WORLD TRADE ORGANIZATION

RESTRICTED

WT/DSB/M/270
28 August 2009

(09-4053)

Dispute Settlement Body
19 June 2009

MINUTES OF MEETING

Held in the Centre William Rappard
on 19 June 2009

Chairman: Mr. John Gero (Canada)

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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.79)

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(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.5)

(f) Brazil – Measures affecting imports of retreaded tyres: Status report by Brazil (WT/DS332/19/Add.3)

1. The Chairman recalled that Article 21.6 of the DSU required that, unless the DSB decided otherwise, the issue of implementation of the recommendations or rulings shall be placed on the Agenda of the DSB meeting after six months following the date of establishment of the reasonable period of time and shall remain on the DSB's Agenda until the issue is resolved. He proposed that the six sub-items under Agenda item 1 be considered separately.

(a) United States – Section 211 Omnibus Appropriations Act of 1998: Status report by the United States (WT/DS176/11/Add.79)

2. The Chairman drew attention to document WT/DS176/11/Add.79, which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning US Section 211 Omnibus Appropriations Act of 1998.

3. The representative of the United States said that his country had provided a status report in this dispute, on 8 June 2009, in accordance with Article 21.6 of the DSU. As noted in that status report, a number of legislative proposals that would implement the DSB's recommendations and rulings in this dispute had been introduced in the current Congress, which had convened in January 2009. The US administration was working with the Congress to implement the DSB's recommendations and rulings.

4. The representative of the European Communities said that the United States was presenting its seventy-ninth status report on its lack of progress in the implementation of the DSB's ruling in this dispute. The EC understood that there were various bills before the House of Representatives and the Senate that could lead to a solution to this long-standing dispute. The EC hoped that the new US authorities would take steps to finally implement the DSB's ruling.

5. The representative of Cuba said that the TRIPS Agreement, negotiated during the Uruguay Round, incorporated rules on intellectual property rights into the multilateral trading system for the first time. The dispute settlement mechanism, which had also resulted from the Uruguay Round negotiations, became an essential element in providing security and predictability to the multilateral trading system. He noted that this was something worth remembering when examining the prolonged

non-compliance in this dispute. The actions of the past three US Governments had violated two of fundamental principles of the multilateral trading system; i.e. the principles of the most-favoured-nation and national treatment. It seemed that the United States ignored the Appellate Body's rulings and the views of the international community regarding Section 211. In May 2009, the new US Trade Representative had visited the WTO, and when answering the question as to when the United States would comply with the DSB's rulings regarding Section 211, he had replied that his country had a history of outstanding compliance, and that the US Congress would work to solve the case. His reply had come as no surprise and had not revealed anything new. Each month, the United States, after listening to the statements made by many Members, had repeated that it had a great record of compliance. The status reports continued to refer to the fact that the US administration would work with the US Congress on appropriate measures to solve this case. Cuba reiterated that, as long as there were pending cases for so many years, which implied a continued violation of WTO Agreements, it was not possible to claim that the United States had a good record of compliance. Regarding the work of the US administration with Congress, Cuba recalled that WTO rules applicable to this case did not require governments to use only their best endeavours. Under the Marrakech Agreement, WTO Members must ensure the conformity of their laws, regulations and administrative procedures with their WTO obligations. The US administration must work immediately to repeal Section 211; it had no other choice. The US status reports, presented each month, contained the same words and did not explain specifically what the United States had done. The United States could not explain what it had done, as it had done nothing. The reports only made references to legislative proposals introduced by the Congressmen on their own initiative. The facts showed that the United States had no intention of complying with the DSB's recommendations and rulings.

6. Cuba noted that on 30 March 2009, the Federal Court for the District of Columbia (Washington DC) had issued a ruling that had legitimized the decision of the Office of Foreign Assets Control to deny the license that had been requested in 2006 for the renewal of registration of the Cuban trademark HAVANA CLUB in favour of the CUBAEXPORT company, thus confirming the implementation of Section 211. Such decisions were an example of the United States' double standards. He noted that 1 July 2009 would mark four years since the circulation of the Understanding between the EC and the United States regarding the Section 211 dispute. Pursuant to that Understanding, the EC had undertaken not to request the DSB's authorization to suspend concessions or other obligations *vis-à-vis* the United States.

7. Cuba recalled that at the 29 April 2009 General Council meeting, the Director-General had expressed his desire to make the WTO "more development-friendly", more "user-friendly", so that all could benefit: large and small, rich and poor, strong and weak. It seemed there was still a long way to go before the long-awaited balance could be achieved, especially when presented with the case such as this, in which, with the consent of large, rich and strong countries, international obligations had been ignored, and the rights of small and poor countries, along with the complaints raised by many Members every month in the DSB, had completely been ignored. In the past few months, several important international events had taken place that were related, directly or indirectly, to the case at hand and to political motives behind Section 211. In December 2008, at the first Latin American and Caribbean Summit on Integration and Development held in Brazil, all Latin American and Caribbean Heads of State and Government had approved a special declaration on the need to end the economic, commercial and financial blockade imposed on Cuba by the United States. Section 211 formed part of this blockade. At the Summit of the Americas, held in Trinidad and Tobago in April 2009 in the presence of the US President, Latin American and Caribbean statesmen, once again, had made a unanimous call to end the blockade against Cuba. In June 2009, the 39th General Assembly of the Organization of American States, had officially laid to rest the infamous, shameful and illegal resolution that, in 1962, had excluded Cuba from the Inter-American System and also served as a basis for the blockade policy against Cuba. In recent months, in the midst of those fora, US leaders had dared to say that their policy towards Cuba had failed because it had not achieved its objective, namely to defeat the Cuban revolution. However, it was what had happened during those meetings in Latin America, and what happened every year at the UN General Assembly, when the

international community almost unanimously voted in favour of putting an end to the economic, commercial and financial blockade against Cuba, that really demonstrated the failure of the United States towards Cuba, a policy which the Section 211 dispute was an integral part of. The actions taken by the United States against Cuba, including in the areas of trade and intellectual property, was not only legally unsustainable, politically and commercially counter-productive and a fiasco in practice, but was also morally and humanly indefensible. In the midst of the US recession and the consequent international economic crisis, it was becoming increasingly clear that the blockade policy, including Section 211, affected not only Cuba and the WTO, but also the economic, commercial and intellectual property interests of businessmen and the US population, as well as those of third parties, whether or not they were WTO Members. So, why did the United States continue to insist on maintaining its failed policy? When all pretexts presented by the United States had collapsed, due to their inconsistency, the only possible and sensible option was to put an end to this isolated and failed policy, which had been questioned by Members, without any more excuses and delays. Cuba would continue to raise its concerns, stand up for its rights, seek prompt resolution of this dispute and demand the repeal of the legislation that was inconsistent with international rules.

8. The representative of China said that his country thanked the United States for its status report and its statement. However, China had to, once again, express its concerns since nothing new had been reported by the United States and there was no indication when the matter would be resolved. As China had pointed out many times, 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 DSB's decision without further delay.

9. The representative of the Bolivarian Republic of Venezuela said that his country had noted the status report presented by the United States. At the meeting held in June 2009 at the headquarters of the Organization of American States (OAS), with a view to revoking the arbitrary OAS sanction imposed on Cuba in the context of the Cold War, under which Cuba had been excluded from the Organization since 1962, Venezuelan Chancellor Nicolas Maduro had stated that "the next step must be the termination of the economic blockade imposed by the United States against Cuba". Section 211 formed part of this blockade. The United States disregarded DSB's decisions and continued to ignore the international outcry to put an end to the blockade, which had been unilaterally imposed on Cuba. This had been demonstrated, not only in the OAS but in Geneva as well, in the month of June, in connection with the adoption of Cuba's human rights compliance report on the occasion of the Universal Periodic Review at the 11th Session of the UN Council on Human Rights. At that Session, Cuba had had the full backing of the representatives who supported the adoption of the report of the Working Group, which highlighted Cuba's commitment to the human dignity of its people. That report had been adopted by consensus. By maintaining the attitude of non-compliance and by repeating the same old argument that the Act was being reviewed by the US Congress and other US authorities, the United States was undermining the credibility of the WTO and was casting doubt on its commitments in the WTO, particularly when it had argued that its compliance record was good. The United States should not be allowed to choose, for reasons having more to do with politics than trade, which decisions of the DSB to comply with or not. For all of those reasons, Venezuela called upon the United States to take urgent and necessary steps to comply with its obligations under the TRIPS Agreement and the DSB's recommendations, which determined that Section 211 was inconsistent with the WTO Agreements and should be revoked as quickly as possible.

10. The representative of Brazil said that his country thanked the United States for its status report. Brazil wished to repeat its systemic concerns about the non-compliance situation in this dispute and to encourage the United States to continue to take the necessary steps in order to bring its measures into conformity with the DSB's recommendations.

11. The representative of India said that her country thanked the United States for its status report and its statement. Despite the best endeavours by the US administration, the full implementation of

the DSB's recommendations had not been achieved and India remained concerned about this. India encouraged the United States to continue to pursue the necessary actions in this regard.

12. The representative of Mexico said that his delegation wished to reiterate that Articles 3.3 and 21.1 of the DSU respectively stated that, as an essential element to the effective functioning of the WTO, prompt settlement of disputes must be ensured, and prompt compliance with the DSB's recommendations and rulings was essential in order to ensure effective resolution of disputes to the benefit of all Members. Mexico urged the parties to this dispute to keep those principles in mind, and to take necessary actions to comply with the recommendations, which would benefit the functioning of the WTO as well as its Members.

13. The representative of Ecuador said that his country thanked the United States for its status report and supported the statements made by Cuba and other Members. Ecuador recalled, once again, that Article 21 of the DSU had expressly referred to prompt compliance with the DSB's recommendations or rulings, in particular with regard to the matters affecting the interests of developing countries. He noted that the United States closely monitored compliance by all Members with their WTO obligations and had expressed, in the different WTO Councils and Committees, its systemic concerns with regard to certain commitments undertaken by other Members. Thus, if the United States wished to promote coherence in the WTO, it should be setting an example in this regard. Ecuador, once again, urged the US administration and the US Congress to accelerate their compliance with the DSB's recommendations and rulings by repealing Section 211.

14. The representative of Viet Nam said that his country thanked the United States for its status report. Like at previous DSB meetings, Viet Nam urged the United States to bring its measures into conformity with the DSB's rulings and recommendations in this dispute.

15. The representative of Argentina said that his country thanked the United States for the information provided which, unfortunately, was not new. Once again, Argentina joined in the request made by other delegations for a definitive solution to this issue. The lack of effective compliance with the DSB's recommendations and rulings had important systemic implications for all WTO Members. Argentina urged the United States to take necessary measures in order to ensure prompt implementation of the DSB's recommendations.

16. The representative of Chile said that his country thanked the United States for its status report. Like at the previous DSB meetings, Chile urged the United States to comply with the DSB's recommendations and rulings in this dispute as soon as possible. This would put an end to a situation which caused injury to the multilateral trading system.

17. The representative of Nicaragua said that her country had noted the US status report. Since that report was the same as the previous ones, which the United States had been submitting for years, Nicaragua did not know what measures had been taken. Nicaragua believed that submissions of the same reports with a different date set a bad precedent. Nicaragua, therefore, urged the United States to inform the DSB of any measures it had taken to ensure prompt compliance and to provide the date by which the United States would comply with its obligations.

18. 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.79)

19. The Chairman drew attention to document WT/DS184/15/Add.79, 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.

20. The representative of the United States said that his country had provided a status report in this dispute on 8 June 2009, in accordance with Article 21.6 of the DSU. As of 23 November 2002, the US authorities had addressed the DSB's recommendations and rulings with respect to the calculation of anti-dumping margins in the hot-rolled steel anti-dumping duty investigation at issue in this dispute. Details were provided in document WT/DS184/15/Add.3. With respect to the recommendations and rulings of the DSB that had not already been addressed by the US authorities by 23 November 2002, the US administration would work with Congress with respect to appropriate statutory measures that would resolve this matter.

21. The representative of Japan said that his country thanked the United States for its statement and its most recent status report. Japan noted that the United States reported that it had taken certain measures to implement part of the DSB's recommendations in November 2002. Japan was hopeful that the United States would soon be in a position to report to the DSB more tangible progress for the remaining part of the DSB's recommendations and rulings. A full and prompt implementation of the DSB's recommendations and rulings was "essential to the effective functioning of the WTO and the maintenance of a proper balance of the rights and obligations of Members".[1] Japan called on the United States to fully implement the DSB's recommendations in this long-standing dispute without further delay.

22. 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.54)

23. The Chairman drew attention to document WT/DS160/24/Add.54, 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.

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

25. The representative of the European Communities said that the United States had again reported on its non-compliance. The United States had continually failed over many years to bring itself into compliance with its obligations. The EC hoped that the new US authorities, who had indicated that Intellectual Property enforcement was a priority for them, would solve this dispute expeditiously.

26. 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.17 – WT/DS292/31/Add.17 – WT/DS293/31/Add.17)

27. The Chairman drew attention to document WT/DS291/37/Add.17 – WT/DS292/31/Add.17 – WT/DS293/31/Add.17, 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.

[1] Article 3.3 of the DSU.

28. The representative of the European Communities said that his delegation welcomed the continuing constructive discussions with the complainants, which had allowed yet another extension of the reasonable period of time by Canada until 30 June 2009. Recent developments had shown that the EC regulatory procedures on biotech products continued to work as foreseen in the legislation. Twenty-one GMO products had been authorized in the EC since the date of establishment of the Panel and others were being processed, in accordance with applicable law. The EC believed that further progress in such a sensitive area could only be achieved through dialogue and cooperation. The EC remained open to continue discussions with the three complainants.

29. The representative of Argentina said that his country thanked the EC for its status report and was satisfied with the excellent results reached through bilateral dialogue. Argentina would continue to monitor any new developments regarding the situation and the EC member State bans.

30. The representative of Canada said that her country thanked the EC for its statement. Canada valued the constructive dialogue with the EC to resolve the issues that had affected, and continued to affect the approval and marketing of biotech products in the EU. However, Canada continued to be particularly concerned about continuing member State actions on the cultivation and marketing of EU-wide approved biotech products. Canada would continue to monitor the situation closely and hoped to continue the dialogue with the EC to address trade in biotech products in a constructive manner.

31. The representative of the United States said that his country thanked the EC for its statement. He said that being at the mid-point of calendar year 2009 the EC had, regrettably, shown little, if any, progress through the first half of 2009 in addressing the problems in the operation of its approval system for biotech products. As the United States had noted at past DSB meetings, approximately 50 biotech applications were backed up in the EC approval system. As a result of this backlog, the EC currently banned the import of maize and other important agricultural products produced in the United States. During the first six months of 2009, the EC had managed to reach a final decision on only a single pending product. And that product – rapeseed T-45 – had first been submitted for approval in February 1999. With the passage of over a decade, the rapeseed variety was now obsolete and was no longer marketed. In short, during the first half of 2009, the EC had failed to reach a decision on a single biotech product that was currently in commercial production. Moreover, with regard to EC member State bans on those biotech products that the EC had managed to approve, the situation seemed to be getting worse. As the United States had discussed at the April DSB meeting, during the first half of 2009 two additional member States – Germany and Luxembourg – had imposed bans on a key biotech product approved at the EC level. These bans had been adopted despite the fact that the DSB had found that Austria's ban on this same product amounted to a breach of the obligations set out in the SPS Agreement.[2] The United States again urged the EC to take

[2] "EC – Measurers Affecting the Approval and Marketing of Biotech Products", WT/DS291/R, para. 8.24.

prompt steps to resolve those serious and ongoing problems in the operation of its biotech approval system.

32. 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 of the DSU by Ecuador: Status report by the European Communities (WT/DS27/96/Add.5)

33. The Chairman drew attention to document WT/DS27/96/Add.5, which contained the status report by the European Communities on progress in the implementation of the DSB's recommendations and rulings in the case concerning the European Communities' regime for the importation, sale and distribution of bananas.

34. The representative of the European Communities said that, as had been indicated in previous meetings, the EC stood ready to implement the recommendation made in the Panel Report by means of modifying its bound duty. The EC still hoped that this rebinding could be made in the context of a comprehensive agreement with Latin American suppliers, an agreement that had been sought since the EC initiated the GATT Article XXVIII negotiations back in 2004. The EC was fully committed to finding very soon a final solution to this long-standing "banana saga". As indicated in its status report, the EC was fully engaged in negotiations with all Latin American supplying countries with the view to concluding promptly such a comprehensive agreement. The EC hoped that these negotiations could soon lead to a satisfactory agreement. The requests made to the EC to simply sign, *tel quel*, the draft agreement established in the margins of the 2008 July Ministerial Meeting had simply disregarded the fact that the signature of that agreement had been subject to the successful adoption of DDA Agriculture modalities. Having said that, the EC was now engaged in negotiations to discuss the possibility of concluding a draft agreement with a number of elements based on the July 2008 text, subject to necessary adjustments to the current situation and hoped that all banana suppliers would constructively engage in the necessary discussions. This was a unique opportunity to put an end to this long-standing dispute and bring to economic operators the long-awaited legal certainty.

35. The representative of Ecuador said that his country thanked the EC for its status report. Ecuador noted that, once again, the EC had not indicated any date by which it hoped to comply with the DSB's recommendations and rulings in this dispute. On the contrary, the EC had proposed an agreement, which was subject to several conditions that would further complicate the negotiations and would make it more difficult to reconcile positions of different Members. Although those issues were not related to the compliance with the DSB's recommendations and rulings in this dispute and the compensation for the EC's enlargements, Ecuador was ready to seek a negotiated solution to this long-standing dispute. Ecuador had thought that this dispute would have been resolved with the conclusions of the 27 July 2008 Agreement, but the EC had refused to endorse that Agreement. Any proposal by the EC that would tip the balance, reached in the July 2008 Agreement, would be difficult to accept for Ecuador and any unilateral decision by the EC in this case would have serious political, legal and systemic implications.

36. The representative of Panama said that his country, like Ecuador and others, believed that a positive solution to this dispute was long overdue. Panama noted the EC's commitment to "finding very soon a final solution", but remained concerned about the approach proposed by the EC. Panama could not see how the EC's many unrelated contingencies and procedural complexities were conducive to a prompt solution. A solution aimed at settling all outstanding banana actions and legal claims was one thing – one tied to a long list of non-banana interests was quite another. Unrelated contingencies should not be allowed to defeat the EC's obligation to come into prompt compliance with its obligations. Panama was also not convinced that a rebinding, pursuant to Article XXVIII of the GATT 1994, would accomplish full and prompt compliance with 13 years of negative rulings

under the GATT and the GATS. The EC's compliance obligation extended to all rulings issued over the duration of the EC's action. Given the many instances of non-compliance over the past 13 years, a solution, to be permanent, should not only redress the EC's current inconsistencies, but prevent the prior ones from reoccurring as well. All parties wanted this long dispute to end. If the EC was willing to moderate its contingencies, open its market, as agreed in July 2008, and adequately meet its DSB compliance obligation, a settlement could be possible. Panama continued to believe that the July 2008 Agreement would show the way.

37. The representative of Nicaragua said that, like at previous DSB meetings, her country, once again, joined Ecuador in calling upon the EC to bring itself promptly into conformity with the DSB's recommendations and rulings. Nicaragua noted with regret that there was still an enormous gap between what the EC had stated and what the rules required. The EC had stated that there was a "unique opportunity" to end this dispute, when in fact the EC's unconditional obligation to bring itself into conformity with the recommendations dated back to January 1999. This "unique opportunity" was more than ten years old. The EC had expressed its wish that all banana suppliers participate constructively in the discussions and that "it takes two to tango". However, the issue under discussion was one of compliance, and this was not an obligation that the EC could share with the MFN banana supplying countries. The fact was that the EC had lost 13 bananas cases in the GATT/WTO system, and the obligation to put an end to non-compliance in a constructive manner was on the EC alone. The EC continued to speak of a "comprehensive arrangement ", which was tantamount to saying that the MFN suppliers must pay in other areas so that the EC could comply with its obligations regarding bananas. The WTO did not provide for the imposition of conditions that would delay or undermine compliance. Nicaragua was ready to help the EC to comply with its DSB's obligations. In exchange, Nicaragua hoped that the EC would cease to treat this dispute as a multilateral negotiation and start to treat it as a compliance issue that needed to be settled promptly with Latin American countries, in accordance with WTO rules.

38. The representative of the Dominican Republic, speaking on behalf of the ACP countries, said that at the previous five DSB meetings, which had dealt with this matter, the ACP countries had reiterated their respect for the need to implement final decisions despite their continued disagreement with certain conclusions reached by the Panel and the Appellate Body in this dispute. As at previous meetings, however, the ACP countries felt that it remained useful to recall what the Panel and the Appellate Body had concluded, namely that the EC's schedule at this time still committed the EC to a TRQ at a tariff of €75/metric tons and an out-of-quota tariff of €680/metric tons. As previously mentioned, the ACP countries could live with a literal implementation of those conclusions. The EC, however, had indicated that it aimed to change its tariff commitments through negotiations with the MFN banana suppliers, and thereby also achieve compliance and implementation. It appeared that this process would lead to an overall reduction of applied (and bound) duty rates. It was worth recalling that the DSB's conclusions in this dispute did not require any overall reduction of average tariffs; all they required was a rearrangement. A decision to reduce the EC's average banana tariff was not related to compliance, but rather to the DDA negotiations. The ACP remained committed to supporting its partners in finding an effective solution to the "banana issue". The steps towards such a solution, however, should be taken for the right reasons and should be anchored and balanced out in the right context.

39. The representative of Honduras said that his country had legal and economic interests in the Bananas dispute. Its legal interest resulted from the fact that Honduras had been one of the five original complainants in the Bananas III dispute. In this regard, he noted that there was no single Panel or Appellate Body Report pertaining to the Bananas dispute that had concluded that the EC had brought itself into conformity with its obligations vis-à-vis Honduras or the other co-complainants. Honduras would continue to insist that its rights be respected. Honduras' economic interest stemmed from the fact that it was a substantial banana producer, and for many years it had been suffering from the effects of the EC's discrimination. In 1992, a year prior to the entry into force of the EC's first banana import regime, Honduras had shipped 240,000 mt to the EC market. In 2008, it had shipped

no more than 24,000 mt. In other words, shipments to the EC had fallen by 90 per cent in a crucial sector of Honduras' economy. Consequently, Honduras was keen to have its legal and economic rights restored. Honduras regretted that after nine rulings against the EC in the Bananas III dispute, two WTO arbitrations, and many years with the dispute being discussed in the DSB, the EC had yet to inform Members as to how it intended to bring itself into conformity with its obligations. What the EC called a "comprehensive" proposal was the EC's way of avoiding compliance in other areas of the WTO instead of bringing itself promptly into conformity with WTO rules. The number of conditions involved in this "comprehensive" approach had rendered the possibility of reaching an agreement unnecessarily complicated and had undermined the DSU provisions on compliance. Honduras was ready to work with the EC to find an arrangement that would genuinely lead to compliance; that would open up the EC market; that would restore Honduras' rights; and that would prevent further non-compliance. Honduras believed that the tariff cuts accepted by the EC in July 2008 continued to provide the best way to resolve this dispute.

40. The representative of Colombia said that his country had noted the EC's intention to bring itself into compliance with the DSB's recommendations and rulings by modifying its scheduled tariff commitments on bananas. Colombia hoped to enter shortly into negotiations with the EC in order to settle this dispute as rapidly as possible.

41. The representative of the United States said that his country thanked the EC for its status report and statement. However, once again, the EC had provided no information regarding how it was in compliance with its obligations under Articles I and XIII of the GATT 1994. And, once again, the United States noted that the DSB had not adopted any finding that the EC was in compliance with its WTO obligations with respect to its bananas import regime with respect to any of the other original co-complainants in this dispute, including the United States. The reasonable period of time for compliance in this dispute had expired more than ten years ago, on 1 January 1999. The commercial impact of the EC's non-compliance over this very long period was undeniably large and damaging to a number of WTO Members. The United States called on the EC to resolve this dispute and, until then, to provide a comprehensive explanation of how the EC intended to come into substantive compliance with all of the DSB's recommendations and rulings.

42. The representative of Cameroon said that his country thanked the EC for its status report and supported the EC's approach to seek a comprehensive agreement, which would guarantee a satisfactory solution in order to end this dispute. Cameroon supported the statement made by the Dominican Republic, on behalf of the ACP countries, with regard to rebinding. Cameroon stood ready to help to solve this dispute as soon as possible.

43. The representative of Panama said that his country wished to make some comments on the statement made by the ACP countries. Ecuador's Article 21.5 Panel Report had established with clarity and finality that the EC's current €176/mt banana tariff was "in excess of" the EC's bound banana tariffs set forth in Part I of its Schedule (Part I included both the €75/mt in-quota tariff and the €680/mt out-of-quota tariff), and must be reduced in order for the EC to be in compliance with its GATT Article II obligations. The Panel had explicitly ruled that the EC's tariff "set at €176/mt, without consideration of the tariff quota for 2.2 million mt bound at an in-quota tariff rate of €75/mt, was an ordinary customs duty in excess of that set forth and provided for in Part I of the European Communities' Schedule, and resulted in a treatment for the commerce of bananas from MFN countries (i.e., non-ACP WTO Members) that was less favourable than that provided for in Part I of the European Communities' Schedule [and] … therefore … was inconsistent with the first sentence of Article II:1(b) of the GATT 1994." [paras. 7.504 and 8.2(d)]. The EC had chosen to accept that Panel's finding by not appealing it. The Appellate Body, thereafter, had affirmed the EC's GATT Article II violation using language nearly identical to the findings of the Panel: "[T]he tariff applied by the European Communities to MFN imports of bananas, set at €176/mt, without consideration of the tariff quota of 2.2 million mt bound at an in-quota tariff rate of €75/mt, is inconsistent with the first sentence of Article II:1(b) of GATT 1994, insofar as it constituted "an ordinary customs duty in

excess of that set forth and provided for in Part I of the European Communities' Schedule, and results in a treatment for the commerce of bananas from MFN countries (i.e., non-ACP WTO Members) that is less favourable than that provided for in Part I [of the] European Communities' Schedule." [paras. 455 and 478(c)(iii)]. The EC had since assured the DSB that "it will bring itself into compliance" with the Article II finding by "rebinding its tariff." Any rebinding by the EC above €176/mt, rather than significantly below it, would contradict that assurance and would leave the EC's regime out of compliance.

44. The representative of the European Communities said that the Appellate Body had confirmed that no recommendation, as opposed to findings, was warranted with respect to the measure at issue in this dispute, since it was no longer in existence (para. 479 of the AB Report). The Appellate Body had referred generally to the principle that in Article 21.5 of the DSU, 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, 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 ongoing FTA negotiations with Latin American suppliers.

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

(f) Brazil – Measures affecting imports of retreaded tyres: Status report by Brazil (WT/DS332/19/Add.3)

46. The Chairman drew attention to document WT/DS332/19/Add.3, which contained the status report by Brazil on progress in the implementation of the DSB's recommendations and rulings in the case concerning Brazil's measures affecting imports of retreaded tyres.

47. The representative of Brazil said that, on 8 June 2009, Brazil had provided the DSB with a further status report in the dispute, in accordance with Article 21.6 of the DSU. Brazil remained convinced that the actions pursued by the Brazilian Government constituted not only a fundamental step in strengthening Brazil's environmental policy, but that those actions would also bring full implementation of the DSB's recommendations and rulings in this dispute.

48. The representative of the European Communities said that his delegation had noted Brazil's fourth status report. The EC noted again that Brazil had admitted not having achieved compliance to date, and this despite the expiry of the reasonable period of time on 17 December 2008. As regards Brazil's efforts towards implementation, the EC maintained its position last expressed at the 20 May 2009 DSB meeting. The EC was neither convinced nor satisfied by Brazil's actions. As had been previously stated, the fastest and the best way to remove the ongoing WTO-inconsistent discrimination consisted of lifting the import ban on retreaded tyres. This would also have the benefit of allowing Brazil to comply with its MERCOSUR obligations, as confirmed by binding arbitral rulings. From the fourth status report, the EC could still not see what Brazil intended to put in place when referring to a "common trade regime for tyres with its MERCOSUR partners". The EC recalled that the DSB's rulings and recommendations in this case did not permit keeping the import ban in place while maintaining the possibility for intra-MERCOSUR trade in retreads. The EC continued to express its understanding and support for measures aiming at environmental and public health protection. To achieve this aim, however, the EC considered that Brazil had better and more effective measures at its disposal than the ones currently in place. The EC was deeply concerned about the lack of progress and called again upon Brazil to end, without further delay, its arbitrary and discriminatory practices regarding retreaded tyres, and to do so by removing the import ban.

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

2. Colombia – Indicative prices and restrictions on ports of entry

(a) Implementation of the recommendations of the DSB

50. The Chairman recalled that, in accordance with the DSU provisions, the DSB was required to keep under surveillance the implementation of recommendations and rulings of the DSB in order to ensure effective resolution of disputes to the benefit of all Members. In that respect, Article 21.3 of the DSU provided that the Member concerned shall inform the DSB, within 30 days after the date of adoption of the panel or Appellate Body report, of its intentions in respect of implementation of the recommendations and rulings of the DSB. He recalled that at its meeting on 20 May 2009, the DSB had adopted the Panel Report pertaining to the dispute on: "Colombia – Indicative Prices and Restrictions on Ports of Entry". He invited Colombia to inform the DSB of its intentions in respect of implementation of the DSB's recommendations.

51. The representative of Colombia said that his country would comply with the recommendations and rulings adopted by the DSB at its meeting on 20 May 2009. To that end, Colombia had examined possible implications of the recommendations of the Panel Report for its domestic law and customs administration. Following its examination, Colombia had come to the conclusion that it would not be able to implement immediately, and that it would seek a reasonable period of time, pursuant to Article 21.3 of the DSU, to work on various technical and legal aspects in order to bring its measures into conformity with the Panel's recommendations. He said that implementation in this case called for an internal process, which involved the participation of different government entities concerned (National Customs Directorate; Ministry of Finance and Public Credit; Ministry of Trade, Industry and Tourism; Committee on Customs and Tariffs; and Office of the President of the Republic) as well as a number of legislative amendments. Colombia would discuss the matter with Panama with a view to reaching an agreement on a reasonable period of time for implementation.

52. The representative of Panama said that his country thanked Colombia for its statement. Colombia and Panama had held discussions both in the capitals and in Geneva. The purpose of the discussions was to reach an understanding on a reasonable period of time for Colombia to bring its measures into conformity with WTO rules. During those discussions, Colombia had informed Panama that it would be undertaking a comprehensive reform of its customs valuation system, and that this would require an extended reasonable period of time. Colombia, like any other WTO Member, was entitled to conduct a thorough and comprehensive reform of its general system of customs valuation. However, in this particular case, such a comprehensive reform was irrelevant to Panama, and to any other WTO Member, since what was required was compliance with the Panel's conclusions and recommendations. It was unlikely that a panel, or the Appellate Body, or an arbitrator would consider the comprehensive reforms that Colombia wished to introduce relevant for the purposes of compliance. Indeed, it would appear that Colombia itself did not yet know exactly what those reforms would entail, but information received indicated that the reforms would go far beyond correcting the challenged measures on port restrictions, indicative prices and advance import declarations. What was important in this case was that those "specific" measures should be brought into conformity with the WTO Agreements as soon as possible. Colombia's proposals were not meeting this objective, and were completely not acceptable to Panama. The suggested time-periods were exaggerated and the port restrictions and indicative prices had to be eliminated immediately. Panama did not understand why Colombia could not proceed with the same speed as it had done in 2006 when, as a result of bilateral consultations, it had dismantled similar restrictions on ports within 48 hours following a mutually agreed solution between the two countries, which had been notified to the DSB. As for the indicative prices, Panama was prepared to agree to a period of time that would be considerably shorter than what Colombia had proposed. However, the discussions between Colombia and Panama had failed to reconcile their positions. The same applied to the recommendations concerning advance import declarations. Panama would be willing to show a certain amount of flexibility, but could not, under any circumstances, accept any lengthy delays that were not justified

by the arguments put forward by the Panel. In conclusion, Panama urged Colombia to bear in mind, when reconsidering how to implement the Panel's recommendations, that Panama had already waited a long time in this dispute: i.e. since 2005. Panama also hoped that Colombia would take into account the importance of not only the two countries' current bilateral trade in goods and services, but also their solid relations in the area of investment.

53. The representative of Chinese Taipei said that her delegation thanked Colombia for the information of its intention to implement the DSB's recommendations and rulings. As a third party in the Panel proceeding, Chinese Taipei had both substantial and systemic interest in the dispute. Chinese Taipei was glad to see that the Panel Report had been adopted by the DSB in May. Chinese Taipei urged Colombia to follow what was set out in Article 21.1 of the DSU, and promptly bring itself in compliance with the DSB's recommendations and rulings in order to ensure effective resolution of disputes to the benefit of all Members.

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

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

(a) Statements by the European Communities and Japan

55. The Chairman said that the item was on the Agenda of the present meeting at the request of the European Communities and Japan. He invited the respective representatives to speak.

56. The representative of the European Communities said that, as in many previous meetings, his delegation wished to ask the United States when it would effectively stop the transfer of anti-dumping and countervailing duties to its industry and finally put an end to the condemned measure. The EC also renewed its call to the United States to abide by its clear obligation under Article 21.6 of the DSU and to submit status reports in this dispute.

57. The representative of Japan said that, on 26 May 2009, the US Customs Border Protection had published "FY 2009 Preliminary CDSOA amounts available" as of 30 April this year.[3] This latest action showed that the CDSOA remained operational.[4] Japan, once again, called on the United States to stop illegal distributions and repeal the CDSOA, not just in form but in substance, so as to resolve this dispute 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.

58. 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.

59. The representative of India said that her country thanked the EC and Japan for bringing, once again, this issue before the DSB. In India's view, the CDSOA still allowed for disbursements by the US administration to its domestic industry, showing that the Byrd Amendment continued to be in force and was thus affecting the rights of other WTO Members. Members continued to raise concerns about this situation. As reiterated previously, India was concerned that non-compliance by Members

[3] See US Customs and Border Protection's website at:
http://www.cbp.govainkhandler/cgov/trade/priority trade/add cvd/cont dumpify09 prel im.cttify09 prelim.pdf

[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.xm 1

led to a growing lack of credibility of the WTO dispute settlement system. India, therefore, urged the United States to cease its WTO-inconsistent disbursement.

60. The representative of Canada said that her country thanked the EC and Japan for having placed this item on the Agenda of the present meeting. Canada shared the view of the EC and Japan that the Byrd Amendment remained subject to the DSB's surveillance until the United States ceased to apply it.

61. The representative of Brazil said that his country thanked the EC and Japan for maintaining this item on the DSB's Agenda and joined those delegations in urging the United States to eliminate the trade-distorting effects of the disbursements under the Byrd Amendment. Brazil emphasized that full compliance in this dispute would only come through the complete cessation of all disbursements under the Byrd Amendment.

62. The representative of Thailand said that his country thanked the EC and Japan for bringing, once again, this item before the DSB. Thailand urged the United States to cease disbursements under the Continued Dumping and Subsidy Offset Act, repeal the Byrd Amendment with immediate practical effect, and resume providing status reports until such actions were taken and this matter was fully resolved.

63. The representative of the United States said that, as the United States had already explained at previous DSB meetings, the US President signed the Deficit Reduction Act into law on 8 February 2006. That Act included a provision repealing the Continued Dumping and Subsidy Offset Act of 2000. Thus, the United States had taken all actions necessary to implement the DSB's recommendations and rulings in these disputes. The United States further recalled that Members 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 in this matter, as had already been explained at previous DSB meetings, the United States failed to see what purpose would be served by further submission of status reports repeating the progress the United States made in the implementation of the DSB's recommendations and rulings.

64. The DSB took note of the statements.

4. Memorandum of Understanding between the United States and the European Commission regarding the importation of high-quality beef and the dispute: "EC – Measures Concerning Meat and Meat Products (Hormones)"

(a) Statements by Argentina, Australia and Uruguay

65. The Chairman said that this item was on the Agenda of the present meeting at the request of Argentina, Australia and Uruguay. He then invited the representatives of the respective countries to speak.

66. The representative of Australia said that her country recognized that the bilateral agreement between the EC and the United States, as announced on 13 May 2009, sought to find a way forward in the long-running beef hormones dispute. Australia noted that the agreement established a new tariff-rate quota for high-quality beef. As a major global beef exporter, Australia was taking a close interest in the establishment, implementation and administration of that quota. Australia thanked the EC for the opportunity to discuss bilaterally that new quota and for the information provided to date. Australia understood that the quota would be offered on a most-favoured-nation (MFN) basis and on the principle that it would be open to all countries. However, the quota, as it appeared in the Memorandum of Understanding (MOU) between the European Union and the United States, raised concerns about consistency with the WTO Agreements. Australia was keen to ensure that the quota

was not discriminatory in its treatment of beef exporters, was consistent with the EC's WTO obligations and would provide equal access for all beef exporters, including Australian beef exporters of high-quality beef. Australia obviously would welcome any increased access that flowed from the establishment of the new quota. Australia noted that its response at the present meeting was preliminary, and would welcome further details about how the quota would operate.

67. The representative of Argentina said that it was his country's understanding that the EC and the United States had reached an agreement that would establish a new quota for the importation of high-quality beef in relation to the long-standing beef hormones dispute. Argentina expressed its satisfaction with the parties' willingness and efforts to reach an agreement in this long-running beef hormones dispute. According to the information available, the agreement established a new quota for high-quality beef based on a specific definition requirement and with a zero in-quota rate. Argentina understood that that quota would be offered in accordance with the MFN principle, but did not know how that quota would be administered. As one of the major exporters of high-quality beef, Argentina was concerned about commercial implications of the quota. Argentina would appreciate receiving more details about how the quota would be operated, as well as the assurances that the quota would be operated in a WTO-consistent manner, without impairing concessions previously negotiated between Argentina and the EC. Argentina reserved its right to revert to this matter, if necessary, after receiving more details regarding the quota.

68. The representative of Uruguay said that, on 13 May 2009, the EC and the United States had signed an agreement relating to the Hormones dispute (DS26). He noted that despite the amount of time that had passed since the rulings had been made in this dispute, no implementation had yet taken place. Uruguay was concerned about the agreement reached by the EC and the United States, and reserved all its rights in this respect. Pursuant to that agreement, and in order to prevent further retaliation by the United States – even though such retaliation had been authorized by the DSB – the EC had undertaken to open a quota for 20,000 tonnes of high-quality beef, at zero duty, for three years, as of 3 August 2009. This quota would be to 45,000 tonnes in the fourth year. In the meantime, the United States would not apply further retaliatory measures. Article VI of the Memorandum of Understanding in question defined high-quality beef as only that of the type exported by the United States. There was no justification for maintaining that this specific type of beef, which received preferential treatment, was different from other high-quality beef. This constituted discriminatory treatment in favour of a certain origin. At the present meeting, Uruguay wished to describe in detail the extent of the problem and the way in which its rights might be impaired. The EC's quotas for high-quality beef amounted to 60,000 tonnes. All Members exporting within those quotas must pay an in-quota tariff of 20 per cent *ad valorem*. Out-of-quota tariffs were around 100 per cent. The United States accounted for 19 per cent (11,500 tonnes) of these 60,000 tonnes. If the agreement in question was implemented in such a way that only the United States had access to it, the country would benefit from a quota of 56,500 tonnes, rather than 11,500 tonnes. New volumes would enter tariff-free and, therefore, under very different competitive conditions from those applicable to all other suppliers, which must pay 20 per cent if exporting within the quota and 100 per cent if outside the quota. In short, the United States would go from having 19 per cent of access quotas for high-quality beef, to 54 per cent. Uruguay and all other suppliers would be up against a competitor with a single and exclusive zero tariff preference. Under those circumstances, it was not very difficult to imagine how this additional quota would operate and which suppliers would be pushed aside, including Uruguay whose main export was beef, which accounted for around 25 per cent of the total value of its exports. The importance of the EC market for Uruguayan meat exports was indisputable and the EC had traditionally been the main destination for Uruguayan meat exports, in particular high-quality beef.

69. The justification for the new quota was the EC's need to gain experience in the way its market would function in the light of an eventual increase in tariff-free trade in high-quality beef. If this was the objective, and the EC wanted to see how its high-quality beef market would perform, it should have acted on an MFN basis and be open to all suppliers. Uruguay would almost certainly be one of

those suppliers. Uruguay's wealth was due to the production of beef from free-range animals that grazed on natural pasture. Uruguay had a unique system for tracing meat from an animal's birth through to the packaging of cuts. The system covered all slaughterhouses and was overseen by the Ministry of Agriculture, Livestock and Fisheries (at the livestock stage) and by a non-State public body, the National Meat Institute (at the processing stage). Uruguay was able to meet the requirements of the most demanding international meat markets in three relevant areas: product safety, animal welfare, and environmental sustainability. Animals were monitored and certified. The rearing process was guaranteed to be pasture-based and hormone-free (pursuant to the Law of 1978), feed contained no antibiotics or animal proteins (since 1996), and no chlorine was used when cleaning and handling livestock at the time of slaughter. As far as Uruguay was concerned, having justified the logical and legal need for an MFN quota, the existence of "autonomous" quotas with specific definitions was nothing new. However, these quotas stemmed from legitimate negotiations and compensation, such as those derived from the implementation of Articles XXIV:6 or XXVIII of the GATT 1994, and were consistent with Article XIII of the GATT 1994. All Members with initial negotiating rights, principal supplying interest or substantial interest were represented and able to exercise their rights effectively. The quota in question, however, would be established bilaterally in the context of a dispute in which an award had already been issued and where one of the parties was required to comply with the DSB's rulings.

70. Compensation, as part of a settlement to a dispute, could not be exercised *ad libitum* between the parties to that dispute. The parties, following the decision adopted by the DSB, were not free to agree to a settlement amongst themselves that would be to the detriment of third parties. This would undermine the principle of non-discrimination. This was why compensation between the parties was regulated by the DSU provisions. In this regard, Uruguay highlighted three fundamental issues. First, compensation between the parties could not be a substitute for compliance with the DSB's recommendations. Second, compensation could only be temporary. Third, and most importantly, temporary compensation must always be lawful and must not entail the nullification or impairment of any benefit. In this case, those conditions did not seem to have been met. Under the agreement in question, the EC, in the light of its continued and prolonged non-compliance with the DSB's recommendations, would grant the United States significant compensation to prevent that country from applying new and legitimate retaliatory measures against European exporters. An agreement of that sort must be reached in accordance with Article 22.1 of the DSU: it could only be temporary and must be consistent with the WTO Agreements and of a non-discriminatory nature, in accordance with Articles I and II of the GATT 1994. He noted that Article 3.2 of the DSU stated that "recommendations and rulings of the DSB cannot add to or diminish the rights and obligations provided in the covered agreements". The DSB's rulings could not add to or diminish rights and obligations of Members, and the parties to the dispute were in even less of a position to do so. The parties' free will was clearly restricted by the existence of mandatory rules. Article 3.5 of the DSU stated that "All solutions to matters formally raised under the consultation and dispute settlement provisions of the covered agreements, including arbitration awards, shall be consistent with those agreements and shall not nullify or impair benefits accruing to any Member under those agreements...". Article 22.1 of the DSU stated that "Compensation and the suspension of concessions or other obligations are temporary measures available in the event that the recommendations and rulings are not implemented within a reasonable period of time. However, neither compensation nor the suspension of concessions or other obligations is preferred to full implementation of a recommendation to bring a measure into conformity with the covered agreements. Compensation is voluntary and, if granted, shall be consistent with the covered agreements". Uruguay hoped that the duty-free autonomous quota, provided under the EC/US Understanding to producers of a specific type of meat, would be applied in accordance with WTO rules, taking into account the rights of those Members who were principal suppliers, had a substantial interest or initial negotiating rights in respect of that product to the EC market.

71. The representative of New Zealand said that this dispute had a long history and New Zealand had been a third party throughout. New Zealand welcomed the active efforts made by the EC and the

United States in order to find a solution to this long-running dispute. She noted that, as part of the solution developed, the parties to the dispute had agreed to the establishment of a new tariff-rate quota for high-quality beef. As an exporter of beef into the EC, New Zealand had a close interest in the operation and implementation of that quota and, like other Members, would be watching developments closely. New Zealand thanked the two parties for the information provided with regard to the agreement. Her country would appreciate further details on the quota and the way in which it would be operationalized. This information would be of particular assistance to New Zealand in analyzing the agreement.

72. The representative of Paraguay said that exports of beef constituted an important part of Paraguay's exports. Paraguay had made substantive efforts to gain access to the EC's beef market. Therefore, as indicated by previous speakers, Paraguay was concerned about the EC's new tariff-rate quota for high-quality beef. Paraguay wished to have more information on the administration of the quota in order to see if the quota was consistent with the EC's WTO obligations. It was also important to ensure that the quota was not discriminatory against other beef exporters, such as Paraguay, which was a land-locked developing country.

73. The representative of Brazil said that his country noted the statements made by Argentina, Australia and Uruguay concerning the MOU between the EC and the United States regarding the importation of high-quality beef and the Hormones dispute. Brazil appreciated the efforts made by the parties in searching for a solution to this long-standing dispute, and looked forward to a notification of the MOU to the WTO. Brazil noted that any solution mutually accepted by the parties, by means of this MOU or any further instruments or compensation, must be consistent with the covered agreements, including, in particular, the need to give due respect to the MFN principle, and shall not nullify or impair benefits accruing to any Member, nor impede the attainment of any objective of those agreements. In that regard, Brazil would be following, with the utmost interest, the implementation and administration of the tariff-rate quota for high-quality beef provided for under the MOU.

74. The representative of Nicaragua said that her country noted the statements made by Argentina, Australia and Uruguay and thanked them for the inclusion of this item on the Agenda of the present meeting. Nicaragua noted the concerns raised by previous speakers regarding this matter. Like others, Nicaragua was also concerned that a bilateral agreement had been reached, which could impair the rights of other WTO Members. Nicaragua wished to have more details concerning the MOU and to know how the quota would be implemented. Nicaragua would be following the situation very closely and hoped that this matter would again be discussed in the DSB, and that the parties to the dispute would provide more detailed information.

75. The representative of India said that her country noted the statements made by Australia, Argentina and Uruguay regarding the MOU reached between the EC and the United States. As a third party in the Hormones proceedings, India welcomed the arrangement between the EC and the United States pertaining to this long-standing dispute. India believed that the MOU between the parties was the first step towards a mutually agreed solution to the Hormones dispute. While looking forward to see the details of the MOU, pending the notification of the details by the parties, India believed that the quota would give access to the EC market for high-quality beef on an MFN basis and would be consistent with the WTO Agreement.

76. The representative of the European Communities said that, in May 2009, the EC and the United States had reached an understanding on the level of sanctions applied by the United States in the Hormones dispute. The United States had agreed to lower the level of sanctions applied to EC products, and the EC would create market access opportunities for beef by opening a tariff-rate quota (TRQ) for high-quality beef on an autonomous and MFN basis. The TRQ would be non-discriminatory. The definition would be origin-neutral. Any country that produced high-quality beef meeting the definition would qualify for import licenses under the new quota. The EC was planning

to notify the DSB of this understanding as soon as preparations for its implementations were completed, which the EC was expecting by the beginning of August 2009. Given the interest of other Members, however, the EC was happy to discuss it at the present meeting, even though not every detail was available at this stage, since the opening of the autonomous TRQ had not yet been finalized. The EC intended to open a TRQ for a specific segment of beef products which would be called, for ease of reference, "high-quality beef". Such beef would have a special diet and other objective characteristics so as to ensure high quality. Beef meeting the definition of high-quality beef would be able to qualify for the quota, irrespective of its country of origin, provided it also complied with the EC's general food law (e.g. labelling, approval of establishments, etc). The TRQ would be administered in line with Article XIII of the GATT 1994. The EC clarified that the TRQ would be a new quota, and not linked to the definitions or the implementation of the TRQ for beef opened by the EC as part of its Uruguay Round market access commitments. All countries benefiting from this other TRQ would continue to do so. Since the EC was still in the process of drafting and adopting the legislation, it could not discuss the exact size or the TRQ or of the definition. Such details would be made available as soon as the regulations would be finalized.

77. The representative of the United States said that his country recalled the discussion of raising this matter at the 20 May 2009 DSB meeting and thanked Argentina, Australia, and Uruguay for inscribing this as an item on the Agenda of the present meeting. The United States noted their statements as well as those made by other Members and the EC. Beef from cattle raised with the growth-promoting hormones at issue in this dispute was safe and healthy for consumers. However, the United States was pleased that the United States together with the EC had been able to forge a pragmatic way forward in this long-running dispute, and the US thanked the EC for its cooperation and hard work in concluding the MOU. The United States confirmed the EC's statement that the MOU provided for the establishment of a tariff-rate quota for beef that met a definition that was origin-neutral. Any beef that met the definition's objective requirements on matters such as diet, age and quality would be eligible for the quota regardless of origin. In addition, it was the US understanding that the EC intended to implement and administer the quota on a non-discriminatory basis. The United States had long stressed the importance of flexibility in the WTO dispute settlement system. The ability of the United States and the EC to conclude this MOU was a demonstration of how that flexibility could be put to use by Members to make progress in a long-running dispute. The progress made towards resolving this dispute would seem to reinforce the questions previously expressed by a number of Members in the DSB[5] about the wisdom and appropriateness of the Appellate Body's "recommendation" to both parties that they initiate proceedings "without delay" under Article 21.5 of the DSU to resolve their disagreement over implementation.[6] The agreement between the EC and the United States demonstrated that there was a better way forward in this dispute than pursuing further litigation.

78. The representative of Argentina said that his country thanked the EC for its explanation. It was his delegation's understanding that the EC had clearly asserted that this new quota would not affect other quotas for beef opened by the EC as part of its Uruguay Round market access commitments. Argentina also noted that the United States had confirmed what had been stated by the EC, namely, that any beef that met the definition's objective requirements would be eligible for this new quota. In this regard, Argentina also noted that different definitions of high-quality beef had been agreed by the EC with different exporters. As a result of the MOU, one single definition with certain characteristics had been agreed upon with the United States and the EC. Therefore, Argentina wished to know how any other third party could meet this particular definition requirement. Argentina would be grateful if the EC and the United States could provide, in a timely fashion, more details on this issue.

[5] See, e.g., WT/DSB/M/258, paras. 9, 23, 26, and 31 (DSB Meeting of 14 November 2008).

[6] Appellate Body Report, "US – Continued Suspension of Obligations in the EC - Hormones Dispute", WT/DS320/AB/R, adopted 14 November 2008, para. 737.

79. The representative of Uruguay said that his country supported the statement made by Argentina. Uruguay always welcomed settlement of disputes through conciliatory channels as well as agreements reached by the parties in an effort to resolve their disputes. However, Uruguay was concerned that such bilateral agreements could lead to the impairment of third-party rights. Uruguay, therefore, supported the question raised by Argentina since the current drafting of the MOU regarding a definition of high-quality beef might be incompatible with the MFN principle. Uruguay would be willing to look at any additional information to be provided by the EC, and hoped that any such information would confirm the effective implementation of the MFN principle.

80. The representative of Paraguay said that his country thanked the EC for its clarification. Paraguay was a land-locked small and vulnerable economy and wished to be aware of any practical implications of the new quota. Paraguay had a tariff difference of 25 to 30 per cent vis-à-vis other trading parties, and had to struggle to be able to compete and gain access to the EC market. He said that Paraguay did not object to a solution reached in relation to the Hormones dispute. However, Paraguay hoped that any such a solution would not run counter to the benefits accrued by Paraguay and that it would not distort Paraguay's competitiveness. Argentina and Uruguay had clearly stated their concerns in this regard and Paraguay had the same concerns. Paraguay believed that any solution must avoid market distortions, and that this matter should also be discussed in the context of the DDA negotiations. Finally, he said that Paraguay was satisfied that a solution had been reached and hoped that that solution would not affect the rights of other WTO Members, nor create injury for small and vulnerable economies such as that of Paraguay.

81. The DSB took note of the statements.

5. Appointment of Appellate Body members

82. The Chairman said that, as announced in the fax sent out to all delegations on 25 May, he intended to propose, under the present Agenda item, that the DSB take several decisions in relation to the appointment of Appellate Body members. However, before taking up these proposed decisions, he first wished to briefly review the process that had led to this point. He recalled that at its meeting of 22 December 2008, the DSB had agreed to the Chairman's proposal on procedures for selecting new Appellate Body members. The proposal consisted of the following: (i) to carry out a single selection process for the two positions in the Appellate Body to replace Messrs. Luiz Olavo Baptista and Giorgio Sacerdoti; (ii) to set a deadline of 20 March 2009 for Members' nominations of candidates for these two positions; (iii) in light of the exceptional circumstances resulting from the early resignation of Mr. Baptista, to deem that the term of his position would expire on 30 June 2009, and to agree that this position would be filled for a four-year term; (iv) to follow the procedures set forth in document WT/DSB/1, and, in accordance with them, to establish a Selection Committee consisting of the Director-General and the 2009 Chairpersons of the General Council, the Goods Council, the Services Council, the TRIPS Council and the DSB, and chaired by the 2009 DSB Chairperson; (v) to request the Selection Committee to conduct interviews with candidates and to hear views of delegations in April and the first half of May 2009, and to make its recommendations to the DSB by no later than the end of May, so that the DSB could take a final decision by mid-June 2009; and finally, (vi) to ask the DSB Chairman to continue to carry out consultations on the possible reappointment of Mr. David Unterhalter. The Chairman also recalled that, by the agreed deadline of 20 March, six candidates had been nominated by five different WTO Members. Curricula Vitae of all the candidates had been circulated as Job documents to all delegations. Subsequently, during the month of April, the Selection Committee had conducted interviews with all six candidates. Then, during the month of May, the Committee had met individually with 46 delegations to hear their views on the candidates; it had also received in writing the views of another nine delegations. To arrive at its final recommendations, the Selection Committee had carried out its duties in accordance with the guidelines, rules and procedures contained in applicable DSU provisions and document WT/DSB/1. Needless to say, the Committee's task had been challenging given the excellence of all the candidates. He said that, at this point, on behalf of the Committee and the entire WTO

Membership, he would like to extend his gratitude to all the candidates who had participated in the process and to their respective Governments for nominating them. He said that, as a procedural matter, he would like to suggest that the DSB first take actions on the proposed decisions, and then he would open the floor to delegations who would wish to make statements for the record. He asked if the proposed course of action was acceptable to all delegations.

83. The DSB so agreed.

84. The Chairman said that, as communicated by fax to all delegations on 25 May 2009, the Selection Committee had recommended that Mr. Ricardo Ramírez Hernández of Mexico be appointed as a member of the Appellate Body for four years beginning on 1 July 2009, and that Mr. Peter Van den Bossche of the EC be appointed as a member of the Appellate Body for four years beginning on 12 December 2009. He proposed that the DSB take a decision to accept those recommendations of the Selection Committee.

85. The DSB so agreed.

86. The Chairman said that, based on his consultations with delegations and as also communicated to all WTO Members on 25 May, he wished to propose that the DSB agree to reappoint Mr. David Unterhalter for a four-year term starting on 12 December 2009.

87. The DSB so agreed.

88. The Chairman thanked delegations and said that, before giving the floor to those delegations wishing to make statements, on behalf of the Selection Committee and the entire WTO Membership, he thanked all the candidates and their respective Governments, and congratulated Mr. Ramírez and Mr. Van den Bossche on their appointments and Mr. Unterhalter on his reappointment.

89. The representative of Mexico said that, on behalf of his country, he wished to thank the Chairman of the DSB and the other members of the Selection Committee for their work in order to come up with their recommendations to fill the two positions in the Appellate Body. This enabled the DSB to take a decision at the present meeting on those recommendations. Mexico also wished to thank those delegations who had come forward with their candidates in this selection process, as well as those delegations who had met with the candidates and had then communicated their views to the Selection Committee. Mexico also wished to thank the Secretariat for its assistance throughout the process. His country was very proud that, after a very long process during which the DSB provisions and the other requirements agreed by Members had been respected, a Mexican candidate had now become a member of the Appellate Body. Mexico recognized that the selection process had been difficult due to the competition among high-quality candidates, and that any of the presented candidates would have been able to do excellent work. He said that Mexico was certain that Mr. Ramírez would do an excellent job and his delegation, shortly after this meeting, would call to congratulate him and to wish him success. Mexico also wished to thank and congratulate Mr. Van den Bossche on his appointment to the Appellate Body, and thanked the outgoing members of the Appellate Body, Mr. Sacerdoti and Mr. Baptista, for their excellent work they had done for the Organization and wished them success in their future projects. Finally, he said that Mexico had always expressed its systemic interest in the proper functioning of the WTO dispute settlement system, and that was why it would continue to ensure that new members of the Appellate Body were persons of recognized authority, with demonstrated technical expertise, in order to ensure that Appellate Body reports were of high quality. Mexico also wished to congratulate Argentina, Brazil, Costa Rica and the EC for submitting excellent candidates and hoped that any candidates to be submitted in future selection processes would also be as of high quality as those proposed in the course of the current process.

90. The representative of the European Communities said that the EC thanked all Members who had participated in the nomination process for allowing a choice amongst high-quality candidates. This was good for the Appellate Body as an institution and would strengthen the dispute settlement system. The EC also thanked the Selection Committee and its Chairman for all the work they had done. The EC wished the successful candidates good luck for their challenging tasks as members of the Appellate Body, and congratulated Mr. Unterhalter on his re-appointment to a second term.

91. The DSB took note of the statements.

6. Proposed nomination for the indicative list of governmental and non-governmental panelists (WT/DSB/W/406)

92. The Chairman drew attention to document WT/DSB/W/406, which contained an additional name proposed for inclusion on the indicative list of governmental and non-governmental panelists, in accordance with Article 8.4 of the DSU. He proposed that the DSB approve the name contained in document WT/DSB/W/406.

93. The DSB so agreed.