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Dispute Settlement Body
31 August 2005

MINUTES OF MEETING

Held in the Centre William Rappard
on 31 August 2005

Acting Chairman: Mr. Don Stephenson (Canada)

Prior to the adoption of the agenda, Ambassador Don Stephenson (Canada), the Chairman of the TPRB, welcomed delegations and said that he had the pleasure of chairing the present meeting at the request of Ambassador Eirik Glenne (Norway), the Chairman of the DSB, who had asked him to preside over the proceedings on his behalf due to his absence from Geneva. He noted that this was in accordance with the Rules of Procedure for meetings of the DSB.

Subjects discussed:

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.34)

(b) United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.34)

(c) United States – Continued Dumping and Subsidy Offset Act of 2000: Status report by the United States (WT/DS217/16/Add.19 – WT/DS234/24/Add.19)

(d) United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.9)

(e) Mexico – Measures affecting telecommunications services: Status report by Mexico (WT/DS204/9/Add.8)

(f) Canada – Measures relating to exports of wheat and treatment of imported grain: Status report by Canada (WT/DS276/20/Add.3)

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 six sub-items to which he had just referred be considered separately.

(a) United States – Section 211 Omnibus Appropriations Act of 1998: Status report by the United States (WT/DS176/11/Add.34)

2. The Chairman drew attention to document WT/DS176/11/Add.34, 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 18 August 2005, in accordance with Article 21.6 of the DSU. As noted in the report, several legislative proposals relating to Section 211 that would implement the DSB's recommendations and rulings in this dispute had been introduced in the current Congress, both in the US Senate and the US House of Representatives. The US administration was working with the US Congress to implement the DSB's recommendations and rulings.

4. The representative of the European Communities said that this was the second dispute between the United States and the EC in which the United States had first breached its obligations under the TRIPS Agreement and then had been unable to bring itself into compliance within the prescribed deadline despite a long implementation period from which it had benefitted. He noted that the bills that would repeal Section 211 were pending respectively in the US Senate and in the US House of Representatives. Adoption of these bills would remove a discriminatory legislation that had been driven by specific interests and would bring a satisfactory solution to the dispute in question. The EC called on the US authorities to consider the effects of the current situation, which had gone beyond the stakes of the dispute under consideration. The repeated failure of one of the main sponsors of the TRIPS Agreement to comply with its obligations undermined the authority of that Agreement and the objective of ensuring an effective and non-discriminatory protection of intellectual property rights worldwide.

5. The representative of Cuba recalled that, at the 20 June DSB meeting, a new and unprecedented Understanding[1], which had been reached between the EC and the United States regarding Section 211, had been presented to the DSB. As stipulated in that Understanding, the EC had agreed that, at this stage, it would not seek authorization from the DSB to suspend concessions *vis-à-vis* the United States, and at the same time it had reserved the right to be able to request such authorization at a future date. In exchange for the foregoing, the United States had agreed not to block the EC's request for the DSB's authorization to suspend concessions, to be made at a future date, on the grounds that such a request was not filed within the prescribed time-period, as provided for in the DSU provisions. The United States had also reserved the right to challenge the level of suspension that might be proposed by the EC in future. In Cuba's view, the Understanding could only be seen as further "capitulation" by the EC, after more than three years within which it had systematically criticized the US status reports for their lack of progress and precision. The so-called Understanding did no more than tacitly accept the continued application of an illegal provision; i.e. Section 211. It implied, in practice, an incredible act of complicity on the part of the EC. Not only did the Understanding enable the United States to maintain the current situation for an indefinite period of time, but it also provided the United States with the necessary time to continue to perpetuate violation of the "Havana Club" rum trademark in that country against the legitimate interest of a small country, which was a WTO Member.

6. He recalled that the Appellate Body's conclusion was clear and unequivocal in stating that Section 211 violated the national treatment and most-favoured-nation obligations under the TRIPS Agreement. Thus, Cuba urged the United States to adjust that legislation within a reasonable period of time, in accordance with its WTO obligations. The essential objective of Section 211 was to deprive Cuban right-holders or their successors, including foreign companies with interests in Cuba, of the recognition and enjoyment in the US territory of their rights regarding properly registered and protected trademarks: thus preventing the legitimate owners from defending their rights in the US courts and renewing the registration of their trademarks in that country. Section 211 enabled the United States to include into the intellectual property area the Helms-Burton Act, which was universally condemned for its unilateral and extra-territorial character. This was one more step in the escalating build-up of the economic, financial and trade blockade imposed on Cuba over a period of more than four decades, in violation of the principles of international law and free trade, which the WTO claimed to promote.

7. Cuba was seriously concerned about the systemic implications of the so-called Understanding. Its key element was a lack of transparency. In an unprecedented manner, the complainant had given up and had postponed indefinitely compliance with the DSB's recommendations and rulings disregarding the provisions of Articles 21.1 and 21.2 of the DSU, which recognized that prompt compliance with the DSB's recommendations was essential for the effective functioning of the dispute settlement mechanism, and that particular attention should be paid to matters affecting the interests of developing-country Members with respect to measures which had been subject to dispute settlement.

8. Furthermore, Cuba believed that, in accordance with Article 21.3 of the DSU, the so-called Understanding between the EC and the United States should have stipulated a reasonable period of time for compliance with the DSB's recommendations. He recalled that the last reasonable period of time granted to the United States for implementation had expired on 30 June 2005. However, pursuant to the Understanding, the issue of a new reasonable period of time was left to be taken up at an unspecified future date. In Cuba's view, the Understanding had released the United States from the responsibility of reporting to the DSB on this illegal measure; i.e. Section 211. In that way, the United States would be able to continue to apply Section 211 illegitimately for an indefinite period of time, until it had completed its registration "theft" of the Havana Club trademark in that country.

[1] WT/DS176/16.

9. He noted that the presentation of status reports by the United States in the DSB meetings had turned into a routine ritual and one had the impression of having seen the same reports. Furthermore, one could even almost foresee what the content of the next report would be. These reports stated nothing. Members had been told over and over again that the United States intended to comply with the DSB's recommendations and rulings. They had also been told that the US Congress was considering several legislative proposals on the subject, and that the administration was continuing its work with respect to appropriate measures that would resolve the matter. What the status report did not indicate was that these proposals had only sought to make insubstantial and cosmetic changes to Section 211 in order to keep it in force without fully complying with the DSB's recommendations. This situation undermined the effectiveness of the WTO dispute settlement mechanism, and demonstrated that improvements to the DSU provisions were necessary in the area of compliance with the DSB's recommendations and rulings so as to make them genuinely effective and efficient, in particular for those Members that represented less weight in international trade.

10. Finally, his delegation wished to reiterate that: (i) the continued application of Section 211 was inconsistent with the TRIPS Agreement and harmed the legitimate interests of Cuba and, therefore, Section 211 should be repealed immediately; (ii) a total lack of ethical conduct and respect for the WTO was reflected in the fact that after more than three years following the adoption of the DSB's recommendations, a solution was being sought, which did not foresee compliance with those recommendations. Cuba stressed, once again, that the only right path for the United States was to repeal Section 211, and categorically rejected the Understanding that had recently been reached by the United States and the EC. At the same time, Cuba claimed its sovereign right to respond in due course by adopting the necessary measures pursuant to the WTO provisions.

11. 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.34)

12. The Chairman drew attention to document WT/DS184/15/Add.34, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US anti-dumping measures on certain hot-rolled steel products from Japan.

13. The representative of the United States said that his country had provided a status report in this dispute on 18 August 2005, 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 had been provided in document WT/DS184/15/Add.3. The US administration continued to support specific legislative amendments that would implement the DSB's recommendations and rulings with respect to the US anti-dumping duty statute, and was working with the US Congress to pass these amendments. In that connection, on 19 May 2005, legislation had been introduced in the US House of Representatives (H.R. 2473) that would implement the DSB's recommendations and rulings with respect to the US anti-dumping duty statute. The US administration would continue to work with the US Congress to enact the legislation.

14. The representative of Japan said that his country was keen to see discussions on and the passage of the bill H.R. 2473 by the US Congress, which would amend the US anti-dumping statute in order to comply with the DSB's recommendations and rulings in this dispute. Pursuant to the Understanding between Japan and the United States contained in WT/DS184/19 and in light of Japan's trust in the pledge of the United States to sincerely address the matter, Japan urged the US Government to secure the full-fledged implementation of the DSB's recommendations and rulings in the dispute under consideration in a prompt manner. As Japan had repeatedly stated before the DSB, prompt implementation was essential for a credible WTO dispute settlement system.

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

(c) United States – Continued Dumping and Subsidy Offset Act of 2000: Status report by the United States (WT/DS217/16/Add.19 – WT/DS234/24/Add.19)

16. The Chairman drew attention to document WT/DS217/16/Add.19 – WT/DS234/24/Add.19, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning the US Continued Dumping and Subsidy Offset Act of 2000.

17. The representative of the United States said that his country had provided a status report on 18 August 2005, in accordance with Article 21.6 of the DSU. As noted in the report, the US administration had proposed repeal of the CDSOA in its budget proposal for fiscal year 2006. In addition, legislation that would repeal the CDSOA had been introduced in the US House of Representatives. The US administration would continue to work with the US Congress to enact legislation, and to confer with the complaining parties in these disputes, in order to reach mutually satisfactory resolutions of these matters.

18. The representative of the European Communities said that on 25 July 2005, the Ways and Means Trade Sub-Committee of the US House of Representatives had called on interested parties to comment by 2 September 2005 on a proposed miscellaneous trade bill. That bill would include technical corrections to US trade laws and miscellaneous duty suspension proposals. Among the provisions that could be inserted in that trade package was the bill introduced in March 2005 to repeal the Byrd Amendment. The EC welcomed that very positive move. He recalled that the enactment of the Byrd Amendment had raised immediate and widespread concerns, and had led to an unprecedented dispute between the United States and, basically, the rest of the world. He recalled that those WTO Members which applied retaliation, or were authorized to do so, due to the US failure to repeal the Byrd Amendment were the main trading partners of the United States with 71 per cent of total US exports and 64 per cent of total US imports. By contrast, the Byrd Amendment only benefitted a handful of companies. Two companies had received more than one third of the money distributed thus far; i.e. more than US$366 million out of the roughly US$1 billion disbursed in the first four distributions, and every year half of the payments had gone to a very limited number of companies: four in 2001, three in 2002, two in 2003 and nine in 2004. The EC urged the US Congress not to miss this opportunity to remove a serious trade irritant, which affected the US credibility as a reliable partner, and to stop further damage being caused to all, including to US industries.

19. The representative of Canada said that his country noted the most recent status report of the United States on the Continued Dumping and Subsidy Offset Act of 2000. Members were aware of Canada's decision of 1 May 2005 to suspend concessions *vis-à-vis* the United States in response to the US failure to repeal the WTO-inconsistent Byrd Amendment. Canada was disappointed that the US failure to implement the DSB's recommendations had forced Canada and other WTO Members to impose retaliatory measures. Canada had done so simply in order to induce US compliance with its WTO obligations. Canada regretted that the imposition of these measures had become necessary so close to the Hong Kong Ministerial Conference at a time when the world was preparing to engage more deeply in negotiations to liberalize trade, and at a time when Members sought to promote, not restrict, trade. Concerns surrounding the Byrd Amendment were not limited to US trading partners. On the contrary, concerns over its economic impact in the United States were also being echoed within the United States. In the past week, the Congressional Research Service of the Library of Congress had published a Report on the Byrd Amendment. The Report noted that the repeal of the Byrd Amendment "...itself would do nothing to affect other US anti-dumping or CVD laws, procedures or actions, and domestic industries would continue to benefit from these measures". That conclusion supported the WTO finding that the Byrd Amendment was an unjustified double remedy not provided for in the Agreements. And, major US media outlets, including the Wall Street Journal,

had been reporting that the Byrd Amendment was harmful to the US economy and to US consumers. Canada reminded the United States of their common interests in the international trading system governed by the rule of law and again called upon the United States to end the dispute and repeal the Byrd Amendment.

20. The representative of Japan said that his country noted those signs of progress on the part of the US Government as indicated in its status reports for some time. Japan had been monitoring with keen interest how the US Congress might proceed with the deliberation of the bill H.R. 1121 and address the issue of complying with its obligations to repeal a measure that had been found to be inconsistent with the WTO disciplines. Due to the prolonged delay of the United States to secure the implementation of the DSB's recommendations and rulings in this dispute, Canada, the EC, and recently Mexico had put into place their countermeasures *vis-à-vis* the United States, pursuant to Article 22 of the DSU. For its part, Japan had decided to impose 15 per cent additional duties on certain US products starting from 1 September 2005. Japan's decision had been notified to the DSB on 18 August 2005 and had subsequently been circulated to Members in document WT/DS217/48. It was regrettable that, as a last resort, it had become necessary for four Members to impose such trade-distorting measures in order to counter the illegal US measure and to protect their legitimate interests. He recalled that the measure shall be of a temporary nature until the implementation was secured, as provided for in Article 22.8 of the DSU. Japan again strongly called on the United States to intensify its efforts to secure a prompt repeal of the CDSOA.

21. The representative of Mexico recalled that, on 17 August 2005, his country had published in its official journal, the *Diario Oficial de la Federación*, a decree initiating the suspension of concessions and other obligations as a result of non-compliance by the United States in the CDSOA case. The aforementioned decree modified the duty applied to 10 tariff lines, varying it from 30 per cent to 9 per cent. The decree had come into force the day after it had been published. Mexico regretted that it had had to impose these measures *vis-à-vis* such an important trading partner. However, the US non-compliance had forced Mexico to take such action. His country hoped that the United States would comply soon.

22. The representative of India said that his country thanked the United States for its status report. Once again, India was disappointed by the lack of any notable progress from the report provided by the United States at the previous DSB meeting. India noted the legislative initiative in the form of bill H.R. 1121 on repeal of the CDSOA in the US Congress, and the fact that the Chairman of the Sub-Committee on Trade of the House Committee on Ways and Means had invited public comments. As stated at the 20 July DSB meeting, India preferred full compliance by the United States with the DSB's decision to suspension of concessions and other obligations under the authority obtained from the DSB. India, therefore, urged the United States to take urgent steps in the forthcoming Congressional Session, beginning the following Monday, to repeal the CDSOA. India, of course, reserved all its rights under the DSU.

23. The representative of the United States expressed his country's regret that Japan and Mexico had decided to suspend their obligations in connection with these disputes. The US administration's recent budget proposal to repeal the CDSOA – and the recent introduction of repeal legislation – demonstrated that the United States was making progress in repealing the CDSOA. The US administration would continue to work with the US Congress to achieve compliance with the DSB's rulings and recommendations in these disputes. The United States would be reviewing carefully the measures taken by Japan and Mexico to be sure that those measures were consistent with the DSB's authorization. He noted that the DSB had only authorized the suspension of concessions or other obligations as provided in the Decision of the Arbitrator.

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

(d) United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.9)

25. The Chairman drew attention to document WT/DS160/24/Add.9, 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.

26. The representative of the United States said that his country had provided a status report in this dispute on 18 August 2005, in accordance with Article 21.6 of the DSU. As noted in the report, the US administration continued to work with the US Congress, and would confer with the EC in order to reach a mutually satisfactory resolution of this matter.

27. The representative of the European Communities said that the DSB had adopted the recommendations and rulings in this dispute more than five years ago. And yet, the US status report contained nothing as to what steps would be taken to solve this dispute and could again be summarized in two words: "no progress". The lack of interest on the part of the United States to solve this dispute sent out a very disturbing signal. Again, the EC could not, but question the willingness of the United States to ensure effective protection of intellectual property rights. In a joint declaration with the EC of 20 June, the United States had declared its commitment to "working effectively to combat piracy and counterfeiting at home and abroad". He then questioned how could this be reconciled with Section 110(5) of the US Copyright Act, which did nothing else than institutionalizing piracy in the US music sector. The TRIPS Agreement was not a one-way agreement which created rights for the United States and obligations for others. The EC called on the United States to accord the highest priority to the resolution of this dispute. Should that not be the case, the EC wished to recall that it had reserved its right to reactivate, at any point in time, the arbitration procedure pursuant to its retaliation request.

28. The representative of the United States noted that the EC was once again making unfounded comments about US intellectual property rights. Not only was the US administration working to resolve the dispute, but the United States was second to none in providing strong protection for intellectual protection rights. However, if the EC really considered Section 110(5) as "institutionalizing" piracy, it would be hard to escape the conclusion that its own GI regime did so as well, and on a much larger scale.

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

(e) Mexico – Measures affecting telecommunications services: Status report by Mexico (WT/DS204/9/Add.8)

30. The Chairman drew attention to document WT/DS204/9/Add.8, which contained the status report by Mexico on progress in the implementation of the DSB's recommendations in the case concerning Mexico's measures affecting telecommunications services.

31. The representative of Mexico said that his country had repeatedly expressed its disagreement with the conclusions and recommendations of the Panel Report in this dispute. Furthermore, Mexico was fully convinced that, in the light of the analysis and the existing case law of the Appellate Body, the Panel's findings in this dispute would have been reversed. However, Mexico recognized the importance to guarantee and maintain an effective dispute settlement system. For that reason, as a WTO Member, Mexico reiterated its commitment to full compliance with the recommendations of panels and the Appellate Body, including those cases in which their decisions went against Mexico. He recalled that Mexico and the United States had reached an agreement on 1 June 2004 concerning compliance with the Panel Report. Mexico's commitments under the agreement involved, on the one hand, eliminating from its international long distance rules the "proportional return" system, and the

requirement that the carrier with the largest share of outgoing traffic should be the one to negotiate the settlement rate. In addition, Mexico had undertaken to put into effect the regulations needed to permit the resale of long distance telecommunications services through commercial agencies.

32. He recalled that in 2004, Mexico had fulfilled the first of its commitments by eliminating from its international long distance rules those aspects that had been declared inconsistent by the Panel in this case. In connection with the second commitment, on 12 August 2005 Mexico had published in the *Diario Oficial de la Federación* (Official Journal) the "*Regulation on Marketing of Long Distance and International Long Distance Telecommunications Services"*. By virtue of that instrument, enterprises from any country that had been established in Mexico might market domestic and international long distance services without owning public telecommunications networks. He emphasized that the regulation would enable commercial agencies to have access to domestic long distance services, even though Mexico's commitment to the United States had focussed exclusively on international long distance services. At the same time, that instrument would enable the commercial agencies to operate under non-discriminatory conditions, in as much as it obliged concession holders to refrain from imposing conditions that restricted the marketing of services or from offering rates and commercial terms and conditions less favourable than those offered to the public at large. The commercial agencies would be free to set rates. With the issuing of that regulation, Mexico considered that it had fully complied with the terms of the agreement reached with the United States. Consequently, Mexico requested that this dispute be deemed to be definitively settled.

33. The representative of the United States said that his country thanked Mexico for its status report. The United States wished to comment briefly on the implementation of the DSB's recommendations and rulings. The agreement entered into by the United States and Mexico, following adoption of the DSB's recommendations and rulings, required Mexico to undertake two distinct regulatory reforms. First, Mexico had to modify its international long distance rules to eliminate the uniform settlement rate system, the allocation of incoming calls, and the right of the carrier with the highest volume of outgoing calls to be the sole negotiator of settlement rates. Second, Mexico had to promulgate regulations to allow for the resale of international switched services by commercial agencies in Mexico. On 11 August 2004, Mexico had published its revised international long distance rules. The revised rules allowed, for the first time, the competitive commercial negotiation of international termination rates. Then, on 12 August 2005 Mexico had published its new resale regulations allowing for the commercial resale of long distance and international long distance services originating in Mexico. With these reforms, the United States was satisfied that Mexico had fulfilled the regulatory changes required by the agreement. For that reason, the United States could accept Mexico's suggestion that it discontinue filing status reports in this dispute. The United States noted, however, that this was without prejudice to the question of whether Mexico had fulfilled all of its WTO commitments with respect to telecommunications services. The United States recognized the progress that Mexico had made through these regulatory reforms, and hoped to see continuing liberalization in Mexico's telecommunications services market.

34. The DSB took note of the statements.

(f) Canada – Measures relating to exports of wheat and treatment of imported grain: Status report by Canada (WT/DS276/20/Add.3)

35. The Chairman drew attention to document WT/DS276/20/Add.3, which contained the status report by Canada on progress in the implementation of the DSB's recommendations in the case concerning Canada's measures relating to exports of wheat and treatment of imported grain.

36. The representative of Canada said that his country was pleased to inform the DSB that amendments to the Canada Transportation Act and the Canada Grain Act and associated regulatory changes had come into force on 1 August 2005. That had brought Canada into compliance with the DSB's recommendations and rulings. Canada recalled that the United States had posed a number of

questions to Canada at the previous DSB meeting regarding the implementation of those measures. Canada was pleased to note that it had provided answers to those questions directly to the United States.

37. The representative of the United States said that his country thanked Canada for its status report. The United States appreciated Canada's statement that the previously announced regulatory changes had come into force on 1 August 2005. At the 20 July 2005 DSB meeting, the United States had noted that it had certain questions concerning how Canada's new regulations would work in practice, and that it would be pursuing those questions with Canada. Canada had provided written responses to those questions, and the United States was reviewing them.

38. The DSB took note of the statements.

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

(a) Implementation of the recommendations of the DSB

39. 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 3 August 2005, the DSB had adopted the Panel Report in the case: "European Communities – Countervailing Measures on Dynamic Random Access Memory Chips from Korea" (DS299). He invited the EC to inform the DSB of its intentions in respect of implementation of the DSB's recommendations.

40. The representative of the European Communities recalled that on 3 August 2005, the DSB had adopted the recommendations and rulings in the dispute on countervailing measures imposed by the EC on dynamic random access memory chips from Korea. As already stated at the 3 August DSB meeting, the EC intended to fully implement those recommendations and rulings. But, the need to redo certain parts of the investigation and to adopt a new Council regulation had made it impossible to comply immediately and the EC would need a reasonable period of time in order to do so. The EC stood ready to discuss with Korea the appropriate duration of this reasonable period of time, in accordance with Article 21.3(b) of the DSU.

41. The representative of Korea said that his country welcomed the statement made by the EC that it would comply with the DSB's ruling and recommendation in the dispute under consideration (DS299). Since the Korean company was now suffering from the EC's countervailing duty that was found to be inconsistent with the SCM Agreement, the most important element in implementation was promptness. Korea believed that the EC would implement the Panel's recommendations completely, quickly and in good faith. Korea wished to remind the EC that what the Panel had found to be inconsistent with the SCM Agreement was the substantial element of the EC's countervailing measure, such as denial of subsidy and existence of benefit, and incorrect injury determination. Korea considered that the measure had been so thoroughly impugned by the Panel's decision and the DSB's rulings and recommendations that it should be immediately revoked or suspended. Korea was willing to discuss any proposals the EC might make regarding a reasonable period of time and how such a period of time would be used.

42. The DSB took note of the statements, and of the information provided by the European Communities regarding its intentions in respect of implementation of the DSB's recommendations.

3. European Communities and certain member States – Measures affecting trade in large civil aircraft

(a) Initiation of the procedures for developing information concerning serious prejudice under Annex V of the SCM Agreement and designation of the representative referred to in paragraph 4 of that Annex (WT/DS316/2)

43. The Chairman said that this item was on the agenda of the present meeting at the request of the United States. He then drew attention to the communication from the United States contained in document WT/DS316/2, and invited the representative of the United States to speak.

44. The representative of the United States said that on 20 July 2005, the DSB had established a panel to examine the US claims regarding the massive subsidies that France, Germany, the United Kingdom, Spain, and the European Communities provided to Airbus, the European manufacturer of large civil aircraft. At that meeting, the United States had also sought to have the DSB initiate the procedures provided for in Annex V of the SCM Agreement, pursuant to paragraph 2 of that Annex. Regrettably, the EC had blocked initiation of the Annex V process. At that meeting, the United States had also responded to the reasons that the EC had given for blocking the process. The United States had invited the EC to reconsider its stance and to allow the DSB to go forward with the decision that paragraph 2 required it to take. On 3 August, the United States had renewed its request to have the DSB initiate the Annex V procedures in this dispute. Regrettably, the EC had again blocked the initiation of the process. The United States again invited the EC to reconsider its stance, but the EC had refused. The procedures for developing information provided for in Annex V were an important part of a dispute concerning actionable subsidies under the SCM Agreement. It provided a way for both parties as well as the Panel to have access to relevant information. The EC had in the past agreed with the importance of the process and the need to engage promptly and constructively. At the present meeting, the United States renewed its request that the DSB initiate the Annex V procedures in this dispute and hoped that the EC would not stand in the DSB's way for a third time.

45. The representative of the European Communities said that, as indicated at the 3 August DSB meeting, the EC was not – as such – opposed to the initiation of the Annex V procedure in DS316 and in DS317 cases for that matter. However, the EC firmly believed that it was of vital interest to ensure that the content of any agreement on an Annex V procedure was carefully crafted so as to take the particularities of the disputes properly into account. Furthermore, consistent with WTO jurisprudence, an Annex V procedure could not be initiated unilaterally by only one party to a dispute, but required a meeting of the minds; an actual agreement between the parties. As indicated by the EC at the 3 August DSB meeting, the EC – together with the United States – had been actively seeking to negotiate an agreement on the Annex V procedure. The parties had numerous exchanges, and another videoconference was foreseen to take place on 1 September 2005. While there were still outstanding issues, these efforts had narrowed the differences and should enable the two parties to jointly request the commencement of the Annex V procedures in the two proceedings very soon, and if necessary at a special DSB meeting. In the light of the above, the EC could not agree to the US request for the initiation of an Annex V procedure pertaining to the DS316 dispute at this stage.

46. The representative of the United States said that his country was disappointed that the EC had chosen to block the initiation of the Annex V process for a third time. Although the EC had claimed in the past that it was not trying to delay the process, it was hard to avoid the conclusion that it was. The EC plainly wanted to avoid having the dispute settlement process review the terms and conditions of the launch aid and other subsidies that Airbus received. With respect to the discussions between the United States and the EC to which the EC representative had just referred: the US willingness to entertain the possibility of an agreement did not change the fact that there was no requirement in the DSU for the parties to do so. In the US view, the time to initiate the process had come. The EC must realize that its intransigence on this matter would not indefinitely shield its large civil aircraft

subsidies from the panel's scrutiny. As the EC continued to try to run out the clock, the United States was finding itself obliged to review all the precedents for pursuing claims of serious prejudice.

47. The representative of Canada said that he had no intention of getting in between the two largest trading partners with the two largest aircraft manufacturers in the largest dispute the WTO had witnessed, especially on such a sensitive issue. The only comment that he wished to make was that it was his understanding that the EC had relied upon past practice in blocking the initiation of the procedures. At the present meeting, the EC had referred to WTO jurisprudence regarding this matter. He was not aware of any jurisprudence in the WTO on this matter. If indeed it was practice that guided the EC that was one thing, but if the EC wished to rely on jurisprudence, one would benefit from reference to DSB's rulings or recommendations to that effect.

48. The DSB took note of the statements.

4. Japan – Measures affecting the importation of apples

(a) Statement by Japan

49. The representative of Japan, speaking under "Other Business", said that at the present meeting, he wished to update Members about a recent development in the dispute: "Japan – Measures Affecting the Importation of Apples"(WT/DS245). He said that Japan had amended the SPS measures related to this dispute in order to fully implement the DSB's recommendations and rulings. As a result of that amendment and the consultations with the United States, a mutually agreed solution has been reached. Japan and the United States had notified the Chairman of the DSB of their mutually agreed solution on 30 August 2005 (WT/DS245/21). Japan, therefore, wished to report to the DSB that, with that notification, the dispute had now been settled.

50. The representative of the United States said that his country appreciated the further changes that Japan had made to its measures relating to US apple fruit. As Japan had noted, the United States and Japan had jointly notified the DSB on 30 August 2005 that Japan's changes constituted a mutually agreed solution to this long-standing dispute. The parties expected the notification to be circulated to Members shortly. The United States again wished to thank the Panel and the Secretariat for their hard work throughout this dispute. In particular, the United States wished to thank the Panel once more for the thoroughness and clarity of its Report in the Article 21.5 proceeding. The Report provided a clear road-map to the further steps Japan needed to undertake to bring its measures into compliance, and made possible the positive outcome discussed at the present meeting. The United States would be monitoring implementation of Japan's revised measures and expected that implementation would proceed smoothly.

51. The DSB took note of the statements.

5. Mexico – Certain pricing measures for customs valuation and other purposes

(a) Statement by Guatemala

52. The representative of Guatemala, speaking under "Other Business", said that her delegation was pleased to inform Members that, at beginning of the current week, Guatemala had been able to notify the DSB that it had reached an agreement with Mexico in the dispute: "Mexico – Certain Pricing Measures for Customs Valuation and Other Purposes" (WT/DS298). That achievement was the result of the efforts made by both governments to comply with the principal aim of the dispute settlement mechanism; i.e. to secure a positive solution to disputes that might arise between Members. Guatemala believed that it had set an example for all WTO Members, in particular those imposing measures that limited or restricted the exports of countries with small economies such as Guatemala. Thus, Guatemala invited those Members to reflect upon and address, in an appropriate

manner, the concerns raised by other Members, and urged them to explore the alternative of seeking a mutually satisfactory solution. Finally, her country thanked Mexico for showing good faith in its efforts to meet Guatemala's requirements. Guatemala trusted that the same positive and constructive attitude would be extend to other ongoing disputes between the two countries.

53. The representative of Mexico said that his country thanked Guatemala for its notification regarding this matter. He recalled that Guatemala had initiated its consultations with Mexico on 22 July 2003 and, subsequently, through his government's efforts in 2004, Mexico's measures had been amended in such a way so as to resolve the dispute. The solution reached by Guatemala and Mexico was another example of the benefits that consultations offered to Members in order to find a solution without recourse to the panel stage provided under the dispute settlement mechanism. Mexico noted that Guatemala had referred to Mexico's good faith. His country believed that Members should act in good faith not only in the ongoing disputes, but also in any future disputes that might arise.

54. The DSB took note of the statements.