WORLD TRADE ORGANIZATION

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Dispute Settlement Body
23 January 2004

MINUTES OF MEETING

Held in the Centre William Rappard
on 23 January 2004

Acting Chairperson: Mrs. Mary Whelan (Ireland)

Subjects discussed: Page

1. Surveillance of implementation of recommendations adopted by the DSB

(a) United States – Anti-Dumping Act of 1916: Status report by the United States (WT/DS136/14/Add.22 - WT/DS162/17/Add.22)

(b) United States – Section 211 Omnibus Appropriations Act of 1998: Status report by the United States (WT/DS176/11/Add.15)

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

(d) Chile – Price band system and safeguard measures relating to certain agricultural products: Status report by Chile (WT/DS207/15/Add.3)

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

1. The Chairperson 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". She proposed that the five sub-items to which she had just referred be considered separately.

(a) United States – Anti-Dumping Act of 1916: Status report by the United States (WT/DS136/14/Add.22 - WT/DS162/17/Add.22)

2. The Chairperson drew attention to document WT/DS136/14/Add.22 – WT/DS162/17/Add.22, 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.

3. The representative of the United States said that his country had provided an additional status report in these disputes on 12 January 2004, in accordance with Article 21.6 of the DSU. As noted in the report, legislation repealing the 1916 Act was pending in both the US Senate and US House of Representatives. The House legislation had been scheduled for consideration by the relevant committee for action this month. The US administration was continuing to work with Congress to achieve further progress in resolving these disputes with the EC and Japan.

4. The representative of Japan said that her country deeply regretted that the status report by the United States offered no prospect for implementation of the recommendations and rulings three years and four months after the adoption of the Panel and the Appellate Body Reports in this proceeding. This lengthy period of non-compliance by the United States continued to damage the credibility of the WTO dispute settlement system. Japan, once again, strongly urged the US administration to make utmost efforts to secure the passage of bills repealing the 1916 Act at the earliest juncture during the second session of the 108th Congress. In addition, the Congress must pass the repealing bills with proper retroactive effect, not those without it. Japan could not tolerate the fact that its companies involved in the cases brought under the WTO-inconsistent Act were being forced to incur substantial damages including significant legal costs. Japan sincerely hoped that the United States would do much better this year than just "to continue to work with the US Congress to enact legislation" so that the Act would be repealed and the pending cases be terminated. The United States should also report more details to the DSB when and how exactly the implementation would take place. She noted that Japan had not yet made a final decision on whether to reactivate the DSU Article 22 arbitration.

Finally, Japan wished to remind the United States of its right to suspend concessions or other obligations.

5. The representative of the European Communities said that the EC regretted that its first statement in 2004 regarding this subject had to be substantially the same as the previous one and, in fact, as all other statements in 2003. The repealing bills mentioned in the US report had been pending for months and yet to date discussion on them had not even started. Two years had passed since the expiry of the implementation period and one had still been waiting for a sign that the DSB's recommendations would be implemented. The failure of the United States to stand by its obligations had caused substantial costs to EC companies involved in lawsuits based on the 1916 Anti-Dumping Act. Moreover, EC companies remained under the constant threat of new actions being brought against them in blatant violation of WTO rules. The persistent inaction of the United States in this case set a very damaging precedent.

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

(b) United States – Section 211 Omnibus Appropriations Act of 1998: Status report by the United States (WT/DS176/11/Add.15)

7. The Chairperson drew attention to document WT/DS176/11/Add.15, 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.

8. The representative of the United States said that his country had provided a status report in this dispute on 12 January 2004, in accordance with Article 21.6 of the DSU. On 19 December 2003, the United States and the EC had informed the DSB that they had agreed to extend the reasonable period of time to implement the recommendations and rulings in this dispute until 31 December 2004. The US administration would continue to work with the US Congress with respect to appropriate statutory measures that would resolve this matter.

9. The representative of the European Communities said that the EC had agreed with the United States to extend the implementation period and expected that this would result in the full implementation of the DSB's rulings and recommendations. On 9 December 2003, a bill had been introduced in the Senate to repeal Section 211 of the Omnibus Appropriations Act of 1998 as part of a whole scheme of measures that would ensure an effective protection of intellectual property rights both in Cuba and in the United States. That bill was identical to a bill introduced in June 2003 in the House. This offered a basis to resolve this dispute to the benefit of all and would also show the US commitment to the effective and non-discriminatory protection of intellectual property rights.

10. The representative of Cuba said that, on 24 December 2003, a communication had been circulated in which the United States and the EC had notified the DSB that they had agreed to a new period of time for implementation of the DSB's recommendations pertaining to the Section 211 case. This was the third time that the United States had requested an extension of the period of time in order to meet its obligations as a WTO Member, to comply with the DSB's decisions and to bring its legislation into conformity with WTO rules. Twenty-three months had passed since the Appellate Body's ruling of 2 February in relation to this dispute settlement process. This new extension reflected not only an overweening and arrogant absence of political will to comply with the commitments it had entered into, but also one more delay in complying with the decisions of the DSB to be added to the series of requests for postponement that the United States had already submitted in connection with rulings that were not to its liking. The United States had, on a number of occasions, given notice of its intention and apparent willingness to repeal Section 211. However, these affirmations had proved to be yet another instance of empty rhetoric, with no concrete results. Her

delegation noted with concern the US lack of interest and undue delay in complying with WTO rules and disciplines, to the detriment of the rights of its Members, including, in this case, Cuba. Her country regarded this as a deplorable act of obfuscation which disrupted the balance between Members' rights and obligations under the TRIPS Agreement and the basic principles of the WTO. Consequently, Cuba requested the US authorities to desist from violating the rules governing the multilateral trade system and to repeal Section 211 forthwith, as the only genuine solution to this dispute.

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

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

12. The Chairperson drew attention to document WT/DS184/15/Add.15 which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US anti-dumping measures on certain hot-rolled steel products from Japan.

13. The representative of the United States said that his country had provided a status report in this dispute on 12 January 2004, in accordance with Article 21.6 of the DSU. On 10 December 2003, the DSB had extended the reasonable period of time to implement the recommendations and rulings in this dispute until 31 July 2004. The US administration would continue to work with the US Congress to address the recommendations and rulings of the DSB that had not been addressed by 23 November 2002.

14. The representative of Japan said that the reasonable period of time in this proceeding had been extended to 31 July 2004. It was a great disappointment to Japan that the United States could not comply with these DSB's recommendations and rulings before the first session of the 108th Congress had ended. In fact, no "specific legislative amendments" had been introduced. Japan strongly requested the United States to implement the DSB's recommendations and rulings, including securing the introduction and passage of the necessary bills during the second session of the 108th Congress.

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

(d) Chile – Price band system and safeguard measures relating to certain agricultural products: Status report by Chile (WT/DS207/15/Add.3)

16. The Chairperson drew attention to document WT/DS207/15/Add.3, which contained the status report by Chile on progress in the implementation of the DSB's recommendations in the case concerning price band system and safeguard measures relating to certain agricultural products.

17. The representative of Chile said that the new price band system for wheat and wheat flour had entered into force on 16 December 2003, as indicated in previous status reports. Although Chile considered the new system to be consistent, in form and substance, with the DSB's recommendations and rulings, there was disagreement on this matter within the meaning of Article 21.5 of the DSU. Accordingly, upon expiry of the reasonable period of time, Argentina and Chile had signed a bilateral agreement regarding the procedures under Articles 21 and 22 of the DSU, which had been circulated to Members. In this regard, he wished to point out that Chile still considered that the problem of the sequence between Articles 21 and 22 of the DSU called for a multilateral solution. Ad hoc agreements of the kind signed with Argentina were no substitute in any event for a multilateral solution. Such agreements only provided a transitional solution applicable exclusively to the dispute

in question. Even if such a solution had been reached with Argentina on an amicable basis, the bilateral nature of the agreement was no guarantee that the same solution could be found in all disputes. Consequently, Chile would continue, in particular within the process of negotiations on clarifications and improvements of the DSU, to support the need for finding a multilateral solution to the problem of the sequence between Articles 21 and 22 of the DSU.

18. The representative of Argentina said that, as indicated in previous statements, Argentina considered that Law No. 19.897 and Supreme Decree No. 831 of the Ministry of Finance had not brought into conformity the Chilean measure found to be inconsistent in this dispute. Following the expiry of the reasonable period of time on 23 December 2003, and given that there was disagreement between Argentina and Chile as to the existence of measures taken to comply with the DSB's recommendations and rulings, the two countries had signed an agreement regarding the procedures under Articles 21 and 22 of the DSU. That agreement had been notified to the DSB and circulated in document WT/DS207/16. As stated in the text of the agreement, Argentina would, in due course, request Chile to hold consultations in good faith with a view to resolving that disagreement.

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

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

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

21. The representative of the United States said that his country had provided a status report on 12 January 2004, in accordance with Article 21.6 of the DSU. As noted in the report, on 19 June 2003, legislation to bring the Continued Dumping and Subsidy Offset Act into conformity with the WTO obligations of the United States had been introduced in the US Senate (S. 1299). In addition, the US administration had proposed repeal of this Act in its budget proposal for fiscal year 2004. This remained the position of the US administration. The US administration was continuing to work with Congress to achieve further progress in resolving these disputes with the complaining parties.

22. The representative of Canada said that his country noted the status report of the United States, and was disappointed that the United States had failed to bring itself into compliance with the DSB's rulings and recommendations. Canada noted that the United States had had ample time to bring itself into compliance – fully eleven months. In its status report, the United States had suggested that implementation measures were before Congress, though it had given no time-line for the passage of such measure. In the meantime, the Byrd Amendment continued to inflict both systemic and direct harm to Canadian trade interests. As the Panel and the Appellate Body had found, the very existence of the Byrd Amendment created instability in the international trading system. But, there was more. Already some US$800 million had been disbursed under this measure. These payments, which the WTO had ruled to be illegal, were being provided directly to US companies that competed against exporters in Canada and elsewhere. Moreover, approximately US$1.7 billion in cash deposits had now been collected by the United States from Canadian exporters in one industry alone, and these deposits remained at risk of being disbursed in the future unless the Byrd Amendment was repealed. In this case, the collection of the duties was itself the subject of ongoing trade litigation. Therefore, not only had the affected Canadian companies been forced to pay punishing, and in Canada's view unjustified, duties on their exports to the United States, but now they faced the threat of having those payments handed over directly to their US competitors. In the circumstances, Canada was obliged to move to protect its rights by seeking authorization from the DSB for retaliation pursuant to

Article 22.2 of the DSU. This request, along with those of seven other WTO Members that were taking comparable action, would be considered at a special DSB meeting on 26 January 2004. He wished to be clear that retaliation was not Canada's preferred option – far from it. Canada would far rather see the United States eliminate the need for retaliation by moving promptly to bring itself into compliance with its WTO obligations. And that was what Canada was asking the United States to do. It was time now for the United States to implement the DSB's rulings and recommendations and to uphold the integrity of the rules-based trading system under the WTO.

23. The representative of Australia noted his country's regret that the United States had been unable to comply with the Panel and the Appellate Body's rulings and recommendations in this dispute by 27 December 2003. Australia noted the steps taken to date by the US administration towards implementation and encouraged the United States to continue its efforts to achieve compliance with its WTO obligations.

24. The representative of Chile thanked the United States for its status report of 12 January 2004 and for the statement made at the present meeting. Unfortunately, both the report and the statement confirmed that the United States had not brought the CDSOA into conformity with the covered agreements, nor had it otherwise complied with the recommendations or rulings within the reasonable period of time which had expired almost one month ago. Furthermore, Chile was seriously concerned about the lack of movement on the legislative front and of the necessary impetus to resolve this issue as a matter of priority. The measure commonly known as the Byrd Amendment was causing economic damage to Chilean firms as it constituted a "perverse" anti-dumping and anti-subsidy measure which was not sanctioned by the WTO Agreements. The lack of timely compliance by the United States had obliged Chile to reserve its rights under Article 22 of the DSU, and Chile had joined a large group of co-complainants in requesting the DSB's authorization to suspend concessions or other obligations to the United States.

25. Chile hoped that the United States would be able to bring its measure into conformity in the coming days so as to avoid the use of this ultimate recourse. Chile also wished to express its concern that, at the present meeting, four status reports had been submitted by the United States with regard to four different disputes. In all those cases, the original deadlines for compliance had passed with no solution in sight. Furthermore, the DSB had been repeatedly told that the US administration was continuing to work with Congress in the search for a solution. However, there were no bills under consideration, or if there were, they had not been discussed seriously. The repeated lack of compliance by one of the main Members of the WTO cast serious doubt on its commitment to the multilateral system and the latter's credibility. For this reason, Chile called for redoubled efforts and dialogue between the US administration and the Congress in order to find a solution to all these outstanding issues.

26. The representative of the European Communities said that the EC was extremely worried by the increasing number of disputes where the same scenario recurred. The time-period for implementation in this dispute had expired on 27 December 2003 and yet the EC had still been waiting for a sign that the United States was seriously working on implementation. Indeed, the bill introduced in the Senate to ensure compliance had only two sponsors and had not even been discussed. Worse, the EC had heard statements to the effect that the WTO would have "acted beyond the scope of its mandate" and called for express recognition of the US right to distribute monies collected from anti-dumping and countervailing duties. This dispute had never been and was not about the sovereign right of the United States to spend its resources. The issue raised by the Byrd Amendment was about respecting an obligation voluntarily accepted by WTO Members that permissible response to dumping or subsidization was limited. And this response was the imposition of anti-dumping and anti-subsidy duties. For more than three years, the United States had, in addition, forced dumped or subsidized imports into subsidizing the US competing products. The total amount of payments made under the Byrd Amendment had now come up to around US$800 millions.

In these circumstances, the EC had decided to preserve its rights and had sent, on 15 January 2004, a request seeking the DSB's authorization to suspend concessions to the United States. The EC was very pleased that other complainants had made the same decision and hoped that prompt action by the US Congress would make retaliation unnecessary. The Byrd Amendment had raised immediate and widespread concerns among WTO Members. It was now time that the United States respond to them. The EC hoped that the US administration would convey to Congress the extent of the concern expressed at the present DSB meeting and the importance for the US credibility in the WTO to comply with its obligations without further delay.

27. The representative of Japan said that her delegation had taken note of the first status report by the United States in this proceeding with great frustration and disappointment. The United States referred to the US administration's proposal to repeal the CDSOA (the Byrd Amendment) in its fiscal year 2004 budget proposal and to the introduction of legislation in the US Senate in June 2003. The United States was missing the point: the Byrd Amendment still existed, despite the expiry of the reasonable period of time on 27 December 2003. The Panel and the Appellate Body had unequivocally found the Byrd Amendment to be WTO-inconsistent. The Byrd Amendment was a grave breach of the WTO Agreement, and the United States should have repealed it before 27 December 2003. The co-complainants did not wish 2003 to be a lost year for implementation. Sadly enough, though, that was exactly what had happened with regard to the Byrd Amendment, because of the failure of the United States, the key player of the WTO. This was a very serious situation that Japan could not overlook. On 15 January 2004, Japan, together with Brazil, Chile, the EC, India, Korea, Canada and Mexico, had requested authorization from the DSB to suspend concessions or other obligations. These requests were on the agenda of the DSB meeting scheduled to take place on 26 January 2004. Japan hoped that the United States had taken seriously the fact that these eight Members had no other choice, but to request authorization for retaliation because of the US non-compliance, and would make every effort to have the Byrd Amendment repealed as soon as possible.

28. The representative of Korea said that, like previous speakers, Korea had serious concerns about the US failure to implement the DSB's recommendations and rulings in the case under consideration within the reasonable period of time which had expired on 27 December 2003. Indeed, almost one year had passed since the Appellate Body Report and the Panel Report had been adopted at the DSB meeting on 27 January 2003. Still there was no specific indication from the US side when and how it would implement the DSB's rulings. It was not only a source of grave concern for the parties to the dispute, but also for the multilateral trading system as a whole as non-compliance undermined the credibility of the WTO. In order to preserve the balance of concessions and its right under WTO Agreement, Korea had requested a special DSB meeting to be held on 26 January 2004 in order to consider its retaliation request under Article 22 of the DSU. Korea would detail its position in this regard at the 26 January DSB meeting, but taking this opportunity at the present meeting, it wished to call on the United States to implement the DSB's recommendations as soon as possible.

29. The representative of Brazil said that at the DSB meeting on 27 January 2003, the United States had stated that it intended to implement the DSB's recommendations in a manner that respected the WTO obligations of the United States. Subsequently, the United States had confirmed those intentions at the DSB meeting on 19 February 2003. A reasonable period of time for implementation determined in this case had expired on 27 December 2003. Thus, a "double hit" as described by the author of the Byrd Amendment: i.e. the collection of duties and its distribution to petitioners, continued to be in place and continued to harm foreign competitors. Brazil, like other Members, was disappointed and concerned with the lack of implementation by the United States. Therefore, like others, Brazil had submitted, on 15 January 2004, its request for authorization to suspend concessions or other obligations to the United States. He noted that the request would be considered by the DSB at its meeting on 26 January 2004.

30. The representative of India said that his country was encouraged by the fact that the US administration had proposed repeal of CDSOA, which India believed, was the correct way to bring the infringing measure into conformity with the DSB's recommendations and rulings. However, like previous speakers, India was disappointed by the fact that the CDSOA had not thus far been repealed even though the reasonable period of time determined by a binding arbitration had expired. India wished to emphasize that prompt compliance was not only necessary for removing the adverse trade effects suffered by the WTO Members, including India, due to the unauthorized measure remaining in place, it was also necessary to preserve the security and predictability of the dispute settlement mechanism. In these circumstances, India had decided to preserve its rights and had sent a request on 15 January 2004 seeking the DSB's authorization to suspend concessions to the United States. India was pleased that other complainants in this case had also made the same decision. It hoped that prompt action by the United States would make it unnecessary for India to suspend concessions or other obligations to the United States.

31. The representative of Mexico said that, like previous speakers, his country wished to express its concern about the lack of compliance by the United States with respect to the Byrd Amendment case. Mexico, together with the other co-complainants in this case, after obtaining the satisfied results of the Panel and the Appellate Body, would seek authorization from the DSB, at its meeting on 26 January 2004, to suspend concessions or other obligations to the United States. Mexico underlined that the lack of compliance was the most serious problem in the functioning of the dispute settlement system. Mexico believed that if there was anything that required to be solved in the DSU negotiations, it would be the problem of compliance.

32. The representative of China said that his delegation shared the comments made by previous speakers on this very important issue. China had great concerns about the US practice of resorting often to anti-dumping investigations for the protection of its own market. The Byrd Amendment played a negative role in this context. As the Panel and the Appellate Body had rightly pointed out, the Byrd Amendment was an impermissible action against dumping and subsidies. The United States had an obligation to implement the rulings of the Panel and the Appellate Body and to adopt concrete measures to repeal the Byrd Amendment within the reasonable period of time. However, with the implementation period in this dispute having expired on 27 December 2003, the United States had failed to honour the DSB's recommendation and the rulings. The United States was not the only country that required Congress to do legislative work. While China recognized the fact that it needed time to comply with the WTO's rulings, the political will and the active approach of the US administration also had a role to play. Therefore, as one of the most seriously affected WTO Members by the Byrd Amendment, China strongly urged the United States to implement the DSB's rulings in a timely manner so as to set a good example for other Members and to help maintain the integrity of the WTO dispute settlement system.

33. The representative of Thailand said that his country was a co-complainant in this dispute. Thailand noted the US status report before the DSB at the present meeting and, at the same time, it joined the other co-complainants, who had spoken before, in urging the United States to comply with its WTO obligations. It was desirable that the United States double its efforts in doing so.

34. The representative of Indonesia said that his country regretted that the United States had failed to implement the DSB's recommendations and rulings in the Byrd Amendment case. Since the United States had failed to meet the deadline of 27 December 2003, Indonesia urged the US administration to continue its work with Congress in order to repeal the Byrd Amendment as soon as possible.

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

2. United States – Countervailing duty investigation on dynamic random access memory semiconductors (DRAMS) from Korea

(a) Request for the establishment of a panel by Korea (WT/DS296/2)

36. The Chairperson recalled that the DSB had considered this matter at its meeting on 1 December 2003 and had agreed to revert to it. She drew attention to the communication from Korea contained in document WT/DS296/2.

37. The representative of Korea said that his country had serious concerns regarding the US erroneous countervailing duty order against DRAMS originating in Korea. Indeed, the US imposition of 44.29 per cent definitive countervailing duty against Korean DRAMS virtually prohibited the Korean manufacturer from exporting its DRAMS to the US market. The purpose of countervailing duties was not to close markets altogether. As detailed in the panel request dated 19 November 2003, the Korean government considered the US provisional and final countervailing duty order regarding Korean DRAMS to be inconsistent with the US obligations under relevant provisions of the GATT 1994 and the SCM Agreement. For example, the US Department of Commerce's assumption that every Korean private financial institution involved was under the direction or entrustment of the Korean government was erroneous, because creditors of the Korean DRAMS manufacturer included a number of privately-controlled creditors and also foreign subsidiary banks, including Citibank of the United States. The US Department of Commerce had also disregarded the market benchmarks for measuring benefit established by a foreign bank operating in the Korean market that had extended financing to the Korean manufacturer. For these reasons and others raised at the 1 December 2003 DSB meeting, Korea again requested that the DSB establish a panel pursuant to Article 6 of the DSU, with standard terms of reference, to examine the matter set forth in Korea's panel request.

38. The representative of the United States said that his delegation would not wish to repeat the points made at the 1 December DSB meeting concerning this matter. The United States continued to be disappointed that Korea had chosen to pursue this matter further by requesting the establishment of a panel, and that Korea had declined to cure the procedural defects regarding its panel request. The United States was confident that the panel would find that the determinations made by US authorities in the DRAMS investigation were consistent with the WTO obligations of the United States.

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

40. The representatives of China, the European Communities, Japan and Chinese Taipei reserved their third-party rights to participate in the Panel's proceedings.

3. European Communities – Countervailing measures on dynamic random access memory chips from Korea

(a) Request for the establishment of a panel by Korea (WT/DS299/2)

41. The Chairperson recalled that the DSB had considered this matter at its meeting on 1 December 2003 and had agreed to revert to it. She drew attention to the communication from Korea contained in document WT/DS299/2.

42. The representative of Korea said that, as under the previous agenda item, Korea had serious concerns regarding the EC's erroneous countervailing duty order against DRAMS originating in Korea. In the case of the EC, 34.8 per cent definitive countervailing duties had been imposed against Korean DRAMS. This high level of countervailing duties virtually prohibited the Korean manufacturer from exporting its DRAMS to the EC market. The purpose of countervailing duties was

not to close markets altogether. As detailed in the panel request dated 19 November 2003, the Korean government considered the EC's provisional and definitive countervailing duty order regarding Korean DRAMS to be inconsistent with the EC's obligation under the relevant provisions of the GATT 1994 and the SCM Agreement. For example, the EC had failed to demonstrate the existence of a financial contribution by the Korean government with respect to the financial transactions at issue in the subsidy investigation. The EC had also failed to demonstrate that a benefit was conferred on the Korean manufacturer, given available market benchmarks based on terms extended by commercial creditors. For these and other reasons mentioned at the 1 December 2003 DSB meeting, Korea again requested that the DSB establish a panel pursuant to Article 6 of the DSU, with standard terms of reference, to examine the matter set forth in the Korea's panel request.

43. The representative of the European Communities said that the EC regretted to see that Korea wished to pursue this dispute in the WTO. The EC noted that another WTO Member, the United States, examining the same issues relating to the subsidization of the semiconductor industry in Korea had come to the very same conclusions. The EC was certain that the measures identified by Korea would be found to be fully compatible with EC's obligations under the WTO.

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

45. The representatives of China, Japan, Chinese Taipei and the United States reserved their third-party rights to participate in the Panel's proceedings.

4. Argentina – Definitive safeguard measure on imports of preserved peaches

(a) Statement by Argentina

46. The representative of Argentina said that his country wished to announce that the safeguard measure subject to the dispute on "Argentina – Definitive Safeguard Measure on Imports of Preserved Peaches" (WT/DS238) had been revoked on 31 December 2003, in accordance with Ministry of the Economy Resolution 91/2003, and as stipulated in the bilateral agreement with Chile concerning the reasonable period of time for implementation, contained in document WT/DS238/7. With the elimination of this measure, Argentina considered that it had fully complied with the DSB's recommendations and rulings in this dispute.

47. The representative of Chile said that his country wished to thank Argentina for its report regarding its actions and for its confirmation that the safeguard measure had been removed. This would enable Chile to resume its exports of the products in question.

48. The DSB took note of the statements.