WORLD TRADE ORGANIZATION

RESTRICTED

WT/DSB/M/212
20 June 2006

(06-2999)

Dispute Settlement Body
17 May 2006

MINUTES OF MEETING

Held in the Centre William Rappard
on 17 May 2006

Chairman: Mr. Muhamad Noor Yacob (Malaysia)

Prior to the adoption of the agenda, the item concerning the Panel Report in the case on: "United States – Final Dumping Determination on Softwood Lumber from Canada: Recourse to Article 21.5 of the DSU by Canada" was removed from the proposed agenda following Canada's decision to appeal the Report.

Subjects discussed: Page

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

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

(b) United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States. 4

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

(d) European Communities – Export subsidies on sugar: Status report by the European Communities. 5

2. Implementation by the European Communities of the recommendations and rulings of the DSB in relation to "European Communities – Regime for the Importation, Sale and Distribution of Bananas" and related subsequent WTO proceedings 9

(a) Statements by Honduras, Nicaragua and Panama 9

3. United States – Continued Dumping and Subsidy Offset Act of 2000: Implementation of the recommendations adopted by the DSB 11

(a) Statements by Canada, the European Communities and Japan 11

4. United States – Countervailing measures concerning certain products from the European Communities 14

(a) Statement by the European Communities 14

5. United States – Measures affecting trade in large civil aircraft 15

(a) Initiation of the procedure for developing information concerning serious prejudice under Annex V of the SCM Agreement and designation of Mr. Mateo Diego-Fernández as the DSB representative referred to in paragraph 4 of that Annex for the development of evidence to be examined by the Panel in DS317 established on 17 February 2006 in the form of written responses by the United States to written questions from the DSB representative to the United States pursuant to Annex V, paragraph 1 and Annex V, paragraph 2 of the SCM Agreement. 15

6. Selection process for appointment of an Appellate Body member 17

(a) Statement by the Chairman 17

7. United States – Tax treatment for "Foreign Sales Corporations" 18

(a) Statement by the United States 18

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.42)

(b) United States – Anti-dumping measures on certain hot-rolled steel products from Japan: Status report by the United States (WT/DS184/15/Add.42)

(c) United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/24/Add.17)

(d) European Communities – Export subsidies on sugar: Status report by the European Communities (WT/DS265/35 – WT/DS266/35 – WT/DS283/16)

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

(a) United States – Section 211 Omnibus Appropriations Act of 1998: Status report by the United States (WT/DS176/11/Add.42)

2. The Chairman drew attention to document WT/DS176/11/Add.42, 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 4 May 2006, in accordance with Article 21.6 of the DSU. As noted in the report, several legislative proposals relating to Section 211 that would implement the DSB's recommendations and rulings in this dispute had been introduced in the current Congress, both in the US Senate and the US House of Representatives. The US administration was working with the US Congress to implement the DSB's recommendations and rulings.

4. The representative of the European Communities said that the negotiations and the conclusion of the TRIPS Agreement were major steps in the promotion of a rule-based multilateral trading system and a key element in further development of international trade. The absence of an effective and non-discriminatory protection of intellectual property rights worldwide constituted a brake on the development of trade in goods. The high priority placed by the United States on the fight against counterfeiting and pirating was a perfect illustration of how respect for intellectual property rights and the development of trade went hand in hand. However, the passivity of the United States in the Section 211 dispute as well as in the Section 110 dispute ran against the objective of enhancing the protection of intellectual property rights. Repealing bills were pending in the US Congress. Their adoption would remove a discriminatory legislation that was driven by specific interest and would bring a satisfactory solution to this dispute. As had been seen recently, the US Congress was perfectly able to work towards compliance, when it so wished.

5. The representative of Cuba said that no progress had been made in this dispute since 2 February 2002 when the DSB had adopted the recommendations and rulings. The situation remained the same; i.e. the United States continued to fail to comply with the DSB's recommendations. At the previous DSB meeting, one delegation had urged Cuba not to describe the submission of reports by the United States as ritual, or to describe the understanding announced by the United States and the EC on 20 July 2005 as a manoeuvre. That delegation had also reminded Cuba that Article 3.7 of the DSU gave preference to a solution that was mutually acceptable to the parties and was consistent with the covered agreements. However, no other words adequately described the status reports that the United States was submitting to the DSB, including the one submitted at the present meeting, which contained only one change, namely, a new date of circulation. This demonstrated the lack of political will on the part of the United States to implement the DSB's recommendations. Cuba was not dismissing the provisions of Article 3.7 of the DSU, but objected to reinterpretation of those provisions. In Cuba's view, the understanding between the parties was not aimed at finding a satisfactory solution, but at introducing delaying tactics into the implementation process. It was for that reason that no reference was made to a possible date for such a solution. In drawing attention to the provisions of Article 3.7 of the DSU, Cuba would also wish to point out that this Article provided that the first objective of the dispute settlement mechanism must be to secure the withdrawal of measures inconsistent with the provisions of the covered agreements. Similarly, in recalling the applicable rules one should bear in mind the provisions of Article 21.1 of the DSU, to the effect that: "Prompt compliance with recommendations or rulings of the DSB is essential in order to ensure effective resolution of disputes to the benefit of all Members". The aim pursued by the United States was, and continued to be, to obtain a promise from the EC not to suspend concessions even in the face of continued non-compliance with the DSB's recommendations. Clearly, the principal objective was to find a way of calmly awaiting the expiry of the time-frame for the renewal of the trademark by its current and legitimate owner, thereby paving the way for the fraudulent appropriation of that trademark by Bacardi & Co. The considerable delay in complying with the recommendations arising from this and other disputes had been systematically denounced not only by Cuba, but by other Members as well, given the steadily worsening situation regarding compliance with the WTO Agreements and with the dispute settlement mechanism. This was the result of the constant violation of, and disregard for, established rules, and it affected the maintenance of an adequate balance between the rights and obligations of Members under the covered agreements. Cuba, once again, called on the United States to comply immediately, fully and unconditionally with the recommendations and resolutions pertaining to this dispute. There was only one way to do this, namely, by repealing the arbitrary and discriminatory Section 211.

6. The representative of Brazil said that his country wished to thank the United States for its status report and the statement made at the present meeting. Based on systemic considerations, however, Brazil wished to manifest its concerns with the protracted implementation process in this dispute. Article 21.3(c) of the DSU provided that the period for implementation of recommendations should not exceed 15 months from the date of adoption of a panel or Appellate Body report by the

DSB. In the present case, the adoption of the Panel and the Appellate Body Reports had taken place more than 52 months ago. The United States had, therefore, granted itself a grace period of more than three years on top of the Article 21 "benchmark" for the outer limit of an implementation period. Furthermore, based on what had just been stated by the United States, there was no clear signal that the issue would be resolved in the near future. This could not be reconciled with the principle of prompt settlement of disputes, which was one of the core objectives of the WTO dispute settlement system. Brazil strongly urged the United States to take the necessary and urgent steps to implement the relevant DSB's rulings and recommendations.

7. The representative of Argentina said that, like previous speakers, his country wished to express its systemic concern with regard to the delays in implementing the DSB's recommendations and rulings. Prompt compliance with the DSB's recommendations and rulings was a critical element of the WTO dispute settlement system, and there was no doubt that long delays in implementation adversely affected the credibility of the system to the detriment of all Members. Argentina, therefore, urged the United States to redouble its efforts to ensure immediate compliance with the DSB's recommendations and rulings in this dispute.

8. The representative of India said that prompt compliance with rulings and recommendations of the DSB was essential for effective resolution of disputes to the benefit of all Members, and was indeed the starting point of the surveillance functions of the DSB. While a solution mutually acceptable to the parties was preferred, the parties were required to notify such solutions, and Members could raise points relating thereto. Even four years after adoption of the recommendations and rulings of the DSB in this dispute, it was not clear whether a positive solution was at all being pursued actively by the parties in this dispute. This was a systemic matter for the entire WTO Membership, and the continued concern of Members on this item needed clearer responses than the DSB had received in the past few months. The DSB needed to reflect upon these systemic concerns as a WTO Body, and India called upon the parties to shed some light on the way they intended to fulfill the objective of prompt settlement and the actions they proposed to achieve that objective.

9. 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.42)

10. The Chairman drew attention to document WT/DS184/15/Add.42, 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.

11. The representative of the United States said that his country had provided a status report in this dispute on 4 May 2006, in accordance with Article 21.6 of the DSU. As of 23 November 2002, the US authorities had addressed the DSB's recommendations and rulings with respect to the calculation of anti-dumping margins in the hot-rolled steel anti-dumping duty investigation at issue in this dispute. Details were provided in document WT/DS184/15/Add.3. The US administration continued to support legislative amendments that would implement the DSB's recommendations and rulings with respect to the US anti-dumping duty statute, and was working with the US Congress to pass such amendments.

12. The representative of Japan said that his country noted the statement by the United States along with its latest status report stating that the US administration would continue to work with the US Congress to enact the legislation H.R. 2473. However, it was regrettable that almost one year had already passed since the legislation had been introduced in the US Congress. The delay in implementation would undermine the credibility of the WTO dispute settlement system. Japan

wished to renew its strong hope that the United States would make further efforts towards full and prompt implementation of the DSB's recommendations and rulings.

13. 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.17)

14. The Chairman drew attention to document WT/DS160/24/Add.17, 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.

15. The representative of the United States said that his country had provided a status report in this dispute on 4 May 2006, in accordance with Article 21.6 of the DSU. As noted in the report, the US administration was working closely with the US Congress, and conferring with the EC in order to reach a mutually satisfactory resolution of this matter.

16. The representative of the European Communities said that, once more, the EC wished to underline the lack of progress on the part of the United States in solving this long-standing dispute. Almost five years after the adoption of the Panel Report in this dispute, the United States had failed to take any steps to solve this dispute, and maintained a legislation that violated intellectual property rights and hurt the interests of music creators. For several years now, the United States continued to state that the US administration was actively discussing with the US Congress possible solutions to this dispute, but the DSB was not aware of any concrete result in this regard. In view of this worrying situation, the EC urged the United States to take the necessary action to end a situation of non-compliance that had already lasted too long. Finally, the EC wished to recall that it had reserved its right to reactivate at any point in time the arbitration on retaliation.

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

(d) European Communities – Export subsidies on sugar: Status report by the European Communities (WT/DS265/35 – WT/DS266/35 – WT/DS283/16)

18. The Chairman drew attention to document WT/DS265/35 – WT/DS266/35 – WT/DS283/16, which contained the status report by the EC on progress in the implementation of the DSB's recommendations in the case concerning export subsidies on sugar.

19. The representative of the European Communities said that on 19 May 2005, the DSB had adopted recommendations and rulings in the "EC – Sugar" dispute brought by Australia, Brazil and Thailand by adopting the Appellate Body and the Panel Reports. On 28 October 2005, the Arbitrator acting under Article 21.3(c) of the DSU had determined that the reasonable period of time for the EC to implement the recommendations and rulings of the DSB would be 12 months and three days, thus expiring on 22 May 2006. On 20 February 2006, the Council had adopted Regulation (EC) No 318/2006 on the common organization of the markets in the sugar sector. It had been published in the Official Journal of the European Union on 28 February 2006. As interested Members were aware, the adoption of this Act had been preceded by intense debate, both internally and internationally on how to dramatically reform the EU sugar sector, something which had not been done in 40 years. The end result, Regulation No 318/2006, set out the framework for a comprehensive and very painful reform of the EU sugar sector. This reform addressed the root causes for the exportation in excess of scheduled limits of what the Appellate Body considered to be "subsidised" sugar. One of its main consequences would be to turn the EC from a net exporter into a

net importer of sugar. This reform would not only be painful for EC farmers, but also for ACP countries.

20. Regulation No 318/2006 was not the only piece of legislation that would implement the DSB's recommendations and rulings by 22 May 2006. It contained also the necessary powers for the European Commission to adopt the implementing measures required to fully achieve this. These implementing measures were currently being adopted. A first such measure was the Commission Regulation No 493/2006 of 27 March 2006. Following the elimination of the obligation to export C sugar, this Regulation allowed this sugar to be carried forward to the 2006/2007 marketing year and be considered to be non-quota sugar under the terms of Regulation 318/2006. It also provided for the reduction of eligible production under the quota in respect of the 2006/2007 marketing year so as not to create new stocks of sugar.

21. Other implementing measures were being adopted in the month of May. Through the enactment of these implementing measures, the EC intended to comply with the DSB's rulings and recommendations in this dispute within the reasonable period of time specified for that purpose. The EC would, of course, report on these measures, once adopted, in its next status report.

22. The representative of Australia said that her country wished to thank the EC for its status report and for the statement it had made at the present meeting. However, Australia had serious concerns regarding the EC's implementation in this dispute. Australia wished to state clearly that the EC had not implemented the recommendations and rulings of the DSB and would not have done so by the expiry of the reasonable period of time on 22 May 2006. First, she wished to address the EC's decisions taken during the course of the implementation period and the implications of those decisions for the EC's compliance. In 2005/2006, subsidized sugar exports from the EC were forecast to reach record levels, of between 7-8 million tonnes, compared to average annual exports of around 5.5 million tonnes. The EC's WTO scheduled commitment limit was 1.273 million tonnes. The quantities exported in excess of the scheduled commitment limits were roughly equivalent to the entirety of Australia's annual sugar production. The question was how would the international sugar market react if Australian sugar production were to cease in any one year?

23. These record sugar export levels were directly attributable to decisions taken by the EC, in consultation with member States, with the intent and effect of increasing subsidized exports. Those decisions had been taken in the course of the reasonable period of time for implementing the DSB's recommendations and rulings. During the course of the implementation period, the Commission, in consultations with its member States, had also taken decisions approving the export of subsidized quantities of quota sugar, at levels significantly in excess of its WTO commitment limits. Further, the Commission and members States had approved the grant of export refunds at levels significantly in excess of the EC's WTO scheduled budgetary outlay limits of €499.1 million.

24. Second, in the circumstances of this dispute the actions taken by the EC during the implementation period did not create a presumption of WTO-consistency. For the 2005/2006 period, the facts demonstrated that the EC would continue to be acting inconsistently with its WTO obligations under Articles 3.3 and 8 of the Agreement on Agriculture after 22 May 2006. On the basis of the Sugar Management Committee records, it was evident that – in respect of quota sugar alone – the EC had already exceeded its WTO scheduled quantity and budgetary outlay commitment limits for the 2005/2006 marketing year. Australia asked that the DSB take note of that fact. At the 12 May meeting of the WTO Committee on Agriculture, the EC's representative had acknowledged the relevance of 2005/2006 statistics on export quantities and export refunds to the EC's WTO implementation and had undertaken to provide certain requested information at the present meeting. Australia looked forward to that advice which, she noted, had not been provided by the EC in its statement at the present meeting.

25. Third, the EC status report constituted a statement of intent. It did not claim to have implemented the DSB's recommendations and rulings. Australia noted that the statement by the EC at the present meeting was also one of intent, despite the fact that only five days remained before the expiry of the reasonable period of time. Whatever actions taken thus far and which might be taken by 22 May, they must be measures in effect during the implementation period. They must also be measures for the purposes of compliance with WTO obligations. While Australia welcomed actions to undertake reforms to the EC's sugar regime, there was no need to remind the EC that adoption of a legal framework would be insufficient to constitute compliance with the DSB's recommendations and rulings. The measures must be given effect by the date of expiry of the reasonable period of time.

26. There was also no need to remind the EC that, in the context of Article XVI:4 of the Marrakesh Agreement establishing the WTO, the EC needed to ensure the WTO conformity of not only its laws and regulations, but also its administrative procedures. Australia particularly wished to refer to the Commission's existing authority to regulate quota export quantities and export refund levels for the purposes of compliance with WTO scheduled limits. Australia understood that the new sugar regime continued that authority and extended it to sugar produced in excess of quota. During the implementation period the Commission and member States had not applied that authority in respect of quota sugar. If they now took the position that they did not have to observe the WTO limits in their decisions on export quantities and export refunds, there appeared to be no legal guarantee that they would ensure that regulatory authority would be applied in a WTO-consistent way in future years. In that context, she noted forecasts that structural surpluses and oversupply on the EC's sugar markets were expected to continue in 2006/2007. She noted also that the French Beetgrowers Confederation had recently stated its expectations that the Commission would continue to use the export market as a market management tool to dispose of structural surpluses. According to a recent report in the specialist media, a senior Commission official had reportedly indicated that the Commission would not want to apply its regulatory authority in full to the EC's exports in the future. Article 10.3 of the Agreement on Agriculture would be relevant in such circumstances.

27. Fourth, the EC's actions during the implementation period raised serious concerns. As Australia had stated in 2005 in the DSB, the EC had assumed the right to a unilateral waiver of its WTO obligations. The only way in which the EC could comply with its obligations under Article 3.3 and 8 of the WTO Agreement on Agriculture, was to reduce its subsidized exports and export subsidies to the WTO scheduled commitment limits. The EC most certainly could not claim that actions designed to allow for unrestricted access to export licences and unlimited export refunds during the implementation period – which would continue to be disposed of on world markets for at least three months beyond 22 May – would constitute WTO implementing measures.

28. Fifth, in a wider trade policy context, including the Doha Round negotiations, the EC should be sending a signal that it was prepared to comply with its existing WTO obligations in the agriculture sector.

29. Finally, it was a fact that the EC had not yet taken measures to comply with the DSB's recommendations and rulings. It was also a fact that the EC would continue to be inconsistent with its WTO obligations beyond 22 May. The Australian sugar industry was almost 100 per cent exposed to world sugar price movements. World sugar prices were highly speculative and volatile and in large part responsive to actions taken within Europe. If the EC had taken action to observe its WTO obligations in the 2005/2006 period – as an alternative to decisions to significantly increase exports in 2005/2006 – current world market conditions would have been vastly more favourable for Australia and a number of developing country sugar exporters. Australia reserved its WTO rights in this dispute. Australia would also like to engage in a constructive dialogue with the EC's authorities on implementing actions.

30. The representative of Brazil said that his country took note of the status report provided by the EC, and thanked the EC representative for his statement made at the present meeting. Brazil noted with satisfaction the EC's renewed declaration that it intended to implement the DSB's recommendations within the reasonable period of time; i.e. until 22 May. Brazil was also appreciative of the efforts made by the EC to adjust its sugar regime and hoped that this reform would bring the EC production and export regimes into conformity with the WTO disciplines. Brazil could not avoid regretting, however, the EC's decision to keep the amount and quality of the information on the process of implementation in this dispute at unjustifiably insufficient levels. Submitted after almost one year after the adoption of the Reports of the Panel and the Appellate Body, and less than 20 days before the expiry date of an extended reasonable period of time, the EC's status report contained very little and unspecific information about the actions the EC had taken or would take to fully comply with the relevant DSB's recommendations.

31. Contrary to Brazil's expectations, this situation had not improved with the EC's statement at the present meeting, only five days before the expiry of the reasonable period of time. This certainly fell short of the most basic transparency requirements set forth in Article 21 of the DSU. Moreover, this did not help build the necessary confidence in the EC's real ability or willingness to abide by its implementation obligations in this dispute. In its status report and in its statement at the present meeting, the EC had referred to Council Regulation (EC) No. 318/2006 as the legal basis for the European Commission to adopt the relevant implementing measures to ensure compliance for the purpose of this dispute. It was also mentioned that these implementing measures were currently under preparation. At a minimum, the DSB should receive detailed information on (i) which implementing measures the European Commission had already enacted, and (ii) which further implementing measures the EC was considering to adopt and at which moment the EC intended to do so.

32. Data on the EC's exports were also crucial for an assessment of compliance in the present case. He recalled that both the Panel and the Appellate Body had found the EC in violation of its export subsidy commitments. According to the EC's Schedule, read in conjunction with the Agreement on Agriculture, the EC's exports of subsidized sugar must be limited to 1.23 million tons per year, and the EC's budgetary expenditures to subsidize sugar exports had to be below €499 million euros per year. On the basis of statistical data drawn from the EC records, the EC had already exceeded both its scheduled quantity and budgetary outlay commitments for the marketing year 2005/2006. Brazil would appreciate reasoned and substantiated explanations from the EC on these figures, and the submission of complete data on the actual figures, estimates and forecasts related to its sugar exports for the marketing year 2005/2006. This was a matter of particular concern in light of press reports that the EC would allow exports of marketing year 2005/2006 sugar after the expiry of the reasonable period of time for those quantities under export licenses granted until 22 May. This information had been confirmed by the EC at the 12 May regular meeting of the Committee on Agriculture. Brazil would appreciate an adequate explanation by the EC regarding the compatibility of such a course of action and its WTO obligations. Brazil also urged the EC to present as promptly as possible actual figures or estimates concerning the quantity of sugar still to be exported and the amount of export refunds to be bestowed on European exporters in this scenario. For many years, Brazil and other competitive producers and exporters had paid for the distortions and inefficiencies of the European sugar regime. The EC had been given more than a year to implement the DSB's decision that ruled on the illegality of its sugar exports. Brazil expected that, by virtue of full compliance with the DSB's recommendations within the reasonable period of time, the EC would stop transferring the burden of its illegal subsidies to other WTO Members. Brazil looked forward to the next status report by the EC.

33. The representative of Thailand said that his country wished to join Australia and Brazil in thanking the EC for its statement and the status report. Thailand recognized the EC's intention to implement the DSB's rulings and recommendations within the reasonable period of time; i.e. by 22 May 2006, and the EC's attempts to modify its sugar regime thus far. However, from the details

provided by the EC, Thailand remained to be convinced that by 23 May 2006 the EC's sugar regime would truly be in compliance with the rulings on either a *de jure* or a *de facto* basis. On the *de jure* aspect, while the EC had mentioned in its status report that Regulation 318/2006 provided the necessary legal means for the Commission to bring its sugar regime into compliance, the EC, on the other hand, had stated that the relevant implementing measures were still under preparation. In other words, with only five days remaining of its reasonable period of time, the EC had not yet complied fully in law with the DSB's rulings and recommendations in this dispute. Besides, Thailand understood from the information that the EC had recently provided to the Committee on Agriculture that several implementing regulations might actually not be ready until late June 2006, well after the expiry of the reasonable period of time.

34. The EC had also failed to provide evidence that it had brought or would soon bring itself into compliance on a *de facto* basis. As indicated by Australia and Brazil, during its implementation period, the EC had already exceeded its quantity and budgetary outlay commitments on sugar exports for the 2005/2006 marketing year, a fact exacerbated by its decision of September 2005 to declassify approximately 2 million tons of quota sugar to C sugar despite its obligation to limit subsidized exports to 1.23 million tons. Moreover, under export licenses granted until 22 May 2006, the EC would continue to export excess subsidized sugar for at least three months beyond the reasonable period of time.

35. Despite the EC's declaration of intended timely implementation, Thailand doubted that 22 May would be the day on which Members would see the EC's sugar regime in full compliance. He asked: How would it be possible for the EC to meet this deadline, when the EC had not yet implemented several necessary measures and continued to export illegally subsidized sugar? The continuous flooding of illegally subsidized exports of sugar from the EC posed serious consequences for the Thai sugar industry. These illegal exports affected the livelihood of 1.5 million farmers' and sugar workers' households who already lived in some of Thailand's lowest income areas. The longer the EC delayed its implementation, the heavier the unfair burden that these farmers and workers must bear. Thailand, therefore, urged the EC to live up to its declaration so that its sugar regime and export levels complied with its WTO commitments, both in law and in fact, as soon as possible. To this end, Thailand looked forward to the EC's next status report on this matter.

36. The representative of the European Communities said that the EC wished to assure the previous speakers that their remarks had been carefully noted and would be conveyed to Brussels. As the EC had stated in its first intervention on this matter, the EC still needed to adopt implementing measures to complete the implementation. He could confirm that they would be adopted before the end of the reasonable period of time. In any event, the reform would transform the EC into a net sugar importer, which would be a dramatic change in the sugar world market.

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

2. Implementation by the European Communities of the recommendations and rulings of the DSB in relation to "European Communities – Regime for the Importation, Sale and Distribution of Bananas"[1] and related subsequent WTO proceedings

(a) Statements by Honduras, Nicaragua and Panama

38. The Chairman said that this item was on the agenda of the present meeting at the request of Honduras, Nicaragua and Panama and invited the representatives of the respective countries to speak.

[1] WT/DS27.

39. The representative of Honduras said that, as other Members had pointed out, the illegal measures taken under the EC banana policy had made it necessary for three different WTO Bodies to consider this matter. In the DSB, Honduras and other Members had called for the monitoring of the EC's failure to implement its obligations arising from the Bananas III case. In the Council for Trade in Goods, Members had objected to the EC's request for a waiver under Article XIII of the GATT 1994, as they believed that such a waiver would unjustly overlook their concerns. In the General Council, Honduras together with others had complained that their interests as banana suppliers and their rights to compensation as a result of the 2004 EC enlargement and the cancellation of the bound tariff in 2006 were not being adequately addressed. The level of attention being given in those bodies to the illegal EC measures was an indication that Members attached the highest importance to this dispute. It also underscored the need for the problems being raised in each WTO Body to be resolved as soon as possible. In the DSB, as in other forums, there was no progress to report. Honduras' concerns over compliance intensified rather than diminished. In response to Honduras' objection that the autonomous tariff level of €176/mt was too high, the EC had now informed Honduras that the bound level was in fact €680/mt, which was nine times higher than the tariff it had had before 2006. In reply to Honduras' objection that the ACP tariff quota violated Article XIII of the GATT 1994, the EC was attempting to circumvent its complaint by requesting a waiver. The EC had responded to Honduras' objection that the ACP preferences infringed Article I of the GATT 1994 by maintaining that Honduras must bear the burden of proving the existence of injury after at least one year of application of the new regime. These replies inspired no confidence that the EC would address the concerns of Honduras regarding compliance. On the contrary, Honduras was left with the feeling that it had no choice but to file a complaint. Honduras, together with other interested Members would, therefore, continue to evaluate further possible steps in order to achieve early compliance.

40. The representative of Nicaragua said that the EC had continued to insist that the "monitoring procedures" was the appropriate forum in which to discuss this matter and that his country, along with others, had made a mistake in opting for the "litigation route" instead of participating in that process "in good faith". Nevertheless, thanks to Nicaragua's interventions, all DSB Members were now aware that the monitoring had never aimed at the restitution of rights and that that procedure could not ease the tensions now present in the multilateral system owing to the banana issue. Like the other parties concerned with banana supplies, Nicaragua did not believe that monitoring was a viable option for resolving the matter. Although Nicaragua was still examining other options, the truth was that Nicaragua did not understand why the EC had rejected the "litigation route". If the EC was so convinced that its new regime was compatible with all its WTO obligations, it should welcome the opportunity to demonstrate this and should do so as quickly as possible. In any case, as the DSB had made clear, turning to a review panel should not be considered as a contentious act. If a Member chose that option, the challenged Member should accept it in good faith as an attempt to resolve the dispute, especially if the initiative had been taken by a developing country. Nicaragua asked the EC to remain open to all possible solutions and to be sensitive to the special needs of developing economies. It was in the mutual interests to resolve this matter promptly, in good faith and in a manner consistent with WTO principles and procedures. Nicaragua urged the DSB to work with the Members concerned in pursuit of those objectives.

41. The representative of Panama said that his country also regretted that the EC had been gradually toughening its stance on this matter and was now further than ever from meeting its compliance obligations. The gradual manner in which the EC had been conveying to Panama its message regarding the new MFN tariff level clearly reflected how matters had grown worse. In November 2005, the EC had unilaterally announced an "autonomous" tariff rate increase from €75/mt to €176/mt. In December 2005, the EC had assured Latin American countries that it would be holding consultations through "monitoring" procedures. In January 2006, it had no longer referred to such guarantees, but had stated merely that it would not hold consultations with those countries that had opted for litigation. In February 2006, the EC had again retracted. It had stated that, for at least one

year, it would not be prepared to review the tariff, even for those countries that had chosen not to litigate. In March 2006, the EC had retracted yet again when it had informed Panama and other MFN interests that the new tariff would cancel out any compensation to which Panama might have been entitled as a result of the enlargement. The EC had stated at the same time that it had decided to assess the progress of the Doha Round before binding the new tariff. The picture had grown even gloomier in the current month. Some EC officials have stated that the bound tariff had been €680/mt all along. To put the tariff of €680/mt into perspective, it should be understood that this had been the prohibitive tariff previously applied to out-of-quota bananas. Besides, that tariff level was equivalent to some US$15/box or approximately 120 per cent *ad valorem* – which was three times higher than the highest tariff level ruled against in the arbitration proceedings – and nine times higher than the previous tariff on MFN bananas. In short, for all the months that this matter had been on the DSB's agenda under Article 21 of the DSU, the elements of the new tariff level and the possibilities for bringing about any change in the regime are less than it had ever been imagined. The EC's growing disregard for Panama's interests was inconsistent with the obligation established under Article 21 of the DSU, which required all Members to comply promptly with their commitments arising from the covered agreements, paying particular attention to all matters that could affect the interests of developing country Members. Panama again requested the DSB's support in finding an early solution to this matter.

42. The representative of the European Communities said that the EC had, once more, listened carefully to the statements made on this matter. However, the EC must insist that it did not consider this to be the appropriate forum to discuss this matter. In addition, the EC referred to its prior statements regarding its objection to the categorisation of this matter as an "implementation issue" relevant to Article 21 of the DSU. The EC was well aware of the importance of the banana industry for Latin American countries, as well as for the ACP countries, and had always kept this consideration in mind. This was why the EC had agreed to put its new tariff to the test of the market and to continue discussions with all interested MFN suppliers with the assistance of Minister Støre (Norway) on the basis of the information drawn from the monitoring of the impact of the new MFN tariff. A fourth meeting had taken place recently and the process was well underway. The EC regretted that Honduras, Panama and Nicaragua had opted thus far for the litigation route rather than to engage in this process.

43. The representative of the United States said that his country continued to urge the EC to work with interested Members to resolve this dispute. The United States was very concerned that the EC had taken no steps to do so even though this issue had been raised by Members numerous times, including at the past four DSB meetings and at the Hong Kong Ministerial Conference.

44. The DSB took note of the statements.

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

(a) Statements by Canada, the European Communities and Japan

45. The Chairman said that this item was on the agenda of the present meeting at the request of Canada, the European Communities and Japan. He then invited the respective representatives to speak.

46. The representative of Canada said that, as he had stated previously, his country welcomed the adoption of the prospective repeal of the Byrd Amendment. As Canada understood, the operation of the repealing legislation, anti-dumping and countervailing duties collected after 1 October 2007, would be deposited in the US Treasury, rather than disbursed to US producers. However, the question was about anti-dumping and countervailing duties collected before that date. They would continue to

be disbursed to US producers for many years to come. In this context, Canada questioned the accuracy of the US claim that by implementing this prospective repeal it had already "taken the actions necessary to implement the rulings and recommendations". Disbursements under the Byrd Amendment would continue for many years to come. The United States would continue to act inconsistently with the WTO Agreement for many years to come. There was no justification for the United States to discontinue to submit to the DSB status reports on developments relating to the implementation of the rulings in this dispute. Implementation now, rather than many years in the future. This approach to compliance – this method of "repeal" of a measure found to be in violation of the WTO Agreement – raised important commercial and systemic concerns. Canada called on the United States to address these concerns. It called on the United States to resume the submission of status reports and to implement full repeal of the Byrd Amendment.

47. The representative of the European Communities said that the EC would like to record again its disagreement with the US statement at the previous regular DSB meeting that it had taken all actions necessary to implement the DSB's recommendations and rulings in this dispute. The Continued Dumping and Subsidy Offset Act had been found in breach of WTO rules for transferring the collected anti-dumping and countervailing duties to the US competitors. Because the Deficit Reduction Act of 2005 provided that those transfers would continue for a number of years despite repeal of the CDSOA, the United States was and would remain in breach of Article 18.1 of the Anti-Dumping Agreement and 32.1 of the SCM Agreement still for a number of years as long as those transfers continued. If the United States now considered that it did not have to take any further action, that simply meant that it considered sufficient to bring itself into compliance at some undetermined date in the future while implementation of the DSB's ruling in this dispute was due by 27 December 2003. This sent a very disturbing message regarding the credibility of the US commitment to the dispute settlement system and particularly to Members' duty to ensure the prompt settlement of disputes. In the absence of the status report, the EC wished to ask the United States again if and what steps it intended to take to stop the transfer of anti-dumping and countervailing duties without further delay. The FSC dispute showed that the US Congress had been able to put an end to WTO-illegal transition periods. Nothing prevented the US Congress revisiting the delayed termination of the Byrd Amendment. The EC also renewed its call on the United States to abide by its clear obligation under Article 21.6 of the DSU and to submit implementation reports in this dispute.

48. The representative of Japan said that his country regretted that it had to express, once again, its disappointment that the United States had not submitted a status report in the month of May, and had insisted on having taken all the necessary measures to implement the DSB's recommendations and rulings, without sufficient explanation. As his delegation had stated at previous DSB meetings, Japan welcomed the enactment of the Deficit Reduction Act of 2005. At the same time, as it had also been stated at previous DSB meetings, Japan believed that the full implementation of the DSB's recommendations and rulings in this dispute meant that the CDSOA should be completely repealed and the illegal distribution under the CDSOA be terminated. Japan urged the United States to take steps to comply fully with the DSB's rulings and recommendations without further delay and to provide its status report. Japan reserved all its rights under the DSU until full implementation by the United States were to take place.

49. The representative of the United States said that as the United States had already explained at previous DSB meetings the President had signed the Deficit Reduction Act into law on 8 February 2006. That Act included provisions 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. It, therefore, continued to fail to see what purpose would be served by the submission of status reports repeating the progress the United States made in the implementation of the DSB's recommendations and rulings. Finally, the United States wished to

add that given Canada's recent actions in connection with the CDSOA, it was surprised to hear Canada's intervention under this agenda item.

50. The representative of Thailand said that first his delegation wished to thank the EC, Canada and Japan for bringing this item before the DSB. Thailand joined previous speakers in expressing disappointment that the United States had not submitted a status report on its outstanding implementation in the Byrd Amendment case for this meeting. Thailand, therefore, affirmed its views expressed during the previous DSB meetings, and urged the United States to continue providing status reports until it brought its actions into full conformity with the DSB's rulings and recommendations in this dispute, and until this matter had been fully resolved.

51. The representative of Brazil said that his country wished to thank again Canada, the EC and Japan for raising this issue. Brazil's position on why it considered that this dispute had not been resolved yet had been clearly explained in the past three DSB regular meetings following the enactment of the Deficit Reduction Act in February 2006. In Brazil's view, there would be no full compliance on the part of the United States until and unless all disbursements under the Byrd Amendment ceased. This was not the case at the present moment. Short of further action by the United States, this would not be the case at least until 1 October 2007. The United States had simply reiterated its statement that, with the adoption of the mentioned legislation, it had complied with the DSB's recommendations. Yet, no reasoned explanations had been presented by the United States. At the present meeting, Brazil asked, once again, for these reasoned explanations, and particularly how the next disbursements under the Byrd Amendment could be accepted as acts of compliance with recommendations that clearly held that each and every such disbursement was WTO-inconsistent.

52. The representative of Canada said that his delegation did not know to which actions of Canada the United States had referred at the present meeting. It was possible that the United States was referring to a ruling by the US Court of International Trade as a result of an action brought by Canada in that court, which actually had declared the Byrd Amendment insofar as it applied to Canada, not to be in accordance with US law. As Canada had already stated there were commercial and systemic reasons why the continued operation of the Byrd Amendment after the purported date of repeal caused concern and so Canada would continue to express those concerns.

53. The representative of India said that his country wished to thank the EC, Canada and Japan for raising this matter in the DSB again. Like other Members who had spoken at the present meeting, India was disappointed about the lack of a status report by the United States, given that it had not yet fully complied with its obligations in line with the DSB's recommendations and rulings in this dispute. There was no response from the United States to the question of how continued disbursements of duties collected on imports entering the United States squared up with its compliance obligations. This was a compliance issue, and should be a continued subject of surveillance by the DSB. Until this matter was resolved to its satisfaction, India would continue to reserve all its rights under the DSU, including the right to suspend concessions. India urged the United States again to inform the DSB of the steps it had proposed to take to ensure full compliance. India also requested again that the United States should resume submitting status reports in this dispute.

54. The representative of the United States said that his delegation wished to respond to a previous intervention to clarify that Canada's action to which he had referred previously was Canada's recent decision that it would not continue to suspend concessions in this dispute.

55. The representative of Canada said that any decision on whether or not to impose retaliatory measures and whether to continue imposing them and on what products they would continue to be imposed was difficult. He did not wish to go into the very different considerations that had been taken into account when Canada had decided not to continue imposing retaliatory measures as of

30 April 2006. Those measures had expired. He underlined that Canada continued to consider all options in respect of its rights under the WTO and with respect to the Byrd Amendment.

56. The DSB took note of the statements.

4. United States – Countervailing measures concerning certain products from the European Communities

(a) Statement by the European Communities

57. The Chairman said that this item was on the agenda of the present meeting at the request of the European Communities and invited the representative of the European Communities to speak.

58. The representative of the European Communities said that, once again, the United States had failed to comply with the recommendations and rulings adopted by the DSB in this old dispute. Indeed, the findings of the draft Section 129 determinations were totally unjustified and groundless. Essentially, it was provisionally determined that the privatizations of Aceralia and British Steel had not taken place on market terms. This was supported neither by facts nor by law. The Department of Commerce had stretched the facts and the law to such an extent that one could conclude that the result was pre-ordained. First, it should be recalled that the purpose of this second Section 129 determination was to implement the findings of the Article 21.5 Panel in the case at issue. The draft decision had found essentially that the privatisation of British Steel was not for fair market value. However, in both previous WTO proceedings as well as in national proceedings that had taken place in the United States concerning the same privatization, the United States had accepted unequivocally that British Steel had been privatized for fair market value.

59. In spite of this clear evidence on the record, the United States now seemed determined to ignore previous findings and was retracting previous statements with the purpose of reaching different conclusions regarding the same facts. Such cherry picking was impermissible. Whatever the procedural devices employed, one thing was clear. Both previous and adopted Panel and Appellate Body reports as well as the Department of Commerce in past domestic proceedings had found that the privatisation of British Steel was for fair market value, at arm's length and it was not simply open to the Department of Commerce to rewrite history and make different conflicting findings. The EC trusted that the Department would remedy this matter at the time of the final determination.

60. Second, in its draft determinations, the Department of Commerce had reached the specific findings on the basis, among others, of the alleged deliberate withholding of pertinent information by the Government of the United Kingdom. Both the Commission and the UK Government had, however, provided reasonable explanations of why the valuation study requested was not available. In spite of that and in spite of ample evidence on the record proving that the privatization of British Steel had taken place on market terms, the Commerce Department had chosen to draw adverse inferences which were without basis and contrary to law. The information on the record did not support the finding that the information requested was deliberately withheld. Further, the remaining record evidence, including previous admissions from the US administration regarding this matter, should be the basis for the final conclusions which should definitely accept that the privatisation of British Steel was on market terms.

61. Third, the draft determinations also referred allegedly to certain subsidy programmes which had not been terminated. Although no details were given regarding the identity of these programmes, it seemed that the Department of Commerce referred to regional development aid either through UK national programmes or the European Regional and Development Fund. As explained in the Commission comments, these allegations did not hold water. The Commission had provided detailed and solid evidence to rebut the Department of Commerce allegations beyond any reasonable doubt.

The alleged programmes had been terminated a long time ago and nothing on the record demonstrated that British Steel had continued to receive regional development grants that benefited the subject merchandise. In view of this, and in the complete absence of any breach of the applicable Community rules at the time of the sunset review in question, namely the 1996 EC steel aid code, with regard to British Steel's steel production, the Department should conclude that no CVD orders were justified on this ground either. On the basis of the above and the evidence on the record, it was clear that the draft findings in this case were totally unjustified. It served no purpose to try against all evidence to twist the facts in order to reach different conclusions. When the record evidence was considered, the only defensible conclusion is that all subsidy benefits have been terminated or were *de minimis*. The proven facts simply did not support a finding that subsidisation was likely to continue or recur. The EC trusted that the US Department of Commerce would remedy this situation and terminate the CVD orders once and for all.

62. The representative of the United States said that his delegation thanked the EC for its statement. The United States wished to respond to the EC statements made at previous meetings and again at the present meeting suggesting that implementing the Panel's findings would require repealing the measures at issue "without further delays". In fact, at the EC's insistence, the Article 21.5 Panel stated that the United States needed to take new information provided by EC parties into account. That was what the United States was doing now. The United States was surprised to hear the EC characterize following the DSB's recommendations as "delays", or that repeal was the only way to comply.

63. The DSB took note of the statements.

5. United States – Measures affecting trade in large civil aircraft

(a) Initiation of the procedure for developing information concerning serious prejudice under Annex V of the SCM Agreement and designation of Mr. Mateo Diego-Fernández as the DSB representative referred to in paragraph 4 of that Annex for the development of evidence to be examined by the Panel in DS317 established on 17 February 2006 in the form of written responses by the United States to written questions from the DSB representative to the United States pursuant to Annex V, paragraph 1 and Annex V, paragraph 2 of the SCM Agreement (WT/DS317/5)

64. The Chairman said that this item was on the agenda of the present meeting at the request of the European Communities. He drew attention to the communication from the European Communities contained in document WT/DS317/5, and invited the representative of the European Communities to speak.

65. The representative of the European Communities said that the EC was disappointed that the United States had repeatedly opposed the EC's request for the initiation of an Annex V procedure. The terms of the SCM Agreement were quite unambiguous. It provided for an automatic initiation of the Annex V procedure at the request of either party together with the designation of a facilitator. The continued and unjustified opposition by the United States was also inconsistent with the general obligation to co-operate, set out in paragraph 1 of Annex V. The United States simply could not hide behind the fact that in 2005 the EC had insisted – for substantial and practical reasons – that both parties should consult and co-operate on modalities of the Annex V procedure before actually initiating the Annex V process in this complex proceeding.

66. The EC had never taken the position that the initiation of the Annex V procedure as such was subject to the agreement of the defending party. The United States itself was clearly on the record for considering the initiation of the Annex V process to be automatic. As stated a moment ago, this was clearly spelled out in and supported by the SCM Agreement. Annex V played an important role in

gathering the necessary facts in subsidy dispute to enable the Panel to conduct the ensuing analysis in the most efficient manner. He also wished to clarify that the EC was not seeking a resumption of the "old" Annex V procedure, as the United States had stated at the previous DSB meeting. This should be quite clear from the Airgram, where the EC clearly referred to the DS317 Panel established on 17 February 2006. The EC had requested the designation of Mr. Mateo Diego-Fernández as the DSB representative referred to in paragraph 4 of that Annex for the development of evidence to be examined by the panel in DS317 established on 17 February 2006. Indeed, the EC had a right to have the facilitator appointed. This was clearly spelled out in paragraph 4 of Annex V, pursuant to which the "DSB shall designate a representative to serve the function of facilitating the information-gathering process".

67. This EC considered that this decision should have been automatically adopted at the previous DSB meeting. There was no possibility for this decision not to be taken, even if there was a consensus not to adopt it. The EC had asked for this item to be included on the agenda again so that there could be no doubt as to its position and insisted that the decision be reflected in the minutes of the present meeting. The Annex V procedure was initiated and Mr. Mateo Diego-Fernández was the designated facilitator. The EC Annex V questions were ready for immediate transmission to the facilitator. Finally, he emphasized, once again, that the EC continued to be prepared to discuss practical arrangements on how to conduct this new Annex V procedure in the most expeditious and efficient manner for all parties involved.

68. The representative of the United States said that much of what the EC had stated at the present meeting with the exception of its last few comments were not different in substance from its statements made at previous DSB meetings. In large part the United States wished to refer Members to the statements made at previous DSB meetings expressing its point of view. A couple of points of correction, one was that if the EC and Members would look at the minutes of the previous DSB meeting it would not be correct to say that the United States had stated that it thought the EC was seeking a resumption of the old process, in fact what the United States had stated then, was that it was at the last meeting that it first became clear that that was not what the EC was seeking, and the United States had expressed its surprise about how it had changed its position about that over the course of the past couple of months.

69. With respect to other changes of the EC's position, he wished to repeat once again for Members what the EC had stated at the 31 August 2005 DSB meeting: "consistent with WTO jurisprudence an Annex V procedure could not be initiated unilaterally by only one party to a dispute but it required a meeting of the minds; an actual agreement between the parties". So the EC had taken similar positions at the two DSB meetings immediately preceding the one to which he had just referred. With respect to the very last comments made by the EC, the rather surprising suggestion by the EC that the DSB should depart from the consensus rule that applied to all of its decisions pursuant to the DSU. That was, of course, not a position that the United States shared. The United States would simply suggest that the DSB do and must do what it had done at every previous DSB meeting at which this particular item had been considered, namely to take note of the statements made.

70. The Chairman proposed that the DSB take note of the statements made and agree to suspend the consideration of this agenda item in order to allow consultations with a view to finding a way forward. He further proposed to revert to this item when he would consider it appropriate.[2]

71. The DSB took note of the statements and agreed to the Chairman's proposal.

[2] Subsequently, on 23 May 2006, the Chairman sent out a fax informing Members that, following consultations between the parties to the dispute, an agreement had been reached that it was not necessary to revert to this matter and that the consideration of this agenda item did not need to be suspended.

72. The representative of Canada said that his delegation did not wish to disagree in any way with the Chairman's suggestion about the suspension of the matter, however, he wished to underline that the positions adopted by both the United States and the EC had given rise to very serious systemic concerns. His delegation was consulting with capital to try to solidify its position which was on the record, namely, that the launch of the Annex V procedure was and ought to be automatic. At the same time, the statements made at the present meeting by the EC and the United States in respect of the need for consensus on launching Annex V certainly gave rise to systemic concerns. His delegation would continue discussions with capital and, of course, it would wait for the Chairman to convene a meeting, but his delegation would appreciate adequate notice of the meeting so that it could have proper instructions. In the absence of instructions, of course, he did not think Members could have a full discussion. So, Canada would appreciate the Chairman's careful consideration of this matter.

73. The DSB took note of the statement.

6. Selection process for appointment of an Appellate Body member

(a) Statement by the Chairman

74. The Chairman said that he had placed this item on the agenda of the present meeting in order to report on the selection process for the appointment of an Appellate Body member to replace the late Mr. John Lockhart for the remainder of his term until 11 December 2009. As Members were aware, eight candidates had been nominated for the position by the following seven countries: Australia, Benin, China, Ghana, Kenya, Mexico and South Africa. He recalled that a Selection Committee had been established by the DSB at its meeting on 17 February to carry out the process. He further recalled that this Selection Committee, as provided for in the procedures set out in document WT/DSB/1, was composed of the Chairs of the General Council, the Goods Council, the Services Council and the TRIPS Council; the Director General, and the Chairman of the DSB. The Selection Committee had held an organizational meeting on 10 May. At that meeting the Committee had agreed to conduct interviews with the eight candidates during the period from 27 June until 30 June. The Secretariat was currently making the necessary arrangements in this regard. He noted that delegations wishing to meet with the candidates during this period were invited to contact directly the delegations of Australia, Benin, China, Ghana, Kenya Mexico and South Africa to make the appropriate arrangements.

75. He said that consistent with previous practice, the Selection Committee would also be available to meet, upon request, with any interested delegations who wished to express their views on the candidates in person to the Committee. In this regard, the Selection Committee had agreed to hold such meetings, upon request, during the period from 5 July until 7 July. Delegations wishing to meet with the Selection Committee during this period would be invited to contact Ms. Margaret Kennedy of the Secretariat's Council and TNC Division in order to make an appointment. Alternatively, delegations were free to make their views known to the Selection Committee in writing. Any such written communications should be sent to the Chairman of the DSB in care of the Council and TNC Division by no later than 7 July 2006.

76. Finally, he said that it was the intention of the Selection Committee to complete its process as soon as possible in order to be able to present its recommendation to the DSB before the summer break. He recalled that the last regular DSB meeting before the summer break was scheduled for 19 July. If the Selection Committee had not been able to complete its process by then, he would convene a special DSB meeting before the summer break, as soon as the Selection Committee was able to present its recommendation to the DSB. He would report further on this matter in due course.

77. The DSB took note of the statement.

7. United States – Tax treatment for "Foreign Sales Corporations"

(a) Statement by the United States

78. The representative of the United States, speaking under "Other Business", said that the United States was very pleased to report that, on 11 May 2006, the US Congress had passed legislation to repeal the "grandfather" provisions of the American Jobs Creation Act and the ETI Act that were a subject of the recent compliance proceedings in the FSC dispute. The United States understood that the US President was expected to sign the legislation later in the course of the day. With that development, the United States understood that the United States and the EC would be able to put this dispute behind them. The United States welcomed news of recent efforts by the EC in response to the repeal and looked forward to hearing more from the EC in the course of the day.

79. The representative of the European Communities said that the EC warmly welcomed the repeal by Congress of the "grandfather" provisions of the American Jobs Creation Act. When the transition rules of that Act were to expire at the end of the year, compliance would finally be achieved in this very long saga. In recognition of these efforts, the Council of the European Union had decided on 15 May 2006, by Regulation 728/2006, to prevent the re-introduction of trade sanctions against US exports. These sanctions had been suspended during the second 21.5 compliance review, but were due to be re-introduced on 16 May. Once the US President signed the Bill, the sanctions would end. This was a positive signal not only for the bilateral relationship but also for the WTO as a whole.

80. The DSB took note of the statements.