the WTO, which had been repeated over the past years, about the non-compliance in this case, which undermined the TRIPS Agreement and the credibility of the WTO as well as the DSB.

20. The representative of the Bolivarian Republic of Venezuela said that his country was very concerned that the United States placed quantity and credibility on the same footing. Quantity had nothing to do with credibility so this was not necessarily a perfect equation.

21. 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.78)

22. The Chairman drew attention to document WT/DS184/15/Add.78, 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.

23. The representative of the United States said that his country had provided a status report in this dispute on 7 May 2009, 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 the document numbered WT/DS184/15/Add.3. With respect to

the recommendations and rulings of the DSB that had not already been addressed by the US authorities by 23 November 2002, the US administration would work with the US Congress with respect to appropriate statutory measures that would resolve this matter.

24. The representative of Japan said that his country thanked the United States for its statement and its latest status report. Japan noted in the report that the United States had taken certain measures to implement part of the DSB's recommendations in November 2002. Japan was hopeful that the United States would soon be in a position to also report to the DSB more tangible progress for the remaining part of the DSB's recommendations and rulings. A full and prompt implementation of the DSB's recommendations and rulings was "essential to the effective functioning of the WTO and the maintenance of a proper balance of the rights and obligations of Members".[2] Japan called on the United States to fully implement the DSB's recommendations in this long-standing dispute without further delay.

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

(c) United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.53)

26. The Chairman drew attention to document WT/DS160/24/Add.53, 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.

27. The representative of the United States said that his country had provided a status report in this dispute on 7 May 2009, in accordance with Article 21.6 of the DSU. The US administration would work closely with the US Congress and continue to confer with the European Communities, in order to reach a mutually satisfactory resolution of this matter.

28. The representative of the European Communities said that the United States had, once again, reported non-compliance in this dispute. The United States had continually failed over many years to bring itself into compliance. The EC hoped that the new US authorities, who had indicated that Intellectual Property enforcement was a priority for them, would solve this dispute expeditiously.

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

(d) European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Communities (WT/DS291/37/Add.16 – WT/DS292/31/Add.16 – WT/DS293/31/Add.16)

30. The Chairman drew attention to document WT/DS291/37/Add.16 – WT/DS292/31/Add.16 – WT/DS293/31/Add.16, which contained the status report by the European Communities on progress in the implementation of the DSB's recommendations in the case concerning the EC's measures affecting the approval and marketing of biotech products.

31. The representative of the European Communities said that his delegation welcomed the continuing constructive discussions with the complainants, which had allowed yet another extension of the reasonable period of time by Canada until 30 June 2009. Recent developments showed that the EC regulatory procedures on biotech products continued to work as foreseen in the legislation. With two authorizations in March 2009 (T-45 and a GM carnation), the number of authorizations since the

[2] Article 3.3 of the DSU.

establishment of the panel had increased to 21. Draft decisions on authorization of cultivation of GM maize 1507 and Bt11 were being processed in accordance with the applicable law. The EC believed that further progress in such a sensitive area could only be achieved through dialogue and cooperation. The EC remained open to continue discussions with the three complainants.

32. The representative of Argentina said that his delegation thanked the EC for its status report. As on previous occasions, Argentina expressed its satisfaction with the progress achieved through open dialogue with the EC. The willingness to dialogue, and the flexibility that Argentina had shown, had allowed the parties to make progress in solving certain important issues. Argentina noted that it was continuing to monitor both the process for approvals and the status of prohibitions in the EC member States. Both situations continued to be a source of concern for Argentina. Nevertheless, Argentina would continue working with the EC and the other parties, in the same constructive spirit as always, with a view to achieving full implementation of the recommendations adopted by the DSB.

33. The representative of Canada said that her country thanked the EC for its statement. Canada valued the constructive dialogue that had taken place to date with the EC to resolve the issues that had affected, and continued to affect the approval and marketing of biotech products in the EU. However, Canada continued to be particularly concerned about continuing member State actions on the cultivation and marketing of EU-wide approved biotech products. Canada would continue to monitor the situation closely and hoped to continue the dialogue with the EC to address trade in biotech products in a constructive manner.

34. The representative of the United States said that his country thanked the EC for its status report and its statement. Unfortunately, the EC had again reported its non-compliance in this dispute. The United States regretted to report that since the April DSB meeting, the EC had failed to reach a final decision on any one of the approximately 50 biotech applications backed up in the EC approval system. As a result of the backlog, US producers were completely shut out of what historically had been major US export markets for maize and other agricultural products. To put the US concerns in some perspective, he recalled that exactly one year ago, at the 20 May 2008 meeting, the United States had reported on what appeared to be an important development in the operation of the EC biotech approval system. In particular, on 7 May 2008, the EC College of Commissioners had met for an "orientation debate" on biotech approvals. The Commission had explained that the purpose of the debate was "to take stock of the current situation and to set out how to move forward on pending authorization cases and longer-term issues". Although the ostensible purpose was to find a way to "move forward", the result of the orientation debate was to take seven of the most advanced biotech applications and to move them backwards in the approval process. As the United States had noted with concern at the 20 May 2008 DSB meeting, one of those applications – for BT-11 maize – had first been filed in May 1996, which was now 13 years ago. Because the EC had failed to move the product forward in its approval process, the DSB had found that the EC's consideration of BT-11 was subject to undue delay, in breach of the EC's obligations under the SPS Agreement.[3]

35. Even though seven products had been pushed back in the approval process, in May 2008, Commission officials had assured the United States that the result of the "orientation debate" was in fact a positive development. It was explained to the United States that further review of these products was a political compromise, and that once the products had been moved back and re-reviewed, the EC would finally allow these products to reach a final decision. A full year had passed since the May 2008 orientation debate. Yet, not one of the seven products affected by the orientation debate had reached a final decision. Unfortunately, these results indicated that, regardless of the original intentions, the Commission in its May 2008 orientation debate had not found a way to "move forward" on reaching final decisions on biotech applications.

[3] Panel Report, "EC – Measures Affecting the Approval and Marketing of Biotech Products", WT/DS291/R, para. 7.1964.

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

(e) European Communities – Regime for the importation, sale and distribution of bananas: Second recourse to Article 21.5 by Ecuador: Status report by the European Communities (WT/DS27/96/Add.4)

37. The Chairman drew attention to document WT/DS27/96/Add.4, which contained the status report by the European Communities on progress in the implementation of the DSB's recommendations and rulings in the case concerning the European Communities' regime for the importation, sale and distribution of bananas.

38. The representative of the European Communities said that, as had been indicated at previous DSB meetings, the EC stood ready to implement the recommendation made in the Panel Report by means of modifying its bound duty. The EC still hoped that this rebinding could be made in the context of a comprehensive agreement with Latin American suppliers, an agreement that had been sought since the EC initiated GATT Article XXVIII negotiations back in 2004. The EC was fully committed to finding very soon a final solution to this long-standing "banana saga". As indicated in the status report, the EC was fully engaged in negotiations with all Latin American supplying countries with the view of concluding promptly such a comprehensive agreement. The EC hoped that these negotiations could soon lead to a satisfactory agreement. The requests made to the EC to simply sign *tel quel* the draft agreement established in the margins of the July Ministerial 2008 simply disregarded the fact that the signature of that agreement was subject to the successful adoption of DDA Agriculture modalities. Having said that, the EC was engaged in negotiations to discuss the possibility of concluding a draft agreement with a number of elements based on the July 2008 text, subject to necessary adjustments to the current situation. The EC hoped that all banana suppliers would constructively engage in the necessary discussions. This was a unique opportunity to put an end to this long-standing dispute and bring to economic operators long-awaited legal certainty.

39. The representative of Honduras said that the Bananas case had become a "saga," as the EC had called it, for one important reason: it had had more reoccurring instances of non-compliance than any other dispute in the history of the WTO. The EC's latest episode of non-compliance had lasted for nearly three and a half years. There was no justification for these continuing violations. The EC's reasonable period of time to comply with the Bananas III rulings had been terminated a decade ago. The EC had been claiming for several months that it was interested in a "prompt" solution, but its actions and time-tables suggested otherwise. Rather than promptly and unconditionally lowering its tariff, as required by the Article 21.5 rulings, the EC was asking that its compliance obligations be turned into a complicated Doha exercise under which bananas and tropical products would also be negotiated. Furthermore, the EC was asking that various procedures and joint undertakings, well beyond the framework of the DSU compliance, be accepted. If the EC was genuinely interested in a prompt solution, it should be defining that solution by how fast it could reduce its illegal banana tariff, not by how far the affected Latin American parties must bend to accommodate other products and procedures outside of this dispute. As Honduras had previously stated, the July 2008 Agreement was the proper settlement framework. If the EC was committed to resolving this long-running saga, that Agreement offered the clearest, fastest means of doing so. Until Members could come to a satisfactory resolution, Honduras would continue to reserve all rights in this dispute.

40. The representative of Ecuador said that his country thanked the EC for its status report. Once again, Ecuador was surprised that in its status report, the EC had failed to give any indication of the date by which it would comply with the DSB's recommendations and rulings in this case. Ecuador had accepted to seek a negotiated solution to this enduring deadlock on bananas, and had thought that the matter was solved with the 27 July 2008 Agreement. However, the EC had refused to accept that Agreement. In contrast to the July 2008 Agreement, the EC's recent proposal to Latin American MFN

suppliers had introduced new conditions, such as linking tariff cuts to the uncertain conclusion of the Doha Round modalities; linking it to an "early harvest" of the Doha Round modalities and prior agreement with the ACP countries in the negotiations on tropical products and preference erosion; and making the proposed agreement subject to the conclusion of a parallel agreement with the United States. All of these conditionalities clearly complicated the negotiations. These issues had nothing to do with compliance with the DSB's recommendations and rulings and the compensation for the EC's enlargement. Ecuador also noted that, when it came to compliance with the DSB's recommendations and rulings, the EC differentiated between countries and set its priorities according to whether they were developing or developed countries. For example, there was a recent fast-track resolution by the Council of Europe authorizing the European Commission to initial a Memorandum of Understanding with the United States in the Hormones dispute. The EC should show the same diligence in the Bananas dispute by signing an agreement that was not linked to the Doha Round modalities agreement and to end this longest-standing dispute still pending in the history of the GATT and the WTO.

41. The representative of Panama said that his country noted with satisfaction the EC's interest in reaching a settlement "soon", but shared Ecuador's concern regarding the conditions to which the EC continued to subject this prompt compliance. The Appellate Body had confirmed the EC's lack of compliance. Prompt compliance was not a matter of discretion, nor could it be subordinated to other trade objectives or developments. If the EC refused to bring itself into conformity because it could not settle negotiations that had nothing to do with bananas, it was mistakenly treating compliance as something different from the DSB's recommendations. If the EC failed to comply because the proceedings in another WTO body were not turning out as the EC would have liked, once again, it was unjustifiably rewriting the DSU provisions. When the EC had stated that it was interested in finding a solution to this dispute very soon, Panama hoped that it was taking account of all of the DSU provisions and obligations, which did not allow prompt compliance to be affected by external events, procedural complexities or insufficient tariff reductions. Panama recalled that an acceptable solution to this dispute was available, which had been approved by the EC in July 2008, and could be signed at any time. Thus, if the EC was really committed to finding a solution very soon, the July Agreement provided such a solution.

42. The representative of the Dominican Republic, speaking on behalf of the ACP countries, said that at the four DSB meetings held on 11 December 2008 and 19 February, 20 March and 20 April 2009, the ACP Group had registered its respect for the need to implement final decisions of the Reports despite its continued disagreement with certain conclusions reached by the Panel and the Appellate Body in this dispute. She recalled that the Panel and the Appellate Body had concluded that the EC's Schedule at this time still committed the EC to a TRQ at a tariff of €75/metric tons and an out-of-quota tariff of €680/metric tons. As previously mentioned, the ACP countries could resign itself to live with a literal implementation of those conclusions. The EC, however, aimed to achieve compliance and implementation by changing the structure of its tariff commitments through negotiations with the MFN banana suppliers. It appeared that this process would likely lead to a reduction of applied (and bound) duty rates. She reiterated that the DSB's recommendations in this dispute did not require any overall reduction of average tariffs, but just a rearrangement. Thus, a decision to reduce the EC's average banana tariffs would find its rationale exclusively in the DDA context. She stressed again that the ACP countries remained committed to supporting their partners in finding an effective solution to the "Banana issue". That said, it should be ensured that the steps eventually agreed upon with respect to the EC's banana tariff were taken for the right reasons and anchored and balanced out in the right context.

43. The representative of Colombia said that his country thanked the EC for its status report and noted the EC's proposal to bring itself into compliance with the DSB's recommendations and rulings by modifying its scheduled tariff commitments on bananas. Colombia hoped that the EC would act promptly in that respect. Colombia, together with the other MFN banana-exporting countries, had

been discussing with the EC the basis for negotiations. A long confidence-building process had been under way since the EC had refused to recognize the Agreement reached in July 2008. Colombia hoped that, in the process of negotiations, the EC would not seek to impose any conditions. Both parties would have to be willing to reach a negotiated settlement, which required an understanding of their mutual trade interests, and to show the necessary flexibility regarding this matter.

44. The representative of the United States said that his country thanked the EC for its status report and its statement and noted that the EC, once again, had provided no information regarding how the EC was in compliance with its obligations under Articles I and XIII of the GATT 1994. The United States noted, once again, that the DSB had not adopted any panel or Appellate Body reports finding that the EC was in compliance with its WTO obligations with respect to any of the original co-complainants in this dispute, including the United States. It would certainly be good if the EC's effort to "conclude promptly a comprehensive agreement on bananas" was concluded promptly, as the EC's reasonable period of time for compliance in this dispute had expired more than ten years ago, on 1 January 1999. The commercial impact of the EC's non-compliance over this very long period was undeniably large and damaging to a number of WTO Members. The United States called on the EC to resolve this dispute and, until then, to provide a comprehensive explanation of how the EC intended to come into substantive compliance with all of the DSB's recommendations and rulings.

45. The representative of Nicaragua said that her country wished to refer Members to the statements it had made at previous DSB meetings. Nicaragua noted the status report by the EC, which was identical in every way to the brief report received the previous month. Once again, the EC had merely asserted that it had the intention to "bring itself into compliance". Yet again, the EC had refrained from sharing the underlying truth with the DSB. In fact, the EC was prepared to comply subject to a number of conditions that it had imposed unilaterally, which had nothing to do with this dispute. According to these conditions, for example, Members must find a solution under the Doha Round for tropical products before the EC would accept to reduce its illegal tariff on bananas. Its novel idea of "compliance" involved so many cases that were outside the scope of Article 21 of the DSU that it was impossible to see how, if at all, the EC would ever bring its violations of Articles I and II of the GATT 1994, into conformity with WTO rules. Nicaragua pointed out that under the DSU provision, the EC had an unconditional obligation to bring itself into compliance with the DSB's recommendations. Nothing in those provisions entitled the EC to introduce illegal conditions and then blame others for not complying with them. Once again, Nicaragua asked the EC to recognize its unconditional compliance obligation in this dispute and to explain to the DSB when and how it would bring itself into conformity with the WTO rules, without subjecting such action to any conditions. After so many years of non-compliance by the EC, Members had the right to such clarification.

46. The representative of Saint Lucia said that her country supported the statement made by the Dominican Republic on behalf of the ACP countries.

47. The representative of the European Communities said that the EC wished to state, in response to Ecuador's comment that the EC had been able to come to a settlement with the United States in the Hormones dispute, but seemed to be unable to settle the Bananas dispute, that to come to a mutually satisfactory solution would take more than one: "It takes two to dance tango and the EC would like to dance tango with all MFN suppliers." In response to comments made on Articles I and XIII of the GATT 1994, the EC said that the Appellate Body had confirmed that no recommendation (as opposed to findings) was warranted with respect to the measure at issue in this dispute, since it was no longer in existence (para. 479 of the AB Report). The Appellate Body had referred generally to the principle that, in Article 21.5 DSU procedures, original DSB recommendations and rulings "remain in effect until the EC brings itself into substantive compliance". However, there was no longer a compliance issue, since the measure at fault had ceased to exist in 2007. The current tariff treatment of bananas of ACP origin was a completely different measure, based on the negotiation of Free Trade Agreements

(FTAs) with the ACP countries concerned. Tariff preferences could equally result from FTAs negotiations with Latin American suppliers.

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

(f) Brazil – Measures affecting imports of retreaded tyres: Status report by Brazil (WT/DS332/19/Add.2)

49. The Chairman drew attention to document WT/DS332/19/Add.2, which contained the status report by Brazil on progress in the implementation of the DSB's recommendations and rulings in the case concerning Brazil's measures affecting imports of retreaded tyres.

50. The representative of Brazil said that, on 7 May 2009, his country had provided the DSB with a further status report in this dispute, in accordance with Article 21.6 of the DSU. Brazil firmly believed that the actions pursued by the Government constituted not only a fundamental step in strengthening Brazil's environmental policy, but would also bring full implementation of the DSB's recommendations and rulings in this dispute.

51. The representative of the European Communities said that his delegation noted Brazil's third status report and that, again, Brazil had admitted not having achieved compliance to date, and this despite the expiry of the reasonable period of time on 17 December 2008. As regards Brazil's efforts towards implementation, the EC maintained its position expressed at the 20 April 2009 DSB meeting. The EC was neither convinced nor satisfied with Brazil's actions. As stated at previous meetings, the fastest and best way to remove the ongoing and WTO-incompatible discrimination would consist of lifting the import ban on retreaded tyres. This would at the same time allow Brazil to respect its MERCOSUR obligations, confirmed by binding arbitral rulings. The EC could not see that Brazil had satisfactorily answered its repeated question of what exactly Brazil intended to set up when it referred to a "common trade regime for tyres with its MERCOSUR partners". The EC stressed again that the DSB's rulings and recommendations in this case did not permit keeping the import ban in place while maintaining the possibility for intra-MERCOSUR trade in retreads. The EC continued to express its understanding and support for measures aiming at environmental and public health protection. It would, therefore, by no means discourage Brazil from doing more for the protection of its citizens against diseases spread by mosquitoes that bred in abandoned waste tyres. For that purpose, however, much better and more effective measures were available as compared to the selective targeting of certain imported products that did not actually contribute to the problem. The EC rejected unjustified insinuations that it intended to export its waste to Brazil. The EC recalled that it managed, recycled and recovered waste tyres without relying on exportation. Moreover, like the overwhelming majority of WTO Members, the EC did not ban the importation of retreaded tyres. On the contrary, the EC imported retreaded tyres from other countries, including from Brazil. The EC, therefore, called upon Brazil to end, without further delay, its arbitrary and discriminatory practices regarding retreaded tyres, and to do so by removing its import ban.

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

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

(a) Statements by the European Communities and Japan

53. The Chairman said that the item was on the Agenda of the present meeting at the request of the European Communities and Japan. He then invited the respective representatives to speak.

54. The representative of the European Communities said that, as in many previous meetings, his delegation wanted to ask the United States when it would effectively stop the transfer of anti-dumping and countervailing duties to its industry and finally put an end to the condemned measure. The EC also renewed its call on the United States to abide by its clear obligation under Article 21.6 of the DSU and to submit status reports in this dispute.

55. The representative of Japan said that, as the latest distributions[4] showed, the CDSOA still remained operational.[5] Japan, once again, called on the United States to stop illegal distributions and repeal the CDSOA not just in form, but in substance so as to resolve this dispute once and for all. According to Article 21.6 of the DSU, the United States was under obligation to provide the DSB with a status report in this dispute "until the issue is resolved". Japan reserved all its rights under the DSU until the United States came into full compliance.

56. The representative of China said that his country thanked the EC and Japan for, once again, raising this matter at the DSB meeting. China shared the concerns expressed by previous speakers, and wished to join them in urging the United States to comply fully with the DSB's rulings.

57. The representative of Thailand said that his country continued to urge the United States to cease WTO-inconsistent disbursements under the Continued Dumping and Subsidy Offset Act, repeal the Byrd Amendment with immediate practical effect, and resume providing status reports until such actions were taken and this matter was fully resolved.

58. The representative of Canada said that her country agreed with the EC and Japan that the Byrd Amendment remained subject to the surveillance of the DSB until the United States ceased to administer it.

59. The representative of Brazil said that his country wished to thank Japan and the EC for raising this important issue in the DSB once again. Brazil was of the view that, since the CDSOA still allowed for disbursements by the US administration to its domestic industry, full implementation of the DSB's recommendations and rulings in this dispute could not be claimed.

60. The representative of India said that her country thanked the EC and Japan for bringing this issue, once again, before the DSB. India was of the view that CDSOA still allowed for disbursements by the US administration to its domestic industry. This fact continued to raise concerns to WTO Members. India, therefore, urged the United States to cease its WTO inconsistent disbursements, and fully implement the DSB's recommendations and rulings.

61. The representative of the United States said that, as his country had already explained at many previous DSB meetings, the US President had signed the Deficit Reduction Act into law on 8 February 2006. That Act included a provision repealing the Continued Dumping and Subsidy Offset Act of 2000. Thus, the United States had taken all actions necessary to implement the DSB's recommendations and rulings in these disputes. He recalled, furthermore, that Members, including the EC and Japan, had acknowledged during previous DSB meetings that the 2006 Deficit Reduction Act did not permit the distribution of duties collected on goods entered after 1 October 2007. The United States, therefore, did not understand the purpose for which the EC and Japan had inscribed the item on the Agenda of the present meeting. With respect to comments regarding further status reports

[4] According to Updated FY2008 Annual Disbursement Report published by US Customs on 3Apri1 009, some US$198 million have been disbursed for FY 2008. See US Customs and Border Protection's website at: http://www.cbp.gov/xp/cgov/trade/priority_trade/add_cvd/cont_dump/cdsoa_08/fy08_annual_rep/

[5] In the words of the US Customs, "the distribution process will continue for an undetermined period". See US Customs and Border Protection's website at:
http://www.cbp.gov/xp/cgov/trade/priority_trade/add_cvd/cont_dump/cont_dump_faq.xml

in this matter, as the United States had already explained at previous DSB meetings, the United States failed to see what purpose would be served by further submission of status reports repeating, again, that the United States had taken all actions necessary to implement the DSB's recommendations and rulings in these disputes.

62. The DSB took note of the statements.

3. Colombia – Indicative prices and restrictions on ports of entry

(a) Report of the Panel (WT/DS366/R and Corr.1)

63. The Chairman recalled that, at its meeting on 22 October 2007, the DSB had established a panel to examine the complaint by Panama pertaining to this matter. The Report of the Panel contained in WT/DS366/R had been circulated on 27 April 2009 as an unrestricted document. The Report of the Panel was before the DSB for adoption at the request of Panama. The adoption procedure was without prejudice to the right of Members to express their views on the Report.

64. The representative of Colombia said that his country wished to thank the Panel for its analysis and its work in this dispute as well as the Secretariat for its support throughout the process. At the present meeting, his country wished to make a few general comments concerning the various elements and arguments on which the Panel had based its conclusions. With regard to the valuation of the imported goods for customs purposes, Colombia regretted that the Panel's analysis had been based exclusively on the terminology used by the Colombian customs regime which, in the Panel's view, was clear, when in fact, throughout the proceedings it had been evident that there were a number of ambiguities in the regime and that it needed to be interpreted in order to resolve certain obvious inconsistencies. On the one hand, when the value declared by the importer was below the indicative price, a cash guarantee was required, a guarantee which consisted in the difference between the declared value and the indicative price for the purposes of duty payment. However, the official responsible for the importation, upon the release of the goods, must automatically pass the corresponding file to the office in charge of post-importation control where the customs value of the goods in question was determined. This aspect of the Colombian customs regime, the sending of the file to another office for determination of the customs value, had completely been disregarded by the Panel, which meant that the Panel had interpreted the terms of the customs regime out of context. In other words, although the wording in one part of Colombia's legislation referred to *derechos y pagos* (duties and payments), the phrase "*revisión de valor*" in another part suggested that a different functional meaning should be given to the term "duties and payments". Unfortunately, this literal analysis by the Panel of Colombia's legislation had prevented it from determining whether the additional disbursement required of the importer was effectively a cash guarantee, or whether in fact it amounted to payment of the customs taxes. It was also disconcerting that the Panel had not considered the functioning of the indicative price system in the general context of the practice and application of customs control mechanisms established by the Colombian and Andean Community regimes, in particular the other types of reference prices. At the same time, the Panel had ignored the argument that an "as such" violation could not be established unless it was determined that the legislation in question resulted in an action that was openly inconsistent with WTO rules. The evidence showed that Colombia's legislation established a process of automatic valuation after the release of the goods. In addition, Colombia had provided ample evidence in this connection showing that the Colombian authorities applied the Customs Valuation Agreement to that stage. Nevertheless, the Panel had ignored the existence of this "*estudio de valor*" (study of value) during the post-importation control stage which resulted, where applicable, in the importer being refunded. Colombia did not consider that receiving a "payment *sensu strictu*" at a particular moment in time implied that it had collected a levy and that customs valuation had, therefore, already taken place. The concept of "payment *sensu strictu*" did not exist in the Agreement on Customs Valuation. The question of whether these payments were called "duties" or "deposits" was irrelevant. The Panel had

erred in failing to consider that when the customs administration questions a price, this was the direct consequence of the alteration of the taxable base. Thus, the Panel had disregarded the fact that customs valuation was a process involving payments which led to the release of the goods. To the extent that the function of these payments was related solely to the release of the goods, customs valuation had not yet taken place, since the value was determined through a separate process based on the principles of the Agreement on Customs Valuation. Finally, as regards the indicative prices system, Colombia did not agree that the interpretation of the Customs Valuation Agreement should rely on the definition of concepts as important as valuation and value found in English language dictionaries rather than in the general context of the technique of valuation as developed by the World Customs Organization.

65. With regard to the defence under Article XX of the GATT 1994, he said that in the Panel's opinion, the evidence submitted showed that Colombia had problems with smuggling and under-invoicing, particularly in relation to goods from the Colón Free Zone (CFZ), and with the black market Colombian peso exchange (paragraph 7.564). Panama had not called into question the incidence of money laundering or contraband in relation to goods arriving to Colombia. However, it called into question Colombia's attribution of the severity of the problem in light of the fact that the anti-fraud and anti-money laundering steps had not been imposed at all ports of entry (paragraph 7.561). Despite reservations by Panama concerning the general nature of evidence to demonstrate problems with money laundering and contraband goods in the region and the link between these phenomena and drug trafficking, it nevertheless had acknowledged the problem through its own participation in a Customs Cooperation Protocol with Colombia in an attempt to address these problems. Moreover, evidence submitted by Colombia in ongoing and completed investigations shed light on its broad efforts to address these problems (paragraph 7.565). On the basis of the evidence submitted and the circumstances surrounding the implementation of the ports-of-entry measure, and in light of the fact that the measure had been imposed with a view to addressing the need to strengthen and improve customs controls related to the importation of textiles, apparel and footwear arriving from Panama, the Panel considered that Colombia had demonstrated to its satisfaction that the ports-of-entry measure had been designed to secure compliance with Colombia's customs laws and regulations. In spite of this, the Panel had determined that it was not in a position to conclude that the ports-of-entry restriction measure had contributed in the past or currently contributed to combating customs fraud and contraband in Colombia. The Panel qualified Colombia's qualitative analysis as purely speculative, rejecting the argument that the limitation in the number of ports of entry had made it possible to exercise more effective control. The Panel stated that it had weighed and balanced various factors to establish whether the ports-of-entry measure was necessary to secure compliance with Colombia's customs laws and regulations. In Colombia's view, the Panel's analysis neither weighed nor balanced the different factors involved in proving necessity. For example, it was particularly disconcerting that the Panel should have based its conclusions on the evaluation of certain textile trade indicators without giving equal weight to the evaluation of those same indicators in respect of footwear and apparel, which were also affected by the measures. For the necessity test, the Panel had required a correlation reflecting almost mathematical certainty and demonstrable precision, thereby imposing on Colombia a standard that was simply too high to be realistic. Regarding the weighing and balancing process, the Panel had found that Colombia had managed to demonstrate that it faced a serious problem of smuggling. This public acknowledgement supported by the complete review of the facts in the course of these proceedings was of great importance to Colombia. Consequently, it could be hoped that the Panel would take this finding into consideration in weighing and balancing the different factors. However, the Report showed that in this process, the Panel had not taken account of the seriousness of the problem. This was evidenced by the Panel's assertion that it had been unable to conclude whether the imposition of the measure had had a suppressing effect on trade volumes, in terms of value or volume. Nor had Panama presented a reasonable alternative measure.

66. In conclusion, Colombia said that it wished to point out that the problem it had been facing with goods arriving from Panama highlighted the need to implement one of the measures proposed in the context of the Doha Ministerial Decision on Implementation-Related Issues and Concerns, in particular as regards the implementation of Article VII of the GATT 1994. That decision underlined the importance of strengthening effective cooperation between the customs administrations of Members in preventing, detecting and combating customs fraud and illegal activities that affect trade. The Ministerial Decision of 1994 stated that when the customs administration of an importing Member had reasonable grounds to doubt the truth or accuracy of the declared value, it might seek assistance from the customs administration of an exporting Member on the value of the good concerned. In such cases, the exporting Member shall offer cooperation and assistance, consistent with its domestic laws and procedures, including furnishing information on the export value of the goods concerned. On the basis of this consideration, Colombia had entered into contact with Panama to agree on joint action that would enable them to deal with the problems that they faced. Colombia would seek agreement with Panama on the reasonable period of time in order to comply with the DSB's recommendations and rulings, and would inform the DSB to this effect accordingly.

67. The representative of Panama said that his country wished to thank the members of the Panel, as well as the WTO Secretariat. Panama was satisfied with their performance and was impressed by the professionalism with which the case had been managed. He recalled that on 22 October 2007, at Panama's request, the DSB had established a panel to settle this dispute. The Report of the Panel, issued on 15 April 2009, had concluded that the customs measures adopted by Colombia with respect to indicative prices and restrictions on ports of entry were inconsistent with various provisions of the WTO Agreement on Customs Valuation and the GATT 1994. The customs measures introduced by Colombia, that were at issue in this dispute, affected certain textiles, apparel and footwear re-exported or exported from the Colón Free Zone (CFZ) and Panama to Colombia. Specifically, these measures consisted, on the one hand, of the use of indicative prices to determine the customs value of certain goods, and on the other hand, restrictions on ports of entry for textiles, apparel and clothing coming from Panama, including the requirement that they only entered at Bogotá or Barranquilla, the restriction of transit through the territory of Colombia to certain specific transit modes, and the requirement to present an advance import declaration.

68. With regard to indicative prices, the Panel had accepted Panama's claims that the legal provisions introduced by Colombia establishing indicative prices were inconsistent "as such" with the obligation established in the Agreement on Customs Valuation to apply, in a sequential manner, the methods of valuation provided in Articles 1, 2, 3, 5 and 6 of the Agreement, since the structure and design of the system of indicative prices prevented that sequential order from being applied, and also because the Colombian customs authorities were required to systematically apply a methodology that did not reflect any of the methods provided for in those provisions, unless the transactional value was higher than the indicative price. The Panel had also accepted Panama's allegations that the measures were inconsistent "as such" with Article 7.2(b) and (f) of the Agreement on Customs Valuation, since the regulations in question imposed "a system which provided for the acceptance for customs purposes of the higher of two alternative values" and a system of "minimum prices" which had to be used for the goods in question to be imported into Colombia. Regarding the restrictions on ports of entry, the Panel had accepted Panama's claims that the ports of entry measure was inconsistent with Article XI:1 of the GATT 1994 because it had a limiting effect on imports arriving from Panama and hence constituted a restriction under Article XI:1 of the GATT 1994. It had also accepted that the ports of entry measure was inconsistent with Article V:2, first and second sentences, because by requiring that goods undergo transhipment in order to proceed in international transit, Colombia had failed to extend freedom of transit via the most convenient routes to goods arriving from Panama, and because by subjecting only goods arriving from Panama or the CFZ to the requirements under the exemption from the regulations in question while goods originating in or departing from a member other than Panama were permitted to proceed in international transit. Colombia also made

distinctions based on place of origin or departure of textiles, apparel and footwear arriving from Panama or the CFZ.

69. The Panel had accepted Panama's claims that the ports of entry measure was inconsistent with the first sentence of Article V:6 by not extending "treatment no less favourable" to goods arriving from Panama and the CFZ in comparison to the same goods had they been transported from their place of origin to Colombia without circulating through Panama and the CFZ. It had also found that the requirement to submit an advance import declaration was inconsistent with Article I:1 of the GATT 1994 because it involved conferring advantages to like products from all other WTO Members and third countries that were not extended immediately and unconditionally to textile, apparel and footwear imports from Panama. The Panel had further rejected Colombia's defence that the ports of entry measure was justified under Article XX(d) of the GATT 1994, concluding that the measure was not provisionally justified under that provision since Colombia had failed to demonstrate the need for the measure. The measures that had been found contrary to WTO rules, negatively affected the shipping of goods from Panama to Colombia and caused serious economic prejudice to Panama's exporters and re-exporters, chiefly from the CFZ. Because this was the case, and because the conclusions of the Panel were perfectly clear, Panama hoped that Colombia would rapidly bring its measures into conformity with the relevant WTO Agreements. This would ensure the re-establishment of a normal trade flow between the two countries to the benefit of all of the economic operators.

70. The representative of the United States said that his country thanked the Panel and the Secretariat for their work in these proceedings. The United States had been a third party in this dispute and, in view of the limited time available, would like to take the opportunity to comment on just two points in the Panel Report. First, the Panel had found that Colombia's measures that had established a regime of indicative prices for the purpose of customs valuation were inconsistent with Colombia's obligation to conduct customs valuation based on the sequential application of the methods established by Articles 1, 2, 3, 5 and 6 of the Customs Valuation Agreement. Moreover, the Panel had found that Colombia's use of indicative prices had breached its obligations under Article 7.2(b) and (f) of the Customs Valuation Agreement, respectively, because it involved taking the higher of two alternative values for customs purposes and also functioned as a "minimum customs value[]". The United States had been troubled for some time by reports of the use of indicative prices (or database prices) in connection with customs valuation. The use of these prices was a pressing issue in the customs valuation area, as such pricing was often trade-distorting and non-transparent. Further, serious concerns had been voiced about the reliability and veracity of these prices. Accordingly, the United States was pleased that the Panel had found the use of indicative prices or database prices was no substitute for following the customs valuation process prescribed by the Customs Valuation Agreement. The Panel's findings could provide helpful guidance to those facing some of these same issues. Second, the Panel's approach to the obligations in Articles V:1, V:2 and V:6 of the GATT 1994, and the Panel's application of these obligations to the measures at issue in this dispute, raised some interpretive and analytical questions. The United States believed that Members would need to reflect on the analytical approach taken by this Panel's Report.

71. The representative of Ecuador said that his country had participated as a third party in this dispute, and wished to join others in thanking the members of the Panel and the WTO Secretariat for their work and their commitment in this case. He said that Ecuador had taken the opportunity to repeat, in the course of this dispute, its concern regarding the negative effects of contraband, smuggling, under-invoicing and circumvention by exporting through a third country (triangulation) on the economies of all WTO Members, especially developing countries, effects which were aggravated if the goods came from free-zones or special customs regimes in which export subsidies were applied. Unfortunately, many developing countries did not have the resources nor the capacity to put into place an adequate mechanism to tackle these issues in all their ports of entry.

72. The representative of the European Communities said that his delegation had participated as third party in this dispute because of its systemic interest in the correct interpretation of various WTO legal provisions, which had never been interpreted by GATT/WTO panels or the Appellate Body. The EC was pleased with the Panel's interpretation of the CVA which had imposed an obligation on the national authorities to determine the customs value of imported goods based on the transaction value and, if it was not possible, to sequentially apply the customs valuation methods contemplated by the CVA. The EC also found the Panel's legal analysis of Article V of the GATT 1994 clear and straightforward.

73. The DSB took note of the statements and adopted the Panel Report contained in WT/DS366/R and Corr.1.

4. United States – Final anti-dumping measures on stainless steel from Mexico

(a) Statement by the United States

74. The representative of the United States, speaking under "Other Business", said that in the dispute "United States – Final Anti-Dumping Measures on Stainless Steel from Mexico" (DS344) an arbitrator had awarded the United States a reasonable period of time of 11 months and 10 days. That reasonable period of time had expired on 30 April 2009. On 18 May 2009, to facilitate resolution in the event of any further proceedings in this dispute, the United States and Mexico had concluded a sequencing agreement. That agreement had been notified to the DSB, and it would soon be circulated to all Members. The United States had also been conferring with Mexico about the steps that the United States had taken to comply with the DSB's recommendations and rulings. These steps included the following. First, on 23 April 2009, the US Department of Commerce had issued a new final determination in the stainless steel anti-dumping duty investigation that had implemented the DSB's recommendations and rulings with respect to the calculation of dumping margins in that investigation. That determination had been published in the Federal Register on 29 April 2009 (74 Fed. Reg. 19527). In addition, with respect to model zeroing in investigations "as such", the panel in this dispute had concluded that the measure at issue had expired on 22 February 2007.[6] Since then, the United States was no longer performing average-to-average comparisons in anti-dumping investigations without providing offsets. With respect to the administrative reviews that had been challenged "as applied", any prospective effect of those reviews had been eliminated and all entries of merchandise under the five reviews had been liquidated for customs purposes. As noted previously, the United States had been conferring with Mexico and would continue to do so.

75. The representative of Mexico said that his country thanked the United States for its statement and its willingness to continue discussions with Mexico on this matter since there were still some issues to be settled.

5. Appointment of Appellate Body members

(a) Statement by the Chairman

76. The Chairman, speaking under "Other Business", said that as he had indicated at the outset of the present meeting, he wished to make a statement regarding the ongoing process for selecting Appellate Body members. He said that first, the Selection Committee had completed its interviews with all six candidates nominated for two positions on the Appellate Body. These interviews had been held on 20, 21 and 22 of April 2009. Second, the Selection Committee had also held consultations with interested delegations to hear their views on the candidates. Those consultations

[6] Panel Report, "US – Final Anti-Dumping Measures on Stainless Steel from Mexico", WT/DS344/R, adopted as modified by the Appellate Body on 20 May 2008, para. 7.45.

had been held on 12 and 13 of May 2009 during which time 46 delegations had met with the Selection Committee. In addition, written comments from those delegations who had chosen not to meet with the Committee had so far been received from eight delegations. The deadline for written comments was 20 May 2009. Therefore, those Members who still wished to submit written comments could do so by close of business. Third, pursuant to the procedures agreed by the DSB on 22 December 2008, the Selection Committee was supposed to make its recommendation to the DSB by no later than the end of May 2009 so that a decision on this matter could be taken by the DSB at its regular meeting on 19 June 2009. However, he said that he had noticed that the airgram for the 19 June DSB meeting did not close until 8 June. Thus, in theory, the Committee could have a few additional days available to it as long as its recommendation was communicated to Members by no later than 8 June. Should there be any delay as to the Committee's recommendation beyond the end of May, something that he certainly did not anticipate, he would communicate this to all Members by fax. Finally, he said that in accordance with the DSB decision of 22 December 2008, he had been consulting and would continue to consult on the possible reappointment of Mr. David Unterhalter.

77. The DSB took note of the statement.