WORLD TRADE ORGANIZATION

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Dispute Settlement Body
19 February 2003

MINUTES OF MEETING

Held in the Centre William Rappard
on 19 February 2003

Chairman: Mr. Carlos Pérez del Castillo (Uruguay)

Subjects discussed: Page

1. Surveillance of implementation of recommendations adopted by the DSB

(a) United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/18/Add.12)

(b) United States – Anti-Dumping Act of 1916: Status report by the United States (WT/DS136/14/Add.12 - WT/DS162/17/Add.12)

(c) United States – Section 211 Omnibus Appropriations Act of 1998: Status report by the United States (WT/DS176/11/Add.5)

(d) United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.5)

1. The Chairman recalled that Article 21.6 of the DSU required that "unless the DSB decides otherwise, the issue of implementation of the recommendations or rulings shall be placed on the agenda of the DSB meeting after six months following the date of establishment of the reasonable period of time pursuant to paragraph 3 and shall remain on the DSB's agenda until the issue is resolved". He proposed that the four sub-items to which he had just referred be considered separately.

(a) United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/18/Add.12)

2. The Chairman drew attention to document WT/DS160/18/Add.12 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.

3. The representative of the United States said that his country had provided an additional status report in this dispute on 6 February 2003, in accordance with Article 21.6 of the DSU. As noted in that report, the United States and the EC had been seeking a positive and mutually acceptable resolution of the dispute. The US administration would continue to engage the US Congress on this issue with a view to concluding a mutually acceptable resolution consistent with WTO rules.

4. The representative of the European Communities said that, once more, his delegation had to express its disappointment with the lack of action by the United States thus far. The EC would expect a greater commitment of the United States to the DSB's rulings, out of respect for the multilateral mechanism for the resolution of disputes. The EC urged the United States to take rapid and concrete action to settle this dispute and to comply with the DSB's recommendations.

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

(b) United States – Anti-Dumping Act of 1916: Status report by the United States (WT/DS136/14/Add.12 – WT/DS162/17/Add.12)

6. The Chairman drew attention to document WT/DS136/14/Add.12 – WT/DS162/17/Add.12 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 Anti-Dumping Act of 1916.

7. The representative of the United States said that his country had provided an additional status report in this dispute on 6 February 2003, in accordance with Article 21.6 of the DSU. The US administration would continue to work with the US Congress to achieve further progress in resolving this dispute with the EC and Japan.

8. The representative of the European Communities said that his delegation could only repeat its statement made at the previous regular DSB meeting. The US administration should make clear to the US Congress that the continuous lack of implementation of the ruling was seriously affecting the credibility of the United States' commitment to the WTO dispute settlement system. The EC also recalled that a proper implementation should not only repeal the 1916 Anti-Dumping Act, but should also terminate the pending court cases. A repeal with effects limited to future cases only would serve to prolong the dispute.

9. The representative of Japan said that his delegation deeply regretted that the United States still had to implement the DSB's recommendations and rulings even though more than two years had passed since the adoption of the Reports of the Appellate Body and the Panel. As Japan had repeatedly stated in the previous DSB meetings, such a lack of implementation damaged the confidence in the WTO dispute settlement system. Japan strongly urged the United States to implement the DSB's recommendations and rulings at the earliest possible time. Japan expected the US administration to make its utmost efforts to have the repealing bills of the 1916 Act submitted to and passed in the first session of the 108th Congress currently under session. Japan noted that there should be no difficulty in this task, as the bills had been indeed submitted to the 107th Congress. He stressed that, due to the reopened proceedings in the US domestic courts, the respondent Japanese companies were suffering real financial consequences, including litigation costs. Therefore, the repealing bills had to terminate any proceedings under the 1916 Act. Japan reminded the United States of Japan's right to suspend concessions or other obligations.

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

(c) United States – Section 211 Omnibus Appropriations Act of 1998: Status report by the United States (WT/DS176/11/Add.5)

11. The Chairman drew attention to document WT/DS176/11/Add.5 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.

12. The representative of the United States said that his country had provided a status report in this dispute on 6 February 2003, in accordance with Article 21.6 of the DSU. He said that the US administration would work with the new Congress with a view to resolving this dispute.

13. The representative of the European Communities said that first he wished to stress that two months had already elapsed since the EC had agreed to give another six months to the United States to comply with the DSB's rulings and recommendations. The EC hoped that the US administration and the US Congress were actively taking advantage of this extra time and would ensure that full implementation was reached by the new deadline. He also wished to recall the EC's position on abandoned trademarks. The Panel had relied on the affirmations made by the US representatives that Section 211 would not apply to a new trademark after a former trademark, to which Section 211 might have applied, had been abandoned. This interpretation was not accepted by US Federal Courts, which applied Section 211 to trademarks succeeding to an abandoned trademark. Therefore, the EC could not accept the US administration's position that there was no need to clarify that Section 211 did not apply in cases where the trademark had been abandoned by the original owner.

14. The representative of Cuba said that her delegation wished to stress, once again, the lack of progress by the United States in implementing the DSB's recommendations and rulings with regard to Section 211 of the Omnibus Appropriations Act of 1998. Her delegation wished, once again, to reiterate that the United States had an obligation to comply with the DSB's recommendations and rulings within the new agreed deadline. In Cuba's view, such compliance had to entail repeal of the

above-mentioned Act, which would be the best outcome from both the legal and the ethical standpoint.

15. The representative of the United States said that his delegation had noted the comments made by the EC with respect to its position on abandoned trademarks and its view on the US position in this regard. His delegation would be happy to refer the EC's claims concerning the application of Section 211 back to capital for review.

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

(d) United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.5)

17. The Chairman drew attention to document WT/DS184/15/Add.5 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.

18. The representative of the United States said that his country had provided a status report in this dispute on 6 February 2003, in accordance with Article 21.6 of the DSU. With respect to the recommendations and rulings of the DSB that had not been addressed in the 22 November 2002 anti-dumping duty determination of the US Department of Commerce, the US administration would continue to consult and to work with the US Congress with a view to resolving this matter with Japan in a mutually satisfactory manner.

19. The representative of Japan said that although his delegation would prefer not to repeat the same statements, it had to express regret and concern, once again, about the delay in implementation by the United States. He said that the United States had not complied with the DSB's recommendations and rulings within the original reasonable period of time (RPT) and had requested the extension of the RPT with its commitment for implementation. Following its request, the United States had been given additional time until the end of the first session of the 108th US Congress or 31 December 2003, whichever would be earlier. This commitment would have to be fulfilled. As pointed out under the previous sub-item, such a lack of implementation by the United States undermined the confidence in the WTO dispute settlement system. The United States had to implement the DSB's recommendations and ruling as soon as possible, including having the necessary legislation introduced and passed in the first session of the 108th Congress. Japan expected the United States to continue to consult closely with Japan on the status and content of implementation.

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

2. United States – Subsidies on upland cotton

(a) Request for the establishment of a panel by Brazil (WT/DS267/7)

21. The Chairman drew attention to the communication from Brazil contained in document WT/DS267/7.

22. The representative of Brazil said that on 27 September 2002, pursuant to Article 4 of the DSU and Article XXII of the GATT 1994, Brazil had requested consultations with the United States (WT/DS267/1, dated 3 October 2002) concerning prohibited and actionable subsidies provided to US producers, users and exporters of upland cotton. Brazil raised concerns that these subsidies violated the Agreement on Agriculture, the SCM Agreement and the GATT 1994. Furthermore, consistent with Articles 4.2 and 7.2 of the SCM Agreement, Brazil had set forth statements of available evidence

regarding the existence of and adverse effects generated by such subsidies. Three rounds of consultations concerning these subsidies had been held between 3 December 2002 and 17 January 2003. Despite a cordial exchange of views and the exchange of factual information between Brazil and the United States, these consultations had not resulted in a mutually acceptable solution to the problem.

23. The US 2002 Farm Bill and other US legislation guaranteed and mandated the payment of a wide variety of export and domestic subsidies for the production, use and export of US upland cotton. These subsidy payments for the marketing year ending on 31 July 2002 alone totaled almost US$4 billion. The value of the US upland cotton production for the same period was US$3 billion. This represented a subsidization rate of over 130 per cent. US upland cotton producers were among the highest-cost producers of upland cotton in the world with average total costs far exceeding US and world market prices over the past five years. Since 1998, those costs had increased but at the same time world cotton prices had fallen significantly. Economic theory suggested that with high costs far in excess of market prices, failing prices, and a high-valued currency relative to other cotton exporters, US producers would have drastically cut back the acreage dedicated to the production of upland cotton. But this had not happened. Instead, since 1998, US production of upland cotton had increased from 14 million bales to a record 20.3 million bales in marketing year 2001.

24. This subsidy-stimulated excess production would be bad enough for world prices and the export marketing opportunities of other producers even if the US had not exported much of its upland cotton. But unfortunately for Brazilian and other lower-cost and efficient producers such as those in Africa, most of this high-cost subsidy-generated cotton was not consumed in the United States. Instead, the percentage of US production exported had accelerated as had the US share of world exports which had increased from 25 per cent of world share in 1998 to 38 per cent of total world exports by the mid-2002. This made the United States by far the largest exporter of upland in the world. Brazil's interests had suffered serious prejudice from lower world prices and excess US export market share from at least 1999 to the present. Significantly depressed and suppressed Brazilian and world prices due to the effects of US upland cotton subsidies had impacted negatively on Brazilian farm income, trade balance, cotton-related services, federal and state revenues, and employment, among other factors. Since 1999, Brazil estimated that these effects had cost Brazil and its upland cotton producers hundreds of millions of dollars in lost revenue. The mandated US subsidies would continue to result in fewer acres being planted to upland cotton in Brazil and fewer exports of Brazilian upland cotton. Furthermore, these revenue and market share losses would continue in the future. The 2002 Farm Bill and other US laws mandated the payment of these numerous subsidies until 2007. These guaranteed levels of subsidies meant that the United States would continue to produce massive volumes of upland cotton regardless of US costs of production and regardless of world prices for upland cotton. The United States' projections released recently demonstrated that during the remaining life of the 2002 US Farm Bill, US production would remain at very high levels and the expected world price level would remain far below the US cost of production.

25. The United States also provided prohibited subsidies in the form of the so-called "Step-2 Programme". This programme paid cash to exporters of US cotton and US domestic mill users of US cotton to cover the difference between the high US price and the lower world price. The current cash payments represented more than 110 per cent of the market value of US upland cotton. In addition, the United States provided export credit guarantee subsidies that had made possible long-term financing for the export sale of US cotton. These subsidies harmed the exports of Brazilian and other developing and least developed countries competing for sales into the same markets without any opportunity to offer guaranteed financing. Accordingly, Brazil drew attention to document WT/DS267/7 of 7 February 2003, and requested that a panel be established at the present meeting, with standard terms of reference as set out in Article 7 of the DSU. Finally, he noted that, in its request for the establishment of a panel, Brazil had invoked the Annex V procedures under the SCM Agreement. Brazil looked forward to cooperating with the United States in the collection of factual information concerning Brazil's claims in the weeks ahead.

26. The representative of the United States said that his country was disappointed that Brazil had chosen to move forward with a request for panel establishment at this time. The United States had approached these consultations in good faith and had made enormous efforts to provide information in response to Brazil's approximately 125 consultation questions. Nonetheless, Brazil had chosen to terminate those ongoing consultations, despite the fact that the United States and Brazil were planning to meet again. The United States regretted Brazil's decision and suggested that further consultations could have been fruitful. At the present meeting, he wished to state the US position clearly: US cotton support programmes were within the United States' allowable WTO limits and consistent with the United States' WTO obligations. Therefore, should this dispute move forward, the United States would vigorously defend its cotton support programmes. The United States noted that it shared with Brazil many of the same goals for the Doha Development Round agriculture talks, including the objectives of negotiating significantly lower domestic subsidies and agricultural tariffs and eliminating agricultural export subsidies. However, it appeared that Brazil was attempting to litigate for a reduction in US cotton support that was not embodied in US commitments under the Uruguay Round Agreements, and in particular the Agreement on Agriculture. The United States said that Brazil's and the United States' energies would be better spent ensuring that the WTO talks were successful rather than litigating a dispute that would not provide Brazil with the result it desired.

27. As a procedural matter, the United States also noted that, in its panel request, Brazil had referred to a measure which was not the subject of consultations. Brazil's consultation request concerning "[e]xport subsidies, exporter assistance, export credit guarantees, [and] export and market access enhancement" was limited to upland cotton. Brazil was now attempting to expand the challenged measures to include measures for other eligible agricultural commodities. There was no basis for Brazil's panel request on these newly identified measures relating to "other eligible agricultural commodities" on which Brazil had not requested consultations. Because the United States believed that its cotton support programmes were consistent with its WTO obligations and in order to afford Brazil an opportunity to renew consultations on this matter, the United States was not in a position to agree to the establishment of a panel at this time.

28. The representative of Argentina said that his country had requested, and had participated in, the consultations on this matter. Argentina wished to emphasize its serious concern regarding the level of the US domestic support for cotton production, cotton export subsidies and export credit guarantees for cotton and other products. Argentina was concerned about the detrimental effects of these policies on the world market, in particular for developing countries. Argentina was also concerned about the transparency of these measures, given that the United States, despite having recently notified its domestic support for 1999, had yet to provide domestic support notifications for 2000 and 2001. Argentina was, therefore, in full agreement with the views expressed by Brazil and was considering participating as a third party in this dispute.

29. The representative of India said that his country had both trade and systemic interests in this dispute. India had participated in the consultations requested by Brazil and once a panel was established, it would reserve its third-party rights to participate in the Panel's proceedings.

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

3. Proposed nominations for the indicative list of governmental and non-governmental panelists (WT/DSB/W/220)

31. The Chairman drew attention to document WT/DSB/W/220 which contained additional names proposed for inclusion on the indicative list in accordance with Article 8.4 of the DSU. He proposed that the DSB approve the names contained in document WT/DSB/W/220.

32. The DSB so agreed.

4. United States – Anti-dumping and countervailing measures on steel plate from India

(a) Statement by the United States

33. The representative of the United States, speaking under "Other Business", said that his country was pleased to inform the DSB that it had implemented the DSB's recommendations and rulings in "United States - Anti-Dumping and Countervailing Measures on Steel Plate from India" (DS206). On 7 February 2003, the US administering authorities had issued a new determination in the investigation at issue. The authorities had examined and had considered all of the data on the record and provided a thorough explanation of their treatment of this data, thereby fully complying with the United States' WTO obligations.

34. The representative of India recalled that the Panel Report in the dispute on "United States - Anti-Dumping and Countervailing Duty Measures on Steel Plate from India" had been adopted by the DSB on 29 July 2002. On 1 October 2002, pursuant to Article 21.3(b) of the DSU India and the United States had agreed that a reasonable period of time for implementation of the DSB's recommendations and rulings in this dispute should be until 29 December 2002. However, by mutual agreement, the reasonable period of time had been extended until 31 January 2003. Subsequently on 7 February 2003, the United States had issued a notice of determination under Section 129 of the Uruguay Round Agreement Act purporting to implement the DSB's rulings and recommendations in this dispute. The methodology of re-determination had not yet been made available. In these circumstances it was not clear whether it could be considered that the United States had implemented the DSB's rulings and recommendations within the extended reasonable period of time. It was a matter of disappointment that the United States could not implement the DSB's rulings and recommendations within the extended reasonable period of time. He recalled that in the underlying anti-dumping investigation the United States had rejected information submitted by the Indian exporters and had determined a dumping margin in excess of 72 per cent based on total facts available. Subsequently, the Panel had ruled in favour of India on the key issue in this dispute, i.e. that the US had acted inconsistently with its obligations under Article 6.8 and paragraph 3 of Annex 11 of the Anti-Dumping Agreement by refusing to take into account the US sales price information in the anti-dumping investigation and by relying entirely on facts available in determining dumping margin on the steel plate producer, viz., the Steel Authority of India Limited (SAIL).

35. India was deeply disappointed by the recent notice of the US Department of Commerce purporting to implement the rulings and recommendations of the DSB in this dispute. The United States had, once again, failed to use the US sales data of the Indian exporter on the plea that such information could not be used without undue difficulties and had arrived at a dumping margin in excess of 42 per cent. This re-determination did not take into account the observation of the Panel that paragraph 5 of Annex II of the Anti-Dumping Agreement could be understood to highlight that the information that satisfied the requirements of paragraph 3, but which was not perfect, should nevertheless not be disregarded. India wished to draw attention to one particular aspect of the re-determination. In the re-determination it had been stated that "in cases such as this, given the nature of the information available, it might be appropriate to rely on information that ensured that the respondent had not benefited from its failure to provide information under its control. This was particularly true in this case, where the limited amount of potentially usable data submitted by SAIL raised basic questions owing to the respondent's control of the information relating to a dumping proceeding". India was unable to reconcile the above observation in the redetermination with the obligation on the investigating authority to conduct an objective examination of the facts before it. As the methodology of re-determination had not yet been made available by the United States, India wished to reserve its rights under the DSU for taking further her action, as appropriate, in this dispute. His delegation also wished to take this opportunity to inform Members that India and the United States had agreed upon the procedures under Articles 21 and 22 of the DSU applicable in the follow-up to this dispute. The notification in this regard had been conveyed to the DSB Chairman for circulation to the Members.

36. The DSB took note of the statements.

5. Questions raised by the United States concerning the meeting of the DSB scheduled for 26 February 2003

37. The representative of the United States, speaking under "Other Business", said that his delegation was surprised to see the airgram, dated 14 February 2003, announcing a DSB meeting for 26 February 2003 concerning the statements of intentions on implementation in the dispute regarding the US Continued Dumping and Subsidy Offset Act of 2000. The United States wondered if those Members who had requested the meeting could explain the purpose for that meeting. The United States understood that no documentation had been circulated together with this meeting request. It, therefore, questioned whether its understanding was correct that there was no item for decision by the DSB at that meeting. The United States wondered whether it was common to have an unscheduled meeting of the DSB for an item requiring no action by the DSB.

38. The representative of the European Communities said that Article 21.3 of the DSU clearly put on the Member concerned an obligation to inform the DSB of its intentions in respect of implementation of the DSB's recommendations within 30 days after the adoption of the Panel and the Appellate Body Reports. In the dispute concerning the US Continued Dumping and Subsidy Offset Act, the DSB had adopted the Reports on 27 January 2003. The United States was, therefore, under the obligation to inform the DSB of its intentions in regard of implementation by 26 February 2003, which implied a holding of a special meeting for this purpose. He said that last week it had become apparent that the United States would not call for a special meeting. The United States was apparently of the opinion that the statement it had made at the 27 January DSB meeting upon the adoption of the Reports would meet its obligation under Article 21.3 of the DSU. The EC could not subscribe to the US position. The statement had been made by the United States prior to the adoption of the Reports by the DSB and such an interpretation would render Article 21.3 of the DSU a nullity. Furthermore, the United States also had to inform the DSB whether it could comply immediately, or if this was not practicable it should propose a reasonable period of time for implementation. The EC, therefore, had joined the 10 other complaining parties and had requested a special DSB meeting to be held on 26 February 2003, pursuant to footnote 11 to Article 21.3 of the DSU.

39. The representative of Canada said that his country fully supported the statement made by the EC. As stated by the EC, the United States was apparently of the view that the statement that it had made at the time of the adoption of the Reports was sufficient to discharge its obligation under Article 21.3 of the DSU. Like the EC, Canada did not share the US interpretation. If the drafters of the DSU intended that such a statement be made at the time of the adoption, they clearly could have provided for that, but they did not do so. The wording of Article 21.3 was quite clear: "At a DSB meeting held within 30 days after the date of adoption of the panel or Appellate Body report, the Member concerned shall inform the DSB of its intentions" and footnote 11 to that Article stated that "If a DSB meeting is not scheduled during this period, such a meeting of the DSB shall be held for this purpose". Canada, therefore, agreed with the EC that to assume that the statement made *en passant* at the time of the adoption of the Reports discharged Members of obligations under Article 21.3 of the DSU, would effectively render that Article a nullity. Canada did not view as a minor issue whether a statement was made at one meeting or another, but believed that a broader principle was involved, namely, whether the DSB had a proper surveillance function or not. It was discouraging and disappointing that for the first time since the WTO Agreement had entered into force, a Member had sought to avoid the obligation under Article 21.3 of the DSU. In every single dispute since 1 January 1995 an implementing Member had met its obligations under Article 21.3 of the DSU by placing the matter on the agenda within 30 days after the adoption of the Reports. Many of such statements had been made. It was unclear why the United States had referred to the fact that no decision was to be taken by the DSB in this regard. When such statements of implementation were made, no DSB decision was required. It was simply a Member discharging its obligation under

Article 21.3 of the DSU and the DSB was conducting its surveillance function. In Canada's view, what the United States had done in this case did little to enhance the surveillance function of the DSB.

40. The representative of Korea said that as one of those Members who had requested a special DSB meeting on 26 February, his country fully agreed with the statements made by the EC and Canada. The United States had stated that it would implement the DSB's recommendations and rulings should the DSB adopt the Reports at the 27 January meeting. He noted that the US statement had been made at that meeting before the adoption of the Reports. In terms of timing, the US statement did not qualify as a statement of intentions in respect of the DSB's recommendations and rulings under the meaning of Article 21.3 of the DSU. Article 21.3 of the DSU simply stated that "after the date of adoption of the panel or Appellate Body reports, the member concerned shall inform the DSB of its intentions in respect of implementation". On the basis of this textual interpretation of Article 21.3 of the DSU, Korea was of the view that the United States would still have to inform the DSB, at the latest on 26 February 2003, of its intentions together with its position regarding a reasonable period of time. For this purpose, the co-complainants had provided a forum on that date for the United States to do so.

41. The representative of Japan said that, like previous speakers, his country did not agree with the interpretation of Article 21.3 of the DSU by the United States. That interpretation did not seem to be consistent with the US past practice.

42. The representative of India said that his country was also one of those Members who had requested a special DSB meeting on 26 February. India fully shared the views of the EC and Canada regarding the interpretation of Article 21.3 of the DSU. In addition, he wished to state that the Member concerned had to express its intentions in respect of the implementation of the DSB's rulings within 30 days after the adoption of the Reports. As read out by Canada, in accordance with footnote 11 to Article 21.3 of the DSU, "the DSB meeting shall be held for this purpose". There had been no precedent in any dispute thus far that the Member concerned did not express such an intention. Whenever, there was some inconvenience to hold a special meeting, by mutual agreement, the Member concerned would circulate in writing, within 30 days after the adoption of reports, its intention to implement the DSB's rulings. This had been the practice since the establishment of the WTO and, therefore, India hoped that the United States would abide by this practice as well as by the letter and spirit of Article 21.3 of the DSU.

43. The representative of Brazil said that, notwithstanding the US interpretation of its statement made when the Reports had been adopted, the clear mandatory nature of its obligation under Article 21.3 of the DSU that "the Member concerned shall inform the DSB of its intentions in respect of implementation" did not allow for the circumvention of this obligation. The text of Article 21.3 of the DSU was so clear that no other interpretation was possible.

44. The representative of the United States expressed his delegation's gratitude for the comments made. The United States considered that it had fulfilled its obligations under Article 21.3 of the DSU through its statement of intentions at the 27 January 2003 DSB meeting. The United States found it puzzling that the complaining parties would object to a Member acting immediately to fulfill its obligations. Even if one were to accept the complaining parties' contention that the DSU precluded a Member from doing so, this still would not explain their decision to request a special meeting. The complaining parties were fully aware that, prior to their request for a special meeting, the United States had already offered to confirm its intentions to implement at the present meeting, if there were any lingering questions. Inexplicably, the complaining parties had declined that offer. The United States reiterated that it had already stated its intentions concerning the implementation of the DSB's recommendations and rulings in this dispute. The United States could confirm those intentions at the present meeting. Despite having listened to the comments that Members had made at the present meeting, the United States remained puzzled by one question: why did the co-complainants consider

it necessary to call an additional DSB meeting at a time when delegations were already hard pressed to attend the numerous meetings of various bodies scheduled.

45. The representative of Chile said that this matter deserved particular attention. There was the text of Article 21.3 of the DSU as well as an established practice and the United States appeared to deviate from that established practice. He believed that this matter could be appropriately dealt with in the context of the negotiations in order to see what kind of proper action to take because Members might reach a conclusion that Article 21.3 of the DSU was superfluous and they might find a procedure which would be more effective. However, at this stage, this was an established practice and the United States had not complied with it. The United States should fulfill its obligation in this case. However, Chile was satisfied that the United States had repeated its statement that it was going to comply with its obligations and, of course, Chile would like to have, at an appropriate time, more details as to when the United States was going to do this and how.

46. The Chairman noted the statements made by delegations regarding the reasons as to why a DSB meeting had to be convened on 26 February. The United States had stated that it was puzzled by this course of action, but had not questioned the need for holding such a meeting. He said that the statements made by delegations would be reflected in the minutes of the present meeting and that a special meeting of the DSB regarding this matter would be held on 26 February.

47. The representative of Canada said that his country wished to respond to the statement made by the United States that it found inexplicable that the co-complainants had declined the US offer to raise this issue under "Other Business" at the present meeting. He reiterated that Article 21.3 of the DSU imposed a specific obligation on implementing parties, in this case the United States, to make a statement on implementation. Canada failed to see how one could discharge a binding obligation under the DSU under "Other Business". It was required to be a separate item on the agenda. The importance ascribed by the drafters of the DSU to this matter was clear from footnote 11 which stated that a separate DSB meeting would be held for this purpose. Where the DSB required a Member to take a specific action, Canada failed to see how this could be done under "Other Business".

48. The representative of the United States said that the suggestion raised by Canada that the statement of intentions could not be made under "Other Business" had no support in the DSU. Article 21.3 of the DSU merely provided that a statement had to be made at a DSB meeting without specifying the agenda placement. Moreover, inasmuch as the statement of intentions did not involve actions from Members, there was no reason that it would need to be a separate agenda item. Separately, the United States wished to thank Chile for its point regarding the acceptance of the US statement of intentions and urged the other complaining parties to reconsider whether another meeting on this question was necessary.

49. The DSB took note of the statements.

6. Election of Chairperson

50. The Chairman recalled that at its meeting on 10 February 2003, the General Council had taken note of the consensus on a slate of names for Chairpersons to a number of WTO bodies including the DSB. On the basis of the understanding reached by the General Council, he proposed that the Dispute Settlement Body elect Amb. Oshima (Japan) as Chairman of this body by acclamation.

51. The DSB so agreed.

52. Amb. Pérez del Castillo, the outgoing Chairman said that, on behalf of all Members, he wished to welcome Amb. Oshima as Chairman of the DSB. He said that Amb. Oshima who had recently arrived to Geneva had already demonstrated his knowledge, experience and human qualities

as well as his commitment to the multilateral trading system. He expressed satisfaction that the DSB would be left in good hands. He thanked Members for the support that they had given him during the past year, which he hoped would be equally extended to Amb. Oshima.

53. Amb. Oshima, the incoming Chairman thanked Members for his election, which he believed was not only a great honour to him personally but also to his country. He thanked the outgoing Chairman for his leadership as the DSB Chairman for the past year. He said that as his predecessor, he would also appreciate continued support provided by the Secretariat and Members. He drew attention to Article 3.2 of the DSU which stated that the WTO dispute settlement system was an essential element in providing security and predictability to the multilateral trading system and served to preserve the rights and obligations of Members under the WTO Agreement and to clarify the existing provisions of those Agreements. He said that it was incumbent upon Members to maintain the confidence in the system. He looked forward to Members' continued efforts and cooperation to deliver, serve and benefit the rule-based multilateral trading system through the work of the DSB.

54. The DSB took note of the statements.