# WORLD TRADE ORGANIZATION

RESTRICTED

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**Dispute Settlement Body**
**21 December 1998**

**MINUTES OF MEETING**

Held in the Centre William Rappard
on 21 December 1998

*Chairman: Mr. Kamel Morjane (Tunisia)*

Addendum

## 1. European Communities – Regime for the importation, sale and distribution of bananas

(a) Recourse to Article 21.5 of the DSU

The Chairman said that he was reconvening the meeting of the DSB adjourned on 15 December in order to consider this item. Two requests were before the DSB for consideration: the EC's request contained in WT/DS27/40 and Ecuador's request contained in WT/DS27/41. He proposed to take up first the EC's request which had already been addressed at the 15 December meeting. He recalled that at that meeting no consensus had been reached on this request. If this were still the case, he would propose that at the end of the discussion on the EC's request, the DSB take note of the statements and decide to revert to the matter. He would then propose to take up Ecuador's request and proceed in the same way. If this was agreeable, he would then close the meeting.

The representative of the European Communities said that he wished to clarify certain misunderstandings concerning the EC's request. First, with regard to terms of reference, the EC was requesting standard terms of reference as stipulated in Article 7 of the DSU, namely to examine in the light of the relevant provisions the matter referred to the DSB by the EC in its request. The EC was not requesting special terms of reference and any delegation that had understood the request in that sense because of the word "mandate" had been misled. The use of the word "mandate" meant that this was a task of the panel. The matter referred to in the EC's request was the implementing measures taken by the EC, or in accordance with the language of Article 21.5 of the DSU, a disagreement as to the consistency of the implementing measures taken by the EC with the WTO provisions. Second, he underlined that the EC had had the opportunity to review Ecuador's request. His delegation welcomed and supported this request which responded to the EC's expectations. It had no reservations with regard to this request, which was a standard request under Article 21.5 for a review of the EC's implementing measures, and would agree to it. Ecuador's request had the same objective as the EC's request, namely to review the measures taken by the EC. It still had to be decided whether this matter would be considered as two separate requests or together, but the objectives of both requests were identical. Third, it was normal practice of the DSB to deal with a panel request when such a request was on the agenda, and the EC therefore considered that its panel request should be dealt with in the same manner. As stated by the Chairman, no consensus had been reached on the EC's request at the 15 December meeting, and if no consensus could be reached at the present meeting, it should be concluded that the EC's request had not been accepted following its first consideration by the DSB.

The representative of Honduras, speaking also on behalf of Ecuador, Guatemala, Mexico and the United States, said that the EC's request to reconvene the meeting did not clearly specify why the issues for consideration at the present meeting were different from those addressed at the 15 December meeting. However, the five countries welcomed the opportunity to hold another meeting. Their position on the EC's request remained unchanged. At the 15 December meeting, it had become clear that the EC did not seek the establishment of a panel to review the consistency of its measures with its WTO obligations. On the contrary, the EC had requested that the DSB establish a panel to review procedural issues. Without any legal grounds, the EC wished to establish a panel to create a new presumption which would favour the party whose regime was in violation of its WTO obligations. The five countries had pointed out that it would have been useful to discuss with the EC a review by a panel of its banana regime but the request did not constitute a request for such a review. The complainants as well as other Members had pointed out that the EC's request was not made pursuant to Article 21.5. This was a request for an interpretation of Article 21.5 and, as such, it had not been properly submitted to the DSB. Since July 1998, the EC had, on several occasions, blocked the efforts of the complainants aimed at reconvening the original panel. The five complainants had worked together with Panama to ensure that the panel which had originally examined the case could be reconvened to examine the WTO consistency of all of the EC's measures with regard to its banana regime. Therefore, the alleged request for the establishment of a panel under Article 21.5 submitted by the EC was without prejudice to the rights of the parties to this dispute to request the establishment of a panel under Article 21.5.

The representative of Ecuador said that in his statement on 15 December 1998, he had reiterated his country's legal position with regard to the illegalities of the EC's new banana import regime. He would not wish to reiterate these views at the present meeting. At the 15 December meeting, he had also pointed out the innumerable and unsuccessful efforts by Ecuador to find a solution to this matter and had stressed his country's firm conviction that this case should be settled in accordance with Article 21.5 in spite of the additional difficulties arising from the legal conflict between a small country and a powerful one which had failed to comply with its obligation to fully implement the Panel's and Appellate Body's recommendations within a reasonable period of time. Therefore, Ecuador and other complaining parties considered that the dispute settlement system had been undermined and that the situation could deteriorate as a result of the EC's failure to comply and due to its contradictory presumptions and procedural interpretations not always legally acceptable, made in an attempt to bend the existing legal order to fit the EC's own purposes. Thus, on the basis of these arguments and in accordance with the rights under the mentioned provisions, taking into account the systemic concerns, Ecuador had decided to submit its request for the reconvening of the original panel under Article 21.5 with the terms of reference contained therein. It had done this in order to protect its interests in this area as well as to provide a final opportunity to find a legal solution to this dispute. This demonstrated Ecuador's coherent and constructive attitude during the process in contrast to the EC's statement on 15 December 1998. He reiterated Ecuador's confidence in the principle of the application of the DSU as a suitable mechanism for settling disputes as well as in the work of the panel which had examined this matter. He thanked the Chairman for his efforts to facilitate the dialogue between the parties to this dispute, and Members for their proper assessment of the basic implications of this issue for the future of the dispute settlement system.

The representative of Panama associated his delegation with the statement by Honduras on behalf of the complaining parties, and supported the statement by Ecuador that the EC's request did not offer any further information to this issue. He thanked the EC for the clarification of its intentions concerning its request. However, the EC's written request was not in line with this clarification. If the EC's intention was to make a request along the lines stated at the present meeting, its written request should reflect this. The request in WT/DS27/40 was not in line with the EC's clarification. If the EC wished to do what it had outlined at the present meeting, this request should be corrected accordingly. The EC's request had not been correctly presented and Panama believed that this meeting could not be considered to be the first meeting at which this request was considered by the DSB. He supported the

statements by other delegations to the effect that it was inappropriate to state that this request was under Article 21.5 and considered that this request was not receivable at the present meeting.

The representative of the Philippines said that as part of a small delegation he was obliged to invoke procedural due process. Delegations in Geneva should have had the opportunity to consult capitals in order to be in a position to take a decision on this matter. This case had systemic implications and when the EC had first submitted its request, the Philippines had pointed out that this matter, following its discussion in the DSB, should be referred to the General Council for consideration in accordance with Article IX:2 of the WTO Agreement. At the present meeting, the EC had clarified its intentions. However, as stated by Panama, the clarification had not been provided in writing and his delegation had not been able to consult with the capital on the EC's amended request. He did not wish to comment on whether or not the oral amendment to this request would be sufficient. He considered that the EC should present its amended request in writing. Since the first request was not really a request for the establishment of a panel, the EC should submit its new request for the first time at a later date, to allow time for consultations with capitals.

With regard to Ecuador's request, his delegation recognized that Ecuador had the right to request a panel. However, at this stage, the position of his delegation was affected by the background of this case. Meetings had been postponed and there had been a debate on whether the request under Article 21.5 should be included on the agenda. The item had then been included on the agenda in order to enable the parties to try to settle, if not the substance of the complaint, at least the procedure. It was in that spirit that the meeting had been suspended. Therefore, his delegation, which would have been inclined to accept Ecuador's request, was under the same constraints. This request had been circulated only on 18 December and had been sent to the capital immediately. However, due to the holiday period in the Philippines, no quick response was expected. Had the request for a panel been presented and agreed in the summer, this would have helped to avoid negative systemic implications. However, at this stage it was not appropriate to deal in a precipitate manner on one procedural issue without seeking a possible agreement among the parties. He expressed concern that this would deteriorate the situation. The request for the establishment of a panel under Article 21.5 was not time-bound and could be submitted to the DSB at any time. Therefore, if the procedural implications of this case were not yet fully understood, this would lead to more problems in 1999. He proposed that the DSB should not establish a panel at the present meeting and should suspend consideration of this matter to enable the parties to continue their negotiations in order to find a solution. If this was not possible, this problem as a package would have to be considered by the DSB.

The representative of the European Communities said that there was still some confusion on this matter. There was a difference between the EC's request contained in WT/DS27/40 and terms of reference. Standard terms of reference were specified in Article 7 of the DSU. At the present meeting he had clarified that the EC would accept standard terms of reference as set out in Article 7 and had provided some explanation of the matter to be reviewed. He reiterated that the panel should review the EC's implementing measures, which was also the objective of Ecuador's request. Therefore, there was no element in the EC's request that had to be corrected. He had clarified the terms of reference for the panel. He expected that no consensus on this request would be reached at the present meeting. This was the first time that this request was being considered by the DSB and therefore any delegation could oppose it.

With regard to the comment by the Philippines concerning Article IX:2 of the WTO Agreement, it was not his delegation's intention to propose any amendment or any new interpretation of Article 21.5. He was aware that some Members had interpreted the EC's request in that way, but this was not what the EC had proposed. The EC was entitled to indicate what it had proposed and what it had not proposed. There was still a good deal of confusion, but the EC, like Ecuador, sought a solution to this problem. Regarding the disagreement about the consistency of the EC's implementing measures with the DSU procedures, he had clarified this matter and urged delegations to judge the

EC's intentions by what had been stated at the present meeting, namely, that the EC sought standard terms of reference to allow this process to move forward.

The representative of the Philippines said that the wording of the EC's request called for an interpretation of Article 21.5. The EC's explanation provided some clarification, but he could not inform his capital at this stage that the EC sought a panel under Article 21.5. This was not merely a procedural issue, and there was a need to ensure due consideration of the DSU procedures and to deal with the request for the establishment of a panel adequately. This meant that the EC should submit its request in writing.

The representative of Mexico said that his delegation supported the statement by Honduras on behalf of the complaining parties. Whatever the outcome of the EC's initiative at the present meeting, his delegation reserved its rights in this regard, including the right to request a panel under Article 21.5, if appropriate.

The representative of Ecuador said that his Government's position was transparent on this matter. The EC in submitting its request had stated that no country had shown any interest in questioning the EC's regime. This was not correct, as Ecuador had repeatedly criticized the illegalities of this regime and had reiterated on many occasions that it had an interest in this matter. In light of this, his country had decided to submit its request in WT/DS27/41 which contained terms of reference for the panel. He hoped that the DSB would soon decide thereon.

The representative of Panama sought clarification as to how the DSB would proceed at the present meeting. It was his understanding that the two requests would be considered separately.

The Chairman noted that Ecuador had made a statement in response to the statement by the EC. He reiterated that the DSB had two separate requests for consideration at the present meeting. At the end of the discussion two separate decisions would be taken.

The representative of Panama said that it was his understanding that after consideration of Ecuador's request, the DSB would take up as a separate issue the EC's request, in order to take a decision on that request, and then, as a separate matter, the DSB would take up Ecuador's request and take a decision on that request.

The Chairman confirmed that two requests would be considered separately. However, he did not wish to stop the discussion on the EC's request since many issues involved in the two requests were similar. If delegations wished to consider these requests separately with a view to arriving at different conclusions regarding the EC's request, he would propose that Ecuador's request be considered first. With regard to the EC's request the DSB could take note of the statements, since there was no consensus to establish a panel, and agree to revert to this matter. He had hoped to have a joint position on this matter but it seemed that this might not be the case. He proposed that the DSB take note of the statements concerning the EC's request.

The representative of Panama said that it was his understanding that there were two issues in the EC's request on which a decision was required. One was that the DSB would take note of the statements and agree to revert to this matter. The other was to decide whether or not this meeting constituted the first meeting at which the EC's request pursuant to Article 21.5 had been considered: i.e. whether this request had been duly submitted before the DSB at the present meeting. He reserved the right to maintain his delegation's position that this meeting should not be the first meeting at which the EC's request under Article 21.5 had been considered.

The Chairman said that the DSB would take note of Panama's position and its reservations. However, the DSU did not set out any conditions as to the acceptability of a panel request. Some

delegations had made comments with regard to the conformity of the EC's statement with the terms of its written request. The terms of reference could be discussed at the time when a panel was established or before the panel. If no consensus was reached on the establishment of a panel at the present meeting, the DSB would take note of the statements and revert to this matter at a future meeting. It was his view that the present meeting was the first consideration of the EC's request.

The representative of Mexico said that the right to submit a request for the establishment of a panel was an unrestricted right. However, following the Appellate Body's findings in one case, Mexico recognized the importance of written requests and its implications for final recommendations. Therefore, while a Member could request the establishment of a panel, such a request would limit a case before a panel and the Appellate Body. In some cases this could have serious implications which one could not envisage in the early stages of discussion. Therefore, the clarifications requested by some delegations were important.

The Chairman confirmed that the DSB's decision to submit a case to a panel was without prejudice to any argument to be made by any party before the panel on the appropriateness of the EC's request or Ecuador's request. Any argument to be made by the parties regarding the appropriateness of the requests would be considered by the panel.

The representative of India noted the statements by the Philippines and Panama concerning some procedural issues and due process. He recognized that this case was important for many reasons and involved many vital interests. He only wished to make comments on procedural issues, since the outcome of this case might lead to a precedent. The two requests for a panel had been submitted in the course of the meeting which had been adjourned. As indicated by the Chairman, there was a need to be pragmatic since the DSB could not meet on 25 December. He recalled the request for the establishment of a panel made by Peru in 1995 which had been challenged.[1] This panel request had been made and placed on the agenda before the expiry of the 60-day period for consultations on the basis that there was no hope for a settlement, but the DSB meeting had actually been held after the expiry of that period. At that time, the EC had made a statement to the effect that this organization was 90 per cent about procedures and 10 per cent about substance. The EC had stated that the item could not have been considered because the request for the panel had been inscribed on the agenda before the mandated period of 60 days had elapsed. One had to be careful about procedures in the DSB. In the Periodicals case[2], when Canada had had to report on progress in implementation during the vacation period, a decision had been taken by the DSB that it was not necessary to convene a meeting and that Canada could submit its report in writing. Therefore, if the DSB waived the 10-day requirement and, in view of the importance or special circumstances, decided that this panel could be established, it was competent to do this. Such a decision could be taken at any time. However, the DSU procedures had to be taken seriously and should not be waived in a partial manner as this would have implications for future cases. His delegation would accept any collective decision to be taken by the DSB.

The representative of Jamaica supported the statement by India. He underlined the importance of the record of the DSB meetings and requested that the minutes of these meetings be prepared and circulated as soon as possible.

The representative of the European Communities supported the statements by India and Jamaica that the DSU procedures had to be fully and properly respected. Since its inception, the DSB had established at least 50 panels and, with some exceptions, decisions on panel requests had not been taken immediately at a first meeting at which such panel requests were on the agenda. Therefore, the Chairman's conclusion was correct and the DSB's duty was to deal with such requests

[1] WT/DSB/M/7.
[2] WT/DS31.

as proposed by the Chairman. The question of whether this request was properly on the agenda had been resolved at the 15 December meeting. To this effect, a point of order had been raised on which the Chairman had ruled. Therefore, he considered that this point had been settled and hoped that other delegations would not reopen it. This might also apply to Ecuador's request, but that was another question. While some points raised at the present meeting were important, he supported the Chairman's conclusions.

The representative of the Philippines supported the statement by India. It was his delegation's understanding that at the present meeting the DSB was considering the EC's request as contained in WT/DS27/40. The other request made at this meeting should not be dealt with by the DSB.

The Chairman reiterated that the DSB would take note of the statements and would revert to this matter. He noted the points made by several delegations. However, it was important to bear in mind the special circumstances and demonstrate flexibility as well as understanding as had been done in the past. He underlined that the rights of any party would not be affected, and that the DSB would only take note of the request and would agree to revert to the matter.

The representative of Mexico stated that whatever the course of action with regard to Ecuador's request at the present meeting, his delegation reserved its rights in this regard, including its right to request establishment of a panel pursuant to Article 21.5, if appropriate.

The Chairman proposed to turn to Ecuador's request and asked whether there was any objection with regard to this request.

The representative of the Philippines said that his delegation had not been able to consult the capital on this request and proposed that Ecuador agree to postpone consideration of its request until the next DSB meeting.

The representative of Jamaica recalled that at the 15 December DSB meeting, his delegation had indicated its willingness to join in a consensus to facilitate a resolution of this dispute. This consensus would involve reaching agreement on both the correct procedure and the correct interpretation of Article 21.5. Different interpretations of both procedures and the application of Article 21.5 had been presented at that meeting and a disagreement with regard to these points still existed. Jamaica would have wished to have all the necessary elements in order to be able to join a consensus. It would have wished to have those elements at the present meeting, as well as a pragmatic solution to this matter. However, any pragmatic solution had to be consistent both with the procedures of the WTO and the DSU. It was important that the request for the establishment of a panel had to be consistent with Articles 3, 4 and 7 of the DSU. Ecuador's request had been received by Jamaica on 21 December. Ecuador was requesting reconvening of the original panel in accordance with Article 21.5. In addition Ecuador was seeking to invoke Article 19 of the DSU to ensure that the panel suggest "how the European Communities might implement its recommendations". He noted that this Article also provided in paragraph 2 that neither a panel nor the Appellate Body could diminish or add to the rights and obligations covered in WTO Agreements. Ecuador's request should be read in conjunction with its request addressed to the panel "that it called for the immediate amendment to the Community regulations without the right to another reasonable period of time" (WT/DS27/41). In light of the detailed terms of reference proposed by Ecuador, Jamaica reserved its position on this matter since it had not had time to consult with its capital as well as with other interested parties, including those under the Lomé Convention. For these reasons, Jamaica while wishing for a solution at the present meeting called on the DSB members to ensure that the procedures and rules of the DSB were not questioned, and that the interests of third parties and all Members were fully protected.

The representative of Canada said that this was the first time that recourse to Article 21.5 was being considered by the DSB. A panel request under Article 21.5 was not the same as a panel request under Article 6 of the DSU. Article 21.5 referred to recourse to "these dispute settlement procedures", including wherever possible resort to the original panel. There was a certain amount of procedural ambiguity on how to convene a panel or to determine whether a panel should be convened. It was not clear whether the same procedures should be followed as those under Article 6. Since this was a new area it was necessary to exercise caution.

The representative of the European Communities said that some delegations had stated that they had not had time to consult with their capitals on Ecuador's request. These delegations were entitled to refuse this request at the present meeting, and the DSB would revert to it at its next meeting. The EC was the party the most concerned about this request, and although it had not had much time to examine this request, it did not have any problems. The EC respected third-party rights in particular those that would be affected by the results of this review. However, third parties would be able to present their views before the panel if and when established. It was not correct to indicate that delegations had not had time to reflect on this request since this matter had been discussed since July 1998. The United States had made that clear at the 15 December meeting as well as the Philippines by stating that this matter should have been considered in August 1998. If delegations required more time, the DSB should revert to this matter at its next meeting. The EC as the main party concerned in this review, did not consider it necessary to ask for more time. Ecuador's request had the same basic objective as the EC's request, namely to review the EC's implementing measures under the correct DSU procedures. It was necessary to reflect on the next procedural step in this dispute. The DSB could decide at the present meeting or at the next meeting to refer this matter for examination under Article 21.5, which was an appropriate procedure in the case of this disagreement, or it would have to deal with further difficulties in January. He asked delegations to reflect on this before they decided that more time would be necessary to examine this matter which had been under consideration for several months.

The representative of Ecuador commented on the statement by Jamaica to the effect that no sufficient time had been allowed to review Ecuador's request. Under Article 21.5 it was not required, given the general framework of 90 days, to observe a time-frame for circulation of a request as indicated by Jamaica. This matter had been under consideration for the past several months and during the DSU review not only the question of recourse to Article 21.5 had been discussed, but also its substance. Members had different interpretations with regard to many procedural elements of Article 21.5 and this might be one of them. His delegation did not support the interpretation by Jamaica. The EC had stated that its request had the same objectives as Ecuador's request. His delegation considered that Ecuador's request did not have the same aim as the EC's request. His delegation supported the statement by Honduras concerning the scope and interpretation of the EC's request. Ecuador was not prepared to accept the appeal made by the Philippines.

The representative of Jamaica said that as indicated by Ecuador, the intent of Ecuador's request was different from the EC's request, and since any panel request made in accordance with the criteria and the DSU procedures would lead to the establishment of a panel, two panels would be established on the same subject at the same time. He recalled that at the 25 November DSB meeting, the EC had reported that the implementation of its measures had been completed. At the same meeting the EC had indicated that it had requested consultations with the United States on the Section 301 of the US Trade Act.[3]

Jamaica, which recognized the need for a practical solution to the issue under consideration, had participated in consultations on this matter. As a result of these consultations, an additional item

[3] WT/DS152/1.

concerning Article 21.5 recourse had been included on the agenda of the November meeting. However, the parties had decided not to have a discussion of that item at that meeting. Further confusion had followed. He recalled that the Chairman had been asked by him to hold open-ended consultations in order to provide clarification, since all Members had an equal interest in any interpretation of the DSU provisions. Several other delegations had also expressed their interest in participating in such consultations. He underlined that matters in the WTO needed to be discussed in a transparent manner and that all Members should be able to participate in the decision-making process. Moreover, the final paragraph of Ecuador's request referring to Article 19 of the DSU for the panel to suggest how the EC might implement its recommendations did not constitute standard terms of reference.

A number of issues in the DSU were under review. The Appellate Body could not review matters of fact. In the past, the Appellate Body had dealt with a number of panel findings and had stated that in some cases where the Panel was silent, it could not substitute its own views or that it would not deal with a matter on grounds of "judicial economy". Progressively, the Appellate Body had changed its position and had taken the position that where a panel had not determined the matter, it was up to the Appellate Body to do so. He said that in this context, Members were faced with an important issue which had systemic implications. Jamaica did not intend to create any obstacle with regard to an early resolution of this matter provided that a pragmatic solution was consistent with consensus-building in the WTO and that this would not create a precedent that would be detrimental to the system. No quick decision should be taken.

The representative of Japan said that like Canada he did not consider that in this case the procedures under Article 6 had to be observed for a panel to be established under Article 21.5. This matter was currently under the DSU review. Therefore, his delegation did not wish to be rigid with regard to the procedure. Japan looked forward to an early resolution of this matter in the interest of all Members. Although Japan would have preferred, for the sake of transparency, that the measures at issue and legal arguments be submitted in writing, since the EC's written request was different from its statement at the present meeting, it would be flexible for the sake of the dispute settlement system. He asked when Ecuador's request had been included on the agenda.

The Chairman said that the item on the agenda was recourse to Article 21.5 of the DSU and that at the 15 December meeting the DSB had begun its consideration of the EC's request under this agenda item. He considered that both requests pertained to the same agenda item.

The representative of the Philippines said that if a request under Article 21.5 had been made in August or September 1998, the panel would have completed its work by the time of expiration of the reasonable period of time, which would have been beneficial to the system. The establishment of a panel at this stage ,without an agreement among the parties, might not be beneficial from the systemic point of view. The invocation of rights under Article 21.5 with no agreement between the parties would lead to a difficult exercise in light of the time-frame contained in Article 22. Therefore, a compromise solution among the parties would have been preferred.

The Chairman said that efforts had been made to bring this matter under Article 21.5. This Article provided for a situation where a matter should be submitted to a panel in certain circumstances. Although the text of this Article did not specify that it was for the DSB to take a decision, it was appropriate that the DSB take such a decision when such a request was made. Article 2.4 of the DSU stipulated that in cases where the DSU rules and procedures required the DSB to take a decision, this should be done by consensus. There was only one exception, applicable in this case, which allowed for a panel to be established at the second meeting at which the request was on the agenda or when there was no consensus for the establishment of the panel at the first meeting. Without prejudice to the positions expressed by delegations, he asked whether there was a consensus to establish the panel requested by Ecuador. If not, the DSB would revert to this matter.

The representative of Romania said that one of the main functions of the WTO was to manage disputes in order to avoid the use of unilateral measures. At present all stages in dispute settlement had been placed under the multilateral framework. This case concerned a dispute regarding an interpretation of the conformity of the EC's implementing measures with the recommendations of the panel and the Appellate Body. This matter had been discussed in the DSB for some time. At the present meeting the DSB had before it two requests for recourse to Article 21.5 with regard to the same matter. Romania considered that the two requests constituted a positive step in an effort to bring the two parties to an objective interpretation of the disputed points. The acceptance of the requests would contribute to the strengthening of the multilateral trading system. His delegation had no difficulty in accepting these requests at the present meeting.

The representative of Canada reiterated that there was no procedural clarity as to how the DSB should proceed with regard to the requests under Article 21.5. He asked delegations to consider whether Rule 28 of the Rules of Procedure was relevant in this situation, which read as follows: "Proposals and amendments to proposals shall normally be introduced in writing and circulated to all representatives not later than twelve hours before the commencement of the meeting at which they are to be discussed." These rules of procedure for the General Council also applied when the General Council was meeting as the DSB.

The representative of Jamaica reiterated that his delegation supported a pragmatic solution which would enable the parties to resolve this matter. Ecuador's position at the present meeting was not the same as the position of other complainants in this dispute. Ecuador was a developing country and Article 21.7 and 8 contained references to developing countries. He was concerned that if the two requests were accepted at the present meeting, as suggested by Romania, additional requests by other complaining parties could also be put forward. This would not be good for the system. This matter involved several complainants who for the sake of consistency should have acted together. At the moment, one of the complainants was proposing another course of action under Article 22. He recalled that one of the reasons that Article 21.5 had not been discussed at the 25 November meeting was that one party had wished no parallel action under Article 22 if the proceedings under Article 21.5 were to be followed. He questioned the likely outcome of the DSB meeting convened on short notice, since some small delegations were left with no representations. He was concerned that without a request circulated in time, a decision would be taken pursuant to footnote 1 to Article 2.4 of the DSU by Members "present at the meeting". He questioned the manner in which the procedure would be clarified or the DSU provisions interpreted. Members were entitled to present their views and to act in a way which would serve not only their national interests but also the interest of the WTO. He was concerned about the way in which this matter was being pursued and that the DSU provisions were not observed. The first objective of the dispute settlement mechanism was to secure the withdrawal of the disputed measures. The EC had withdrawn the measures and its new measures would become effective on 1 January 1999. However, it had been criticized even before those measures had come into effect and the last resort -- a suspension of concessions -- was being initiated while the issue of compensation had not even been considered. This case involved many complex issues which should be carefully analyzed. He was concerned that those who would block a consensus would be considered as being not realistic or would be viewed in a negative light. It was important to try to resolve this dispute without putting the DSU procedures and the operation of the DSB in jeopardy.

The representative of India said that he recognized the interests and the complexity of the situation. The procedures of Article 21.5 of the DSU were not clear. His delegation did not have a problem if the DSB decided to place a panel request under Article 21.5 on the agenda for information and then accepted it. However, it was concerned that if in this case the Chairman made a ruling, there would be no guarantee that the same ruling would apply in future. This would depend on a particular delegation with a particular purpose. This matter could be dealt with under normal procedures or fast-

track procedures. However, any decision should be taken collectively. He recognized that there was a problem in trying to reconcile certain provisions of Article 21 and Article 22, and that some delegations considered that if an Article 21.5 panel request was accepted it would imply that they would lose their rights under Article 22. It was necessary to clarify the relationship between Articles 21 and 22. To this effect the Secretariat could prepare a legal note. Any interpretation should be applied equally to all Members. India would accept any decision provided it applied to all and was not restricted to the case at hand.

The representative of Norway proposed holding informal consultations on the legal implications of the matter at issue before the next meeting of the DSB. This would enable the parties to avoid similar debates as well as political and legal misunderstandings.

The representative of Mexico recalled that the complaining parties in this case had proceeded jointly and separately, as indicated in the relevant documents pertaining to this matter, and that four panel reports had been circulated. In this situation each complaining party preserved its procedural and substantive rights as provided for under the DSU provisions with regard to multiple complainants. His delegation believed that it was appropriate to make this reservation in order to safeguard its interests.

The Chairman proposed that with regard to Ecuador's request, the DSB take note of the statements and agree to revert to this matter and that consultations would be held before the next meeting with a view to finding an agreement on pending issues. He then proposed to close the meeting.

The representative of the European Communities supported the Chairman's conclusions. He informed the DSB that the EC was requesting a meeting of the DSB to be held within the next 15 days, namely in the week of 4 January 1999. The EC did not object to holding informal consultations before that date and would make its request for a special DSB meeting in writing.

The Chairman noted the EC's request for a special meeting and said that the date for such a meeting would have to be discussed.

The representative of Ecuador sought clarification with regard to informal consultations. It was not clear what would be the scope of these consultations or the objective, at least with regard to Ecuador's request. The parties concerned, the EC and Ecuador had not objected to the reconvening of the original panel requested by Ecuador. Like the EC, Ecuador would also request a special meeting to be held in January.

The Chairman said that it would be useful to hold consultations to discuss the procedural points on which a decision would have to be taken at the next meeting of the DSB.

The representative of Japan said that it was his delegation's understanding that a special meeting of the DSB requested by the EC and Ecuador would consider only one item and that no additional items would be taken up.

The Chairman confirmed Japan's understanding and said that he would ensure that this special meeting was held when a maximum number of delegations could be present.

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