WORLD TRADE ORGANIZATION

RESTRICTED

WT/DSB/M/255
22 October 2008

(08-5122)

Dispute Settlement Body
29 August 2008

MINUTES OF MEETING

Held in the Centre William Rappard
on 29 August 2008

Chairman: Mr. Mario Matus (Chile)

Prior to the adoption of the Agenda, the item concerning the adoption of the Panel Report in the case on: "European Communities – Regime for the Importation, Sale and Distribution of Bananas: Second Recourse to Article 21.5 of the DSU by Ecuador" (WT/DS27/RW2/ECU) was removed from the proposed Agenda, following the decision of the European Communities to appeal the Report. Also the item related to the adoption of the Panel Report in the case on: "European Communities – Regime for the Importation, Sale and Distribution of Bananas: Recourse to Article 21.5 of the DSU by the United States" (WT/DS27/RW/USA and Corr.1) was removed from the proposed Agenda, following the decision of the European Communities to appeal the Report.

Subjects discussed: Page

1. Surveillance of implementation of recommendations adopted by the DSB 2

(a) United States – Section 211 Omnibus Appropriations Act of 1998: Status report by the United States 2

(b) United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States 5

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

(d) European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Communities 6

2. Implementation of the recommendations of the DSB 7

(a) United States – Measures relating to shrimp from Thailand 7

(b) United States – Customs bond directive for merchandise subject to anti-dumping/countervailing duties 8

3. United States – Continued Dumping and Subsidy Offset Act of 2000: Implementation of the recommendations adopted by the DSB 9

(a) Statements by the European Communities and Japan 9

4. European Communities and its member States – Tariff treatment of certain information technology products 12

(a) Request for the establishment of a panel by the United States, Japan and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu 12

5. Japan – Countervailing duties on dynamic random access memories from Korea 15

(a) Statement by Japan 15

6. Statement by Ecuador concerning the European Communities' regime for the importation, sale and distribution of bananas 16

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.69)

(b) United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.69)

(c) United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.44)

(d) European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Communities (WT/DS291/37/Add.7 – WT/DS292/31/Add.7 – WT/DS293/31/Add.7)

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

(a) United States – Section 211 Omnibus Appropriations Act of 1998: Status report by the United States (WT/DS176/11/Add.69)

2. The Chairman drew attention to document WT/DS176/11/Add.69, 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 2008, in accordance with Article 21.6 of the DSU. As noted in that status report, a number of legislative proposals that would implement the DSB's recommendations and rulings in this dispute had been introduced in the current US Congress, in both the US Senate and the US House of Representatives. The US administration continued to work with the Congress to implement the DSB's recommendations and rulings.

4. The representative of the European Communities said that, as Members had noticed, the US status report, once again, failed to report any progress on implementation. At the previous DSB meeting, the EC had heard from the US representative that the United States was second to none in providing strong intellectual property protection within its territory. This was certainly a bold general statement, but it was simply at odds with the US performance in this dispute as well as in the Section 110 dispute to which the EC would revert at the later stage. In fact, it had now been more

than six years since the United States had been found in breach of the TRIPS Agreement. The EC asked if Members would have to wait another six years for compliance in this dispute. The EC hoped that the bipartisan bills introduced to repeal Section 211 would finally progress and put the United States into compliance with its TRIPS obligations.

5. The representative of Cuba said that her country deplored the fact that for so many years the United States had taken no action towards the adoption of appropriate statutory measures that could resolve this dispute. That very Member, which at the 1 August 2008 DSB meeting had stated that it was committed to full implementation of the TRIPS Agreement, had given no indications in more than six years of any serious commitment to comply with the DSB's rulings and recommendations. It would not be desirable for this case to remain like other cases on the DSB's Agenda where the respondent had formally repealed legislation running counter to the WTO Agreement, but trade-distorting effects continued to prove detrimental to Members. The coherent and comprehensive dispute settlement system, which strengthened multilateralism and prohibited unilateral determinations, was being seriously undermined when Members disregarded their obligations. Cuba, along with other Members, had continuously voiced their concerns about the systemic implications of such cases.

6. All legal disputes had political connotations, as this case had demonstrated. The rights of Cuban owners had been directly affected on US territory. Section 211 affected the registration of Cuban distinctive trademarks which, as everyone was aware, were very important. Members were currently witnessing the enactment of a spate of legal regimes on intellectual property and the enforcement of intellectual property rights. Agreements were being promoted at bilateral, regional and multilateral level in a move to afford more extensive protection for such rights. The Anti-Counterfeiting Trade Agreement, which had recently been the object of such extensive media attention and was being secretly negotiated among a small group of countries, bore witness to the above. However, the viability and credibility of legal instruments such as the aforementioned Agreement, which would impose high standards of protection, was doubtful and unclear, because one of the parties thereto was a country that almost a decade ago had enacted legislation that ran counter to the TRIPS Agreement, and remained in force in spite of the recommendations made by the WTO Appellate Body in 2002. Whilst the commitments undertaken were not being respected, new ones – broader in scope and with a high degree of legal technicality – were being promoted. Cuba could not but recall that the implementation in the Section 211 dispute was very closely linked to the Bacardi company, which marketed rum under the Cuban trade name known as HAVANA CLUB. This was an act of counterfeiting which was promoted in both, fact and law, on US territory. As some Members had stated at the previous DSB meeting, failure to implement the DSB's recommendations also affected the respondent and its own interests. Cuba, yet again, requested the immediate repeal of Section 211.

7. The representative of China said that his country believed that full implementation of the adopted DSB's rulings and recommendations, namely the withdrawal of illegal measures, was of most importance for the smooth functioning of the Organization. China noted that the measure taken by the United States nullified not only the interests of the EC under the TRIPS Agreement, but also the interests of other WTO Members. Although every Member had the right to have recourse to the dispute settlement mechanism, it was definitely a heavy burden for developing countries to do so, especially for those developing countries which lacked human and financial resources. Therefore, it was quite understandable that Cuba expected to benefit from the full and faithful implementation of the DSB's ruling in this dispute, and was closely monitoring the status of this pending dispute. Once again, China wished to join the EC and Cuba in urging the United States to take proper measures to enforce the intellectual property rights pursuant to the TRIPS Agreement, and to implement the decision of the DSB in this dispute as soon as possible.

8. The representative of Brazil said that his country thanked the United States for its status report and wished to state, once again, that full implementation of the DSB's recommendations in this dispute was necessary.

9. The representative of Thailand said that his country thanked the United States for its status report. Like previous speakers, Thailand was concerned about the systemic implications of this dispute. Non-implementation of the DSB's rulings and recommendations undermined the rules-based multilateral trading system. Thailand, therefore, called on the United States to take the necessary and urgent steps to comply with its obligations under the TRIPS Agreement.

10. The representative of India said that her country wished to renew its systemic concerns about the situation of non-compliance in this dispute. Despite the adoption of the Panel and the Appellate Body Reports by the DSB several years ago, Members were still waiting for implementation and compliance by the United States. India, once again, urged the United States to promptly take the requisite steps to bring the condemned measures into compliance with the US obligations.

11. The representative of the Bolivarian Republic of Venezuela said that her delegation thanked the United States for its status report as well as Cuba for its statement made at the present meeting. Her country yet again expressed systemic concern about the persistent failure to comply in this case. It must be emphasized that the attitude of the United States in this dispute undermined one of the foundations of the WTO; i.e. the dispute settlement system, which had been established to solve disputes among Members. Her country hoped that the current US Congress would realize that it was in the interest of not only other Members, but also in the interest of the United States to put an end to this situation, which undermined the authority of the TRIPS Agreement and the DSB. Her country, therefore, urged the United States to comply with the DSB's decisions and rulings.

12. The representative of Uruguay said his country shared the systemic concerns expressed by previous delegations. Uruguay considered it extremely important to ensure that Members complied promptly with the DSB's recommendations. This was an essential factor in preserving the smooth operation and the credibility of the dispute settlement system as well as the legal certainty and the effective balance of rights and obligations provided under the multilateral trading system. Therefore, Uruguay again urged the United States to do its utmost to comply with the DSB's recommendations.

13. The representative of Nicaragua said that her delegation wished to thank the United States for its status report. Nicaragua also thanked Cuba for its statement, which like on previous occasions provided an update regarding the US efforts towards implementation of the DSB's recommendations and rulings. However, Nicaragua regretted that from this report one could not see any progress in this dispute. Nicaragua reiterated its systemic concerns about this situation and urged the United States to take urgent measures in order to implement effectively the DSB's recommendations and rulings. Nicaragua agreed with the statements made by other delegations that it would be in the interest of the United States to implement the DSB's recommendations as this would improve the US image as a WTO Member who respected the dispute settlement mechanism.

14. The representative of the United States said that, in response to certain systemic concerns and comments about the US compliance record, as his delegation had stated in the past, the facts simply did not support Members' assertions. The record was clear: the United States had come into compliance, fully and promptly, in the vast majority of its disputes. As for the remaining few instances where the US efforts to do so had not yet been entirely successful, the United States continued to work actively towards compliance. As at the previous DSB meeting, the United States regretted that the EC had returned to criticizing the US commitment to intellectual property rights and to the TRIPS Agreement. Not only were the EC's comments regrettable, its criticisms were completely unfounded. The EC had noted the US statement that the United States was second to no

one in providing strong intellectual property protection within its own territory. The United States would note that the EC had not seriously contested that statement at the present meeting.

15. The representative of Cuba said that her delegation wished to note that under Item 1 of the Agenda of the present meeting, which monitored the implementation processes in a number of pending disputes, three matters concerned the United States. She wished to draw Members' attention to this fact and said that the US authorities should properly assess its compliance with the DSB's recommendations and rulings in various disputes. Cuba urged the United States to make efforts to ensure that those pending matters be resolved as soon as possible.

16. 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.69)

17. The Chairman drew attention to document WT/DS184/15/Add.69, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US anti-dumping measures on certain hot-rolled steel products from Japan.

18. The representative of the United States said that his country had provided a status report in this dispute on 18 August 2008, in accordance with Article 21.6 of the DSU. As of 23 November 2002, the US authorities had addressed the DSB's recommendations and rulings with respect to the calculation of anti-dumping margins in the hot-rolled steel anti-dumping duty investigation at issue in this dispute. Details were provided in document WT/DS184/15/Add.3. The US administration would continue to work with the US Congress with respect to the recommendations and rulings of the DSB that had not already been addressed by the US authorities by 23 November 2002.

19. The representative of Japan said that his country thanked the United States for its statement and its latest status report. Since the United States had taken certain measures to implement part of the DSB's recommendations in November 2002, as reported by the United States, there had been little tangible progress in this long-standing dispute regarding the remaining part of the DSB's recommendations and rulings. A full and prompt implementation of the DSB recommendations and rulings was "essential to the effective functioning of the WTO and the maintenance of a proper balance of the rights and obligations of Members".[1] Japan called on the United States to redouble its efforts to this end.

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

(c) United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.44)

21. The Chairman drew attention to document WT/DS160/24/Add.44, 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.

22. The representative of the United States said that his country had provided a status report in this dispute on 18 August 2008, in accordance with Article 21.6 of the DSU. The US administration would work closely with the US Congress and would continue to confer with the EC in order to reach

[1] Article 3.3 of the DSU.

a mutually satisfactory resolution of this matter. In this regard, the United States shared the EC's oft-stated goal of discussing how a mutually satisfactory solution to this dispute could be achieved.

23. The representative of the European Communities noted that, at the present meeting, the DSB had before it the 44th update on the TRIPS continued non-compliance. At the last meeting, the EC had expressed its regret and frustration that the United States had made no progress in bringing this long-running dispute to a solution. The United States had reacted by stating that it appreciated "more constructive" statements from the EC side. In fact, the EC would be pleased to do so, if it had any indication from the United States that it was taking any concrete steps to bring itself into compliance. The United States had not given any such indication. Consequently all that was left to do for the EC was to again express its regret and frustration in this matter. The EC would have to do so until the situation changed and the United States displayed a more constructive attitude in this dispute.

24. The representative of China said that his country urged the United States to implement the DSB's rulings as soon as possible, and to bring its copyright law into consistency with the TRIPS Agreement so as to enforce the intellectual property rights properly.

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

(d) European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Communities (WT/DS291/37/Add.7 – WT/DS292/31/Add.7 – WT/DS293/31/Add.7)

26. The Chairman drew attention to document WT/DS291/37/Add.7 – WT/DS292/31/Add.7 – WT/DS293/31/Add.7, which contained the status report by the EC on progress in the implementation of the DSB's recommendations in the case concerning the EC's measures affecting the approval and marketing of biotech products.

27. The representative of the European Communities said that that the EC was happy to report, once more, that good faith cooperation between the complainants and the EC continued. The EC kept a regular dialogue with the three complainants and held regular technical meetings which were aimed at addressing all relevant biotech-related issues of their concern. The last such technical meeting with the United States had been held on 18 and 19 June, but informal contacts with the United States as well as the other complainants had taken place since then. As a sign of satisfaction with this process, Argentina and Canada had agreed to further extend the reasonable period of time until 1 and 31 December 2008, respectively. Progress in the processing of pending applications continued. Sixteen authorizations had been granted since the establishment of the WTO panel, seven in 2007 only. One draft authorization decision on oilseed rape T-45 would be transmitted to the Council after the summer and two more draft authorization decisions (LL25 cotton and A2704-12 soybean) would be adopted by the Commission in the autumn. Following the clarification by EFSA on concerns related to the relevant antibiotic marker gene, expected by mid-December, the Commission might be in the position to authorize four more GM events (one GM potato and three maize hybrids) before the end of the year or in early 2009. In terms of progress on national measures covered by the panel report, the EC had already reported at the previous DSB meeting on the decision adopted by Austria, which had lifted its bans on imports and processing of GM maize MON810 and T-25. The EC believed that given the inevitably sensitive nature of biotech issues, dialogue was the appropriate way forward and remained open to continue discussions with the three complainants. The seventh technical meeting between the EC and the United States had already been tentatively scheduled for October 2008.

28. The representative of the United States said that his country thanked the EC for its written status report and for its statement made at the present meeting. At the prior DSB meeting, the

United States had noted its growing concern with what appeared to be a systemic dysfunction in the EC's approval system for biotech products. As the United States had explained, the EC had fifty (50) biotech product applications backed up in its approval system, and only one product had reached final decision in calendar year 2008. The commercial impact of this dispute was significant and kept increasing as the delays continued and the backlog of applications continued to grow. Unfortunately, in the period since the previous DSB meeting, the EC had made no progress in addressing the ongoing delays in its decision-making on biotech products. It was becoming increasingly apparent that the EC did not feel any sense of urgency in addressing these delays. Accordingly, the United States again urged the EC to take prompt steps to resolve this dispute so that no further proceedings would be required under the DSU.

29. The representative of Canada said that his country thanked the EC for its status report. Canada hoped and expected that further progress would be made by the EC on this matter, and would continue to watch this progress carefully.

30. The representative of the European Communities said that the GMO regulatory regime was working normally. Its functioning should not be rigidly assessed in terms of a number of authorizations per year since this was dependent on various elements and, in particular, on the time needed by applicants to answer requests from EFSA on additional scientific information. That being said, the EC estimated that the current yearly rate of authorization was roughly the same as in 2007. The details of that were set out in the EC's earlier statement.

31. The representative of the United States said that his country understood that the EC had just asserted that the EC's authorization process was "operating normally". He said that this was exactly the US concern.

32. The representative of the European Communities said that her delegation wished to note that the authorization process was set out in the EC's legislation, and the legislation as such had never been attacked by the United States in this dispute.

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

2. Implementation of the recommendations of the DSB

(a) United States – Measures relating to shrimp from Thailand

(b) United States – Customs Bond Directive for merchandise subject to anti-dumping/countervailing duties

34. 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 proposed that the two sub-items to which he had just referred be considered separately.

(a) United States – Measures relating to shrimp from Thailand

35. The Chairman recalled that at its meeting on 1 August 2008, the DSB had adopted the Appellate Body Report in the case on: "United States – Measures Relating to Shrimp from Thailand" and the Panel Report on the same mater, as modified by the Appellate Body Report. He then invited

the United States to inform the DSB of its intentions in respect of implementation of the DSB's recommendations.

36. The representative of the United States said that his country intended to implement the DSB's recommendations and rulings in a manner that respected the US WTO obligations, and it had begun to evaluate options for doing so. The United States would need a reasonable period of time in which to implement. The United States stood ready to consult with Thailand regarding a reasonable period of time to implement, in accordance with Article 21.3(b) of the DSU.

37. The representative of Thailand said that her country thanked the United States for its statement on its intentions regarding the implementation of the recommendations and rulings of the DSB in this matter. As for the request regarding a period of time, Thailand noted that the two measures found to be inconsistent with US obligations under the Anti-Dumping Agreement and the GATT 1994, i.e. the Enhanced Continuous Bond Requirement and zeroing, continued to have an enormous ongoing impact on Thailand's shrimp industry. Thailand, therefore, looked forward to meeting the United States in the near future and within the time-frame required by Article 21.3(b) of the DSU to discuss a reasonable period of time for prompt implementation. Thailand hoped for a timely and satisfactory resolution of this matter without the necessity of arbitration under Article 21.3(c) of the DSU, and looked forward to working with the United States to that end.

38. The DSB took note of the statements, and of the information provided by the United States regarding its intentions in respect of implementation of the DSB's recommendations.

(b) United States – Customs bond directive for merchandise subject to anti-dumping/countervailing duties

39. The Chairman recalled that also at its meeting on 1 August 2008, the DSB had adopted the Appellate Body Report in the case on: "United States – Customs Bond Directive for Merchandise Subject to Anti-Dumping/Countervailing Duties" and the Panel Report on the same matter, as modified by the Appellate Body Report. He then invited the United States to inform the DSB of its intentions in respect of implementation of the DSB's recommendations.

40. The representative of the United States said that his country intended to implement the DSB's recommendations and rulings in a manner that respected the US WTO obligations, and it had begun to evaluate options for doing so. The United States would need a reasonable period of time in which to implement. The United States stood ready to consult with India regarding a reasonable period of time to implement, in accordance with Article 21.3(b) of the DSU.

41. The representative of India said that her country noted with satisfaction the US statement that the United States intended to comply with the DSB's recommendations and rulings on the Enhanced Bond Requirement (EBR) imposed under the Customs Bond Directive, which had been found incompatible with the WTO Agreement. India wished to thank the United States for the statement made in this regard. However, India was disappointed with the US request for a reasonable period of time to implement the DSB's rulings and recommendations. The "stacking" effect of the EBR continued to have enormous impact on the Indian shrimp industry and the overall burden on Indian exports currently ranged from several million US dollars. This was an extremely heavy cost on the Indian shrimp industry. Indian exports had already suffered grave damage and any further delay in compliance by the United States would compound the losses further. As Members were aware, prompt compliance was essential to ensure the effective resolution of the dispute. Having said that, India stood ready to discuss with the United States the question of the reasonable period of time, namely, the shortest possible time-period for achieving compliance and, accordingly, hoped for a timely and satisfactory resolution of this matter without the necessity of arbitration under Article 21.3(c) of the DSU to this effect.

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

3. United States – Continued Dumping and Subsidy Offset Act of 2000: Implementation of the recommendations adopted by the DSB

(a) Statements by the European Communities and Japan

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

44. The representative of Japan said that in early June 2008 the US Customs and Border Protection had published preliminary CDSOA distribution amount available for FY2008[2], thus publicly initiating processes for a new round of distributions of collected anti-dumping and countervailing duties under the CDSOA. This latest action demonstrated that the CDSOA continued to transfer financial resources from the foreign producers/exporters to their US domestic competitors.[3] Thus, the CDSOA remained operational with its "essential feature" and "the decisive basis" for the Appellate Body's conclusion[4] still intact. Under those circumstances, Japan failed to understand why the United States posited that no further actions were necessary on the part of the United States to implement the DSB's recommendations and that there was no basis for Japan to state that the CDSOA continued to cause negative trade impacts on Japan and other WTO Members. Under those circumstances, Japan decided to continue, as from 1 September 2008, its suspension of concessions and related obligations under the GATT 1994 on imports of certain products originating in the United States for another year to induce full compliance by the United States. Due to the decrease in the amount of distribution attributable to Japan for FY 2007 and correspondingly in the level of the suspension authorized for Japan, the products subject to additional duties which would be reduced to 10.6 per cent would be limited to "[b]all bearings" and "[t]apered roller bearings, including cone and tapered roller assemblies". Details would be provided in the notification to the DSB that Japan would file later in the day. Japan, once again, urged the United States to immediately terminate the illegal distributions and to repeal the CDSOA not just in form, but in substance, so as to resolve this dispute once and for all. According to Article 21.6 of the DSU, the United States was under obligation to provide the DSB with a status report in this dispute "until the issue is resolved". Japan reserved all its rights under the DSU in this dispute.

45. The representative of the European Communities said that the repeal of the Byrd Amendment in 2005 would not be effective before several years as anti-dumping and countervailing duties on imports made prior to 1 October 2007 were progressively collected and would still be distributed in accordance with the transition clause in the repealing Act. In fact, the United States was now preparing the eighth distribution and had already published the provisional amount available for distribution on 30 April 2008, more than US$244 million. The EC would, therefore, like to ask again the United States if and what steps it intended to take to stop the transfer of anti-dumping and countervailing duties to its industry and to finally put an end to the condemned measure. The EC also renewed its call on the United States to abide by its clear obligation under Article 21.6 of the DSU and to submit implementation reports in this dispute.

46. The representative of India said that her country thanked the EC and Japan for maintaining this issue on the DSB's Agenda and joined those delegations in urging the United States to eliminate the trade-distortive effects of the disbursements under the Byrd Amendment. The United States was

---

[2] See US Customs and Border Protection's website at:
http://www.cbp.gov/linkhandler/cgov/trade/priority_trade/add_cvd/cont_dump/prelim_report08.ctt/prelim_report08.pdf

[3] Appellate Body Report: "US – Offset Act" (Byrd Amendment), paras. 255 and 259.

[4] Ibid. para. 259.

still distributing disbursements under the CDSOA to the US domestic industry as a result of this WTO-inconsistent measure at the expense of foreign producers and exporters and of WTO Member's rights. India urged the United States to immediately terminate the illegal distributions and to repeal the CDSOA not just in form, but in substance, so as to resolve this dispute once and for all.

47. The representative of Thailand said that his country thanked the EC and Japan for bringing this matter before the DSB. Thailand continued to be disappointed at the United States' maintenance of these WTO-inconsistent disbursements. Thailand thus urged the United States to cease the disbursements, repeal the Byrd Amendment with immediate practical effect, and resume providing status reports until such actions had been taken and this matter had been fully resolved.

48. The representative of Canada said that his country agreed with the EC and Japan that the Byrd Amendment remained subject to the surveillance of the DSB until the United States ceased to administer it. Canada was concerned by the efforts of certain parties in the United States to try to reinstate the Byrd Amendment. In 2003, the DSB had ruled against the Byrd Amendment. A WTO Panel had found that the Byrd Amendment was inconsistent with WTO obligations, and that Panel ruling had been upheld by the Appellate Body. Canada was confident that the United States was cognizant of the negative effects the re-instatement of this measure would have, both in terms of inviting trade retaliation and calling into question the value of a mutually-beneficial WTO rules-based system.

49. The representative of Brazil said that his country thanked Japan and the EC for keeping this topic on the DSB's agenda. Brazil wished to reiterate its concerns about the disbursements by the United States to its domestic industry under the Byrd Amendment. This situation affected the rights of WTO Members and was not in conformity with the DSB's recommendations and rulings.

50. The representative of Australia said that her country wished to register its concern at the efforts by some within the US system to reinstate the Byrd Amendment, as referred to by Canada at the present meeting and by other delegations at the previous DSB meeting. Australia would consider such a development of serious concern and would urge the United States to ensure that the Byrd Amendment was not reintroduced.

51. The representative of the United States said that, as his country had already explained at previous DSB meetings, the US President had signed the Deficit Reduction Act into law on 8 February 2006. That Act included a provision repealing the Continued Dumping and Subsidy Offset Act of 2000. Thus, the United States had taken all actions necessary to implement the DSB's recommendations and rulings in these disputes. The United States recalled, furthermore, that Members, including the EC and Japan, had acknowledged during previous DSB meetings that the 2006 Deficit Reduction Act did not permit the distribution of duties collected on goods entered after 1 October 2007. The United States, therefore, did not understand the purpose for which the EC and Japan had inscribed this item on the Agenda of the present meeting.

52. With respect to comments regarding further status reports in this matter, as the United States had already explained, the United States had taken all steps necessary to implement the DSB's recommendations and rulings in these disputes. In this light, the United States failed to see what purpose would be served by further submission of status reports repeating the progress the United States had made in the implementation of the DSB's recommendations and rulings. The United States wished to comment on Japan's statement that this legislation – though repealed – continued to cause trade distortions. The United States did not understand the basis for this statement. The United States recalled that, with one exception, none of the complaining parties in this dispute had claimed that the CDSOA caused trade-distorting effects under the SCM Agreement. Indeed, none of the Members speaking at the present meeting had made such a claim.

53. Furthermore, though one other Member had claimed that the CDSOA caused trade-distorting effects under the SCM Agreement, those adverse effects claims had been rejected. Accordingly, Japan's comments alleging trade-distorting effects were not based on any DSB recommendations and rulings. The United States, therefore, failed to understand the basis for Japan's statement that its trade with the United States was being distorted by virtue of the now-repealed CDSOA. The United States regretted Japan's announcement that it would continue to apply its suspension of concessions in this dispute. The United States continued to review the action by Japan and had not concluded that it was able to share Japan's characterization. As the United States had observed previously, the DSB had only authorized the suspension of concessions or other obligations as provided in the Award of the Arbitrator.

54. With respect to comments on the possibility of reintroducing the CDSOA, the United States was not aware of any legislative proposals before the Congress that sought to reintroduce the CDSOA, which, as the United States had explained, was repealed by the Deficit Reduction Act of 2005. Finally, returning to a point the United States had raised in previous DSB meetings, the United States had noted the discrepancy between the EC's position in a pending dispute currently on appeal and the EC's continuing statements to the DSB under this agenda item. As Member's would recall from previous DSB meetings, the EC's position in that appeal was that a Member could not state at a DSB meeting that a measure taken to comply by another Member was not consistent with that Member's WTO obligations. The United States had invited the EC to bring its position on appeal into line with its actions at the DSB. At the present meeting, the United States could only express its regret that the EC in fact had made no effort to do so. To the contrary, the EC's position here appeared to be entirely inconsistent with its position on appeal: in its appellant submission in that dispute, the EC had told the Appellate Body that "the European Communities considers that, once a Member has adopted implementing measures which are not properly challenged by the complaining Member, the suspension of concessions or other obligations can no longer be applied".

55. Second, the United States would like to correct certain of the EC's statements made at previous meetings as well as at the present one. Two meetings ago, the EC had asserted that the Deficit Reduction Act, which had repealed the CDSOA "states that it will produce effects only at some undetermined date in the future". At the previous meeting and again at the present one, the EC had stated that "transfers of anti-dumping and countervailing duties to [US] industry ... continue". Neither statement correctly described the Deficit Reduction Act. To the contrary, as the United States had explained, the Deficit Reduction Act did not permit the distribution of duties collected on goods entered after 1 October 2007. So, in other words, anti-dumping and countervailing duties that were being collected on goods entering the United States now would not be distributed to domestic firms. The United States recognized that the EC was in the uncomfortable position of having to try to reconcile its actions here with its words to the Appellate Body, but a mischaracterization of US legislation would not do the job.

56. The representative of the European Communities said that the situations in both disputes had nothing in common, really. The EC's position was not inconsistent, the two disputes were not comparable. In the Byrd Amendment dispute, the entry into force of the implementing act had been postponed by several years. The EC only took at face value the US legislation. The EC did not see how the US could seriously claim that the EC had made a unilateral determination of non-implementation when the implementing act itself stated that it would produce effects only at some undetermined date in the future. The EC had not made a misreading of the legislation as the United States had mentioned. The EC did not contest that the Byrd Amendment did not apply any longer to imports made after 1 October 2007, but it would still apply to all imports made before that date and that was stated in the legislation. Therefore, a measure taken to comply that produced legal effects simply did not yet exist and the United States could not claim in good faith that such a measure existed.

57. The representative of the United States said that his delegation wished to respond briefly to two issues in the EC's intervention. First, the United States had taken note of the EC's assertion that the United States could not take a certain position "in good faith", and would certainly convey that troubling assertion to its authorities in capital. Second, the EC might argue that it was simply reading the implementing legislation "on its face", but the United States had explained how the EC reading was wrong. Thus, it would appear that the EC was asserting a disagreement between it and the United States on the content of the US measure taken to comply.

58. The representative of Japan said that, in response to a couple of points raised by the United States, he wished to state that Japan's retaliatory measure had been and was fully consistent with the findings and the Arbitrator's decision. If the United States considered otherwise, it was up to the United States to substantiate that position. With respect to the transfer of financial resources from the foreign producers/exporters to the domestic competitors under the CDSOA, it was true that duties collected on entries entered after 1 October 2007 were not subject to the distributions. However, this did not change the fact that financial transfers of duties collected from the entries that had already entered before that date, but had not been distributed, still continued.

59. The DSB took note of the statements.

4. European Communities and its member States – Tariff treatment of certain information technology products

(a) Request for the establishment of a panel by the United States, Japan and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (WT/DS375/8 – WT/DS376/8 – WT/DS377/6)

60. The Chairman drew attention to the joint communication from the United States, Japan and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu contained in document WT/DS375/8 – WT/DS376/8 – WT/DS377/6, and invited the respective representatives to speak.

61. The representative of the United States said that, as described in the joint panel request before the DSB at the present meeting, the United States, together with Japan and Chinese Taipei, was concerned about the duties the EC was imposing on certain information technology products. Three products were involved in this dispute. The first product was set top boxes with a communication function – in other words, cable and satellite boxes that could access the Internet. The second product was flat panel computer monitors. And the third product was certain multifunctional digital machines – in other words, computer peripherals that could scan, print, copy and/or fax. These products were included within the Information Technology Agreement, and the EC had incorporated the relevant commitments into its Schedules following the conclusion of the ITA. As Members knew, the ITA was widely regarded as a major success of the WTO. A little over one year ago, participants in the ITA had gathered in Geneva to celebrate the tenth anniversary of its signing. At that time, many Members had lauded the agreement for creating new opportunities for trade and economic growth for developed and developing Members alike. Unfortunately, the EC appeared increasingly to impose duties on ITA products covered by its existing duty-free tariff commitments. As described in detail in the joint panel request, imports to the EC of the products at issue in this dispute were subject to ordinary customs duties, or other duties and charges, in excess of those in the EC's WTO tariff Schedules, and commerce was accorded treatment less favourable than that provided in the EC Schedules. The United States, therefore, considered that these duties were inconsistent with the obligations of the EC and its member States under Article II:1(a) and (b) of the GATT 1994. The United States had discussed these issues extensively with the EC over the past two years, including most recently during the consultations that had been held in June and July. Regrettably, those consultations had not resolved this dispute. Accordingly, the United States, together with Japan and

Chinese Taipei, requested that the DSB establish a panel to examine the matter set out in their panel request, with standard terms of reference.

62. The representative of Japan said that his country, acting jointly with the United States and Chinese Taipei, had initiated this dispute regarding the tariff treatment the EC and its member States accorded to certain information technology (IT) products. Japan had serious concerns that certain EC measures were not only incompatible with the EC's WTO obligations, but also impeded the systemic interests of all the participants in the Information Technology Agreement (ITA), including Japan, the United States and Chinese Taipei. This joint action taken by Japan was a clear indication of these important systemic concerns shared among certain Members. After the conclusion of the ITA, the IT industry had significantly developed. The industry's supply chain networks and production facilities had been globalized and new production methods had been created. With these developments, many IT products had achieved dramatic technological advancements; they had become much more sophisticated by technological integration to perform multiple functions.

63. As participants in the ITA, the EC and its member States had modified in 1997 their Schedules of Concessions to the GATT 1994 to reflect the commitment made under the ITA. Accordingly, the EC and its member States shall grant duty-free treatment for flat panel displays, set-top boxes (STBs) with communication function, and multi functional digital machines (MFMs). However, as a result of the application of certain EC regulations, the EC and its member States currently imposed duties on these products. These measures would hinder the further development of the IT industry and were against the spirit of the ITA. As detailed in its joint request for the establishment of a panel, the three co-complainants considered that these measures were inconsistent with the EC's and its member States' obligations under the WTO Agreement. Japan had held consultations with the EC with a view to reaching a mutually satisfactory solution. Although the consultations had provided opportunities for Japan and the EC to better understand their respective positions on this matter, they had failed to find such a solution. Therefore, Japan, the United States and Chinese Taipei hereby jointly requested that a panel be established pursuant to Article 6 of the DSU and Article XXIII of the GATT 1994.

64. The representative of Chinese Taipei said that Chinese Taipei, acting jointly with the United States and Japan, was seeking the establishment of a panel at the present meeting to hear their dispute against the EC concerning the tariff treatment by the EC and its member States of certain information technology products. Chinese Taipei was deeply concerned that measures taken by the EC with respect to the tariff treatment of flat panel displays, set-top boxes with communication functions, and multifunctional digital machines, were inconsistent with its WTO obligations. Members were probably aware that Chinese Taipei had long been one of the largest suppliers of IT products to most of the world's markets. As a direct result of the EC's measures, its trade interests had been seriously affected. His delegation would even go thus far as to say that the negative impact of such measures could become a hindrance to the advancement of information technology in general, and to trade in such products in particular. As a participant in the ITA and a Member of the WTO, Chinese Taipei considered this case to be of enormous importance, not only because of its economic significance but also because of the systemic concerns raised by the measures imposed by the EC and its member States. When the EC had become a signatory to the ITA, it had pledged to grant duty-free treatment to IT products, including those that he had just mentioned. While the EC had modified its schedules of concessions to the GATT 1994 in order to reflect the commitments it had made under the ITA, the specific measures of the EC imposing duties on those products had in effect rendered such commitments unfulfilled. Its measures had severely eroded the standing of the ITA and, as detailed in its joint panel request, they were inconsistent with the WTO obligations of the EC and its member States, including those under Articles II:l (a) and II:1(b) of the GATT 1994.

65. In the last few months, Chinese Taipei had made exceptional efforts on three separate occasions to consult with the EC in good faith pursuant to Article 4 of the DSU. Chinese Taipei had

gone at lengths to demonstrate its interests in arriving at a mutually satisfactory solution, but to its great regret no solution had been found. Chinese Taipei continued to have serious concerns about the extent to which the EC's measures were compatible with the covered Agreements of the WTO. The lack of progress thus far in this dispute compelled Chinese Taipei to take the next step, which was recourse to the dispute settlement mechanism. Chinese Taipei hereby requested, jointly and severally with the United States and Japan, that a panel be established according to Article 6 of the DSU and Article XXIII of the GATT 1994.

66. The representative of the European Communities said that the issue of the tariff treatment and customs classification of certain Information Technology products was not new – and it was the EC's firm view that attempting to address it via the litigation route would produce no solutions. Following the adoption of the Information Technology Agreement, the EC had agreed to grant duty-free treatment to a specific list of IT products. Since that product list had been agreed back in 1996, new products and new technologies had appeared on the market. The resulting technological changes had enhanced the design and functionalities of digital products, and had given new or additional functions to many of the products originally covered, thereby making those products objectively different. Consequently, they fell outside of the product categories covered by the ITA. The ITA posed a systemic challenge, which was a direct result of the irreconcilability of the ITA specific product-based approach and the rapid evolution in the IT Industry. In the EC's view, this could only be addressed by revisiting the product coverage of the Agreement through negotiation with all participants.

67. The EC had offered on many occasions to use the mechanisms foreseen in the ITA to solve this issue through negotiations. The EC's offers had been met with scepticism as to whether negotiations were suitable to deliver a prompt solution. The EC now faced WTO litigation and legitimately felt that litigation was unduly used as a substitute for negotiations. Unlike the complainants, the EC did not view – and she quoted one of the complainants, "litigation as another form of negotiations" and would not wish for such views to become common amongst the WTO Membership. The EC believed that the ITA rules were clear and was confident that the products were correctly classified and received the tariff treatment provided for in the EC schedules of concessions. On a procedural aspect, as the EC had already bilaterally explained to all the three complainants when accepting consultations, it was the EC which bore the responsibility for the matter covered by the disputes, as this matter was of exclusive EC competence. The EC was, therefore, the only respondent in these disputes. This status of the EC had also been recognized on numerous previous occasions, including by the DSB's rulings, and also those specifically with respect to customs matters, for instance in the adopted Panel report in "EC – Selected Customs Matters" (DS315). The EC, therefore, took note of the requests for establishment of a panel by the United States, Japan and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu addressed to the EC. In this proceeding, the EC would be the sole respondent. The EC very much regretted the steps taken at the present meeting by Chinese Taipei, Japan and the United States to request the establishment of a panel in these disputes, and opposed the establishment of the panels.

68. The representative of the United States said that his delegation had noted the EC's "firm view" that the litigation route would "provide no solutions". Of course, the United States did not understand the EC to be suggesting that it would not implement the DSB's recommendations and rulings were the co-complainants to prevail on their claims in this dispute. The co-complainants considered that the EC was currently in breach of its current WTO obligations, and had requested the DSB to establish a panel to consider that matter. In response to the EC's comments on the proper responding parties in this dispute, the United States noted that the EC member States were WTO Members. As such, each had taken on all the obligations set out in the WTO Agreement. For example, they were bound by the tariff commitments in their respective schedules. Furthermore, as WTO Members, the EC member States were necessarily capable of being made responding parties in a dispute, as they had been in this one. Because the EC member States had been named as respondents in the panel request, claims against the EC member States would be part of the panel's terms of reference.

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

5. Japan – Countervailing duties on dynamic random access memories from Korea

(a) Statement by Japan

70. The representative of Japan, speaking under "Other Business", said that his country was pleased to report that it had implemented the DSB's recommendations and rulings in the dispute: "Japan – Countervailing Duties on Dynamic Random Access Memories from Korea" (WT/DS336). He recalled that on 17 December 2007, the DSB had adopted the Appellate Body Report and the Panel Report, as modified by the Appellate Body Report. As Members would recall, the following WTO-inconsistencies had been found in this dispute. First, the Japan's investigating authorities had acted inconsistently with Article 1.1(b) and Article 14 of the SCM Agreement by determining that the December 2002 Restructuring conferred a benefit on Hynix. Second, Japan's investigating authorities had calculated the amount of benefit conferred on Hynix by the October 2001 and December 2002 Restructurings inconsistently with Articles 1.1(b) and 14 of the SCM Agreement. Third, with respect to the October 2001 Restructuring, Japan had acted inconsistently with Article 19.4 of the SCM Agreement by levying countervailing duties on imports which Japan's investigating authorities had found were not subsidized at the time of duty imposition. On 5 May 2008, the Arbitrator under Article 21.3(c) of the DSU had determined that a reasonable period of time for Japan to implement the DSB's recommendations and rulings was eight months and two weeks. That period of time would expire on 1 September 2008.

71. On 30 January 2008, Japan's investigating authorities had initiated an investigation pursuant to Japan's Customs Tariff Law and related regulations in order to implement the DSB's recommendations and rulings. During the investigation, due account had been taken to defend the due process rights of the interested parties. As the results of the investigation that had been conducted scrupulously in accordance with the findings in the adopted panel and Appellate Body reports, Japan's investigating authorities had found the existence of benefit conferred by the December 2002 Restructuring and had calculated the amount of benefit to Hynix in a manner that Japan believed was fully consistent with the SCM Agreement. With respect to the October 2001 Restructuring, Japan had determined to exclude the countervailing duties equal to 18.1 per cent so as to comply with the relevant DSB's recommendations and rulings. Consequently, the countervailing duty rate would be reduced from 27.2 per cent which was currently in place to 9.1 per cent. As of now Japan had given public notice of the final determination and had announced the revision of countervailing duties that would apply as from 1 September 2008 in Cabinet Order No.266 published in the Special Issue No. 189 of the Official Gazette dated on 29 August 2008. With those actions, Japan had complied with the DSB's recommendations and rulings in this dispute.

72. The representative of Korea said that his country was deeply disappointed to hear Japan's claim that it had fully implemented the DSB's decision in the DS336 dispute, which was Korea's challenge to Japan's measures imposing countervailing duties on imports of dynamic random access memories ("DRAMs") from Korea. The Reports of the Panel and the Appellate Body, as adopted by the DSB, had eliminated all bases for the continuation of countervailing duties on DRAMs exported by Hynix Semiconductor. Moreover, both the Panel and the Appellate Body had found that the December 2002 restructuring transaction was "commercially reasonable", which meant that such transaction was fully in accordance with normal market practices, and thus had not conferred any "benefit" to Hynix within the meaning of the SCM Agreement. However, the announcement made at the present meeting demonstrated that Japan had decided not to withdraw its countervailing duties on imports of Hynix DRAMs. This was against the DSB's decision and its recommendations. Furthermore, such continued imposition of duties did not reconcile with Japan's own admission that subsidies in the semiconductor industry provided benefits only for a period of five years. Japan's recalcitrance had left Korea with no choice but to pursue the remedies available under the DSU.

Korea had already initiated discussions with Japan on a possible sequencing agreement to move the process forward under the relevant provisions of the DSU. Unfortunately, Korea might have to seek action from the DSB on this matter again in the near future.

73. The representative of Japan said that, with respect to Korea's statement, Japan was confident that its measures taken to comply with the DSB's recommendations and rulings were fully consistent with its obligations under the SCM Agreement. Japan would not get into a detailed discussion at the present meeting, as Japan did not believe that the DSB was the forum in which to debate highly technical case specific issues regarding determinations and findings made by Japan's investigating authority. That being said, Japan was ready to pursue the dialogue with Korea and would respond to any further concerns that Korea might have.

74. The DSB took note of the statements.

6. Statement by Ecuador concerning the European Communities' regime for the importation, sale and distribution of bananas

75. The representative of Ecuador, speaking under "Other Business", said that his delegation was obliged to make a statement at the present meeting in order to clarify certain points contained in a press release issued on 28 August 2008 by the EC concerning its decision to appeal against the Panel Report on: "European Communities – Regime for the Importation, Sale and Distribution of Bananas: Second Recourse to Article 21.5 of the DSU by Ecuador". He said that Ecuador was obliged to pursue the legal claim on this matter because of the EC's failure to sign the Geneva Agreement on Trade in Bananas, dated 27 July 2008, which had been designed to put an end to the longest running legal dispute in the history of the WTO. His said that his authorities had requested him to register Ecuador's great frustration about the lack of compliance by the EC with a commitment negotiated in good faith by Ecuador during a lengthy process of talks carried out by the WTO Director-General. At the present meeting, Ecuador would not repeat the arguments put forward by his delegation in the meetings of the TNC and the General Council in July 2008. He only wished to recall that, at that time, Ecuador had underlined the fact that the Agreement in question was totally independent of the Doha Round agreement on modalities, since a reading of the text and, in particular paragraphs 4 and 5 thereof, proved that Ecuador and the other Latin American countries were right about the unquestionable fact that the Agreement was separate from the results of any agreement or lack thereof on modalities. The Agreement was designed to ensure the EC's compliance with the DSB's recommendations and to give compensation for the EC's successive enlargements between 2004 and 2007, in accordance with the provisions of Article XXVIII of the GATT 1994. In that Agreement, Ecuador had undertaken to waive its legal rights in exchange for the tariff reduction agreed for MFN bananas. The Agreement would make it possible for a country like Ecuador, with limited resources for combating poverty, to save hundreds of millions of dollars in tariff payments and avoid the enormous financial cost of legal proceedings. The EC held the key to resolving this long-standing dispute, and Ecuador, therefore, urged the EC to sign the Agreement and put an end to a dark chapter in the history of relations between Ecuador and the EC.

76. The representative of Colombia said that the EC's decision to appeal against the findings of the Panel, which had, once again, condemned the EC's banana import regime, had been filed at a time when the parties had reached a solution to the banana dispute. The appeal was clearly presented in response to the actions taken by Ecuador and the United States to propose for adoption the 2008 Panel Reports concerning the EC's banana import regime. All knew that the EC's appeal would not lead to a change in the Appellate Body's jurisprudence on this matter. The EC's banana import regime was inconsistent, for a number of reasons, with the EC's WTO obligations. Given the political reality of the importance attached by the EC to its banana import regime and the perpetual difficulty of implementing the rulings to bring the EC's banana import regime into compliance with the EC's WTO obligations, Colombia had used a mechanism which had brought the parties to the table within legal

parameters. Colombia had sought the good offices of the WTO Director-General in November 2007, under the procedures of the 1966 Decision. After numerous meetings, a stand-alone Agreement, that is, an agreement not linked to the negotiation of modalities in the Doha Round, had been reached between the EC and the MFN banana supplying countries, on 27 July 2008. For reasons that Colombia found mystifying, the EC had disowned the stand-alone Agreement. Colombia knew that the only way to terminate the never ending banana dispute was by putting into effect the Geneva Agreement on Trade in Bananas, dated 27 July 2008. With that Agreement, the EC would tie up all the loose ends of the past and the MFN countries would improve their access conditions to the EC's market. Pursuant to the Agreement, the MFN countries accepted the more favourable treatment given to ACP suppliers. Now, for example, it was known that their exports were entering in violation of the EC's commitments since no association agreements had been signed, nor was there a waiver for preferential treatment. The EC's compliance with the Agreement would have eliminated the need for action by Ecuador and the United States as well as for the appeal, and it would have made it unnecessary to involve the Appellate Body in an issue in which the circumstances might change, but not the substance. It could, therefore, prove highly convenient for the EC to tie up all the loose ends of the banana issue by implementing the Agreement. Colombia deplored the EC's decisions and hoped that the EC's appeal was not an excuse to disregard the many months of work, the results of which benefited all: the EC, the MFN banana supplying countries, the ACP countries and the multilateral trading system.

77. The representative of Panama said that his country wished to lend its support to the views expressed by Ecuador. As the DSB was aware, there had already been 11 legal rulings against the EC on bananas. The parties were now about to embark on cases number 12 and 13. Latin America's legal hand had again been forced by the EC, who after reaching a settlement Agreement on 27 July 2008 had then walked away. While the EC wanted the Membership to believe that its Agreement was contingent on Doha's success, the explicit language of that Agreement proved the contrary. The 27 July 2008 Agreement remained on the table ready to be signed. It was not open to re-negotiation. If the EC wanted to put an end to this long dispute, it would need to respect the peace it had already committed to on 27 July 2008. Until it did, Panama, like Ecuador, would defend its rights.

78. The representative of Costa Rica said that his country thanked Ecuador for placing this matter on the Agenda of the present meeting. Costa Rica understood and shared Ecuador's concern about the EC's continued non-compliance with the decisions of the DSB, the determinations of two arbitration proceedings on bananas, and the EC's obligations under Articles XXVIII and XXIV of the GATT in relation to its two most recent enlargements. In recent months, the good offices of the WTO Director-General, under the DSU, had facilitated a *rapprochement* between the parties, which had finally concluded, on 27 July 2008, the Geneva Agreement on Trade in Bananas. That Agreement had coincided with the Doha Round Ministerial negotiations in July 2008, as had occurred with the banana negotiations in 2001, which had been held in Doha, in parallel to other important Ministerial negotiations. However, both the results of the 2001 banana negotiations in Doha and those of 27 July 2008 were valid in and of themselves. The Agreement reached had independent validity, as was established in paragraph 4 thereof, and did not, therefore, depend on the success of the Doha Round negotiations in the WTO. Despite that fact, when the Round had reached an impasse, the EC had stated that it would not comply with the commitments made under the Agreement. Costa Rica had deployed its best efforts to achieve a strengthening of the rules of the multilateral trading system in order to deepen the process of trade liberalization so as to benefit all concerned, and in particular developing countries. Costa Rica understood the EC's frustration at the failure of the negotiations in the Round and shared that frustration. However, as a country that observed the rule of law within its frontiers and in the international sphere, Costa Rica failed to understand why the EC disowned the Geneva Agreement on Trade in Bananas reached in July 2008. The Agreement had been negotiated and had been concluded as a stand-alone agreement independent of the single undertaking under the Round, and should, therefore, be respected. Respect for the mutual rights and

obligations of Members, irrespective of their size, was a matter of fundamental importance to Costa Rica. This could be achieved by rejecting unilateral decisions and actions in the area of trade and international law, and by ensuring that good sense, good faith and the letter of agreements prevailed in international relations. Costa Rica hoped that the EC would comply with the Geneva Agreement on Trade in Bananas by implementing it as from 1 January 2009, as agreed on 27 July 2008 by Costa Rica and other delegations.

79. The representative of Nicaragua said that, like previous speakers, her country was also concerned about the EC's position in this dispute. She recalled that, at the TNC meeting on 30 July 2008, her delegation had stated that Nicaragua was still analysing the implications of the Geneva Agreement on Trade in Bananas reached by the end of July 2008. However, Nicaragua did not understand how the EC could have first agreed to a solution to what was already a 16-year-old trade dispute and had, subsequently, disowned that Agreement only a few days afterwards, stating that a settlement of this issue depended on success in adopting modalities in agriculture and NAMA. Numerous legal proceedings had confirmed that the trading rights of the Latin-American exporting countries were being infringed by the EC, and these rights must, therefore, be restored. Nicaragua had defended its interests in this dispute since 1992 and would continue to do so at the appeal proceedings.

80. The representative of Cameroon said that his delegation wished to react to the statement made by Ecuador, which had been supported by other Members who had been negotiating with the EC in the context of the Geneva Agreement on Trade in Bananas of 27 July 2008. As Cameroon had stated at the July meeting of the General Council, Cameroon was not a party to the Agreement, but had always been an interested third party to all banana agreements. Cameroon always favoured a negotiated solution and believed that negotiations should not exclude other interested parties. Cameroon continued to believe that the EC, as well as the MFN suppliers, needed to take this into account. The DSB was to resolve trade issues not to legislate trade law. Trade had to be at the centre of the considerations, and all parties involved must take into account the interests of all interested parties so that everybody could participate both in the legal proceedings and negotiations at the same time. Otherwise, it would not be fair for particular interests of certain Members and a particular product to be set aside. Cameroon believed that all Members needed to be able to find an arrangement satisfactory to all so that trade would benefit all.

81. The representative of the European Communities said that not surprisingly her delegation did not have any speaking points on this matter as it had not expected this item to be on the Agenda of the present meeting. The EC thanked delegations for their statements. The EC had taken good note of them and would transmit them to Brussels. However, she wished to note that the central issue raised in the statements at the present meeting was about a difference of opinion on what had exactly happened during the Ministerial week in July 2008. As had been made clear, in particular by Costa Rica at the present meeting, it was undeniable that this was all linked to the DDA negotiations. Therefore, it would seem that the DSB was not the right forum for a discussion on this, but the TNC or the General Council would be better suited.

82. The DSB took note of the statements.