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Dispute Settlement Body
20 April 2009

MINUTES OF MEETING

Held in the Centre William Rappard
on 20 April 2009

Chairman: Mr. John Gero (Canada)

Subjects discussed: Page

1. Surveillance of implementation of recommendations adopted by the DSB

(a) United States – Section 211 Omnibus Appropriations Act of 1998: Status report by the United States (WT/DS176/11/Add.77)

(b) United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.77)

(c) United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.52)

(d) European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Communities (WT/DS291/37/Add.15 – WT/DS292/31/Add.15 – WT/DS293/31/Add.15)

(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.3)

(f) Brazil – Measures affecting imports of retreaded tyres: Status report by Brazil (WT/DS332/19/Add.1)

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.77)

2. The Chairman drew attention to document WT/DS176/11/Add.77, 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 8 April 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 had convened in January 2009. The US administration was working with the Congress to implement the DSB's recommendations and rulings.

4. The representative of the European Communities said that the United States was presenting its seventy-seventh status report on its lack of progress in the implementation of the DSB's ruling in

this 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 nothing had changed in the case under consideration for more than seven years. The only new development in 2009 had been an ambiguous reference to proposed legislation to implement the DSB's rulings. He recalled, once again, what his delegation had repeatedly stated in the DSB, namely that status reports must refer to progress made in implementing recommendations and rulings in accordance with Article 21.6 of the DSU. The US administration professed to be among those the most concerned by the failure to observe intellectual property rights in other parts of the world. Recently, it had published its annual list of countries whose efforts to combat piracy it deemed to be wanting. That was known as the Special 301 Report, in which the United States had classified countries according to the seriousness of the situation. It was paradoxical that the country that drew up such a list of offenders, and which was currently negotiating an anti-piracy agreement, much broader in scope than the TRIPS Agreement, was unable to repeal immediately Section 211, which was contrary to the WTO Agreement and to an industrial property convention of 1883. In March 2009, it had been reported in a number of international press media that, in the United States, a federal judge had dismissed a suit brought by the Cuban company CUBAEXPORT, the rightful owner of the HAVANA CLUB trade mark, against the US Treasury's Office of Foreign Assets Control (OFAC), which had denied the licence applied for in 2006. The basis in law for the dismissal was Section 211. The press had been swift to report the response of Bacardi: "We are the legitimate owners of the brand" and "We are thrilled that once again the US courts have upheld these laws." However, it had not been mentioned that: (i) Bacardi had conceived and promoted Section 211; (ii) that five years after its enactment that provision had been found to be in breach of fundamental principles of the Paris Convention and the TRIPS Agreement; and (iii) that a growing number of WTO Members requested its repeal. Also it had been overlooked that the use of the HAVANA CLUB trade mark by Bacardi constituted unfair competition, which clearly entailed acts of unfairness towards consumers, competitors and the market. As regards unfairness to the market, it encompassed exploitation of another's reputation, confusion and deceit of consumers and the breach of rules. Cuba urged the immediate repeal of Section 211, which prompted the US judges to issue decisions which were contrary to what the DSB had ruled more than seven years ago. As long as Section 211 was in force, the United States had no more authority to challenge the registration of foreign trade marks in order to use them and prevent their real owner from ever marketing the product. What would happen if another Member were to cancel the registration of US trade marks and a company were to use them wilfully on that market, without infringing trade rights, and they were furthermore to claim unilaterally the prerogative of disregarding legally binding international agreements or some legal ruling in the multilateral context? The response would undoubtedly be legal action, pressure and trade reprisals. Why, then, a developed trading power such as the United States continued with impunity to disregard the rights of a company from a small underdeveloped country as well as international trade law, industrial property law and the DSB's rulings?

6. The representative of Brazil said that, as on previous occasions, his country wished to express its appreciation to the United States for its status report pertaining to this dispute. Brazil understood that full implementation of the DSB's recommendations had not been achieved, and thus encouraged the United States to continue to pursue the necessary initiatives in this regard.

7. The representative of China thanked the United States for its status report and the statement. However, China regretted that the US Congress had not begun to consider any implementation action pertinent to this case despite the endeavours of the US administration. As previous speakers had pointed out, the situation of non-compliance was seriously damaging the authority of the TRIPS Agreement and the credibility of the WTO dispute settlement system. China supported the statements made by the EC and Cuba, and urged the United States to implement the decision of the DSB without further delay.

8. The representative of Ecuador said that his country thanked the United States for its status report. Ecuador supported the statements made by Cuba and other Members on this issue. He drew attention to the provisions of Article 21 of the DSU on prompt compliance with recommendations and rulings of the DSB, in particular with regard to matters affecting the interests of developing countries. The United States, both at home and in the various WTO Councils and Committees, had closely monitored the commitments undertaken by other Members. Ecuador, therefore, expected the United States to set a good example. After the disputes on Bananas and Hormones, this was the longest-standing pending dispute in the WTO with respect to which all WTO Members should express concern. Ecuador, once again, urged the United States to comply with the DSB's recommendations and rulings and to promptly repeal Section 211.

9. The representative of the Bolivarian Republic of Venezuela said that his country thanked the United States for its status report. Venezuela was optimistic following the positive message of the presidents of the American continent who had attended the Fifth Summit of the Americas in Trinidad and Tobago, who had stated their desire to cooperate in fostering development and well-being in the countries of the Americas. It was hoped that the US President's undertaking would lead to prompt compliance with the DSB's recommendations and in particular in this case. The repeal of Section 211 had given rise to systemic concerns, which had been reiterated by Members at each DSB meeting, about the protracted situation of non-compliance. Venezuela urged the parties to this dispute to immediately adopt measures that would ensure that the adopted recommendations were implemented. Compliance by the United States would have a positive effect on the overall effectiveness of the WTO dispute settlement system.

10. The representative of India said that her country thanked the United States for its status report and the statement. India regretted that the new US Congress had not begun to consider any implementation action pertinent to this case, despite the endeavours of the US administration and the appeals of WTO Members. As mentioned by previous speakers, the situation of non-compliance in this dispute was seriously damaging the credibility of the WTO dispute settlement system. India was confident that the US administration would continue to work with the US Congress in a constructive manner with a view to implementing the DSB's recommendations.

11. The representative of Costa Rica said that his country thanked the United States for its status report. Costa Rica considered that, as in other cases under this Agenda item, it was important to comply with Article 21.1 of the DSU, which underlined that "Prompt compliance with recommendations or rulings of the DSB is essential". Costa Rica was confident that the US administration would rapidly find a solution to this issue with its Congress, as indicated in the US status report.

12. The representative of Thailand said that her country joined previous speakers in thanking the United States for its status report and the statement. Thailand remained positive regarding this matter and urged the United States to take all necessary steps to comply with its obligations in this dispute as soon as possible.

13. The representative of Mexico said that Articles 3.3 and 21.1 of the DSU, respectively, stated that the "prompt settlement" of disputes was essential to the effective functioning of the WTO, and that "prompt compliance with recommendations or rulings of the DSB" was essential in order to ensure the effective resolution of disputes "to the benefit of all Members". Mexico urged the parties to heed these provisions and to take the measures required to achieve compliance, to the benefit both of the functioning of the WTO and of all Members.

14. The representative of Viet Nam thanked the United States for its status report and hoped that the United States would soon fully comply with the DSB's rulings and recommendations in this case.

15. The representative of the United States said that his country regretted that some Members – including some whose record of protecting intellectual property rights appeared less than robust – continued to criticize the US commitment to intellectual property rights. The criticisms were completely unfounded. It was, of course, true that the United States remained a strong advocate of substantial protections for intellectual property internationally. However, the United States also provided the highest standard of intellectual property protection within its own territory. The United States looked forward to continuing to work with all Members to secure the protection of intellectual property rights around the world. In response to the suggestion that the US compliance record was poor, the facts simply did not support that assertion. To the contrary, the record showed that the United States had fully complied in the vast majority of its disputes. As for the remaining few – and those few were a small fraction of the total – the United States had been actively working towards compliance.

16. The representative of Cuba said that his delegation was surprised to hear the US statement with regard to the US compliance record with intellectual property rights matters. For many years, Members had been waiting for compliance in this case as well as in many other cases. The DSU provisions and the WTO rules had to be complied with in all cases and not just in some cases. It was very unfortunate that this case had been pending for over seven years. Cuba hoped that the United States would conform facts with its rhetoric.

17. 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.77)

18. The Chairman drew attention to document WT/DS184/15/Add.77, 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.

19. The representative of the United States said that his country had provided a status report in this dispute on 8 April 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 document WT/DS184/15/Add.3. With respect to the DSB's recommendations and rulings that had not been already 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.

20. The representative of Japan said that her country thanked the United States for its statement and the latest status report. She said that the United States had reported that it 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 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".[1] Japan called on the United States to fully implement the DSB's recommendations in this long-standing dispute without further delay.

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

[1] Article 3.3 of the DSU.

(c) United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.52)

22. The Chairman drew attention to document WT/DS160/24/Add.52, 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.

23. The representative of the United States said that his country had provided a status report in this dispute on 8 April 2009, in accordance with Article 21.6 of the DSU. He said that the US administration would work closely with the US Congress and would continue to confer with the EC, in order to reach a mutually satisfactory resolution of this matter.

24. The representative of the European Communities said that the United States had again reported continued non-compliance in an IPR case. The EC said that the United States had continually failed over a number of years to bring itself into compliance. The EC hoped that this matter could be soon resolved.

25. 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.15 – WT/DS292/31/Add.15 – WT/DS293/31/Add.15)

26. The Chairman drew attention to document WT/DS291/37/Add.15 – WT/DS292/31/Add.15 – WT/DS293/31/Add.15, which contained the status report by the EC 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.

27. The representative of the European Communities said that recent developments showed that the EC regulatory procedures on biotech products continued to work as foreseen in the legislation. In the previous month only, the Commission had authorized two applications: an application of a GM oilseed rape (T-45) (10 March) and a GM carnation (16 March). This would make 21 authorizations since the establishment of the panel. Draft decisions on authorization of cultivation of GM maize 1507 and Bt11 were being processed in accordance with applicable law. With respect to national bans, the Commission had transmitted draft decisions requesting measures prohibiting cultivation of GM maize MON810 (FR, HU, EL and AT) to be lifted. 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.

28. The representative of Canada said that her country thanked the EC for its statement. Canada valued the constructive dialogue that it had to date with the EC to resolve the issues that had been affected, and continued to affect the approval and marketing of biotech products in the European Union. However, Canada continued to be particularly concerned about continuing member State actions on the cultivation and marketing of EU-wide approved biotech products. Not only had Austria not lifted its ban on the maize event T25, as recommended by the DSB in this case, but member States continued to adopt new, completely unjustified measures on biotech products. For example, Canada had learned recently that Germany had placed a new ban on the cultivation of a variety of maize (MON810) that had been authorized by the European Commission since 1998. Canada would continue to monitor the situation closely and hoped for the continuation of dialogue with the EC to address trade in biotech products in a constructive manner.

29. The representative of Argentina said that his country thanked the EC for its status report. He recalled that Argentina had made a statement on this matter at the 20 March DSB meeting and, once again, expressed Argentina's desire to continue to work with the EC.

30. The representative of the United States thanked the EC for its status report and its statement. The United States regretted to report that, on 14 April 2009, Germany had announced a new biotech ban that seriously called into question the EC's commitment to resolving this long-standing dispute. The United States recalled that, at the 19 February 2009 DSB meeting, the United States had expressed serious concerns with EC member State measures banning biotech products that had been approved by the EC prior to the EC's adoption of the across-the-board moratorium on biotech approvals. The United States noted that the DSB found that such measures had not been based on risk assessments and thus breached the EC's obligations under the SPS Agreement. He added that, despite specific DSB findings that Austria's ban on an insect-resistant maize variety was inconsistent with WTO rules, Austria continued to ban the cultivation of that product. The United States further noted that the EC had not only failed to remove the Austrian ban, but even allowed the same ban to be adopted by France, Greece and Hungary. The United States understood that at the end of March, Luxembourg had become the fifth EC member State to adopt the ban, and that Germany planned to ban the same variety of maize. In making the announcement, Germany's Minister for Agriculture explicitly relied for justification on the bans previously adopted by Austria, France, Greece, Hungary and Luxembourg. The German ban was especially troubling because German farmers had been purchasing this product in significant and increasing volumes, and had been growing this variety of maize safely and successfully for over a decade.

31. Just as for the other bans, the United States was aware of no scientific justification. Nor had Germany cited any scientific justification. Indeed, the EC's own scientific committees had repeatedly reviewed those bans, and had found no scientific basis. In short, the United States was greatly concerned that additional EC member States continued to ban biotech products, relying for justification on earlier member State bans found by the DSB and/or EC-wide scientific committees to be without a basis in science. It was becoming increasingly apparent that EC member State bans on biotech products could render meaningless any action taken at the Community level. The United States wished to hear from the EC how it would eliminate the existing unjustified member State bans and how it intended to stop its member States from adopting further such measures. The United States thanked the DSB for its attention to this matter.

32. The representative of the European Communities said that the measures mentioned were not related to the implementation of the WTO Panel Report, as they were not covered by it. Thus, the DSB was not the appropriate forum to deal with those questions.

33. 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.3)

34. The Chairman drew attention to document WT/DS27/96/Add.3, 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.

35. The representative of the European Communities said that, as indicated at previous DSB meetings, the EC stood ready to implement the recommendation made in Ecuador's 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 its 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 2008 Ministerial Meeting 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 now 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 and hoped that all banana suppliers would constructively engage in the necessary discussions.

36. The representative of Ecuador said that his country thanked the EC for its status report. In that report the EC had, once again, failed to give any indication of the date by which the EC hoped to comply with the DSB's recommendations and rulings in this case. He recalled that the EC's recent proposal to Latin American MFN suppliers was characterized by the following: (i) its lack of balance in the commitments that would be assumed by the parties; (ii) the linkage of tariff cuts to the uncertain conclusion of Doha Round modalities; (iii) the introduction of further conditions in areas unrelated to compliance with the DSB's recommendations and rulings and the compensation for the EC's enlargements; (iv) linking the proposal to an "early harvest" of the Doha Round modalities together with prior agreement in the negotiations on tropical products and the erosion of preferences and (v) making the proposed agreement subject to the conclusion of a parallel agreement with another Member. Ecuador considered that the 27 July Agreement, with the major Latin American MFN suppliers, had struck a proper balance among the parties. Ecuador had identified those products and areas that might be subject to their cross-retaliation and the possible initiation of demands against the EU-ACP trade agreements. A unilateral decision by the EC would have serious political, legal and systemic implications. Finally, he reiterated that the EC had, once again, refused to submit a status report concerning the DSB's recommendations and rulings in the Bananas dispute with the United States. Ecuador did not share the EC's unilateral interpretation of the DSU in this regard.

37. The representative of Panama said that his country regretted that it had to express, once again, its disappointment at the EC's status reports and the actions the EC had undertaken since January. The most recent status report, like the previous ones, failed to reflect the EC's true position. In that report, the EC had asserted that it intended to bring itself into compliance with its obligations. Panama saw no evidence of such an intention. By demanding that Latin American banana supplying countries paid in other product areas in exchange for the EC's compliance, the EC was departing from the concept of "intention to comply" as set out in the DSU provisions. The status report also asserted that the EC was engaged in negotiations with the Latin American banana supplying countries. As far as Panama was aware, there had been no negotiations since July 2008. The report likewise stated that there was interest in a "comprehensive agreement", which was hard to understand since the most important element, namely complying promptly with Articles I and II of the GATT 1994, would appear to be absent. There had been no effort whatsoever on the EC's part to clarify the new tariff rate, which would remedy the breach of tariff binding and eliminate the discrimination. When the EC alluded to a "comprehensive agreement", it appeared to refer to negotiations that would accommodate issues and Members outside the normal scope of DSB compliance. In its status report, the EC had expressed its interest in reaching a satisfactory agreement promptly. However, the EC had introduced so many quotas, deadline extensions and procedural complexities that a "prompt" agreement would appear to be out of the question. Panama saw no way of reconciling the many discrepancies in compliance and the underlying impediments in this status report with the EC's obligation to bring itself promptly into conformity with WTO rules. It was no less difficult to see how ignoring the DSB's recent decisions could be consistent with the EC's renewed promise to resist protectionism. As Panama had already stated, if the EC really intended to put an end to its legacy of illegalities, only the

Agreement of July 2008 afforded a suitable means of finding a clear solution. Panama called on the EC to reinstate that agreement without further delay.

38. The representative of Colombia said that his country was grateful for the EC's status report, and took note of 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 quickly in this respect. Colombia had been examining a proposal submitted recently by the EC and had been discussing it with other Latin American banana suppliers. Colombia hoped to obtain a result that would preserve the economic value of the agreement reached in July 2008. With respect to the fears expressed by the ACP banana suppliers, Colombia recalled that the margin of preference increased from €75/ton to €176/ton at their expense, and with a regime that had repeatedly been declared illegal. Colombia wanted to see the balance restored and the EC's regime brought into conformity with WTO rules. Colombia hoped that in the near future necessary conditions would be created for the initiation of negotiations on the basis of the July Agreement with a view to reaching a comprehensive solution to the banana issue. To do so, the EC's full cooperation was needed.

39. The representative of the Dominican Republic, speaking on behalf of the ACP countries, said that, at the DSB meetings held on 11 December 2008, 19 February and 20 March 2009, the ACP countries had registered their disagreement with certain conclusions reached by the Panel and the Appellate Body in this dispute, and also their respect for the need to implement final decisions. Currently, only the finding of a violation of the EC's obligations under Article II of the GATT 1994 awaited implementation. She recalled that the Panel and the Appellate Body had concluded that the EC's schedule at this time still committed the EC to an out-of-quota tariff of €680/mt and a TRQ of 2.2 million tons at a tariff of €75/mt. As previously mentioned, the ACP countries could live with a faithful and literal implementation of those conclusions. As reflected in its status report, however, the EC aimed to achieve compliance and implementation by changing its tariff structure through negotiations with the MFN banana suppliers. This process, it seemed, may lead to a reduction of applied (and bound) duty rates. She stressed, once more, that the DSB's conclusions in this dispute did not require any overall reduction of average tariffs; nor, in fact, did the negotiations under Article XXVIII of the GATT 1994. Any decision to reduce the EC's banana tariffs thus would find its rationale exclusively in the DDA. She underlined that the ACP countries actively supported efforts to move towards an effective solution of the issue of the EC bananas tariff regime. The ACP countries wished to ensure that the steps eventually agreed upon would be taken for the right reasons and that they would be balanced out in the right context.

40. The representative of Costa Rica said that his country noted the EC's status report but, once again, was disappointed with that report. Since 1992, the EC bananas import regime had been examined by a number of different bodies, all of which, as in this case, had confirmed the illegality of that regime with the rules of the multilateral trading system: the GATT and the WTO. Costa Rica continued to hope that the EC would comply with its obligations. The status report submitted by the EC was vague and did not refer to the proceedings initiated by the United States. The EC had not stated when it would comply with the DSB's recommendations and had provided no details as to how it would do so. In its report, the EC stated that it was seeking an agreement with Latin American banana-exporting countries on this issue. Such a statement appeared to be seeking to give the impression that no agreement had yet been reached or that the MFN exporters were the ones preventing an agreement which would enable the EC to remedy its bananas import regime. The solution to this long-standing dispute had, however, been found on 27 July 2008. The 27 July Agreement was a balanced agreement and was the only time when the EC and all the Latin American countries under the MFN regime were in agreement on this issue. It was important not to lose sight of the great importance of this, so that any attempt to reinvent the wheel should be avoided. Costa Rica urged the EC to make the utmost effort to resolve this issue, which continued to be an irritant for its region and caused problems for developing countries.

41. The representative of Honduras said that, ever since the Bananas III dispute came under surveillance for the first time 12 years ago, the EC had repeatedly asserted that it was taking the requisite steps to respect its obligation to comply with its obligations. The fact that those promises had not been kept had been found in four WTO review procedures. At the present meeting, the EC had yet again assured the DSB that it intended to comply with its obligation. As in the past, the EC's words were at odds with its actions. When the EC referred to compliance, it was in fact saying that it envisaged making a few minor adjustments, provided that, and until such time as, the Latin American parties accepted the EC's long list of conditions. The list was a set of requirements that were not linked to the compliance under the dispute settlement system. The EC only envisaged the possibility of complying if, for example, the entire Membership did not object to its compromise offer. The EC only envisaged complying if the complainants in the Bananas III dispute, which included Honduras, and other interested suppliers renounced the right to liberalization in respect of other products. Small tariff cuts could not be regarded as compliance on the part of the EC, which turned this case into a complicated Doha exercise, nor could the EC transfer its obligation to comply to other Members. If the EC genuinely intended to settle this case, rather than pursue its illegal actions, it should forget the idea of imposing inappropriate conditions merely aimed at detracting from a solution. Honduras was still willing to accept the solution to which the EC had agreed in July 2008. To the extent that the EC continued to refuse the July Agreement, and in order to settle the issue, if the EC insisted on imposing irregular conditions and obfuscated its own obligation to comply, Honduras could only ask whether the EC's assurances of compliance were the EC's most recent list of unfulfilled promises. As an original complainant in the Bananas III dispute, Honduras continued to reserve all of its rights to challenge the EC's repeated non-compliance.

42. The representative of Nicaragua said that her delegation wished to refer to the statements it had made at previous DSB meetings and expressed renewed disappointment at the EC's long-standing and continuing failure to comply in this dispute. The status report of 8 April stated without any explanation that "the EC is engaged in negotiations with Latin American banana-supplying countries" and hoped that these negotiations "can soon lead to a satisfactory agreement". Nicaragua was not aware of any agreement being negotiated or of any proposal by the EC that could "soon lead to a satisfactory agreement". Furthermore, a close reading of the status report showed that the EC did not indicate any intention of bringing itself promptly into compliance. The EC had not stated this because its position was contrary to prompt compliance. The EC had taken the position that it was only under the obligation to comply if the Latin American banana supplying countries, including Nicaragua, renounced the rights to which they were entitled in other Doha-related areas and accepted other unilateral conditions imposed by the EC that were not linked to this dispute. Under the DSU, the EC did not have the prerogative to turn its obligation to comply with the DSB's ruling into a multilateral trade negotiation contingent upon requirements that had nothing to do with the re-instatement of rights. Nor did the EC have the prerogative to insist that the Latin American supplying countries, which had a definite stake in the illegal measures in question, should not negotiate with any Member other than itself. The EC's responsibility was clear and unconditional. The EC was under the obligation to comply with the DSB's ruling, which required the EC to provide immediate and non-discriminatory access to the Latin American suppliers. The EC's continuing reluctance to comply should be a matter of systemic concern to all delegations. The WTO was setting a highly visible example of recurring non-compliance, which weakened its enforcement mechanisms, promoted protectionism to the detriment of the rule of law, and breached Members undertaking to help developing countries overcome poverty through trade. Nicaragua, once again, called upon the EC to bring itself into compliance without delay.

43. The representative of Cameroon said that his delegation thanked the EC for its status report and endorsed the content of the statement made by the Dominican Republic, on behalf of the ACP countries. Since Cameroon's position remained the same, his delegation wished to refer to its previous statements made at the DSB meetings on 11 December 2008, and 19 February and 20 March 2009. There was nothing in particular that would enable Cameroon to change its position,

and since the EC was planning on an extended agreement, Cameroon reaffirmed its willingness to participate constructively, as it always had done, in the search for a solution which would take into account the interests of all suppliers.

44. The representative of the United States said that the EC had, once again, filed a status report that mentioned only Ecuador's proceeding, and even in that context, provided no information regarding how the EC was in compliance with its obligations under Articles I and XIII of the GATT 1994. As had been previously stated, the fact was that the DSB had not adopted any panel or Appellate Body report finding that the EC was in compliance with its WTO obligations with respect to its bananas import regime. This was true with respect to the United States as well as the other original co-complainants in this dispute. With respect to the GATT Article II inconsistency that the panel and Appellate Body had found, the United States, once again, wished to recall that the EC was required to reduce its bananas tariff as a dispute settlement compliance matter. This was independent of whatever other goals the EC may wish to achieve in a much broader and distinct set of negotiations. The United States noted that the reasonable period of time for compliance by the EC had expired more than 10 years ago, on 1 January 1999, and 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. Once again, the United States hoped that, at the next DSB meeting, Members would receive a comprehensive status report with a comprehensive explanation of how the EC intended to come into substantive compliance with its obligations, as well as a description of the progress it was making towards that end.

45. The representative of Guatemala said that his delegation would like to join other delegations in expressing its disappointment at the EC's failure to comply with the DSB's rulings in this case. Guatemala regretted that the report submitted by the EC on 9 April 2009 was vague, and failed to explain how the EC intended to bring itself into compliance with what had been decided by the DSB. Guatemala recalled what had been said in the DSB and other WTO fora, namely that an agreement that would have put an end to this dispute had already been reached between the EC and the Latin American banana-producing countries. He said that he was referring to the Geneva Agreement on Trade in Bananas, completed on 27 July 2008. Once again, Guatemala urged the EC to comply with what had been agreed.

46. The representative of the European Communities 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's recommendations and rulings "remain in effect until the EC brings itself into substantive compliance". However, there was no longer a compliance issue here, 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 FTA negotiations with Latin American suppliers.

47. 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.1)

48. The Chairman drew attention to document WT/DS332/19/Add.1, 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.

49. The representative of Brazil said that, on 8 April 2009, his country had provided the DSB with a further status report in this dispute, in accordance with Article 21.6 of the DSU. In that status

report, Brazil provided updated information on the actions pursued by the Government regarding the implementation of the DSB's recommendations and rulings, following the adoption of the Reports of the Panel and the Appellate Body. As stated in its status report, Brazil believed that the judgment of ADPF 101 by the Supreme Court would constitute a fundamental step in the strengthening of Brazil's environmental policy concerning tyres, as well as for the implementation of the DSB's recommendations and rulings in this dispute.

50. The representative of the European Communities said that the EC noted Brazil's second status report and what Brazil had considered progress towards WTO compliance since its import ban on retreaded tyres was found incompatible with the WTO Agreement. The EC noted, once again, that Brazil 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 March 2009 DSB meeting. The EC was neither convinced nor satisfied by Brazil's actions. The fastest and the best way to do away with the ongoing and WTO-incompatible discrimination would be to lift by Brazil its import ban on retreaded tyres. This would also ensure that Brazil respected its MERCOSUR obligations, confirmed by binding arbitral rulings. The EC did not feel it had received a satisfactory answer to its question of what exactly Brazil intended to set up when it had 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 emphasized that it was strongly in favour of environmental and public health protection. It would, therefore, by no means wish to discourage Brazil from doing more for the protection of its citizens against diseases spread by mosquitoes that breed in abandoned waste tyres. For that purpose, however, much better, more effective measures were available as compared with the selective targeting of certain imported products that did not actually contribute to the problem. The EC was dissatisfied by the ongoing resort, including by representatives of the Brazilian Government, and in fact by the reporting judge of the Supreme Court referred to by Brazil, to the polemic allegation that the EC intended to export its waste to Brazil. The EC 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 the import ban.

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

2. China – Measures affecting the protection and enforcement of intellectual property rights

(a) Implementation of the recommendations of the DSB

52. The Chairman recalled that, in accordance with the DSU provisions, the DSB was required to keep under surveillance the implementation of recommendations and rulings of the DSB in order to ensure effective resolution of disputes to the benefit of all Members. In this respect, Article 21.3 of the DSU provided that the Member concerned shall inform the DSB, within 30 days after the date of adoption of the panel or Appellate Body report, of its intentions in respect of implementation of the recommendations and rulings of the DSB. He recalled that at its meeting on 20 March 2009, the DSB had adopted the Panel Report pertaining to the case on: "China – Measures Affecting the Protection and Enforcement of Intellectual Property Rights". He noted that the 30-day period, under Article 21.3 of the DSU, for stating China's intentions in respect of implementation in this case had expired on 19 April, and on 15 April, China had informed the DSB in writing of its intentions in respect of implementation. The relevant communication was contained in document WT/DS362/11. He invited the representative of China to make a statement.

53. The representative of China recalled that the DSB had adopted, on 20 March 2009, the Panel Report in this dispute. After reaching an agreement with the United States, China had informed the DSB of its intentions to implement the DSB's recommendations and rulings by letter on 15 April 2009, rather than at a special meeting, and had requested that this item be placed on the Agenda of the present meeting. China was pleased to reaffirm its intention to implement the DSB's recommendations and rulings in this dispute in a manner that respected China's WTO obligations. China would need a reasonable period of time in which to implement. China stood ready to consult with the United States regarding a reasonable period of time to implement, in accordance with Article 21.3(b) of the DSU.

54. The representative of the United States said that his country thanked China for its statement indicating that it intended to implement the DSB's recommendations and rulings in this dispute. The United States further thanked China for its letter of 15 April, that conveyed this same intention, and was pleased to confirm that, as stated in that letter, the United States had agreed that China would inform the DSB of its intentions by letter rather than at a special meeting of the DSB. In light of the pressing problems of IPR infringement, the United States looked forward to China moving promptly to bring its measures into compliance with its obligations. The United States stood ready to discuss with China a reasonable period of time for its implementation under Article 21.3(b) of the DSU.

55. The representative of the European Communities said that, as had been stated under item 1 of the Agenda, the EC attached great importance to the effective protection of IP rights and hoped that China would expeditiously implement the DSB's recommendations.

56. The DSB took note of the statements, and of the information provided by China regarding its intentions in respect of implementation of the DSB's recommendations in this case.

3. 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

57. The Chairman said that this matter was on the Agenda of the present meeting at the request of the EC and Japan. He then invited the respective representatives to speak.

58. The representative of the European Communities said that, on 17 April, the EC had adopted a regulation that would bring the level of retaliatory measures applied in this dispute down to US$16.31 million as from 1 May 2009. In accordance with the DSB's authorization to suspend concessions to the United States, this reflected the proportionate decrease of the amount disbursed to US companies from anti-dumping and countervailing duties collected on EC products in the latest distribution of November 2008. But it showed also that duties were still being paid to the US industry. The EC asked the United States again as to when it would effectively stop the transfer of those 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.

59. The representative of Japan said that the latest distribution for FY2008[2] showed that the CDSOA still remained operational.[3] 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

[2] According to the latest CDSOA Annual Report published by US Customs, some US$180 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/

[3] 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

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.

60. The representative of India said that her country thanked the EC and Japan, once again, for raising this item at the DSB meeting and shared their concerns. India remained disappointed at the United States' maintenance of these WTO-inconsistent disbursements. As mentioned by previous speakers, the CDSOA remained fully operational. Those disbursements made by the United States to its domestic industry under the Byrd Amendment affected the rights of other WTO Members. India, therefore, urged the United States to cease its WTO-inconsistent disbursement and supported the view that continued surveillance by the DSB was needed, as long as the United States did not comply with the WTO ruling.

61. 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.

62. 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.

63. The representative of Brazil expressed his country's appreciation to Japan and the EC for raising this important issue in the DSB. Brazil was of the view that the CDSOA still allowed for disbursements by the US administration to its domestic industry. Members continued to raise concerns about this fact. Brazil thus expected that the United States would endeavour all efforts to rectify this situation so as to be in full compliance with the DSB's recommendations and rulings.

64. The representative of Thailand thanked the EC and Japan for continuing to bring this item before the DSB. Thailand remained disappointed at the US maintenance of these WTO-inconsistent disbursements. She said that Thailand regretted that the CDSOA remained fully operational, affecting several million dollars worth of Thai exports to the United States. Once again, Thailand urged the United States to cease those disbursements, repeal the Byrd Amendment with immediate practical effect, and resume providing status reports until such actions were taken and this matter was fully resolved.

65. The representative of the United States said that, as his country had already explained at 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. The United States recalled further 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. With respect to comments regarding further DSB surveillance in this matter, as it had already explained at previous DSB meetings, the United States had taken all steps necessary to implement the DSB's recommendations and rulings. In this light, the United States failed to see what purpose would be served by further submission of status reports repeating the progress the United States made in the implementation of the DSB's recommendations and rulings. With respect to the EC's comments on its new measures suspending concessions, the United States continued to review the action by the EC and had not concluded that it was able to share the EC's characterization at this time. As previously observed, the DSB only authorized the suspension of concessions or other obligations as provided in the Award of the Arbitrator.

66. The DSB took note of the statements.

4. United States – Measures relating to shrimp from Thailand

(a) Statement by the United States on implementation of the recommendations adopted by the DSB

67. The Chairman said this item was on the Agenda of the present meeting at the request of the United States. He then invited the representative of the United States to speak.

68. The representative of the United States said that, on 1 August 2008, the DSB had adopted the recommendations and rulings contained in the Panel and Appellate Body reports in this dispute. The United States wished to take the opportunity to describe to Members the steps that the United States had recently taken to implement those recommendations and rulings. First, on 12 January 2009, the US Customs had published a notice proposing to end the designation of shrimp subject to anti-dumping or countervailing duty orders as a special category or covered case subject to an enhanced bonding requirement. After considering public comments on its proposal, US Customs had issued a final notice ending the designation, effective 1 April 2009. This notice had been published in the Federal Register on 1 April 2009. The United States would be pleased to provide a copy to interested Members. As a result of this action, importers of shrimp may now obtain bonds based on the ordinary bond formulas and were no longer required to post bonds in the amounts established under the additional bond requirement. Furthermore, with regard to the finding of the panel regarding the use of zeroing by the Department of Commerce in the investigation of warmwater shrimp from Thailand, the Department of Commerce completed its Section 129 determination, recalculating the margins of dumping without zeroing, and implemented the determination effective 16 January 2009. Thus, the representative of the United States was pleased to report that his country had complied with the DSB's recommendations and rulings in this dispute.

69. The representative of Thailand said that her country wished to thank the United States for its cooperation in negotiating the reasonable period of time in this dispute and for its hard work in taking certain measures to comply before the end of the reasonable period of time. Thailand was particularly appreciative of the US efforts in implementing the DSB's recommendation with respect to the use of zeroing in this dispute by 1 February 2009. With respect to the enhanced bonding requirement, Thailand also welcomed the US publication on 1 April 2009 of a notice in the US Federal Register setting forth how the United States intended to comply with the DSB's recommendations regarding the enhanced bonding requirement thus far. Thailand thanked the United States for taking this step and for the cooperative manner in which the United States had listened to Thailand's views on the implementation of the DSB's recommendations. Because the Federal Register notice had been published at the end of the reasonable period of time, Thailand was still considering whether the steps enumerated in the notice would be sufficient to bring the United States into compliance with the DSB's rulings and recommendations in this case. In any event, Thailand would have to see how the notice was applied to individual importers of shrimp from Thailand before it could assess whether the United States had come fully into compliance. Pending that assessment, Thailand reserved all of its rights under the DSU. With that in mind, Thailand had entered into negotiations with the United States regarding a "sequencing" agreement. Thailand looked forward to continuing those negotiations with the United States in the same cordial and constructive manner as in all other discussions with the United States in these proceedings. Thailand hoped, of course, that no further proceedings under the DSU would be necessary. Because Thailand considered that this issue had not been resolved, it requested that this matter continue to be placed on the DSB's Agenda in accordance with DSU Article 21.6 of the DSU until it was fully resolved.

70. The DSB took note of the statements.

5. United States – Customs Bond Directive for merchandise subject to anti-dumping/countervailing duties

(a) Statement by the United States on implementation of the recommendations adopted by the DSB

71. The Chairman said that this item was on the Agenda of the present meeting at the request of the United States. He invited the representative of the United States to speak.

72. The representative of the United States said that many of the comments that the United States made under the previous Agenda item applied to this one as well. In particular, as mentioned previously, as a result of the notice published by US Customs on 1 April 2009, importers of shrimp were no longer required to post bonds in the amounts established under the additional bond requirement and instead may import with bonds in amounts calculated using the ordinary bond formulas. He also noted that the action extended not only to importers of shrimp from Thailand and from India, but to all affected importers. Finally, he reported that the United States had notified the documents relating to the additional bond requirement to the Committee on Anti-Dumping Practices and the SCM Committee, in accordance with the finding of the panel. The United States was, therefore, pleased to inform the DSB that the United States had complied with the recommendations and rulings adopted by the DSB in this dispute.

73. The representative of India said that her country thanked the United States for its statement regarding implementation of the recommendations and rulings on the Enhanced Bond requirement imposed under the Customs Bond Directive, which had been found incompatible with the WTO Agreement. India also thanked the United States for its cooperation in negotiating the reasonable period of time in this dispute, and for the efforts in taking certain measures to comply, before the end of the reasonable period of time. Without prejudice to their rights under the DSU, India welcomed the steps announced by the United States in the Federal Register on, 1 April 2009, setting forth how it intended to comply with the DSB's recommendations and rulings. Since the notice had been published at the very end of the reasonable period of time, India would have to see how the notice would be applied in practice to individual importers of shrimp from India. India looked forward to seeing how those steps would be implemented. Pending that assessment, and reserving their rights under the DSU, India was willing to have further constructive discussions with the United States in these proceedings. Since India considered that this issue had not been fully resolved, it requested that the matter continue to be placed on the DSB's Agenda, in accordance with Article 21.6 of the DSU, until it was fully resolved.

74. The DSB took note of the statements.

6. United States – Measures concerning the importation, marketing and sale of tuna and tuna products

(a) Request for the establishment of a panel by Mexico (WT/DS381/4)

75. The Chairman recalled that the DSB had considered this matter at its meeting on 20 March 2009 and had agreed to revert to it. He drew Members' attention to the communication from Mexico contained in document WT/DS381/4, and invited the representative of Mexico to speak.

76. The representative of Mexico said that, at the 20 March DSB meeting, his country had requested the establishment of a panel in this case. However, it had proved impossible to establish such a panel at that meeting because of the US refusal to do so. At the present meeting, Mexico's request was on the DSB's Agenda for the second time. In accordance with Article 6.1 of the DSU, Mexico, once again, requested that a panel be established, and referred to its statement made at the

20 March DSB meeting. Mexico was nevertheless leaving the door open to the possibility of reaching a mutually satisfactory solution with the United States regarding this matter.

77. The representative of the United States said that his country was disappointed that Mexico had chosen to move forward with its request for panel establishment a second time. As had been explained at the 20 March 2009 DSB meeting, United States considered its dolphin-safe labelling regime central to the protection of the dolphin population in the Eastern Tropical Pacific ocean. Furthermore, the United States was confident that the US dolphin-safe labelling measures that Mexico had challenged were consistent with US WTO obligations. In addition, the United States was very concerned that Mexico was proceeding with this request for another reason. On 24 March 2009, the United States had invoked Article 2005(4) of the North American Free Trade Agreement (NAFTA). In that provision, the NAFTA parties had agreed that certain disputes which pertained to matters arising under the WTO Agreement and the standards-related provisions of the NAFTA, and which concerned human, animal or plant life or health or the environment and raise factual issues regarding the environment or conservation, would be heard – at the responding party's option – solely under the NAFTA's dispute settlement procedures. This dispute met the criteria set out in that NAFTA provision, and the United States had the right to have this dispute considered under the NAFTA. The United States understood that a panel would be established at the present meeting. The United States deeply regretted Mexico's decision to seek establishment of a WTO panel despite its prior agreement with the other NAFTA parties on a choice of forum provision in their free trade agreement, and their invocation of that provision. The United States urged Mexico to reconsider its position. The United States would also be considering its options moving forward.

78. The representative of New Zealand said that environmental labelling was a growing phenomenon in international trade. New Zealand expected, therefore, that this case would be an important one for the WTO system. New Zealand had both a systemic and commercial interest in ensuring that environmental labelling was pursued within the parameters established by the WTO Agreements.

79. The representative of Mexico said that his delegation wished to comment briefly on the statement made by the United States, and in this connection, it wished to underline a couple of issues both for the benefit of the other Members and in the interest of transparency, as well as to acknowledge the importance that Mexico attached to NAFTA. After the first request for the establishment of a panel, the United States had requested Mexico's authorities that this matter be resolved under the NAFTA dispute settlement mechanism indicating that certain provisions of NAFTA were applicable in this dispute. Mexico had always acknowledged the importance of NAFTA's dispute settlement mechanism. However, having examined that request carefully, Mexico's authorities had concluded that the provisions cited by the United States did not apply in the present dispute. Mexico had replied promptly to the United States explaining the foregoing. In that reply, it had also pointed out that, besides the legal considerations, this dispute dealt with issues that had important multilateral implications that had to be resolved in the WTO. Many countries had indicated informally that they wished to take part in, or follow up on, the dispute which would not be possible under NAFTA proceedings. Mexico considered that the substantial interest prompted by this case at international level ought also to be taken into account. Accordingly, Mexico reiterated its request for the establishment of a panel in order to settle this dispute in the WTO.

80. The representative of the United States said that the present meeting was perhaps not the best place to debate the meaning of NAFTA's dispute settlement provisions. However, in light of Mexico's comments, it might be helpful to say that, at the time the NAFTA had been negotiated, the NAFTA parties understood that disputes concerning standards-related measures for the protection of human, animal or plant life or health or the environment could arise under either the NAFTA or the WTO. As a consequence, the NAFTA parties specifically included the NAFTA choice of forum provision to give the responding party the right to have such disputes heard before a NAFTA panel.

The United States was very concerned that Mexico's approach would mean that NAFTA Article 2005(4) would never apply. That was certainly not the intention of the NAFTA parties, and it was a cause for serious concern. The United States appreciated Mexico's acknowledgment that the international community may have an interest in this dispute. The United States hoped that it could count on Mexico's cooperation in making sure that the proceedings in this dispute – whether in the WTO or under the NAFTA – were as transparent as possible, including by making submissions publicly available when filed and by opening the panel hearings to public observation.

81. 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.

82. The representatives of Argentina, Australia, China, Ecuador, the European Communities, Guatemala, Japan, Korea, New Zealand, Chinese Taipei and Turkey reserved their third-party rights to participate in the Panel's proceedings.

7. Appointment of Appellate Body members

(a) Statement by the Chairman

83. The Chairman, speaking under "Other Business", said that, as he had announced at the outset of the meeting, he would like to make a statement concerning the process for appointment of Appellate Body members. In this connection, he referred to his fax to delegations of 25 March 2009, which set forth certain arrangements concerning this matter. In that regard, he recalled that the Selection Committee would interview all six of the nominated candidates starting on 20 April (afternoon) and continuing through the afternoons of 21 and 22 of April. Since all six candidates would be in town that week, he reminded Members that, in accordance with past practice, delegations wishing to meet with the candidates were invited to contact directly their respective Geneva missions to make an appointment – in this case, the missions of Argentina, Brazil, Costa Rica, the European Communities and Mexico. With regard to the process through which interested delegations could express their views on the candidates directly to the Selection Committee, arrangements to do so had already been made by the Secretariat for the days of 12 and 13 May. He understood that some Members had already contacted the Secretariat to make an appointment with the Committee. Those Member who still wished to make an appointment on one of those two days were invited to contact the Council and TNC Division. Alternatively, delegations could send their comments in writing to the Committee. Such comments should be addressed to the Chairman of the DSB, in care of the Council and TNC Division, and sent by no later than 20 May 2009 at 6 pm. After completing its interviews with the candidates and hearing or receiving in writing the views of all interested delegations, the Selection Committee would meet to decide by consensus on its recommendations to fill the two Appellate Body positions under consideration. As agreed by the DSB on 22 December 2008, the Selection Committee would make its recommendations to the DSB by no later than the end of May so that a decision on this matter could be taken by the DSB at its regular meeting in June. Finally, he recalled that, pursuant to its decision of 22 December, the DSB had agreed to ask the DSB Chairman to continue to carry out consultations on the possible reappointment of Mr. David Unterhalter, who had expressed his willingness and desire to be reappointed for a second term. As was the case at the previous meeting, he intended to continue these consultations and would report back to Members on this as soon as it was appropriate to do so.

84. The DSB took note of the statement.