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Dispute Settlement Body
24 June 2002

MINUTES OF MEETING

Held in the Centre William Rappard
on 24 June 2002

Chairman: Mr. Carlos Pérez del Castillo (Uruguay)

Subjects discussed: Page

Prior to adoption of the agenda

The Chairman said that over the weekend he had received a letter from Canada related to item 6 of the agenda, namely, "Canada – Export Credits and Loan Guarantees for Regional Aircraft: Recourse by Brazil to Article 4.10 of the SCM Agreement and Article 22.2 of the DSU". He said that that letter had been circulated in document WT/DS222/8 in the course of the morning. He then invited Canada to make a statement.

The representative of Canada said that, on 21 June 2002, his country had submitted a letter to the Chairman and had had an opportunity to discuss it with him. He said that Canada believed that the issue of retaliation in terms of the options and the calculations of the figures submitted by Brazil were inappropriately placed before the DSB at the present meeting. These issues had been discussed with Brazil and were explained in the letter addressed to the Chairman. Since in its letter, Canada referred to the appropriate Articles, he did not wish to go into detail at this time, but reiterated that Brazil's request was inappropriately before the DSB and sought the Chairman's judgment on this issue.

The representative of Brazil said that his country had noted Canada's request to modify the agenda by removing Brazil's request for suspension of concessions. In Brazil's view, Canada's request was unfounded. He then proceeded to an examination of the grounds for Canada's request. First, Canada claimed that "the situation described in Article 22.2 of the DSU has not occurred". According to Canada, "the situation described in Article 22.2 ... [is] a necessary precondition for the operation of Article 22.6". Moreover, Canada claimed that "the DSB has no authority to consider the authorization requested by Brazil". Canada explained that the "reason for this is that Brazil's request is based ... on an allegation that Canada ... has failed to withdraw subsidies in respect of ... aircraft options in a transaction considered by the Panel in this dispute". Brazil disagreed with Canada's presentation of the facts and with Canada's interpretation of the relevant WTO provisions. Canada incorrectly claimed that Brazil's request was based on Canada's failure to withdraw subsidies with respect to options. This was not accurate. Brazil had never made this linkage, neither in the DSB nor to Canada in bilateral discussions. Rather, Brazil based its request on the fact acknowledged by Canada, both to the DSB at its meeting on 22 May 2002 and to Brazil, that it had taken no measures whatsoever to comply with the DSB's recommendations and rulings. Canada had taken no measures at all since the adoption of the Panel Report, which had recommended that Canada withdraw, without delay, the subsidies found to be inconsistent with the SCM Agreement. Canada recognized that it had not withdrawn the subsidies found to be inconsistent with its obligations under the SCM Agreement. The parties did not disagree that the subsidies, which had been found inconsistent with the SCM Agreement, had not been withdrawn during the reasonable period of time. According to Article 22.2 of the DSU, if a Member (Canada in this case) either: (a) "fails to bring the measure ... into compliance" with the covered agreement - a condition the parties agree has been met in this case; or (b) "fails to comply with the recommendations and rulings within the reasonable period of time", a condition that also had been satisfied in this case, the complaining Member (Brazil in this case) could "request authorization from the DSB to suspend the application of concessions or other obligations under the covered agreements".

He underlined that Brazil was not making a unilateral determination of non-compliance. Brazil had always opposed such a course of action, as Members were aware through Brazil's unequivocal statements before the DSB and before all other WTO bodies in which the issue had been raised. In the case under consideration, the two parties were in agreement that Canada had failed to withdraw subsidies found to be inconsistent with the SCM Agreement. The two parties agreed that Canada had taken no action whatsoever following the adoption of the Panel Report. The two parties were in agreement that Canada was not in compliance with its WTO obligations. Brazil, therefore, was entitled to request authorization to suspend concessions pursuant to Article 22.2 of the DSU and the DSB had to authorize Brazil's request, pursuant to Article 22.6 of the DSU, unless Canada objected to the amount proposed by Brazil. Thus far, Brazil had responded to the grounds raised in Canada's letter. Not surprisingly that letter ignored the fact that this case concerned prohibited

subsidies; export subsidies governed by Part III of the SCM Agreement. As provided for in Article 4.10 of that Agreement, "In the event the recommendation of the DSB is not followed within the time-period specified by the panel ... the DSB shall grant authorization to the complaining Member to take appropriate countermeasures, unless the DSB decides by consensus to reject the request." Brazil and Canada agreed that the DSB's recommendations and rulings had not been complied with within the reasonable period of time. It followed that the DSB shall grant such authorization, unless, as stated in Article 4.11 of the DSU, a party to the dispute requested arbitration under Article 22.6 of the DSU. He stressed that, according to Article 4.11 of the DSU, the arbitrators would "determine whether the countermeasures are appropriate". Thus, if Canada contested the appropriateness of the countermeasures Brazil intended to apply – which seemed to be the case – this issue should be decided by the arbitrators, not by the DSB. The questions of how Brazil based its request to adopt countermeasures and how Brazil assessed the appropriateness of the countermeasures would have to be addressed by the arbitrators, not by the DSB. In concluding, he made the following points. First, this was not a sequencing question. As he had pointed out earlier, this case was distinct from previous proceedings that involved the sequencing issue because Canada had taken no action to comply with the DSB's recommendations and rulings and admitted that no action had been taken. Indeed, the question before the DSB at the present meeting was whether a Member that had been found to provide an export subsidy, had taken no action to comply with the DSB's recommendations and rulings and had admitted the same, could preclude the complaining Member from pursuing retaliation under Article 22 of the DSU. The answer to this question was "no". Second, Brazil did not believe that any of Canada's claims were relevant. However, it was important that Members understood that Canada would not lose any substantive rights, if Brazil's request remained on the agenda. Canada might still raise the issue in the Article 22.6 proceeding, which could be addressed in detail by the arbitrators. In short, Canada's request to remove the item from the agenda was groundless and Brazil would not join in any consensus that would approve Canada's request.

The representative of Canada said that he wished to briefly respond to the statement made by Brazil. He said that his delegation was very specific and the letter of 21 June to the Chairman of the DSB that the Panel had not dealt with the issue of options. There was no Government of Canada decision or authority with reference to options and, therefore, Canada believed that the options were inappropriately included in Brazil's request at the present meeting. He reiterated that the letter and the comments made by his delegation were specifically directed at options, which was different from earlier panel decisions in relation to PROEX because Brazil's decision and authority quite explicitly covered and incorporated the same decision to be transferred on any exercise of the options. Canada had raised this issue with Brazil on a number of occasions and this was one of the reasons why the consideration of this item had been postponed to see if it was possible to obtain agreement that the options part of this request was inappropriately before the DSB. However, it had not been possible to obtain such an agreement. On the basis of the discussions with Brazil, it appeared quite clear that Brazil wished to claim in Article 22.6 proceedings that the options were relevant even if they had not been subsidized because they had to be factored in some sort of harm or impairment that Brazil claimed to have suffered as a result of Canada's subsidization of the firm orders. Brazil was free to make this argument, whatever its merits, in Article 22.6 proceedings. However, the methodology now advocated by Brazil was not the one considered appropriate in respect of its non-compliance in PROEX. Nevertheless, in seeking confirmation from Brazil as to the basis of its claim of non-compliance, Canada sought to reassure Brazil that it was not trying to preclude such an argument. For that reason, Canada had made it very clear in its letter of July 2002 to Brazil that the confirmation it sought was distinct from all the options that might relate to a calculation of appropriate countermeasures. Nevertheless, if Brazil really considered that the determination of non-compliance on the options was unnecessary it should concede Canada's position that no Canadian Government financing was provided in respect of the options and that they were not the subject of the DSB's recommendations and rulings. If Brazil were to concede this would have no effect on its calculation of countermeasures, if the Arbitrators accepted its methodology. The fact that Brazil would not agree to this, showed that, quite apart from any arguments it might wish to advance in the course of Article 22.6 arbitration, its request for countermeasures was premised in part on the allegation that Canada had failed to withdraw imagined subsidies on the options. Canada, therefore, would welcome

the clarifications from Brazil that this was not the case, but, thus far, Brazil had refused to provide one.

The Chairman noted that Canada and Brazil had presented substantive arguments on item 6 of the agenda. He recalled that this item had been included on the agenda at the request of Brazil and that in accordance with the Rules of Procedure for DSB meetings, the DSB may at any time amend the agenda. In the absence of opposition to the adoption of the agenda, the Chairman stated that the agenda would be adopted with all the items including item 6. He asked if any representative wished to add any other items to the agenda under "Other Business". The representative of the United States indicated that her delegation wished to make a statement under "Other Business" concerning the agreement between Argentina and the United States in the case on "Argentina – Certain Measures on the Protection of Patents and Test Data". The representative of Canada sought confirmation from the Chairman as to whether the exchange of views between Brazil and Canada concerning item 6 of the agenda would be reflected in the minutes of the present meeting. The Chairman confirmed that the statements made by Canada and Brazil prior to the adoption of the agenda would be duly reflected in the minutes of the meeting.

The DSB took note of the statements and adopted the proposed agenda with the inclusion of the item under "Other Business" requested by the United States.

1. Surveillance of implementation of recommendations adopted by the DSB

(a) United States – Section 110(5) of the US Copyright Act: Status report by the United States

(b) United States – Anti-Dumping Act of 1916: Status report by the United States

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

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

2. The Chairman drew attention to document WT/DS160/18/Add.5 which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning Section 110(5) of the US Copyright Act.

3. The representative of the United States said that, on 13 June 2002, in accordance with Article 21.6 of the DSU, her country had provided an additional status report in this dispute. As noted in the report, the United States had been engaged in discussions with the EC to find a positive and mutually acceptable solution to the dispute. The United States was working hard to reach a mutually acceptable arrangement consistent with WTO rules. Since the previous status report, the US Administration had continued to engage actively with the US Congress on this matter and looked forward to resolving the dispute.

4. The representative of the European Communities said that even though the EC and its member States remained concerned about the delays in the implementation of the DSB's recommendations and rulings in this case, they noted that the US Administration was working with the US Congress with a view to solving the dispute. The EC hoped to see rapid progress in that regard.

5. The representative of Australia said that, at a number of previous DSB meetings, his country had registered its concern about the continued delay in the United States' implementation of the DSB's

recommendations and rulings in this dispute. Australia had also registered its concerns about the apparent discriminatory nature of the proposed compensation arrangements that it understood had been agreed between the United States and the EC. Australia noted from the most recent US status report that the US administration was continuing to work actively with the US Congress to implement a mutually acceptable resolution of the dispute. However, the report contained no information on the nature of the proposed solution. Australia would be grateful if the United States could provide this information to the DSB.

6. The representative of the United States said that any arrangements to be reached with the EC would be consistent with the WTO covered agreements.

7. The representative of the European Communities said that the EC was aware of its transparency obligations under the DSU, which it had always respected. However, at this stage there was no agreement to notify in the context of this dispute.

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

(b) United States – Anti-Dumping Act of 1916: Status report by the United States (WT/DS136/14/Add.5 - WT/DS162/17/Add.5)

9. The Chairman drew attention to document WT/DS136/14/Add.5 – WT/DS162/17/Add.5 which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning the US Anti-Dumping Act of 1916.

10. The representative of the United States said that, on 13 June 2002, her country had provided an additional status report in this dispute, in accordance with Article 21.6 of the DSU. As noted in that report, bills had been introduced in both the US Senate (S.2224) and the US House of Representatives (H.R. 3557) which would repeal the 1916 Act and apply to all pending court cases. The United States would continue to work for further progress in reaching a mutually satisfactory resolution to this dispute with the EC and Japan.

11. The representative of Japan said that, as his delegation had repeatedly stated in the DSB meetings, Japan's goal was to obtain prompt compliance by the United States. As he had pointed out at the 22 May DSB meeting, the communication, dated 4 March 2002 contained in WT/DS162/21 clearly stipulated that "the arbitration proceeding may be reactivated at the request of either party after 30 June 2002, if no substantial progress has been made in resolving this dispute by that date". He noted that 30 June 2002 was fast approaching. Japan urged the United States to continue its best efforts to have the Bill repealing the 1916 Act passed by the US Congress as soon as possible.

12. The representative of the European Communities said that the EC had noted, once again, that the US Congress had still not made progress towards implementation of the DSB's recommendations despite the fact that a reasonable period for implementation had originally expired in July 2001, and had been extended until the end of 2001. This continued lack of compliance was increasingly worrying. It was a bad signal for all Members with regard to compliance and the priorities of the United States in this context. Therefore, the EC wished to impress on the US Administration the extreme urgency of securing a repeal of the 1916 Anti-Dumping Act.

13. The representative of Mexico recalled that his country had an interest in the prompt resolution of this dispute.

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

2. United States – Rules of origin for textiles and apparel products

(a) Request for the establishment of a panel by India (WT/DS243/5/Rev.1)

15. The Chairman recalled that the DSB had considered this matter at its meeting on 22 May 2002 and agreed to revert to it. He drew attention to the communication from India contained in document WT/DS243/5 and Rev.1.

16. The representative of India said that his country was requesting the establishment of a panel to examine the WTO-consistency of the US rules of origin relating to textile and apparel products. He said that India had previously expressed its concern that the relevant US legislation and administrative practices had resulted in extraordinarily complex rules of origin for textile and apparel products under which the criteria that conferred origin varied between similar products and processing operations. The structure of the rules of origin, their implementation and administration, the circumstances under which they had been adopted and their effect on the conditions of competition for textiles and apparel products had led India to consider that the US rules of origin were being used as instruments to pursue trade objectives, and had created restrictive, distorting and disruptive effects on international trade. In India's view the US rules of origin relating to textile and apparel products were inconsistent with its WTO obligations. India had held consultations with the United States on this issue. Unfortunately, these consultations had not resulted in a satisfactory resolution of the dispute. India was, therefore, requesting the establishment of a panel. Despite disagreement expressed at the 22 May DSB meeting over a typographical error contained in the panel request, India had submitted a revised version of its panel request. Therefore, it was India's understanding that the panel would be established at the present meeting.

17. The representative of the United States said that both Section 334 of the Uruguay Round Agreements Act (1996) and Section 405 of the Trade and Development Act of 2000 were fully consistent with the United States' obligations under the Agreement on Rules of Origin, and the United States was confident that a panel would so agree. The United States noted that India had submitted a corrected version of its panel request, and recalled the statement made by the United States at the 22 May DSB meeting that the United States would accept the establishment of a panel at the first meeting at which the corrected request had been considered. Therefore, while the United States regretted that India had chosen to continue to pursue panel proceedings, it would accept the establishment of a panel at the present meeting; i.e. the first DSB meeting at which India's panel request appeared on the agenda.

18. At the present meeting, the United States also wanted to take the opportunity to respond to the Secretariat's intervention when this agenda item had been considered on 22 May 2002. In that statement, the Secretariat had defended the decision of the Translation Division to modify India's panel request in the circulated version, without consulting either India or the United States. The statement of the Secretariat in no way allayed the serious concern of the United States with this incident. While the United States appreciated that the Secretariat played a constructive role when, following consultations with the submitting Member, it corrected clerical errors in certain types of documents, it must not purport to make changes to a panel request, for whatever reason. As the United States had discussed at the 22 May DSB meeting, panel requests were legal documents which established the terms of reference of panel proceedings. These legal documents played a central role in the arguments of the parties and the legal deliberations of the panel, and their wording and its meaning could decide the outcome of a dispute. The DSU authorized Members alone to submit panel requests. Only the original document was the legal panel request, and the Secretariat had no basis or authority for modifying such a document. The Secretariat's explanations for its actions only highlighted the risks to all Members when changes were made in the circulated version of a panel request. For example, the Secretariat had explained that it would only alter the circulated version when the change involved a typographical error. However, disputes would inevitably and needlessly arise as to whether an alteration by the Secretariat could be justified as typographical. It was the better part of wisdom, not to mention the only proper exercise of its authority, for the Secretariat to

circulate a panel request exactly as submitted by the complaining Member. When, as in the case at hand, a simple oversight required that a panel request be revised, Members, acting in good faith, could resolve the problem. India and the United States had been able to do so in this case, and the United States was confident that such situations could be resolved amicably in the future, without improper intervention by the Secretariat.

19. The representative of the Secretariat (Legal Affairs Division) said that that he wished to make a few comments in response to the statement made by the United States. First, he wished to clarify that the change made in India's panel request had not been made by the Translation Division but in response to a question put by the Translation Division in trying to translate the matter and finding that a particular term was missing. It was not a decision of the Translation Division. Second, he also wished to clarify that, as it had been indicated previously, the practice of the Secretariat and of the Legal Affairs Division was to check with the parties concerned before making changes to documents such as a request for the establishment of a panel. This had been done consistently over time and it had also been done in relation to documents submitted by the United States and other countries. In this particular case, the Secretary had not checked with the Legal Officer or India, and as had been stated, the Secretariat regretted this incident, and it would ensure that it did not reoccur. However, now the United States was saying that the Secretariat was not supposed to make any changes even after checking with the party concerned. In this regard, he said that the change had been made in relation to the request of Canada on 21 June 2002 and this was correctly reflected in the document circulated at the present meeting. He noted that the Secretariat was not supposed to make any clerical changes to typographical errors, or otherwise, even if the Secretariat were to check with the Member concerned.

20. 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.

21. The representatives of the European Communities, Pakistan and the Philippines reserved their third-party rights to participate in the Panel's proceedings.

3. United States - Definitive safeguard measures on imports of certain steel products

(a) Request for the establishment of a panel by China (WT/DS252/5)

(b) Request for the establishment of a panel by Switzerland (WT/DS253/5)

(c) Request for the establishment of a panel by Norway (WT/DS254/5)

22. The Chairman recalled that, at its meeting on 7 June 2002, the DSB had considered the panel request by China and had agreed to revert to it. Subsequently, at its meeting on 14 June 2002, the DSB had considered the panel requests by Switzerland and Norway and had agreed to revert to them. Since these three panel requests pertained to the same matter, he proposed that they be considered together.

23. The Chairman drew attention to the communication from China contained in document WT/DS252/5.

24. The representative of China recalled that with regard to the safeguard measures imposed by the United States on imported steel products on 20 March, at the 7 June DSB meeting, China had lodged its first request for the establishment of a panel to determine that the US safeguard measures were inconsistent with the provisions of the GATT 1994 and of the Agreement on Safeguards. Unfortunately, China's request had been declined by the United States at that meeting and China had to make the request for the establishment of a panel to examine the US safeguard measures for the second time. He did not wish to repeat the points made by China at the 7 June DSB meeting, but reiterated that the US safeguard measures violated the United States' obligations under the WTO

Agreement. China requested that a single panel be established to examine its complaint together with the complaints by the EC, Japan and Korea, pursuant to Article 9.1 of the DSU.

25. The Chairman drew attention to the communication from Switzerland contained in document WT/DS253/5.

26. The representative of Switzerland said that, on 3 April 2002, his country had initiated the procedures under Article 4 of the DSU, Article XXII:1 of the GATT 1994 and Article 14 of the Agreement on Safeguards by requesting the United States to enter into consultations. These consultations had been held in Geneva on 11-12 April 2002, but had failed to bring about a mutually agreeable solution. Switzerland considered that the US measures were inconsistent with the US obligations under the covered agreements within the meaning of Article 1.1 of the DSU and had resulted in nullification and impairment of benefits accruing to Switzerland directly or indirectly under such Agreements. Switzerland claimed that the US safeguard measures were in violation of the US obligations under the provisions of GATT 1994 and of the Agreement on Safeguards, in particular, because: (i) the precondition of "unforeseen developments" laid down in Article XIX:1 of the GATT 1994 was not satisfied; (ii) the safeguard measures had been imposed in the absence of the requisite increase in import volume for many of the imported products under investigation and were, therefore, inconsistent with Articles 2.1 and 4.2 of the Agreement on Safeguards; (iii) the determination of the relevant domestic industries that produced like or directly competitive products to those allegedly being imported in increased quantities, as required by Articles 2.1 and 4 of the Agreement on Safeguards was incorrect; (iv) the safeguard measures were inconsistent with Article 2.1 in conjunction with Articles 2.2 and 4.2 of the Agreement on Safeguards. Indeed, the requirement of parallelism between the scope of the investigation of the injury arising from imported products and the scope of the safeguard measures was not met; (v) the United States had failed to demonstrate, as required by Articles 2.1 and 4.2(b) of the Agreement on Safeguards, causality between the increased imports and serious injury. The United States had also failed to ensure that serious injury caused by factors other than increased imports was not attributed to increased imports; (vi) the safeguard measures had exceeded the extent necessary to prevent or remedy serious injury and to facilitate adjustment, and thus were in violation of Article 5(1) of the Agreement on Safeguards. The safeguard measures were not limited to the serious injury caused by increased imports; (vii) the United States violated Article 8.1 of the Agreement on Safeguards because it had failed to maintain a substantially equivalent level of concessions and other obligations between the exporting Member and the United States; and (viii) neither the Report of the Investigation nor the other relevant documents set forth adequately the findings and reasoned conclusions on all pertinent issues of fact and law. They had failed to outline the justification for the measures actually imposed and for all the other elements mentioned above, as required by Article 3.1 of the Agreement on Safeguards. Neither the Report of the Investigation nor the other relevant documents provided the analysis and demonstration required by Article 4.2(c) of the Agreement on Safeguards. In order to solve this dispute, Switzerland was requesting that a panel be established with regard to the definitive safeguard measures imposed by the United States on imports of steel products. At its meeting on 14 June 2002, the DSB had decided that the panel established on 3 June to examine the EC's complaint would also deal with the complaints by Japan and Korea. It was Switzerland's understanding that a single panel would examine all the complaints in accordance with Article 9.1 of the DSU and that the panel established on 3 June at the request of the EC would also examine the complaint by Switzerland.

27. The Chairman drew attention to the communication from Norway contained in document WT/DS254/5.

28. The representative of Norway said that on 14 June 2002, Norway had requested the establishment of a panel to examine the US definitive safeguard measures on imports of certain steel products. As the dispute had not been solved, Norway was requesting, for the second time, that the panel be established to examine this matter. Norway maintained its view that the United States was in breach of several provisions of the Agreement on Safeguards, as well as the GATT 1994. She did not wish to enter into detail, as the basis of Norway's complaint was outlined in its written request in

document WT/DS254/5. Norway was requesting that a panel be established in accordance with the procedures laid out in Article 9.1 of the DSU, and that the complaint be examined by a single panel, namely, that established at the 3 June DSB meeting at the request of the EC.

29. The representative of the United States said that it was regrettable that China, Norway and Switzerland had chosen to challenge the US safeguard measures. These measures were fully consistent with the applicable portions of the Safeguards Agreement and the GATT 1994, and the United States trusted that the dispute settlement process would ultimately reach the same conclusion. The United States understood that a panel would be established at the present meeting. Consistent with Article 9.1 of the DSU, the United States believed that these requests should be referred to the single panel already established at the request of the EC, Japan and Korea so that the single panel would consider all six panel requests.

30. The representative of the European Communities said that the EC had taken note of the requests for the establishment of a panel against the US steel safeguards following three additional complaints and welcomed the application of Article 9.1 of the DSU in this case. Thus, a panel would be established for all the co-complainants involved in the joint consultations against the US steel safeguards held in Geneva on 11-12 April 2002. The EC also recalled that, on 13 June 2002, New Zealand and Brazil had held consultations under the DSU with the United States on the same matter and on the basis of similar claims. The EC expected that all the DSU procedures, including those launched by New Zealand and Brazil, would proceed expeditiously.

31. The representative of Japan said that his country agreed to the establishment of a single panel in accordance with Article 9.1 of the DSU.

32. The representative of Korea said that his country also agreed to the establishment of a single panel in accordance with Article 9.1 of the DSU.

33. The DSB took note of the statements and agreed that the requests by China, Switzerland and Norway for the establishment of a panel with standard terms of reference are accepted. The DSB further agreed that, as provided for in Article 9.1 of the DSU in respect of multiple complainants, the Panel established at the 3 June DSB meeting to examine the complaint by the European Communities contained in document WT/DS248/12, which pursuant to the DSB's decision on 14 June 2002 had also been requested to examine the complaint by Japan contained in document WT/DS249/6 and the complaint by Korea contained in document WT/DS251/7, would also examine China's complaint contained in document WT/DS252/5, Switzerland's complaint contained in document WT/DS253/5 and Norway's complaint contained in document WT/DS254/5.

34. The Chairman said that those delegations who had reserved their third-party rights to participate in the proceedings of the Panel established at the 3 June and then subsequently on 14 June 2002 DSB meetings shall be considered as third parties in the Panel established at the present meeting.

35. The representative of Cuba reserved third-party rights to participate in the Panel's proceedings.

4. Turkey – Certain import procedures for fresh fruit

(a) Request for the establishment of a panel by Ecuador (WT/DS237/3)

36. The Chairman drew attention to the communication from Ecuador contained in document WT/DS237/3.

37. The representative of Ecuador said that as outlined in document WT/DS237/3, Ecuador was requesting the DSB to establish a panel in order to settle the dispute concerning the application of

Turkey's current procedures for the import of bananas. He recalled that Ecuador had entered into consultations with Turkey on this matter more than 20 months ago, under the Committee on Sanitary and Phytosanitary Measures. These consultations had been held on 17 September 2001, within the framework of the dispute settlement system. Unfortunately, neither at the bilateral meetings, nor in its replies to the questions posed by Ecuador at the Committee on Sanitary and Phytosanitary Measures, or in the course of the consultations, had Turkey been able to justify the procedures that it applied to its system of Control Certificates for imports of fresh fruit and, specifically bananas as WTO-consistent. In document WT/DS237/3, Ecuador explained in detail the basis for its claim. It considered that Turkey applied its Control Certificate system in a manner that constituted a disguised restriction on imports of bananas inconsistent with WTO rules. Ecuador considered in particular that: (i) the quantitative limitations on the importation of bananas made effective through the Control Certificates were inconsistent with Article 4.2 of the Agreement on Agriculture and Article XI:1 of the GATT 1994; (ii) the administration of the Control Certificate system – in particular the delays in issuing such Certificates, the lack of predictability as to the quantities and the time-periods for which Certificates were issued and the requirement that a Certificate must have been used before a new one was issued – could not be reconciled with the requirements set out in Articles 1.2, 1.3 and 1.6 of the Agreement on Import Licensing Procedures and in Article 2.3 of the SPS Agreement including the requirement that the procedures for the application of import licenses shall be "as simple as possible" and that sanitary and phytosanitary measures shall not be "applied in a manner which would constitute a disguised restriction on international trade"; (iii) Turkey's failure to apply to domestic bananas a testing and certification procedure equivalent to that applied to bananas from other Members and to allocate access to its laboratory capacity appropriately between importers and domestic producers was inconsistent with its obligation under Article 8 and paragraph 1 of Annex C of the SPS Agreement and Article III:4 of the GATT 1994; and (iv) Turkey's failure to publish the quantities of domestic and imported bananas that its laboratories accept for inspection and for which Control Certificates were issued violated Turkey's obligations under Article 7 and paragraph 1 of Annex B of the SPS Agreement. Ecuador was, therefore, requesting the DSB to establish a panel at the present meeting to settle this dispute.

38. The representative of Turkey expressed his country's regret that Ecuador had chosen to request the establishment of a panel to examine this issue. Although the Turkish legislation and the application procedures that had been called into question were compatible with WTO rules, Turkey was open to finding a solution through bilateral consultations. Consequently, Turkey was not prepared to accept the establishment of a panel at the present meeting.

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

5. Peru – Tax treatment on certain imported products

(a) Request for the establishment of a panel by Chile (WT/DS255/3)

40. The Chairman drew attention to the communication from Chile contained in document WT/DS255/3.

41. The representative of Chile said that on 29 December 2001 Peru had amended the tax regime applicable to a long list of products, including fish, milk, fruit and vegetables and tea. Sales within the country as well as imports of these products had, until then, been exempted from the General Sales Tax. From that date onwards, only domestic sales had been exempted. Consequently, the import of these goods had become subject to the General Sales Tax, which was fixed at 18 per cent. On 22 April 2002, Chile had requested consultations with Peru, which had been held in Lima on 9 May. Although the parties had had the opportunity to gain a better understanding of their respective positions, they were unfortunately unable to reach a mutually satisfactory solution. Chile considered that the exemption from the General Sales Tax only of sales in Peru of certain products but not of imports was inconsistent with Article III of the GATT 1994. This discrimination affected Chilean exports of various products, in particular – but not exclusively – apples, table grapes and peaches.

Consequently, Chile was obliged to request the establishment of a panel, with the standard terms of reference set out in Article 7 of the DSU. Throughout this dispute, Chile had invoked the rules on cases of urgency concerning perishable goods which were set out in Article 4 of the DSU. It was worth noting that these rules were applicable during the panel stage. Finally, Chile was still open to finding a bilateral solution that was compatible with the WTO Agreements.

42. The representative of Peru said that as soon as her country had become aware of the concerns raised by Chile about Law 27.614 of 28 December 2001 amending the Single Codified Text of the Law on the General Sales Tax and Selective Consumption Tax (TUO), it had agreed to hold consultations with Chile on this matter. During the consultations, which had been held in Lima on 9 May 2002, a very positive exchange of information had taken place between the competent authorities of both countries, regarding the grounds for Chile's concerns. The meeting in Lima was intended to dispel these concerns as swiftly as possible. On numerous occasions, Peru had made it clear that it was taking a constructive approach towards reaching a mutually acceptable solution in the shortest possible time and was working to this end. Under these circumstances, Peru considered Chile's decision to request the establishment of a panel to be hasty and, therefore, could not agree to the establishment of a panel at the present meeting.

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

6. Canada - Export credits and loan guarantees for regional aircraft

(a) Recourse by Brazil to Article 4.10 of the SCM Agreement and Article 22.2 of the DSU (WT/DS222/7 and Corr.1)

44. The Chairman recalled that at its meeting on 3 June 2002, the DSB had agreed to defer consideration of this item until 24 June 2002. He drew attention to the communication from Brazil contained in document WT/DS222/7 and Corr.1. He also recalled that at the outset of the meeting an exchange of views had taken place between the parties to the dispute. To this end, substantive arguments had been made which would be reflected in the minutes of the meeting.

45. The representative of Brazil said that the Panel in the case on: "Canada - Export Credits and Loan Guarantees for Regional Aircraft" had found that a number of transactions concerning Canadian exports of regional aircraft were inconsistent with Article 3.1(a) of the Subsidies Agreement. The Report of that Panel had been adopted by the DSB on 19 February 2002. The corresponding DSB's recommendations had established that Canada had to withdraw the identified prohibited subsidies within 90 days. He noted that the 90-day period had expired on 20 May 2002. At the 22 May DSB meeting Canada had informed Members that it had not taken action with regard to any of the transactions found to be inconsistent with its obligations under the SCM Agreement. Canada had not complied with the DSB's recommendations within the time-period specified by the Panel and the DSB, pursuant to Article 4.10 of the SCM Agreement and Article 22.2 of the DSU. Therefore, on 23 May 2002, Brazil had submitted its request for the DSB's authorization to take appropriate countermeasures. Since the matter had been deferred to the present meeting, Brazil was requesting that, pursuant to Article 22.2 of the DSU and Article 4.10 of the SCM Agreement, the DSB grant authorization to Brazil to take appropriate countermeasures, in the form set out in Brazil's request contained in WT/DS222/7 and Corr.1 in the amount of US$3.36 billion.

46. The representative of Canada said that in response to Brazil he wished to make four principal points. First, as Members were aware, in its letter to the Chairman, dated 21 June 2002, Canada was requesting that this item be removed from the agenda, because Brazil had not met the legal preconditions to having its request considered by the DSB. This continued and remained to be Canada's view. Therefore, at the present meeting, he wished to take the opportunity to explain Canada's position. He recalled that Article 3.7 of the DSU stated that the suspension of concessions or other obligations was a remedy of "last resort". It was therefore incumbent on the DSB, in considering retaliation requests, to ensure that the complaining party had satisfied the preconditions to

the invocation of these provisions. Brazil had invoked Article 22.2 of the DSU and Article 4.10 of the SCM Agreement in requesting authorization to take "appropriate countermeasures" against Canada in the amount of US$3.36 billion. Article 22.6 provided that the DSB would grant authorization for retaliation, or the matter would be referred to arbitration, provided that "the situation described in paragraph 2 occurs". Article 22.2 – the precondition cited in Article 22.6 – referred in part to the Member concerned having failed to comply with the DSB's recommendations and rulings. Such a precondition had not been fully met in this case, because Brazil's request to take countermeasures was based, in part, on Brazil's allegation that Canada had failed to withdraw subsidies in respect of certain aircraft options in a transaction considered by the panel in this dispute. However, neither the panel nor the DSB had found that these options were being subsidized, and, in fact, they were not being subsidized. Therefore, as far as this part of Brazil's claim was concerned, there were no subsidies for Canada to withdraw, and no DSB recommendations or rulings with which Canada was required to comply. As he had already stated, Brazil sought authorization to take countermeasures of US$3.36 billion. Brazil had arrived at this figure by taking the announced sales value of one of the transactions at issue in this dispute, the Air Wisconsin transaction, and had multiplied it by two. Why had Brazil multiplied the announced sales value by two? Because the contract for the sale of aircraft to Air Wisconsin provided that in addition to its firm order for up to 75 aircraft, Air Wisconsin could exercise options on another 75 aircraft. However, the subsidy Canada had been asked to withdraw in the Air Wisconsin transaction involved only the Canada Account financing for the firm orders. That financing was what the panel, and subsequently the DSB, had identified as a prohibited export subsidy. Neither the panel nor the DSB had made any finding with respect to Canada Account financing for the options because there was no Canada Account financing for the options. Therefore, to the extent that Brazil's request involved a situation that had not occurred as described in Article 22.2 of the DSU, Canada believed that Brazil's request was not properly before the DSB, but respected the Chairman's decision. Brazil was not entitled to make a request for countermeasures on the basis of Canada's alleged failure to withdraw subsidies that did not exist, that had not been found to exist, and in respect of which neither the panel nor the DSB had made any recommendation. In an effort to avoid the problem like the one before the DSB at the present meeting, Canada repeatedly sought assurances from Brazil over the past two weeks that it was not alleging non-compliance by Canada in respect of these options. Unfortunately, Brazil had refused to provide any such assurances. For example, on 11 July 2002, Canada had sent a letter to Brazil seeking confirmation that there was no issue of non-compliance in respect of the options themselves, as distinct from how the options might relate to a calculation of appropriate countermeasures. Brazil would not provide such confirmation.

47. In an e-mail exchange that had followed, Canada had again asked Brazil to acknowledge that the Panel's findings and the DSB's recommendations with respect to the Canada Account financing to Air Wisconsin related only to the up to 75 aircraft and that the DSB had made no recommendation with respect to the options. Brazil had replied that it would not acknowledge this. The clear implication of Brazil's refusal was that Brazil's request was indeed based, in part, on an allegation that Canada had failed to withdraw non-existent subsidies, in respect of which the DSB had made no recommendation. Second, Canada was concerned that Brazil had sought to proceed directly to Article 22 retaliation without seeking an Article 21.5 "compliance panel" on the options issue. Even if the DSB could consider a request for countermeasures based, in part, on something that was not found to be inconsistent with a covered agreement, Brazil's insistence on doing so resulted, at a minimum, in a disagreement between the parties as to whether or not Canada had complied with the DSB's recommendations and rulings. Therefore, Brazil had to take this issue to an Article 21.5 panel. Indeed Canada had proposed such a course to Brazil, but Brazil had rejected this suggestion. Even if an Article 22.6 arbitration could be established on the basis of Brazil's request, in order to preserve the important limitation that Members could not unilaterally determine the non-compliance of other Members, it would have to be suspended until Brazil had obtained a multilateral determination as to Canada's compliance in respect of the alleged financing of the optioned aircraft. Thus, on the one hand, Brazil had made Canada's alleged failure to withdraw subsidies in respect of the options part of its justification for seeking countermeasures. On the other hand, although Canada denied that there was any recommendation to withdraw such subsidies and denied that such subsidies even existed,

Brazil had refused to refer the matter to a compliance panel. He was certain that Members would agree that it was not for Brazil – or any other complaining party – to determine unilaterally that another Member had not complied with a DSB recommendation in a dispute. Indeed, he recalled what Brazil had stated in the DSB in early 1999, in the context of the Banana dispute. According to the minutes of that DSB meeting, contained in document WT/DSB/M/54, Brazil had stated as follows: "In the absence of a DSB's recommendation on compliance there was a risk that the DSB would become an instrument for Members to take decisions regarding suspension of concessions. The principle of automaticity and the negative consensus rule would cease to be viewed as an improvement to the dispute settlement mechanism. It would cause grave concern." Canada agreed entirely with this statement. In the present case, Brazil was seeking to have the DSB serve as an instrument for Brazil's own unilateral decision to suspend concessions, despite the disagreement between Canada and Brazil on the issue of options. Just as Brazil had stated in 1999, this indeed "causes us grave concern". Brazil could not have it both ways. Canada was asking Brazil to limit its request for countermeasures to recommendations in respect of which Canada had not contested its non-compliance. If Brazil did that, then an Article 22.6 arbitration could proceed on that basis. However, so long as there remained a disagreement between the parties as to the extent of Canada's non-compliance, Brazil could not make unilateral determinations. It should and must go to an Article 21.5 panel. Canada would have greatly preferred to avoid the procedural problems faced by Members at the present meeting. All it would have taken – all it still would take – was a simple acknowledgement by Brazil that Canada was not required to comply by withdrawing subsidies that did not exist. Alternatively, Brazil could refer this matter to an Article 21.5 panel. Therefore, Canada awaited Brazil's response. Third, he wished to put Brazil's request into some perspective. He recalled that there had been no fewer than five separate rulings against Brazil's programme PROEX: twice by the original Panel, twice by the Appellate Body and once by arbitration. As a result of Brazil's failure to withdraw its illegal PROEX export subsidies on regional aircraft, the DSB had granted Canada authorization to take countermeasures against Brazil in the amount of Can$344.2 million per annum. That was an historically large retaliation figure, but the arbitrators based it on Brazil's failure to withdraw its subsidies on 1118 aircraft. Now, in respect of approximately one-tenth that number of aircraft, Brazil was asking for authorization to take approximately fifteen times the level of countermeasures. And more than half of the aircraft covered by Brazil's request were the options that were not being subsidized. Even if the options were included – and Canada's position on this issue was clear – the dollar figure cited by Brazil in its request was ridiculously high. If this matter reached an Article 22.6 arbitration, Canada was confident that the arbitrators would agree with Canada's position in this regard. Finally, to end on a more positive note, he reminded Members that Canada had not implemented its authorized countermeasures. Moreover, as Canada had described at previous DSB meetings it was working with Brazil toward a resolution of the aircraft dispute, one that would encompass both Canadian and Brazilian programmes. The most recent round of negotiations had been ongoing since November 2001, and the next meetings were scheduled for the week of 8 July in Ottawa. Canada believed that the broader ongoing discussions between the parties were a healthy turn of events in this long-standing dispute between the two countries. Despite the procedural problem that Brazil had brought upon the DSB at the present meeting, Canada continued to hope that the two countries could soon agree to a satisfactory and forward-looking solution to this dispute.

48. The representative of Brazil said that despite his earlier clarifications concerning the grounds of Brazil's request for authorization to adopt countermeasures, Canada insisted on making a linkage between the request circulated by Brazil and the issue of options. At this point in time, he wished to recall two points that had already been made. One that Brazil had never made the linkage between the subsidies granted to options and countermeasures suggested by Brazil. Two, all the issues raised by Canada at the present meeting were the issues that had to be addressed by the arbitrators not by the DSB. As it had been mentioned with regard to the question of unilateral determination of compliance, he reiterated that Brazil was not making any unilateral determination of non-compliance because Brazil had always opposed such a course of action as all Members were aware from Brazil's unequivocal statement before the DSB. The two parties agreed that Canada had failed to withdraw the subsidies found to be inconsistent with the SCM Agreement and they agreed that Canada had taken no action following the adoption of the Panel Report. Furthermore, the parties agreed that

Canada was not in compliance with its obligations and therefore Brazil had the right to request authorization to suspend concessions pursuant to Article 22.2 of the DSU and the DSB would have to authorize Brazil's request. Therefore, at the present meeting, Brazil would not engage in a discussion that did not belong to the DSB. He recalled that Brazil's request to adopt countermeasures stood and that this request would have to be approved by the DSB unless Canada requested arbitration under Article 22.6 of the DSU.

49. The representative of the European Communities said that the EC had noted carefully the statements made by both parties, in particular prior to the adoption of the agenda. It seemed, however, that there was a divergence of views between the two parties as to the extent of compliance or non-compliance. This case raised a difficult systemic question regarding the relationship between Articles 21 and 22 of the DSU. Therefore, the way in which the DSB would address this issue should be without precedent for future cases. In any event there were two fundamental principles that should be respected: Article 22 arbitration might only be established to the extent that the defendant, in this case Canada, accepted that it had not complied with the Panel's recommendations. The mandate of the arbitrators should be limited to establish a level of nullification and impairment in relation to measures for which Canada had accepted non-compliance. Arbitrators might not seek to resolve a dispute among the parties as to the extent of compliance. Furthermore, if there was a dispute as to extent of compliance it would be appropriate to refer such an issue to a compliance panel.

50. The representative of the United States said that she first wished to make a statement with regard to the discussion that had taken place prior to the adoption of the agenda and then she would pose some questions to Canada and Brazil. The US position on the authority of an Article 22 arbitrator was long-standing and well-known. As previous arbitrators and the Panel in "United States – Import Measures" had correctly concluded, part of the mandate of the arbitrator was to determine the level of nullification or impairment as the first step in determining whether this level was equivalent to the proposed level of the suspension proposed. The Article 22 arbitrator could undertake and had, in the past, undertaken such an examination. Likewise an arbitrator would necessarily determine the level of nullification or impairment based on an examination of the effects of the measure which was the subject of the DSB's recommendations and rulings. To the extent that there was a disagreement on whether certain effects in fact resulted from that or some other measure, the arbitrator had to, in order to determine the level of nullification or impairment, resolve that disagreement. This differed little, if at all from the types of issues Article 22 arbitrators had considered in the past in attempting to reconcile conflicting assumptions and calculations of the parties regarding the level of nullification or impairment.

51. The United States recalled the statement made by the Chairman at the 3 June DSB meeting concerning the extension of the deadlines in the dispute under consideration. The United States would first like to reaffirm that it supported the ability of parties to reach agreements, such as that between Canada and Brazil, which provided additional time to allow parties to a dispute to reach a mutually satisfactory solution. At the 3 June 2002 DSB meeting the Chairman had stated that: "Any time-periods that may apply to this request [of Brazil] and its approval by the DSB are extended accordingly." There were two issues raised in the Chairman's statement that might benefit from clarification. First, with respect to extending the deadlines, the United States noted that footnote 6 of the SCM Agreement authorized the parties to extend "any time-periods mentioned in this Article" by "mutual agreement". Accordingly, the United States considered that footnote 6 authorized the parties to extend these deadlines without requiring action by the DSB. The United States understood that in this instance Brazil had already reached agreement with Canada to extend the deadlines. She asked the representatives of Brazil and Canada to confirm that they did not intend the Chairman's statement to set a precedent under which action by the DSB was necessary to extend the deadlines mentioned in Article 4 of the SCM Agreement. In other words, was this a situation specific to this particular dispute and not intended to be a precedent for any other dispute? Second, she asked Brazil and Canada to clarify that the time-period at issue in the Chairman's statement was the time-period in Article 22.6 of the DSU for the DSB to grant a request for authorization to suspend concessions.

52. The representative of Canada, in response to the questions raised by the United States, recalled that as indicated at the 3 June DSB meeting, the parties to the dispute had entered into the agreement in order to gain additional time to continue discussions with a view to resolving some procedural questions in this dispute. This was intended as a case-specific solution, without intending to set a precedent for future cases. Also, Canada wished to confirm its understanding that the reference to time-periods in the Chairman's statement was to the time-period in Article 22.6 of the DSU for the DSB to grant a request for authorization to suspend concessions. This was without prejudice to Canada's position on the broader question of the application of the time-period set out in the first sentence of paragraph 6 of Article 22. In addition, Canada had clearly stated in its letter of 21 June 2002 in the final paragraph that if this issue remained on the agenda and indeed it remained, that in accordance with Article 22.6 of the DSU and Article 4.11 of the SCM Agreement, the matter would be referred to arbitration.

53. The representative of Brazil said that his country was in agreement with the statement made by Canada with regard to the two questions raised by the United States and that this was without prejudice to Brazil's position on the broader question of the application of the time-periods set out in the first sentence of paragraph 6 of Article 22 of the DSU.

54. The Chairman said that on the one hand Brazil had asked the DSB to suspend concessions and on the other hand there was Canada's request contained in document WT/DS222/8 that the matter be referred to arbitration. In light of this, he proposed that the matter raised by Canada in document WT/DS222/8 be referred to arbitration.

55. The DSB took note of the statements and it was agreed that the matter raised by Canada in document WT/DS222/8 is referred to arbitration, in accordance with Article 22.6 of the DSU.

7. Proposed nominations for the indicative list of governmental and non-governmental panelists (WT/DSB/W/196)

56. The Chairman drew attention to document WT/DSB/W/196 which contained additional names proposed for inclusion on the indicative list in accordance with Article 8.4 of the DSU. He proposed that the DSB approve the names contained in document WT/DSB/W/196.

57. The DSB so agreed.

8. Argentina – Certain measures on the protection of patents and test data

(a) Statement by the United States

58. The representative of the United States said that on 31 May 2002, her country and Argentina had jointly notified the DSB of an agreement reached in April 2002 in Buenos Aires, in which most of the claims in the dispute under consideration had been resolved (WT/DS196/4). This agreement reflected a commitment on both sides to use creative approaches in solving vexing trade issues. It was a culmination of three years of consultations, and had allowed the two countries to realize the progress that had been made during this period. In the joint notification to the WTO, Argentina had clarified how certain aspects of its intellectual property regime operated so as to conform with the obligations of the TRIPS Agreement. For instance, Argentina had clarified that its competition authority had to first make a finding of violation under its competition law before a practice could be considered anti-competitive under its patent law. It also clarified that its patent law did not permit the importation of patented products by unauthorized third parties. Likewise, it had clarified that only third parties who had completed investments in preparation for using a patented invention prior to 1 January 1995, could continue to use the invention upon payment of fair and reasonable remuneration to the patent holder. In addition, Argentina had agreed to submit to the Congress an amendment to its patent law related to issues such as product by process patent protection, preliminary injunctions, and the shifting of the burden of proof in process patent infringement cases.

The United States appreciated the cooperative spirit in which the consultations to date had been conducted. The United States hoped this spirit would carry forward in the consultations to resolve the remaining issues in the dispute according to the modalities agreed upon in the agreement that the parties had notified to the DSB. In this regard, the United States noted with concern that the Argentine Supreme Court had recently overturned an appeals court decision that would have permitted adding product claims to pending process patent applications. The United States hoped to resume the consultations as quickly as possible to address this issue.

59. The representative of Argentina said that on 31 May 2002, the United States and Argentina had jointly notified the DSB of an agreement reached in April 2002 in Buenos Aires, in which most of the claims in the dispute had been resolved. This agreement reflected a commitment on both sides to use creative approaches in solving complex legal and trade issues. As the United States had stated, the agreement was the culmination of three years of intensive consultations. In the joint notification to the WTO, Argentina had clarified how certain aspects of its intellectual property regime operated so as to conform with the obligations of the TRIPS Agreement. The United States recognized that the Argentine Intellectual Property Legislation on compulsory licenses (Article 31(k), exclusive marketing rights (Articles 70.8 and 70.9), import restrictions (Articles 6 and 28.1) and certain aspects of the transitional patents legislation (Article 70.4) were consistent with Argentina's obligations under the TRIPS Agreement. Argentina did not consider it necessary to add any further clarification to the text of the Agreement notified, which spoke for itself and represented the complete expression of the common understanding reached by both Parties. In addition, Argentina had agreed to submit to its National Congress an amendment to its Patent Law in connection to product by process patent protection, preliminary injunctions and the shifting of the burden of proof in process patent infringement cases. Argentina and the United States had agreed that the matters related to certain aspects of transitional patents and to the protection of test data against unfair commercial use shall be subject to the conditions set forth in the respective paragraphs of the Agreement. In particular, concerning transitional patents (obligations under Article 70.7 of the TRIPS Agreement), both Parties had agreed that Argentina would meet its WTO obligations on this matter through its legal system and practices, including decisions of the Supreme Court of Justice, an independent branch of government according to its constitutional system. The decision by the Supreme Court mentioned by United States had addressed this issue. Argentina appreciated the cooperative spirit in which the consultations had been conducted. It hoped that this spirit would continue to prevail during the next phase leading to the implementation of the mutually agreed solution, according to the conditions set forth in the notification circulated to DSB.

60. The DSB took note of the statements.