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Dispute Settlement Body
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MINUTES OF MEETING

Held in the Centre William Rappard
on 19 February 2009

Chairman: Mr. Mario Matus (Chile)

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 6

(c) United States – Section 110(5) of the US Copyright Act: Status report by the United States 6

(d) European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Communities 7

(e) European Communities – Regime for the importation, sale and distribution of bananas: Second recourse to Article 21.5 by Ecuador: Status report by the European Communities 8

2. United States – Continued Dumping and Subsidy Offset Act of 2000: Implementation of the recommendations adopted by the DSB 15

(a) Statements by the European Communities and Japan 15

3. United States – Continued existence and application of zeroing methodology 17

(a) Report of the Appellate Body and Report of the Panel 17

4. Election of Chairperson 24

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.75)

(b) United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.75)

(c) United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.50)

(d) European Communities – Measures affecting the approval and marketing of biotech products: Status report by the European Communities (WT/DS291/37/Add.13 – WT/DS292/31/Add.13 – WT/DS293/31/Add.13)

(e) European Communities – Regime for the importation, sale and distribution of bananas: Second recourse to Article 21.5 by Ecuador: Status report by the European Communities (WT/DS27/96/Add.1)

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

(a) United States – Section 211 Omnibus Appropriations Act of 1998: Status report by the United States (WT/DS176/11/Add.75)

2. The Chairman drew attention to document WT/DS176/11/Add.75, 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 6 February 2009, in accordance with Article 21.6 of the DSU. As noted in that status report, a legislative proposal that would implement the DSB's recommendations and rulings in this dispute had been introduced in the new Congress, which had convened in January 2009.

4. The representative of the European Communities said that at the present meeting, the United States was presenting its seventy-fifth status report on its lack of progress in the implementation of the DSB's ruling in this dispute. The EC hoped that this would change and that the United States would take steps to implement the DSB's ruling.

5. The representative of Cuba recalled that, at the DSB meeting on 19 February 2002, the United States had stated that it needed a reasonable period of time to implement the DSB's recommendations and rulings in the Section 211 dispute. Seven years had now passed since then. He said that his country did not know what the United States understood by "reasonable period of time." Perhaps the United States was setting a precedent that may be useful for other respondents to delay indefinitely the implementation of the DSB's rulings. If a Member like the United States was unable to modify its legislation in seven years, in order to bring it into conformity with WTO Agreements, the rest of the non-complying Members did not have reason to act promptly. Another reason of utmost concern was that the current dispute was not the only dispute involving the United States that had remained on the DSB Agenda for years because of failure to comply with the DSB's decisions. It

was not an isolated incident. This was now becoming a pattern of behaviour, which was unacceptable to other Members since it affected their rights.

6. At the 20 January 2009 DSB meeting, the United States had mentioned that a legislative proposal that would implement the DSB's rulings had been introduced in the new Congress. It was a legislative proposal promoted by a congressman that called for the lifting of the economic, commercial and financial blockade imposed by the United States on Cuba for nearly 50 years. The proposal had included, *inter alia*, the repeal of Section 211. The draft proposal was introduced in the new Congress on 6 January 2009 but it was not new; it came from the previous legislature. Though it had been submitted to several Chamber Committees, no action had been taken with respect to this proposal and, as far as Cuba knew, the new US executive had not declared itself in its favour. Cuba could not be too optimistic. It was worth recalling that similar draft proposals had been rejected by the US administration in previous legislatures and that those drafts had been defeated as a result of several manoeuvres. The United States must respect the work of the DSB, the DSU provisions, the TRIPS Agreement and other Members. Those who had heard at the last DSB meeting that a proposal that would resolve this dispute had been introduced in the US Congress had probably imagined that it was a new bill aimed at repealing Section 211 only. In accordance with the DSU provisions, the respondent must provide all the details in its status reports. The United States was obliged to submit complete and detailed status reports. It had been equally unable to do so in seven years. Cuba had become accustomed to reading and listening to repetitive status reports that did not reflect reality. However, Cuba had not heard that the United States was doing something to bring its legislation in line with the TRIPS Agreement, according to the recommendations and rulings made by the DSB, as set out in Article 21.6 of the DSU. Cuba would continue to remind the United States that each Member was responsible for ensuring the conformity of its laws, regulations and administrative procedures with its obligations under the WTO Agreements. The foregoing was stipulated in Article XVI:4 of the Marrakesh Agreement. Cuba had heard at recent meetings of negotiating groups that, with the new government and Congress, the United States would review its positions. Hopefully, the United States realized that it was affected, isolated and increasingly discredited by its lack of compliance in this dispute. A country that presented itself as the strongest advocate of intellectual property rights could no longer ignore the provisions of the TRIPS Agreement.

7. The representative of Brazil said that his country thanked the United States for its status report in this dispute. As stated before, Brazil remained concerned about the non-compliance situation in this dispute. Brazil urged the United States to fully implement the DSB's recommendations.

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

9. The representative of Nicaragua said that her country had systemic concerns about the proper functioning of the multilateral dispute settlement system and urged the Member concerned to comply with the DSB's rulings in this case without further delay. The statements to this effect made month after month by numerous delegates failed to achieve the desired outcome, and month after month, delegations heard renewed calls for prompt compliance and objections had been raised that such conduct was an impediment to the proper functioning of the dispute settlement system. All WTO Members had the same rights and obligations. Nicaragua was concerned about the protracted non-compliance since this caused enormous economic harm to the industries of the most vulnerable developing countries, which in turn affected job creation and the economy as a whole. Section 211 of the US Omnibus Appropriations Act of 1998 had been found to be in breach of Article 42 of the

TRIPS Agreement in that it limited, in specific circumstances, the right of trademark owners to have recourse to US civil judicial procedures in order to achieve the required compliance, thereby leaving the door open to infringements of intellectual property rights in US territory. The US failure to implement the DSB's recommendations undermined the most important principles of the multilateral trading system and should not be tolerated. A number of delegations, including Nicaragua, had asked the Member concerned to inform the DSB of the specific measures it envisaged to bring Section 211 into line with WTO rules without delay, but no reply was forthcoming. At the end of 2008, there had been expressions of encouragement for the new US administration to take appropriate measures promptly in order to implement the DSB's rulings on this issue once and for all. However, Nicaragua once again noted with regret that there had been no progress and, what was worse, no sign that Members could reasonably expect to see compliance in the short term. No parallel measures that failed to target the flaws in the system, no partial monitoring of the financial crisis, no meetings of trade ministers (whether in plenary or in groups) could do as much for the WTO's image and international credibility as the effectiveness and unfailing reliability of its dispute settlement system.

10. The representative of Bolivia reiterated her country's concern, once again, that no progress had been made in this case and noted that this had consequences for the Organization. The United States must comply with the DSB's rulings and recommendations and lift the restrictions under Section 211. The United States must ensure that the WTO integrity was preserved. Bolivia hoped that the new US administration would take the necessary measures in order to solve this dispute.

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

12. The representative of Ecuador said that his country thanked the United States for the status report and supported the statements made by Cuba and other Members on this issue. All WTO Members were required to respect the WTO Agreements. Ecuador recalled that the United States, through the various WTO Councils and Committees, closely monitored the commitments undertaken by other Members and Ecuador expected it to set a good example. After the bananas dispute, this was the longest-standing pending dispute in the Organization and in respect of which all WTO Members should express concerns. Ecuador, once again, urged the United States to comply with the DSB's recommendations and rulings and to promptly repeal Section 211.

13. The representative of Chile said that the statement under the present Agenda item applied to all the various matters pursuant to Item 1 on the Agenda. Chile wanted to voice its concern that the long period of time had elapsed without compliance with the DSB's rulings pertaining to the various disputes. It was not right for those old cases to be left pending without compliance. Chile thought that the general level of compliance was good. Notwithstanding that, those matters which were left pending without full compliance gave rise to a very dangerous situation for the system. Chile wanted to encourage all the Members involved in those matters to promptly comply with the DSB's rulings and decisions.

14. The representative of India said that his country thanked the United States for the status report and its statement which was not different from the statements made in the past. India wanted to renew its systemic concerns about this situation arising out of non-compliance in this dispute. Despite the adoption of panel and the Appellate Body reports by the DSB in this case several years ago, absence of compliance in this dispute was a cause of concern for the WTO Membership. India was confident

that the US administration would continue to work with the US Congress in a constructive manner with a view to implement the DSB's recommendations.

15. The representative of Thailand joined previous speakers in thanking the United States for its status report and statement. Thailand urged the United States to take all necessary steps to comply with its obligations under the TRIPS Agreement applicable to this dispute. Non-implementation of the DSB's rulings and recommendations undermined the integrity of the rules-based multilateral trading system.

16. The representative of Viet Nam said that his country thanked the United States for its status report. Like other Members, Viet Nam wanted to express its concern on the implementation of the DSB's rulings and recommendations in this dispute. The prompt settlement of the dispute was essential for the effective functioning of the WTO. Therefore, Viet Nam urged the United States to comply with the DSB's rulings and recommendations as soon as possible in order to contribute to the effectiveness of the WTO dispute settlement mechanism.

17. The representative of the Bolivarian Republic of Venezuela said that his delegation noted the status report submitted by the United States under this Agenda Item. His country wished to echo the views, which had been expressed by many delegations for a long time, that the United States end its economic, commercial and financial blockade imposed on Cuba, including the application of the Helms-Burton Act. By attempting to prevent the development of foreign investment in Cuba associated with the international sale of Cuban products with trademarks and trade names that enjoyed worldwide prestige, the United States was causing that country irreparable damage. Under the present financial crisis, which affected trade and would continue to affect it even more, the US position towards Cuba would cause even greater damage if the above-mentioned Act remained in force. The United States had pushed back the deadlines for compliance with the DSB's ruling. By doing so, the United States had undermined the WTO's credibility because its failure to implement the DSB decisions had gone unpunished. It was important to point out that Cuban people also suffered as a result. For six years now there had been a firm decision, taken by an institution that Member countries sought to reinforce because they believed in the benefits of multilateralism and the need to comply with the rulings in order to make it stronger. Yet there had been no compliance. Nevertheless, his country believed that if the United States repealed that Act, the new US authorities could give a positive signal as to their intentions regarding multilateralism in trade and the WTO in the coming years. His country, therefore, urged the United States to take steps, as a matter of urgency and necessity, to comply with the obligations incumbent on it under the TRIPS Agreement, to which it was a signatory.

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

19. The representative of Cuba said that his delegation was tired of hearing the same statements under this Agenda item. The fact was that there were a number of pending unresolved cases under this Agenda item, and some of them were not related to the TRIPS Agreement. He reiterated that the DSB's recommendations and rulings were not like a menu of options from which to choose. All

rulings had to be respected, if not, the credibility of the WTO and the DSB would be undermined. When a major developed country did not comply with the DSB's rulings, there would be serious economic consequences.

20. 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.75)

21. The Chairman drew attention to document WT/DS184/15/Add.75, 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.

22. The representative of the United States said that the United States had provided a status report in this dispute on 6 February 2009, in accordance with Article 21.6 of the DSU. As of 23 November 2002, the US authorities had addressed the DSB's recommendations and rulings with respect to the calculation of anti-dumping margins in the hot-rolled steel anti-dumping duty investigation at issue in this dispute. Details were provided in the document numbered WT/DS184/15/Add.3. With respect to the recommendations and rulings of the DSB that had not been already addressed by the US authorities by 23 November 2002, a new US administration had taken office in January 2009. The new US administration would work with the US Congress with respect to appropriate statutory measures that would resolve this matter.

23. The representative of Japan said that his country thanked the United States for its statement and its latest status report. As had been reported, the United States had taken certain measures to implement part of the DSB's recommendations in November 2002. Since then, however, there had been little tangible progress for the remaining part of the DSB recommendations and rulings. A full and prompt implementation of the DSB's recommendations and rulings was "essential to the effective functioning of the WTO and the maintenance of a proper balance of the rights and obligations of Members"[1]. Japan hoped that the United States would fully implement the DSB's recommendations in this long-standing dispute without further delay.

24. 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.50)

25. The Chairman drew attention to document WT/DS160/24/Add.50, 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 6 February 2009, in accordance with Article 21.6 of the DSU. The US administration would work closely with the US Congress and continue to confer with the European Communities, in order to reach a mutually satisfactory resolution of this matter.

27. The representative of the European Communities noted that this was the fiftieth time the United States reported on continued non-compliance without offering any concrete means to bring

[1] Article 3.3 of the DSU.

itself into compliance. He said that there had been 50 DSB meetings without progress and that the EC was still waiting for compliance.

28. 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.13 – WT/DS292/31/Add.13 – WT/DS293/31/Add.13)

29. The Chairman drew attention to document WT/DS291/37/Add.13 – WT/DS292/31/Add.13 – WT/DS293/31/Add.13, which contained the status report by the European Communities 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.

30. The representative of the European Communities said that recent developments showed that the EC regulatory procedures on biotech products continued to work normally. Draft Commission decisions on authorization of cultivation of GM maize 1507 and Bt11 would be presented to the regulatory Committee at the end of February. Draft authorization decisions on two other maize applications which had received a positive opinion by EFSA (maize 59122×NK603 and MON89034) would also be adopted soon. With respect to national bans, draft decisions on several measures prohibiting cultivation of GM maize MON810 (France, Hungary, Greece) would be discussed at standing committee meeting/Council in the coming weeks. The European Commission had also adopted a draft decision on the Austrian measure condemned by the Panel. The previous month, the EU Agriculture Council had voted on two draft authorization decisions on a GM oilseed rape (T-45, of interest to Canada) and a GM carnation. Once these products were approved, 21 authorizations would have been made since the establishment of the Panel. The EC believed that the progress described in such a sensitive area showed that the only appropriate way forward was dialogue and cooperation. The EC remained open to continue discussions with the three complainants.

31. The representative of the United States said that his country thanked the EC for its status report, and its statement. Unfortunately, recent developments had not addressed US concerns with the EC's treatment of biotech products. At recent DSB meetings, the United States had addressed concerns regarding the backlog of approximately 50 pending applications, and the commercial impact of the delays in EC decision-making. At the present meeting, the United States would focus attention on the DSB's recommendations and rulings regarding EC member State measures. In particular, the DSB had found that nine EC member State measures banning biotech products, approved by the EC prior to the moratorium, were not based on risk assessments and thus breached the EC's obligations under the SPS Agreement. The EC had yet to address each of those member State measures. For example, Austria continued to ban the cultivation of an insect-resistant maize variety that the Commission approved for cultivation prior to the moratorium. In member States that did not ban its use, EC farmers had chosen to grow it in increasing quantities, without any adverse effects on health, safety, or the environment. In December, the EC's own scientific committee had again found that this variety of maize was safe, and that Austria had no basis for its ban. Yet, more than two years after the DSB's adoption of its recommendations and rulings, Austria's ban remained in place. Moreover, not only had the EC failed to remove the Austrian ban, but it had allowed this unjustified ban to spread to additional jurisdictions. In particular, France, Greece, and Hungary have all banned this same variety of maize.

32. On Monday, 16 February, the Commission had submitted to an EC regulatory Committee a measure that would direct Greece and France to lift the ban that they had imposed on this variety of maize. The measure was supported by a formal report of the EC's own scientific committee showing that the Greek and French bans lacked any scientific justification. Yet the Committee failed to

approve the measure. This meant that the unjustified bans would be maintained within Greece and France unless, and until, further action was taken. In sum, the United States remained very concerned with the state of the EC's compliance with the DSB's recommendations and rulings on the unjustified member State bans on particular biotech products. Not only did some of the unjustified bans remain in place, but they had been extended to additional jurisdictions within the EC. The United States thanked the DSB for its continuing attention to this matter.

33. The representative of Argentina said that his country thanked the EC for its status report and the statement. Argentina, however, noted with concern that authorizations in the EC member States proceeded at a slow pace. Notwithstanding this, Argentina and the EC had held a meeting in Brussels with a view to continuing in the same spirit of cooperation which had prevailed to date. Argentina renewed its commitment to continue to work together with the parties involved and, in particular with the EC, with a view to finding a definitive solution to this case.

34. The representative of Canada said that her country thanked the EC for its statement. As had been said in previous meetings, Canada valued the constructive dialogue it had had to date with the EC. However, Canada had ongoing concerns, most notably regarding member State bans in place on the cultivation and marketing of approved biotech products. For example, just a few days ago, the EC's Standing Committee on Food Chain and Animal Health had failed to agree to ask Greece and France to repeal their safeguard measures against the cultivation of GM maize MON810. This was so despite opinions from the European Food Safety Authority (EFSA) that the cultivation of MON810 maize was unlikely to have any adverse effects on human or animal health, or on the environment. Canada also remained deeply concerned that undue delays were reappearing in the EC approval system for biotech products. Canada would continue to monitor the situation closely.

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

(e) European Communities – Regime for the importation, sale and distribution of bananas: Second recourse to Article 21.5 by Ecuador: Status report by the European Communities (WT/DS27/96/Add.1)

36. The Chairman drew attention to document WT/DS27/96/Add.1, which contained the status report by the European Communities on progress in the implementation of the DSB's recommendations and rulings in the case concerning the EC's regime for the importation, sale and distribution of bananas.

37. The representative of the European Communities said that the EC stood ready to implement the recommendation made in Ecuador's Report by means of modifying its bound duty. The EC still hoped that this rebinding could be made in the context of a comprehensive agreement with Latin American suppliers, an agreement that had been sought since the EC had initiated GATT Article XXVIII negotiations back in 2004. The EC was fully committed to finding, very soon, a final solution to this long-standing "banana saga". Alongside this commitment, the EC had started, on 10 February 2009, negotiations not only with Ecuador, but also with other MFN suppliers with rights to reach an agreement regarding the rebinding of the EC tariff on bananas. The requests made to the EC to simply sign the draft agreement established in the margins of the July Ministerial Meeting in 2008 simply disregarded the fact that the signature of that agreement was subject to the successful adoption of the DDA Agriculture modalities. Having said that, the EC was now engaged in negotiations to discuss the possibility of concluding a draft agreement with a number of elements based on the July 2008 text, subject to necessary adjustments to the current situation, and the EC hoped that all banana suppliers would constructively engage in the necessary discussions.

38. The representative of the United States noted that this was the EC's thirty-second status report in this dispute. The first one had been filed in July 1998 – that was more than 10 years ago. The United States would like to recall, once again, the point that it had made previously regarding the Panel and the Appellate Body's conclusion that the "DSB recommendations and rulings from the original proceedings remain in effect until the European Communities brings itself into substantive compliance".[2] In this connection, the United States was extremely disappointed that, once again, the EC entitled its status report as a document applying only to Ecuador's proceeding. At the 20 January 2009 DSB meeting, the EC had suggested that there was no longer a compliance issue with respect to the recommendations and rulings that the United States and the other complaining parties had obtained because the measure had ceased to exist. Yet, all knew that there was no Panel or Appellate Body Report that found that the EC was in compliance with its WTO obligations with respect to its bananas import regime. If the EC believed that it had implemented the DSB's recommendations and rulings with whatever measure or measures it had put in place, why was the EC reluctant to provide Members with the information? Moreover, the United States again noted that in the report that the EC had filed, the EC again provided no information as to how the bananas import regime, that it had allegedly introduced on 1 January 2008, was in compliance with its obligations under Articles I and XIII of the GATT 1994. The United States failed to understand how the EC could have omitted these elements from its report.

39. With respect to the GATT Article II-inconsistency in Ecuador's proceeding, the EC, in its most recent status report, stated that it was "ready to resume negotiations with Latin American supplying countries in view of promptly concluding a comprehensive agreement on bananas that would establish, among other elements, the level of the new EC bound tariff duty". The United States understood this to mean that the EC was making compliance with the DSB's recommendations and rulings contingent upon the results of a much broader and distinct set of negotiations. The United States, once again, reminded the EC that it was required to reduce its bananas tariff as a dispute settlement compliance matter. The United States hoped that at the next DSB meeting it would receive a comprehensive status report with a comprehensive explanation of how the EC intended to come into substantive compliance with its obligations, as well as a description of the progress it was making towards that end.

40. The representative of Ecuador said that his country thanked the EC for its status report. However, in that report, the EC provided no indication as to when it would comply with the DSB's recommendations and rulings. Furthermore, the EC had again denied the existence of the Geneva Agreement on bananas reached with the principal MFN suppliers on 27 July 2008. Ecuador regretted that the EC did not express any readiness to honour that Agreement. On the contrary, the EC had recently made a proposal to MFN suppliers. That proposal lacked any balance between the commitments that were expected of MFN suppliers and those to be undertaken by the EC. It linked tariff cuts to the conclusion of the Doha Round modalities. It introduced further conditions in areas unrelated to compliance with the DSB's recommendations and rulings, and to the compensation resulting from the EC's enlargements in 2004 and 2007 under Article XXVIII of the GATT 1994. It contained a provision whereby a matter inextricably linked to compliance should be approved by the General Council. Ecuador again called upon the EC to sign the Banana Agreement of 27 July 2008 in order to end this long-standing dispute and to avoid recourse to retaliation by Ecuador or new legal complaints. Ecuador pointed out that a unilateral decision by the EC would have serious legal and systemic implications. Finally, Ecuador was surprised that the EC had not as yet submitted any status report on the DSB's recommendations and rulings in the proceedings brought by the United States under Article 21.5 of the DSU and with regard to other claims of the original complainants in the Bananas III dispute. Ecuador considered that this situation should be of concern to all Members.

[2] Appellate Body Report, para. 273; Panel Report, para. 8.13.

41. The representative of Colombia said that his country thanked the EC for its status report and welcomed the statement made by the EC that it intended to bring itself into compliance with the DSB's recommendations and rulings by modifying its scheduled tariff commitments on bananas. The EC had made a proposal which was broad, since it sought not only conformity with the DSB's rulings and recommendations, but also an early implementation of the Doha Round tariff cuts for bananas and payments of compensations resulting from the EC's enlargement to 25 members and then to 27 members. The EC's proposal represented a lower economic value than what had been negotiated on 27 July 2008. The July Agreement represented a very delicate balance achieved at the last minute in the context of a mutual concessions exercise. Nevertheless, Colombia noted the EC's willingness to negotiate, and was in the process of examining the EC's proposal. Finally, Colombia regretted that the EC status report did not provide any information as to how the EC had brought its bananas import regime into conformity with its obligations under Articles I and XIII of the GATT 1994.

42. The representative of Nicaragua said that his country wished to refer to the statements previously made in the DSB on this issue, since they continued to reflect Nicaragua's position. Nicaragua regretted that, for the second consecutive time, the EC had circulated a status report which failed to give any explanation as to how the EC would bring its bananas import regime into compliance with its WTO-obligations. Under the DSU rules, it was not enough for the EC to condense into a single sentence its expression of willingness to conclude a "comprehensive agreement on bananas that would establish, among other elements, the level of the new EC bound tariff duty". This sidestepped the matter of how the EC intended to comply with Article II of the GATT 1994 and completely disregarded how the EC would comply with Article I of the GATT 1994. With regard to the continuing violation by the EC of Article II of the GATT 1994, merely referring to a new binding did not convey any recent information. The EC had proposed a number of bindings since 2005, all of which had been declared illegal. Any new binding must be well warranted and acceptable to all MFN suppliers, otherwise this dispute would continue. Nicaragua, once again, called upon the EC to rebind its tariff at a level consistent with the competitive conditions for Nicaragua under the GATT and to address his country's urgent need for economic relief. With regard to the violation by the EC of Article I of the GATT 1994, Nicaragua failed to see how discrimination by the EC in respect of bananas could be justified under the WTO rules. Neither silence nor a statement by the EC, of its own accord, that it was already in compliance would serve to resolve this aspect of the dispute. Nicaragua had taken note of the latest EC proposal which purportedly aimed to achieve "a comprehensive agreement", but did not consider that this constituted proper restitution of its rights. A "comprehensive agreement" could not be used to veil the fact that the proposal did not fully comply with, or detracted from, the Doha obligations. Neither could it be linked to events which borne no relationship whatsoever to the matter at issue, such as an "early harvest" under the Doha framework, which was beyond the control of Latin America. Nicaragua regretted that, after more than a decade of non-compliance, the EC still showed no willingness to settle this dispute fully and promptly, with due regard for Nicaragua's developing country interests, as required under the DSU provisions.

43. The representative of Panama said that his country continued to be disappointed by the status reports submitted by the EC. In Panama's view, the EC took its implementation obligations in the wrong direction. He recalled that in July 2008, the EC had agreed to settle this dispute, but then it had walked away. Since then, the EC had lost two bananas disputes. Rather than to promptly comply, as required under the DSU provisions, the EC now wanted to reverse many elements of the July Agreement and to tie relief to the conclusion of the Doha Round, which was not linked to the compliance under the DSB. In the meantime, the EC wanted the Latin American countries to give up even more rights and interests than they had agreed to in July 2008. Panama, like other Latin American countries, considered that the EC's most recent proposal was imbalanced and represented a clear failure to comply with the recommendations. The EC's monthly status reports were only complicating the picture. The objective of status reports was to promote transparency and to prompt compliance. The EC's status reports promoted the opposite. The reports were not transparent as to how the EC intended to redress its GATT Article II violation. The EC tried to bypass its GATT

Article I violation altogether. And, by addressing those reports to Ecuador's case only, the EC had wrongly ignored the original Bananas III rulings, which remained operative for all the Bananas III complainants and had yet to be implemented. The bananas dispute was at a fragile juncture. The 27 July Agreement, which had been difficult to achieve, was more than fair for the EC. Despite undue losses for the past 17 years, Latin American countries were still willing to come together on an accommodating settlement for the sake of a lasting solution. The EC's efforts to reopen that balance would invite calls for more relief, not less, and would aggravate the conflict. As the 27 July Agreement was the only clear path to a solution, Panama again called on the EC to respect the terms of that Agreement.

44. The representative of Honduras said that his country, like the other complainants in the Bananas III dispute and the banana suppliers, was concerned about the EC's status reports. According to the DSU provisions, status reports were supposed to ensure appropriate surveillance of the implementation under the DSB. Rather than meeting that objective, the EC's status reports contributed to creating confusion. First, Honduras was concerned that the EC limited its reporting obligations to the proceedings invoked by Ecuador under Article 21.5 of the DSU. The Appellate Body had recently confirmed that the EC had not implemented the original rulings and recommendations in the Bananas III dispute, and that the DSB's recommendations and rulings from the original proceedings would remain in effect until the EC brought itself into substantive compliance. That meant that the EC's status reports had to refer to all the bananas disputes and not to just one of the compliance measures. Second, Honduras was concerned that the EC's status reports were rather short. The reports did not provide any information as to when and how the EC would remedy its breach of Articles I and II of the GATT 1994. It was difficult to see how this dispute could be settled if the EC refused to refer to the obligations it had to comply with, in particular since it had also failed to explain how it planed to bring itself into conformity with WTO rules. Although Honduras noted the EC's statement in the most recent status report that "The EC stands ready to resume negotiations with Latin American supplying countries", it was, however, not comforted by this. The EC had already come to an agreement on bananas on 27 July 2008, which would settle all outstanding proceedings and the legal claims under the WTO. When the EC had stated that it "stands ready to resume negotiations", the meaning was clear: it implied that the EC now sought to settle the matter on terms well below the terms it had offered in July 2008, notwithstanding the fact that it had lost two other WTO cases in December 2008. Honduras was still perfectly ready to accept the 27 July Agreement but had found that the EC's latest proposal was not balanced and considered any linkages to developments in the Doha Round to be unacceptable. The EC had already backtracked too often during the 17-year long dispute. Since the scope of the EC's compliance obligations had again been noted, and because the EC had expressed the wish to combat protectionism, Honduras hoped that in its next status report, the EC would confirm its intention to settle this matter, in accordance with the terms already agreed in July 2008.

45. The representative of the Dominican Republic, speaking on behalf of the ACP countries, said that at the 11 December 2008 DSB meeting, the ACP countries had registered their disagreement on substance with certain conclusions reached by the Panel and the Appellate Body. However, the Dominican Republic respected the need to implement final decisions. Of the three substantive legal issues litigated in this proceeding, two, namely the violations of GATT Articles I and XIII were no longer relevant. Only the finding of a violation of the EC's obligations under Article II of the GATT 1994 awaited implementation. She wished to recall very briefly what the Panel and the Appellate Body had found to be the law in this context. They had concluded that the EC's schedule at this time still committed the EC to an out-of-quota tariff of €680/mt and a TRQ of 2.2 million mt at a tariff of €75/mt. As her delegation had stated in December 2008, the ACP could resign itself to live with a faithful and literal implementation of these conclusions. But even if the EC and the complainants agreed to another tariff structure, it was important to recall that this occurred for reasons other than this dispute, because the DSB's conclusions in this dispute did not require any overall reduction of average tariffs. There was no downward pressure coming from the implementation

process as such. Any such pressure found its rationale exclusively in the DDA, since the DSB's conclusions, as to what the current EC bindings were, should also provide the main reference for determining what, if any, changes to the EC tariff were required as part of rebinding processes under way. The ACP actively supported efforts to move towards an effective solution of the issue of the EC bananas tariff regime. Their effort was to ensure that the steps eventually agreed upon were taken for the right reasons and anchored and balanced out in the right context.

46. The representative of Guatemala said that his country would not repeat what had already been stated by previous speakers. His delegation wished to place on record that Guatemala supported the statements made by Ecuador, Colombia, Panama, Honduras, Nicaragua and the United States. Guatemala again urged the EC to comply promptly with the recommendations and rulings of the Panel and the Appellate Body. Guatemala hoped that the EC would provide more specific information on the implementation of the adopted rulings and recommendations. Guatemala expressed concern that the EC was only partially reporting on this matter. In Guatemala's view, status reports, which were only confined to the matter pertaining to the proceedings initiated by Ecuador, were not enough because there was still no compliance in relation to the original bananas disputes brought by several WTO Members, including Guatemala. Furthermore, the EC had stated at the present meeting that the negotiations had begun with the MFN countries on a comprehensive settlement of the banana issue with a view to reaching a "draft agreement". In this regard, Guatemala wished to make two comments. First, although it had received a proposal from the EC which, incidentally, fell short of the July 2008 Agreement, Guatemala had not initiated any negotiations with the EC. Second, Guatemala was concerned about the use of the phrase "draft agreement" in the initial statement made by the EC. An aspiration for a "draft agreement" did not measure up to Guatemala's expectations of effective implementation of the Appellate Body's ruling and recommendations.

47. The representative of Cameroon said that this country supported the statement made by the Dominican Republic, on behalf of the ACP countries. He noted that delegations had referred to the 27 July Agreement on bananas, which established a link with the Doha Round. This implied that the solution should be sought in the framework of a negotiated approach. Cameroon echoed the statement made by the Dominican Republic that what mattered most was an effective solution which could be found only in an inclusive process that would take into account the interests of all the parties concerned. Cameroon remained ready to cooperate with all other delegations in order to achieve this objective.

48. The representative of Costa Rica said that his delegation noted the status report submitted by the EC on the implementation of the DSB's recommendations in the case initiated by Ecuador concerning the EC bananas import regime, and had a few observations to make. In Costa Rica's view, in line with the DSB's recommendations, the EC should provide regular reports on compliance in accordance with Article 21.6 of the DSU, to cover this dispute as well as the dispute initiated by the United States. The Panel and the Appellate Body had both concluded that the DSB's recommendations and rulings from the original proceedings were to remain in effect until the EC had brought itself into substantive compliance. The EC's report gave no information on how the EC intended to meet its obligations under Articles I and XIII of the GATT 1994. Costa Rica also wished to see this dispute settled. He recalled that a solution had been found on 27 July 2008, when all the Latin American MFN countries had come to an agreement with the EC (Geneva Agreement on Trade in Bananas). Costa Rica continued to hope that the EC would respect that Agreement. The EC had stated that it was ready to comply with the DSB's recommendations and rulings in the context of a comprehensive agreement. However, such a broad agreement had been reached between the EC and all the Latin American MFN countries after years of disputes, and it was important not to lose sight of the enormous significance of this fact and avoid reopening the issue and Pandora's box. Costa Rica believed that to try and reinvent the wheel would be most unsafe.

49. Costa Rica recalled that the EC had stated that it had started negotiations in the past week. In fact, the negotiations had begun not last week but several years ago in 1997. A number of parties had signed a Memorandum of Understanding in 2001 in the belief that they had found a final settlement, but those agreements had not been honoured. Subsequently, negotiations had been carried out before the Doha Ministerial Meeting in 2001, and Costa Rica believed that a solution had been found. Two arbitration proceedings had shown that one had been too optimistic. Thereafter, the parties had continued negotiating under the Good Offices of the Minister of Foreign Affairs of Norway as mediator. Finally, Costa Rica had joined the good offices initiated by Colombia under the Decision of 1966, and an agreement had been reached on 27 July 2008. Once again, one was too optimistic. Those negotiations had a long history, and had not begun last week. The EC had stated that it had made a proposal based on the July Agreement. In fact, the parties had again embarked on a dialogue with the EC, which was a good thing. However, he wished to point out that the EC's proposal was very disappointing because it diluted the July Agreement significantly and changed the time-frame for binding the last reductions in 2016, which amounted to a cost of several hundred million dollars. Furthermore, the EC was making the new proposal contingent on a number of elements that would only make an agreement more difficult to reach. It was difficult to see how, after the DSB's adoption of the Reports of the Appellate Body and the Panel confirming yet again that the EC was in breach of its obligations, the EC could have made an offer that was worse than the July Agreement. The EC had stated that the July Agreement was tied to the Doha Round modalities. But even more contradictory was the fact that the new proposal sought to establish new links, which entailed much greater risk. The EC thought that this could be part of an early outcome under the Doha Round, together with other items such as cotton, tropical products or preference erosion. If an early outcome was a possibility in some areas of the Doha Round, it was because they were covered by the Ministerial Mandate, the compliance with which was anticipated before the conclusion of the Round. But what the EC was proposing for bananas was precisely the opposite: bananas were tropical products and the outcome proposed was much more modest. If an "early" outcome was taken as pertaining to the Doha Round, then it must refer to the result that would be obtained in the Doha Round. Costa Rica did not believe that African countries would accept a lesser result for cotton other than the one under the Mandate. Would Members be ready to reopen the Mandate in these areas? He did not think so. Then why do so for bananas? One had to keep the apples separate from the pears and avoid confusing the two. Bananas had been the subject of a long dispute and an agreement had been reached under the Director-General's Good offices procedures.

50. The representative of Ghana said that his delegation wished to be associated with the statement made by the Dominican Republic, on behalf of the ACP countries, and the statement made by Cameroon.

51. The representative of the European Communities said that the EC wished to respond to two issues which had been raised by many delegations. First, he said that the Appellate Body had confirmed that no recommendation (as opposed to findings) was warranted with respect to the measure at issue in this dispute, since it was no longer in existence (para. 479 of the Appellate Body Report). The Appellate Body had referred generally to the principle that in Article 21.5 DSU procedures, original DSB's recommendations and rulings "remain in effect until the EC brings itself into substantive compliance". However, there was no longer a compliance issue here, since the measure at fault had ceased to exist in 2007. The current tariff treatment of bananas of ACP origin was a completely different measure, based on the negotiation of Free Trade Agreements with the ACP countries concerned. Tariff preferences could equally result from FTA negotiations with Latin American suppliers. With regard to the second issue, he pointed out that he did not wish to engage in negotiations and had no mandate to do so. Furthermore, he did not think that the DSB was the right forum for this type of discussion. Having said that, the valuable efforts of the WTO Director-General in the context of the Good Offices exercise had offered a unique opportunity to reach an agreement on a comprehensive and once and for all solution on bananas which would take into consideration the interest of all relevant suppliers. Unfortunately, only one Latin American country and the EC had

been ready to initial the standalone draft Agreement proposed by the WTO Director-General on 19 July 2008. The EC and Latin American suppliers had then decided to explore an agreement within the framework of the DDA modalities negotiations. Some Latin American countries had clearly wanted to use the leverage of the modalities negotiations to improve the package. They had succeeded with this strategy, and on 27 July 2008 a package had been agreed, which was ripe for initialling if, but only if, an agreement in the Green Room on modalities more broadly could have been achieved. The EC nevertheless stood ready to consider the signature of the draft bananas agreement, if necessary adjustment to the current circumstances were to be introduced. The EC counted on a constructive engagement of Latin American banana suppliers in the necessary discussions to that aim.

52. The representative of the United States said that in relation to Articles I and XIII of the GATT 1994, whatever the EC might have stated at previous meetings, the one thing it had not done was to say that it was in compliance with the recommendations and rulings of the DSB from the original proceeding. To be sure, the EC had made some vague statements about agreements with certain other WTO Members. However, the EC had not provided any specific information from which the DSB might be able to understand what measures the EC had taken, when the EC had taken them, or what effect those measures had. This was in fact precisely the sort of information that one would expect the EC to include in its status reports. The United States looked forward to receiving one from the EC before the next meeting of the DSB.

53. The representative of Ecuador noted that the July Agreement contained the credit clause in paragraph 4, which demonstrated that that Agreement was not linked to the modalities under the Doha Round or any other Round. It was linked to the compliance with the DSB's recommendations and rulings and compensation under Article XXVIII of the GATT 1994. The July Agreement did not reduce the lowest tariff, which was €114/mt, nor did it change an implementation period of eight years. In other words, the final tariff was much higher than it would have been possible to have under the normal modalities of the DDA for agricultural reductions. He recalled that the MFN suppliers had never been consulted by the EC on the zero-tariff treatment, granted by the EC to the ACP countries.

54. The representative of Costa Rica said that his delegation agreed with the EC that the DSB was not the right forum for negotiations. He noted that, before one entered into negotiations, conditions were usually known in advance. During the Good Offices under the Director-General, a standalone agreement had been negotiated without conditions concerning modalities under the Doha Round. However, the fact that there were going to be conditions had only been communicated to the parties in the Green Room by the EC once the negotiations on modalities had failed. It was at that time that it had become known that there were conditions with respect to the negotiations on bananas. However, he reiterated that normally conditions should be known in advance.

55. The representative of Honduras said that his country supported the statement made by the United States concerning Articles I and XIII. He noted that the ACP countries had referred to 2.2 million tonnes at €75, but the ACP countries had failed to mention that Latin American suppliers of bananas had entered into the markets' of some countries, which had now become part of the EC, at zero tariffs. As a matter of fact, they had paid no tariffs on more than 1.1 million tonnes. He said that Honduras had been a complainant in the Bananas III dispute and wished to draw Members' attention to what the Appellate Body had stated, namely, that the EC had not complied with the rulings and recommendations in the Bananas III dispute and had confirmed that the decisions and recommendations in the Bananas III dispute would remain in force until the EC had complied. Honduras, therefore, asked that Article 21.6 of the DSU be applied to ensure that this matter was kept on the Agenda under the item: "Surveillance of Implementation of Recommendations Adopted by the DSB".

56. The representative of Panama said that the EC's interpretation was that the July Agreement was contingent on modalities. However, the word "modalities" did not appear in any of the seven paragraphs of the July Agreement. The representative of the EC was repeating positions of other colleagues, since he had not participated in the bananas negotiations. Panama reiterated that the July Agreement was a standalone agreement. It was however curious that the EC wanted to link the July Agreement, which represented a substantial departure from the agriculture text, to modalities when in fact modalities would involve much more comprehensive commitment on the part of the EC with respect to bananas. If that was the intention, then one should go back to the tropical-product treatment for bananas.

57. The representative of Mexico said that his delegation did not normally make statements on this matter. Notwithstanding that, and regardless of any substantial interest that his country might have in this matter, some systemic interests were involved in the matter at hand. In this respect, and as an original complainant in the Bananas III dispute, Mexico shared the concerns raised by other delegations with regard to the lack of status reports pursuant to Article 21.6 of the DSU.

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

2. 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

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

60. The representative of the European Communities said that, as his delegation had said many times, illegal distributions of anti-dumping and countervailing duties collected on imports made prior to 1 October 2007 would continue for an undetermined number of years. Therefore, the EC wished to ask again the United States when it would stop the transfer of those duties to its industry and finally put an end to the condemned measure. The EC also renewed its call on the United States to abide by its clear obligation under Article 21.6 of the DSU and to submit implementation reports in this dispute.

61. The representative of Japan said that according to the latest CDSOA Annual Report published by US Customs last month[3], some US$180 million had been disbursed for FY 2008. Those latest distributions showed that the CDSOA still remained operational[4]. Japan urged the United States to stop illegal distributions and 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 until the United States came into full compliance.

62. The representative of Brazil said that his country thanked Japan and the EC for keeping this issue on the DSB's Agenda. The disbursements made by the United States to its domestic industry under the Byrd Amendment continued to be in force affecting the rights of other WTO Members. He

[3] See US Customs and Border Protection's website at: http://www.cbp.gov/xp/cgov/trade/priority_trade/add_cvd/cont_dump/cdsoa_08/fy08_annual_rep/

[4] In the words of the US Customs, "the distribution process will continue for an undetermined period". See US Customs and Border Protection's website at: http://www.cbp.gov/xp/cgov/trade/priority_trade/add_cvd/cont_dump/cont_dump_faq.xml

reiterated the need for the United States to bring this situation to an end and thus to fully implement the DSB's recommendations and rulings.

63. The representative of India said that her country thanked the EC and Japan for maintaining this issue on the DSB's Agenda and fully shared their concerns. As mentioned by previous speakers, the United States was still distributing disbursements under the CDSOA to the US domestic industry. The disbursements made by the United States to its domestic industry under the Byrd Amendment affected the rights of other WTO Members. It was India's concern that non-compliance by the United States in this dispute led to erosion of credibility of the WTO dispute settlement system. India, therefore, urged the United States to cease its WTO-inconsistent disbursement. India supported the view that continued surveillance by the DSB was needed as long as the United States did not comply with the WTO ruling.

64. The representative of China said that his country thanked the EC and Japan for, once again, raising this matter at the DSB meeting. China shared the concerns expressed by previous speakers and wished to join them in urging the United States to comply fully with the DSB's rulings.

65. The representative of Canada said that her country agreed with the EC and Japan that the Byrd Amendment remained subject to the surveillance of the DSB until the United States ceased to administer it.

66. The representative of Thailand said that his country thanked the EC and Japan for continuing to bring this matter before the DSB. Thailand remained disappointed at the United States' maintenance of the WTO-inconsistent disbursements. As noted by Japan previously, the issuance of the CDSOA Annual Report for the 2008 fiscal year demonstrated that the CDSOA remained fully operational. Thailand regretted that, of the approximate US$180 million disbursed for the 2008 fiscal year, about US$8 million were collected from imports of Thai products, particularly canned pineapple and polyethylene retail carrier bags. Thailand urged the United States to cease those disbursements, repeal the Byrd Amendment with immediate practical effect, and resume providing status reports until such actions were taken and this matter was fully resolved.

67. The representative of the United States said that, as the United States had already explained at previous DSB meetings, the 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. He 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. With respect to comments regarding further status reports on this matter, 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.

68. The DSB took note of the statements.

3. United States – Continued existence and application of zeroing methodology

(a) Report of the Appellate Body (WT/DS350/AB/R) and Report of the Panel (WT/DS350/R)

69. The Chairman drew attention to the communication from the Appellate Body contained in document WT/DS350/14 transmitting the Appellate Body Report on: "United States – Continued Existence and Application of Zeroing Methodology", which was circulated on 4 February 2009 in document WT/DS350/AB/R, in accordance with Article 17.5 of the DSU. He reminded delegations that the Appellate Body Report and the Panel Report pertaining to this dispute had been circulated as unrestricted documents. He recalled that Article 17.14 of the DSU required that: "An Appellate Body report shall be adopted by the DSB and unconditionally accepted by the parties to the dispute unless the DSB decides by consensus not to adopt the Appellate Body report within 30 days following its circulation to Members. This adoption procedure is without prejudice to the right of Members to express their views on an Appellate Body report".

70. The representative of the European Communities said that his delegation thanked the Panel members, the members of the Appellate Body and the WTO Secretariat for the time and the efforts dedicated in resolving the present dispute. The issue of zeroing was not a new one. Indeed, the practice of zeroing was first condemned already in 2001 in a WTO dispute against the EC (Bed Linen case) and had led to its abandonment by the EC. The Appellate Body had since maintained a consistent and coherent line on this issue. It had confirmed on several occasions that zeroing ran foul of fundamental obligations of the Anti-Dumping Agreement: to establish dumping in respect of an exporter and a certain product and to conduct a fair comparison between the export prices and normal value. To the EC, those earlier decisions had already made clear that the practice of zeroing, whether in original investigations or in reviews, was *per se* WTO-incompatible. It was regrettable that unlike the EC after the "Bed Linen" ruling, the United States had refused to draw the inevitable consequences of those earlier decisions. Instead, it had chosen to question the authority of the Appellate Body of the WTO and the dispute settlement system as a whole, by forcing other WTO Members into continued litigation only to get the opportunity to re-argue its position over and over again and delay compliance. Suffice it to say that 14 WTO disputes had been brought in less than a decade against the United States on zeroing (both as the unique subject of the dispute or as part of a wider dispute). Despite having been condemned by panels and the Appellate Body a number of times, the United States had refused to comply and abolish zeroing. The EC was grateful to the Appellate Body not only for having reversed the controversial findings of the Panel in this case, but also for a very comprehensive Report. The EC warmly welcomed the Appellate Body's decision to reject all grounds of appeal put forward by the United States and uphold the Panel's findings that: (i) the United States was in violation of Article 9.3 of the Anti-Dumping Agreement and Article VI:2 of the GATT 1994 by applying simple zeroing in the 29 periodic reviews at issue; (ii) that the United States violated Article 11.3 of the Anti-Dumping Agreement by using, in eight sunset reviews at issue, dumping margins obtained through so-called "model" zeroing in original investigations.

71. The EC also wished to stress another fundamental aspect of the Appellate Body's Report; namely, its conclusion that a challenge may be brought in the WTO against the continued use of the zeroing methodology in successive proceedings in which duties resulting from specific anti-dumping duty orders were maintained. The Appellate Body had confirmed that in seeking an effective resolution of its dispute with the United States, the EC, rather than having to challenge each new investigation and review separately, was entitled to make a case against the "continued use" of the zeroing methodology against the "duty" as a whole in the specified cases, under the scrutiny of WTO dispute settlement. That finding was fully consistent with the DSU provisions and previous DSB rulings: the form could not prevail over the substance. The findings were of systemic importance. As in the present dispute, there were clearly cases where the measure at issue consisted of an ongoing conduct, with prospective application and a life potentially stretching into the future. As the Appellate Body had observed, it was not uncommon for measures challenged in WTO dispute

settlement to have a prospective effect (e.g. as such challenges against laws and regulations, subsidy programmes, anti-dumping duties tainted with zeroing). The EC was of the view that rejecting the possibility to challenge such measures would lead to an endless loop of litigation thus preventing the prompt settlement of disputes and security and predictability of the multilateral trading system, which was at the heart of the dispute settlement system. The EC regarded the Appellate Body's findings on the matter of susceptibility to WTO challenge of the duty as a measure as an important landmark, which contributed to the credibility of the WTO dispute settlement system as a whole and would represent a powerful tool against the abuse of Trade Defence Instruments. Having said that, the EC hoped that the Appellate Body's findings in the present case would not result in triggering new disputes against the United States, but that it would instead finally persuade the United States to meet its obligations under the WTO.

72. He said that it was not just the conclusion reached by the Appellate Body on the matter of the duty as a measure, which merited attention, but also the fact that the Appellate Body had confirmed in its analysis that the distinction between "as such" and "as applied" should not be considered as to governing the definition of a measure for purposes of WTO dispute settlement. The EC welcomed the clarification that said distinction, however useful, did not exhaustively define the types of measures that may be subject to challenge in the WTO. The only reservation that the EC would make concerned the Appellate Body's conclusion that it could not complete the analysis and make findings on whether the continued application of zeroing by the United States in 14 of the 18 anti-dumping cases and in two of the seven periodic reviews at issue, was WTO-inconsistent. The EC commended the Appellate Body for completing the analysis in the remaining four anti-dumping cases at issue and five periodic reviews. Nonetheless, the EC was concerned with the implication that too cautious an approach by the Appellate Body could have if followed in other cases. This could mean that the Appellate Body would often find itself in a position where it would be unable to complete the analysis and decide on a claim, despite the fact that a panel wrongly declined to rule on a claim and thus made no factual findings. With this limited reservation in mind, the EC was pleased to support the adoption of the Appellate Body Report and the Panel Report, as modified by the Appellate Body and expected that prompt and full compliance would follow. The EC also noted that US implementation in this case involved mainly a recalculation exercise and should be completed very quickly.

73. The Chairman sought clarification from the EC as to whether the EC had stated that it had accepted the Panel Report with some reservation.

74. The representative of the European Communities clarified that, as Members were required, the EC accepted the Appellate Body and Panel Reports without any reservation, but had reservations about some of their considerations.

75. The representative of the United States said that his country wished to thank the Panel, the Appellate Body, and the Secretariat staff for their work in this proceeding. Although the United States disagreed with several of the Panel's findings, it recognized the Panel's efforts in grappling with the issue of so-called "zeroing". The Panel, like previous panels, had properly understood that the Anti-Dumping Agreement could be permissibly interpreted as allowing the use of zeroing in reviews. As the Panel had explained, it "generally found the reasoning of earlier panels on these issues to be persuasive".[5] In the end, however, the Panel had disregarded the standard of review set out in the Anti-Dumping Agreement and had found against the United States. With respect to jurisdictional issues, the United States welcomed the Panel's rejection of the EC's attempt to include vague, indeterminate measures within the Panel's terms of reference. On the other hand, the United States was deeply disappointed in the Appellate Body's findings, which both incorrectly expanded the scope of the proceedings and disregarded the careful bargain struck as part of the Uruguay Round Agreements. The United States regretted that the Appellate Body, once again, had

[5] Panel Report, para. 7.169.

failed to accept the permissibility of zeroing under the covered agreements, and had imposed obligations on Members where there were none.

76. First, in reaching its finding on the inconsistency of zeroing in reviews, the Appellate Body had relied on the same flawed interpretation that it had offered in previous reports. According to the Appellate Body, the concepts of "dumping" and "margin of dumping" were exporter-based and precluded a finding that dumping could exist with respect to an individual transaction. However, the Appellate Body had manufactured a conflict where there was none – dumping may be an exporter-related concept, but dumping could still exist on a transaction-by-transaction basis. He said that the United States had previously explained in detail the flaws in the reasoning on which the Appellate Body primarily relied on in this Report, and invited Members to consider the previous US communications on this topic.[6] In that regard, the United States noted the opinion of one Appellate Body member who had written that "[w]hile aggregation is an unavoidable requirement of the Anti-Dumping Agreement, these provisions are not clear as to what it is that must be aggregated"[7] and "[t]here are arguments of substance made on both sides".[8] The United States respectfully suggested that, as a consequence, under Article 17.6(ii) of the Anti-Dumping Agreement, the Appellate Body should not have found the use of zeroing in reviews to be inconsistent with the Anti-Dumping Agreement.

77. Second, the United States was very disturbed by the Appellate Body's approach to Article 17.6(ii) of the Anti-Dumping Agreement. That provision stated that where a panel found that a relevant provision of the Agreement admitted of more than one permissible interpretation, the panel shall find the authorities' measure to be in conformity with the Anti-Dumping Agreement if it rested on one of those permissible interpretations. Thus, Article 17.6(ii) required a panel, and the Appellate Body, to determine whether the interpretation proposed by a Member was permissible. The Appellate Body had, however, failed to take that approach. Instead of examining the US interpretation, the Appellate Body had begun by reiterating its analysis of the Anti-Dumping Agreement. It had then found that the US interpretation of the Anti-Dumping Agreement had led to a result that contradicted the result of the Appellate Body's analysis – and on that basis alone, said that the US interpretation could not be permissible.[9] That was a simple non sequitur. If Article 17.6(ii) only sanctioned interpretations that all yield the same result, Article 17.6(ii) would have had no function. The Article made clear that a national authority's measure was to be upheld if it rested on "one" – not "all" – of the permissible interpretations of the Anti-Dumping Agreement. Thus, the very premise underlying Article 17.6(ii) was that two interpretations could be permissible simultaneously: one that would render the measure at issue consistent with the Agreement, and another that would render the measure at issue inconsistent with the Agreement. By definition, the existence of the second interpretation could not be a basis for finding the first one not to be "permissible".

78. In a related vein, the Appellate Body had never actually examined the meaning of "permissible". Instead, it simply asserted "the rules and principles of the Vienna Convention cannot contemplate interpretations with mutually contradictory results".[10] That assertion was unsupported. The ordinary meaning of "permissible" was "allowable" or "permitted" – that was, an interpretation that could be reached under customary rules of interpretation. Nothing in customary rules of interpretation (reflected in Articles 31 and 32 of the Vienna Convention) said an interpretation was not "allowable" simply because another interpretation could also result from application of those rules. In fact, the Appellate Body's approach was particularly surprising in light of the provisions

[6] WT/DS294/16; WT/DS294/18; WT/DS322/16; WT/DS344/11; see also WT/DSB/M/211, paras. 37-40; WT/DSB/M/225, paras. 73-76; WT/DSB/M/250, paras. 47-55.
[7] Appellate Body Report, para. 310.
[8] Appellate Body Report, para. 312.
[9] Appellate Body Report, para. 317.
[10] Appellate Body Report, para. 273.

reflecting the customary rules of interpretation in the Vienna Convention. Article 32 made clear that the application of the rules of interpretation in Article 31 could lead to a meaning that was "ambiguous". In light of that provision as well, the United States failed to see how the Appellate Body could have reached the view that Article 17.6(ii) could not contemplate interpretations with mutually contradictory results. The United States noted in that connection that the Appellate Body had been clear to say that its analysis of zeroing rested entirely on an analysis pursuant to Article 31 of the Vienna Convention.[11]

79. At the end of the Uruguay Round negotiations, Article 17.6(ii) was key to the acceptance of the other provisions of the Anti-Dumping Agreement. The existence of such a provision confirmed that Members were aware that the text would pose particular interpretive challenges, at least in part because it was drafted to cover varying and complex anti-dumping systems around the world and long-standing differences concerning methodology. The negotiators, therefore, had indicated that it would have been a legal error not to respect a permissible interpretation of the Anti-Dumping Agreement. The United States, therefore, deeply regretted the Appellate Body's disregard for the meaning and importance of Article 17.6(ii).

80. There were also a number of procedural findings by the Appellate Body that called for comment. First, the United States failed to see how the EC's reference, in its panel request, to the "application or continued application of anti-dumping duties in 18 cases" could in any way meet the requirement of Article 6.2 of the DSU to identify the specific measures at issue. In the view of the United States, it was the Panel that had adopted the correct approach when it had found that the EC could not meet the requirements of Article 6.2 by referring to duties in a general way, detached from any underlying administrative determinations. The United States had significant concerns as well regarding the 14 measures not included in the consultations request and the four preliminary measures, but would not take the time at the present meeting to detail those concerns.

81. Second, the United States was concerned by the Appellate Body's statement that the Panel in this dispute "appear[s] to have acceded to the hierarchical structure contemplated in the DSU",[12] a statement that was neither explained nor supported. While expressed in terms of a supposed hierarchy found in the DSU, the thrust of the statement was that panels must follow Appellate Body reports even where their own objective assessment of the "applicability of and conformity with the covered agreements" under Article 11 of the DSU led them to a different conclusion. It was easy to understand the attraction to, and convenience for, Appellate Body members of that approach, but that approach was not what had been agreed by Members and was not the legal effect of Appellate Body reports. As the US had explained before, the DSU did not establish a common-law system, in which Appellate Body findings on legal issues became binding precedents. To the contrary, the only thing in the DSU that resembled a hierarchical structure was the role assigned to the Ministerial Conference and the General Council by Article IX:2 of the WTO Agreement: those bodies had the exclusive authority to adopt binding interpretations of the covered agreements.

82. Finally, the United States drew attention to one aspect of the Appellate Body's discussion of the handling of evidence by panels. The Appellate Body had emphasized that "the nature and scope of the evidence that might be reasonably expected by an adjudicator in order to establish a fact or claim in a particular case will depend on a range of factors, including the type of evidence that is made available by a Member's regulating authority. Because the design and operation of national regulatory systems will vary, ... in a specific case, a panel may have a sufficient basis to reach an affirmative finding regarding a particular fact or claim on the basis of inferences that can be

[11] Appellate Body Report, "United States – Final Anti-Dumping Measures on Stainless Steel from Mexico", WT/DS344/AB/R, adopted 20 May 2008, para. 128.

[12] Appellate Body Report, para. 365.

reasonably drawn from circumstantial rather than direct evidence".[13] The United States, of course, had an extremely transparent legal system and, therefore, welcomed the recognition that in the case of less-than-transparent systems, it may be entirely appropriate in WTO disputes to make findings based on circumstantial evidence. In that connection, it was useful to recall "India – Alcohol Tariffs", where the Appellate Body had refused to complete the analysis, despite the existence of evidence – including an admission by India – from which the proper legal conclusions could have been drawn. The United States was puzzled as to whether the Appellate Body had intended to take a different approach in those two disputes and if so, why.

83. The representative of Mexico said that his country thanked the United States for its statement. As the United States was aware, Mexico shared the concerns expressed by other Members on this matter. The Appellate Body Report before the DSB at the present meeting had, once again, condemned the use of the zeroing methodology, and the message could not be more clear. With respect to the compliance panels that were under way, he noted that there was no point in continuing to argue on such matters merely because one Member was unconvinced that it had violated the WTO Agreement. Mexico hoped that the United States would meet its obligations and that it would not only stop applying the zeroing methodology in its dumping calculations in the cases covered by the disputes, but would also abandon the use of this methodology across the board. His country wished to make this point just shortly before the expiry of the reasonable period for compliance, granted to the United States, in the arbitration proceedings requested by Mexico in the dispute challenging the use by the United States of zeroing against Mexican stainless steel exports, and its use as such in a manner contrary to the Anti-Dumping Agreement. The US practice had been condemned by the DSB. The time-period for compliance by the United States in the above-mentioned dispute with Mexico (DS344) would expire on 30 April 2009, which was the deadline for implementation of the DSB's rulings and recommendations. Mexico hoped that the Reports to be adopted at the present meeting would contribute to ensuring that in reviewing this practice, the United States would look at zeroing as a whole rather than in the context of each and every dispute so that one could avoid repetitive procedures that led only to a re-examination of issues, which for most other Members were clear cut, or as one member of the Appellate Body put it in the Reports before the DSB, so as to avoid "raking over dead ashes".

84. The representative of Japan said that his country thanked the Appellate Body for its Report in this dispute. Japan had been actively involved in this dispute as an interested third party and was particularly pleased that the Appellate Body, once again, had affirmed its previous findings that simple zeroing in periodic reviews was inconsistent with the Anti-Dumping Agreement and the GATT 1994. As observed by the Concurring Opinion in the Report, at the very heart of the zeroing controversy was the fundamental issue of the proper meaning of the concept "dumping".[14] By virtue of the introductory phrase of Article 2.1, the definition of "dumping" must apply throughout the Anti-Dumping Agreement in a consistent and coherent manner.[15] Thus, as noted by the Concurring Opinion, the concept of "dumping" could not have a contradictory meaning "that is both exporter-specific and transaction-specific".[16] The Appellate Body had resolved the issue of zeroing definitively based on exporter-specific and product-wide definition of "dumping" and "the Membership of the WTO was entitled to rely on these outcomes".[17] Japan also noted the statement in the Concurring Opinion that "[a]t a point in every debate, there comes a time when it is more important for the system of dispute resolution to have a definitive outcome" and that "[w]ith respect to zeroing, that time has come".[18] In Japan's view, such outcome had been secured already in the

[13] Appellate Body Report, para. 357.
[14] Appellate Body Report, para. 305 (Concurring Opinion).
[15] Appellate Body Report, paras. 281- 283, and 307.
[16] Appellate Body Report, para. 312 (Concurring Opinion).
[17] Appellate Body Report, para. 312 (Concurring Opinion).
[18] Appellate Body Report, para. 312 (Concurring Opinion).

previous zeroing disputes a long time ago. Japan also welcomed the Appellate Body's decision which reversed the Panel's erroneous findings and found, instead, that "the continued use of the zeroing methodology in successive proceedings in which duties resulting from the 18 anti-dumping duties orders are 'measures' that can be challenged in WTO dispute settlement".[19] Further, the Appellate Body had rightly found that the application and continued application of anti-dumping duties in four out of those 18 were inconsistent with the Anti-Dumping Agreement and GATT 1994.[20] Regarding the issue of whether the EC had shown that simple zeroing was used in the seven periodic reviews at issue, the Appellate Body had rejected the Panel's erroneous approach to the evidence and had rightly found that "the Panel erred in failing to examine the European Communities' evidence in its totality, and requiring, instead, that specific types of evidence [namely, authenticated USDOC documents] in and of themselves, are necessary in order to establish that simple zeroing was used by the USDOC in specific periodic reviews".[21] Japan agreed with this conclusion and fully supported the adoption of the Appellate Body Report by the DSB at the present meeting. "Prompt compliance with recommendations or rulings of the DSB is essential in order to ensure effective resolution of dispute to the benefit of all Members."[22] Japan strongly hoped that the United States would take this DSB decision seriously, and promptly bring illegal zeroing measures into full conformity with the WTO Agreement.

85. The representative of Norway said that her delegation welcomed the adoption of the Appellate Body Report in this dispute, and recalled that Norway had been a third party in the proceedings. The Appellate Body had, once again, confirmed the illegality of the "zeroing methodology". The Appellate Body had made clear that both the initial application and the continued application of an anti-dumping duty calculated with zeroing – be it in a periodic review or a sunset review – would always be contrary to WTO rules. The Appellate Body had thus confirmed that the United States could not escape its WTO obligations by creating a "moving target" of measures that were re-determined every year. In its third-party submission, Norway had addressed in particular the interpretation of Article 17.6(ii) of the Anti-Dumping Agreement. Norway had argued that the purpose of treaty interpretation was to arrive at the one and only interpretation of a term, in its context, and in light of its object and purpose. Thus, the tests in the Vienna Convention were designed to assist the treaty interpreter to arrive at one single interpretation of the term in question. Consequently, the second sentence of Article 17.6(ii) would only come into play in the rare case that an interpreter, having exhausted all the elements of Articles 31-33 of the Vienna Convention, was still left with more than one permissible interpretation. This sequential approach had been confirmed by the Appellate Body. In clarifying the role of Article 17.6(ii), the Appellate Body put its application in the right perspective. Norway noted that this was not necessarily different from the result reached through the principle of *in dubio mitius*, that would apply as the last resort to settle an interpretative question under public international law in any case. Norway was of the view that there were now many "zeroing disputes" in the WTO, with most of them concerning the practice of the United States. To bring itself into conformity with the WTO Agreements, the United States would have to change its practice and discontinue the use of "zeroing". It was Norway's hope that this issue was now finally settled, and that speedy implementation would occur.

86. The representative of Brazil said that the Appellate Body had, once again, concluded that the Anti-Dumping Agreement did not allow margins of dumping to be calculated based on the zeroing methodology. In all segments of anti-dumping proceedings; in all comparison methods; as such, as applied and as an "ongoing conduct"; in sum, in all of the incarnations in which it had been before the Appellate Body the zeroing methodology had been considered illegal. The lack of support for this methodology in the negotiated texts should be, by this point in time, beyond any reasonable doubt. It

[19] Appellate Body Report, para. 185.
[20] Appellate Body Report, para. 199.
[21] Appellate Body Report, para. 348.
[22] Article 21.1 of the DSU.

was a matter of systemic concern that Members continued to be compelled to re-litigate an issue that had been so clearly settled by the Appellate Body. Zeroing was not only illegal. It was a fundamentally flawed, unfair methodology. It transformed what should have been objective, unbiased procedures into a one-way road towards an inescapable and pre-determined outcome: the one sought by the domestic industry. WTO Members had repeatedly shown their commitment to the multilateral trading system in changing practices found to be inconsistent with their obligations. Brazil hoped that the Reports to be adopted at the present meeting would encourage the United States to follow this path and abolish the use of the zeroing methodology in all its forms.

87. The representative of Hong Kong, China said that her delegation thanked the Appellate Body, the Panel and the Secretariat for their hard work. The Appellate Body had, once again, reaffirmed the illegality of zeroing. Hong Kong, China welcomed the not unexpected outcome and also appreciated the Appellate Body's confirmation that dumping was an exporter-specific concept, and that the determination should be made for the product under consideration. Hong Kong, China wanted to highlight two specific findings of the Appellate Body that were of systemic importance. First, Hong Kong, China welcomed the Appellate Body's ruling that the "continued use" of zeroing methodology in successive anti-dumping proceedings constituted measures that could be challenged in the WTO dispute settlement. That ruling was particularly pertinent to the retrospective system of assessment of anti-dumping duty and could facilitate Members in seeking effective resolutions of the zeroing practice under such a system. Second, Hong Kong, China shared the grave concern regarding the role of the Appellate Body's rulings and the repeated disputes on the issue of zeroing. Hong Kong, China fully agreed that the question of zeroing had been definitively and conclusively resolved by the Appellate Body and that "the time had come". The consistent Appellate Body jurisprudence left no doubt that zeroing fell outside the permissible ambit of the Anti-Dumping Agreement. Hong Kong, China hoped that the clarifications and comments made by the Appellate Body in the Report would encourage a swift end to the protracted and unnecessary debates and disputes, whether between certain panels and the Appellate Body or between Members. With those observations and comments, Hong Kong, China supported the adoption of the Report of the Appellate Body, and that of the Panel as modified by the Appellate Body. Hong Kong, China encouraged all parties concerned to take prompt actions to bring any WTO-inconsistent practices and measures into compliance.

88. The representative of Thailand said that his country had participated in this proceeding as a third party. Thailand thanked the members of the Panel and the Appellate Body, as well as the Rules, Legal Affairs, and Appellate Body Secretariat, for their work in this dispute. Thailand warmly welcomed the Appellate Body's decision and hoped that it marked the beginning of the end of the series of zeroing cases. Thailand sincerely regretted the controversy that those cases had caused. In addition, Thailand appreciated that the Appellate Body had, once again, reiterated that zeroing was not consistent with the Anti-Dumping Agreement. Thailand agreed with the sentiments of the concurring opinion that it was now time to draw this debate to a close. Thailand agreed with the EC statement regarding the Appellate Body's finding that a challenge may be brought against the continued use of zeroing. Thailand saw no requirement under the covered agreements, or no purpose that would be served, by requiring Members to initiate separate disputes to challenge every single instance in which the United States used zeroing in each of the various administrative proceedings it conducted over the lifetime of each of its anti-dumping measures. Finally, Thailand looked forward to prompt compliance by the United States in this dispute.

89. The representative of India said that her country had participated in those proceedings as a third party due to the systemic concerns about the issue of zeroing and the proper interpretation of the Anti-Dumping Agreement and the DSU. India welcomed the Appellate Body Report in this dispute regarding the clarification given by the Appellate Body on the issue of WTO-inconsistency of the zeroing practice. As had been mentioned by previous speakers, the issue of zeroing was not a new one before the WTO adjudicating bodies. Indeed the practice of zeroing had first been condemned in 2001 and the Appellate Body had since then maintained a consistent and coherent line on this issue.

India welcomed the Appellate Body's findings in this dispute with respect to the simple zeroing in periodic reviews reaffirming its previous rulings that simple zeroing in periodic reviews was inconsistent with the Anti-Dumping Agreement. India also welcomed the Appellate Body's findings that the continued application of anti-dumping duties after sunset reviews, where the margins of dumping were calculated through the use of zeroing methodology in the original investigations, was also inconsistent with Article 11.3 of the Anti-Dumping Agreement relating to sunset reviews. The Appellate Body had, in several rulings, pointed out that the use of zeroing distorted the process of establishing dumping margins and inflated the dumping margins for the product as a whole and had made it clear that the practice of zeroing, whether in original investigations or in reviews, was *per se* WTO-incompatible. However, it was regrettable that the issue of zeroing had been brought back to the Appellate Body for its review repeatedly despite its well-established rulings on the issue. India welcomed the Appellate Body Report and urged the early implementation of the ruling of the Appellate Body so as to bring predictability in the implementation of the Anti-Dumping Agreement as interpreted by the Appellate Body. India appreciated that the Appellate Body had come to the right decision in this dispute.

90. The representative of China said that his country wished to thank the Appellate Body, the Panel and the Secretariat for their excellent work in those proceedings. China had been a third party to this dispute as it had a systemic concern with the legal issues considered in this case. China thought the legal interpretations and findings of the Appellate Body on zeroing in its Report were sound and consistent, which ensured and strengthened the credibility and predictability of the dispute settlement system. China, therefore, welcomed the adoption of the Appellate Body Report and the Panel Report and expected the United States to take all necessary actions without delay and stop using the zeroing methodology.

91. The representative of Chile said that, while his country had not been a third party in this dispute, the issue of zeroing had always been an area of interest to Chile. In that respect, Chile supported the adoption of the Reports. Chile believed that the Reports went in the right direction in terms of prohibiting the use of the zeroing methodology in anti-dumping investigations. However, Chile regretted some comments made in the Report. First, the concept of hierarchy established in the DSU did not exist with regard to the role of the Appellate Body and the Panel. Second, with respect to the jurisprudential value of the rulings, as stated by the United States, the DSU did not establish a common law system and, therefore, the decisions of the Appellate Body and Panels were taken in relation to specific disputes. He reiterated that Chile regretted the trend of the Appellate Body whereby the Appellate Body declared that its decisions had jurisprudential value. Chile supported the adoption of the Reports but had some concerns regarding the above-mentioned issues.

92. The DSB took note of the statements, and adopted the Appellate Body Report contained in WT/DS350/AB/R and the Panel Report contained in WT/DS350/R, as modified by the Appellate Body Report.

4. Election of Chairperson

93. The outgoing Chairman said that, before he would proceed with this Agenda item, he would first wish to thank the Secretariat for the support provided to him in the course of the year. In particular, he thanked Mr. E. Rogerson and his team and Mr. Bruce Wilson. He would also wish to express special thanks to Ms. B. Mueller-Holyst who had played a fundamental role in supporting the Chairman over the past year. Second, he was very impressed by the high level of professionalism of delegations and by the positive working environment that they created. As he was stepping down as Chairman of the DSB, he was more convinced than ever of the importance of the dispute settlement system. In his assessment, Members were satisfied with the way the DSB worked. The system had gradually acquired legitimacy, which was proven by the fact that Members continued to bring disputes to the WTO. There were, of course, certain areas which required more work to be done to

produce a meeting of minds and bring different positions closer together, such as the notion of jurisprudence, whether or not there were legal loopholes, the limits of transparency and degrees of compliance, but the system inspired confidence and was admired outside the WTO. The DSB would now be in the very good hands of Amb. John Gero who had a great experience in trade matters and was a man of common sense and wisdom.

94. The outgoing Chairman recalled that at its meeting on 3 February 2009, the General Council had taken note of the consensus on a slate of names for Chairpersons to a number of WTO bodies including the DSB. On the basis of the understanding reached by the General Council, he proposed that the DSB elect, by acclamation, H.E. Mr. John Gero of Canada as Chairman of the DSB.

95. The DSB so agreed.

96. The incoming Chairman thanked Members for the honour they had bestowed on him and said that he hoped that over the coming year he would be able to fulfil all that honour. He believed that the DSB was one of the corner stones of the Organization and said that he was filling the position with great trepidation but with great hope.

97. The representative of the United States said that his delegation thanked Amb. Matus for his service as Chairman of the DSB over the past year. The United States deeply appreciated the broad experience, sense of balance and serious commitment that he brought to the job and knew that these important qualities would continue to be a benefit to Members in his new role as Chairman of the General Council. The United States looked forward to working with Amb. Matus in that capacity in what was going to be an interesting and challenging year. The United States extended its congratulations to the new Chairman of the DSB, and looked forward to working with him in addressing the fulsome agenda of the DSB over the coming year.

98. The representative of Mexico said that his country welcomed Amb. Gero to his new role as the Chairman of the DSB. Mexico thanked the outgoing Chairman for his support and wished him all the best in his new functions. Mexico was very proud to have worked with Amb. Matus as Chairman of the DSB and bilaterally in his capacity as Amb. of Chile. Finally, referring to the statement by the outgoing Chairman he noted that in the context of the DSU negotiations there were proposals that could improve the DSU provisions, in particular with regard to compliance. In a time of economic difficulties, Members needed to look at what could be done to lighten the Agenda of the DSB meetings, especially with regard to Agenda item 1 concerning compliance with the DSB's recommendations and rulings.

99. The representative of the Bolivarian Republic of Venezuela said that his country welcomed the new Chairman and wished him every success. He thanked the outgoing Chairman for the work that he had been carrying out in the DSB and wished him success in his new role as Chairman of the General Council.

100. The representative of the European Communities said that his delegation thanked the outgoing Chairman for having kept the not so easy DSB under control and wished him well in his new task. The EC welcomed the new Chairman and was convinced that he would carry out the job with pleasure and success.

101. The representative of Canada said that her country thanked the outgoing Chairman for his leadership and guidance over the past year. While some who did not have the pleasure of spending much time in the DSB may think that the matters dealt with in the DSB were dry and legalistic, DSB participants could sometimes be called upon to navigate fairly complicated and delicate issues. In that regard, Canada thanked the outgoing Chairman, for all of the skill and expert advice that he had

provided in navigating some of those difficult waters. Canada wished him success in his new endeavours. Canada welcomed Amb. Gero as the new Chairman

102. The representative of Ecuador said that his country thanked Amb. Matus for the excellent way in which he had managed the issues under consideration in the DSB. Ecuador was convinced that Amb. Matus would be an excellent Chairman of the General Council and wished him every success. Ecuador welcomed the new Chairman of the DSB and wished him all the best.

103. The representative of Colombia said that the issues dealt with in the DSB were, broadly speaking, dry and legalistic, but those were the issues that were crucial for the operation of the Organization. Colombia thanked the outgoing Chairman for the effective and professional way in which he had presided over the deliberations of the DSB and wished the new Chairman every success.

104. The representative of Brazil said that his country welcomed Amb. Gero as the new Chairman of the DSB. His appointment came as yet another recognition of his qualities and professionalism and also of the confidence that the WTO Membership placed upon him. Every official or negotiator had one or two traits that were most evident and tended to shape their acts. For Amb. Gero, it was his objectivity, result-oriented, no-nonsense approach to issues that could be at once both extremely complex and sensitive. The DSB, where complexities and sensitivities abounded, welcomed Amb. Gero's objectiveness and his ability to handle red-hot issues. At the same time, Brazil expressed its recognition to Amb. Matus for the high sense of duty and responsibility he had shown in conducting the DSB over the past year. During that time, issues had been no less complex or sensitive and his leadership had taken Members safely through often mined waters. Brazil was convinced that Members would witness the same display of competence of Amb. Matus as the new Chairman of the General Council, and in that regard wished him every success.

105. The DSB took note of the statements.