WORLD TRADE ORGANIZATION

RESTRICTED

WT/DSB/M/124
13 June 2002

(02-3293)

Dispute Settlement Body
22 May 2002

MINUTES OF MEETING

Held in the Centre William Rappard
on 22 May 2002

Chairman: Mr. Carlos Pérez del Castillo (Uruguay)

Subjects discussed: Page

1. Surveillance of implementation of recommendations adopted by the DSB

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

(b) United States – Anti-Dumping Act of 1916: Status report by the United States

(c) Argentina – Definitive anti-dumping measures on imports of ceramic floor tiles from Italy: Status report by Argentina

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

(a) United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/18/Add.4)

2. The Chairman drew attention to document WT/DS160/18/Add.4 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.

3. The representative of the United States said that on 7 May 2002 his country had provided an additional status report in this dispute, in accordance with Article 21.6 of the DSU. As noted in the report, the United States had been engaged in discussions with the EC in an effort to find a positive and mutually acceptable solution to this dispute. In light of the discussions between the parties, the arbitration proceedings in this matter had been suspended at the joint request of the parties in order to facilitate efforts to find a positive solution. The United States was working actively to reach a mutually acceptable arrangement to this matter.

4. The representative of the European Communities said that the EC was very disappointed with the apparent disinterest of the United States in the surveillance by the DSB of the implementation of recommendations and rulings. The most recent status report submitted by the United States did not address the issue of implementation and, once again, the EC had to conclude that the United States had not made progress towards compliance with its obligations under the TRIPS Agreement. Moreover, he wished to underline that almost 22 months had lapsed since the adoption of the Panel Report in this case, but during this long period of time, the United States had not made any effort to implement the ruling. Furthermore, the bilateral discussions to which the United States referred in its status report had not yet led to a temporary solution, which in any case would not be a substitute for full compliance. The EC, therefore, urged the United States to work actively towards finding a prompt solution to this dispute.

5. The representative of Australia said that, at a number of previous DSB meetings, his country had registered its concern about the continued delay in the United States' implementation of the DSB recommendations and rulings in this dispute. On those occasions, Australia had also raised its concern about the apparent discriminatory nature of the proposed compensation arrangements that it understood had been agreed between the United States and the EC. Once again, his country wished to take this opportunity to raise these concerns, and to register with the United States its expectation that any compensation arrangement reached in this case be applied on a non-discriminatory basis.

6. The representative of the United States said that his delegation was surprised to hear the EC's criticism of the status reports submitted by the United States on this matter. He noted that the EC was well aware of US efforts to find a mutually acceptable solution to this dispute. Moreover, the US

status reports did not compare unfavourably with status reports that had been submitted by other Members in other long-running disputes before the DSB.

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

(b) United States – Anti-Dumping Act of 1916: Status report by the United States (WT/DS136/14/Add.4 – WT/DS162/17/Add.4)

8. The Chairman drew attention to document WT/DS136/14/Add.4 – WT/DS162/17/Add.4 which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning the US Anti-Dumping Act of 1916.

9. The representative of the United States said that on 7 May 2002 his country had submitted an additional status report in this dispute, in accordance with Article 21.6 of the DSU. As noted in that report, on 23 April 2002, a bill (S.2224) had been introduced in the US Senate which would repeal the 1916 Act and apply to all pending court cases. This was a companion bill to the legislation (H.R. 3557) that had been introduced in the US House of Representatives on 20 December 2001. The United States would continue to work toward further progress in reaching a mutually satisfactory resolution to this dispute with the EC and Japan.

10. The representative of Japan said that his country's basic position, as expressed in previous meetings, remained the same, namely, to obtain prompt compliance by the United States. Japan wished to point out that the date of 30 June 2002 specified in the communication contained in document WT/DS162/21 with regard to arbitration was fast approaching. As stipulated in that communication: "the arbitration proceeding may be reactivated at the request of either party after 30 June 2002 if no substantial progress has been made in resolving this dispute by that date". Japan, therefore, expected that the United States would continue with best efforts to have the bill repealing the 1916 Act passed by the US Congress as soon as possible.

11. The representative of the European Communities said that the EC had agreed to request the Arbitrators to suspend their work in order to give the US Congress additional time to repeal the 1916 Act and to terminate pending cases. However, the EC noted, once again, that the US Congress had still not made progress towards implementation of the DSB's ruling, despite the fact that the reasonable period of time for implementation had originally expired in July 2001 and had then been extended until the end of 2001. This continued lack of compliance was increasingly worrying. Indeed, the judicial proceeding brought against EC companies would automatically resume after 8 August, if legislation to repeal this Act and to terminate pending cases was not passed by then. In that case, notwithstanding the clear finding that the 1916 Act was WTO-inconsistent, EC companies would be involved in extremely costly litigation procedures, or could even be condemned. Obviously such a result would not be acceptable to the EC and if the EC were to face such a situation, WTO proceedings to grant the EC the authorization to retaliate would have to be reactivated. The EC, therefore, wished to impress on the US administration the extreme urgency of securing a repeal of the 1916 Act. Indeed, the continuous delay on implementation of this case and the prior one raised troublesome questions about US commitments to compliance.

12. The representative of Mexico said that his country, which had participated as a third party in this dispute, wished to see rapid implementation of the DSB's recommendations.

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

(c) Argentina – Definitive anti-dumping measures on imports of ceramic floor tiles from Italy: Status report by Argentina (WT/DS189/8)

14. The Chairman drew attention to document WT/DS189/8 which contained the status report by Argentina on progress in the implementation of the DSB's recommendations in the case concerning Argentina's definitive anti-dumping measures on imports of ceramic floor tiles products from Italy.

15. The representative of Argentina said that his country wished to inform the DSB that on 24 April 2002, the Ministry of Production had enacted Resolution 76/02 revoking the anti-dumping measures at issue in the case on "Argentina – Definitive Anti-Dumping Measures on Imports of Ceramic Floor Tiles from Italy". With the publication of this Resolution, Argentina considered that it had now fully implemented the DSB's recommendations and rulings in this case as had been announced at the 5 December 2001 DSB meeting.

16. The representative of the European Communities said that his delegation welcomed the rapid resolution of this dispute and thanked Argentina for its efforts devoted to this case. In the view of the EC, this fine outcome was largely due to the constructive spirit shown by the Argentinean authorities in line with the letter, the object and the purpose of Article 21.1 of the DSU.

17. The DSB took note of the statements.

2. India – Measures affecting the automotive sector

(a) Implementation of the recommendations of the DSB

18. The Chairman recalled that in accordance with the DSU provisions, the DSB was required to keep under surveillance the implementation of recommendations and rulings of the DSB in order to ensure effective resolution of disputes to the benefit of all Members. In this respect, Article 21.3 of the DSU provided that the Member concerned shall inform the DSB, within 30 days after the adoption of the panel or Appellate Body report, of its intentions in respect of implementation of the recommendations and rulings of the DSB. He recalled that at its meeting on 5 April 2002, the DSB had adopted the Appellate Body Report in the case on "India - Measures Affecting the Automotive Sector" and the Panel Report pertaining to the same matter. He noted that the 30-day period in this case had expired on 5 May 2002 and on 2 May 2002, pursuant to the agreement by the parties to the dispute, India had informed the DSB in writing of its intentions in respect of implementation. The relevant communication was contained in document WT/DS146/12 - WT/DS175/12.

19. The representative of India said that on 5 April 2002, the DSB had adopted the Panel and the Appellate Body Reports in the dispute on: "India - Measures Affecting the Automotive Sector". In accordance with Article 21.3 of the DSU, India was required to inform the DSB of its intentions concerning implementation of the DSB's recommendations and rulings within 30 days. As stated in that Article, if a DSB meeting was not scheduled during the 30-day period, a special meeting of the DSB should be held for that purpose. However, following an agreement reached with the EC and the United States, India had notified the DSB on 2 May 2002 in writing of its intentions to implement the recommendations and rulings in order to avoid holding a special DSB meeting for that purpose. India's notification was circulated as document WT/DS146/12 – WT/DS175/12 on 3 May 2002. At the present meeting, India wished to inform the DSB of its intentions to implement the recommendations and rulings of the DSB in the case on "India – Measures Affecting the Automotive Sector". India would need a reasonable period of time for implementation and was ready to discuss this issue with the EC and the United States.

20. The representative of the United States said that his country welcomed the statement made by India that it intended to implement the DSB's recommendations and rulings in this case. The United States looked forward to constructive discussions with India on prompt implementation.

21. The representative of the European Communities said that the EC wished that the conclusions and recommendations of the Panel Report, which had been adopted on 5 April 2002, be implemented very rapidly. In the EC's view, this was both necessary and feasible. Furthermore, the EC wished to recall India's assurances given during the Panel's proceedings in particular on the scope of the respective trade balancing commitments assumed by the Memorandum of Understandings' signatories. The EC expected that India would act consistently with those assurances. The EC was fully aware of the positive steps taken by India in removing certain inconsistent measures related to the dispute under examination and most notably the withdrawal of Public Notice No. 60 and the elimination of import licensing as of 1 April 2001. However, these measures were not at all sufficient. The EC looked forward to discussing with India this matter in the immediate future. In any case, the EC considered that the implementation by India of the relevant rulings and recommendations was feasible within a short period of time.

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

3. United States – Sunset review of anti-dumping duties on corrosion-resistant carbon steel flat products from Japan

(a) Request for the establishment of a panel by Japan (WT/DS244/4)

23. The Chairman recalled that the DSB had considered this matter at its meeting on 17 April 2002 and had agreed to revert to it. He drew attention to the communication from Japan contained in document WT/DS244/4.

24. The representative of Japan said that his country was requesting the establishment of a panel for the second time in order to examine US laws, regulations, procedures, practices and decisions pertaining to the sunset review of the anti-dumping order on corrosion-resistant carbon steel flat products from Japan. Without going into the details of Japan's panel request, he wished to highlight that the US automatic initiation of the sunset review without sufficient evidence, the unjustifiably high standards for the withdrawal of the anti-dumping measure, the inappropriate method of determining the dumping margins and the unfair treatments of respondents, had resulted in the erroneous continuation of the measure. In its injury analysis, the United States had undertaken a cumulative assessment, without examining the existence of required conditions. Japan considered both (i) the US decision not to terminate the imposition of the anti-dumping duties on the imports of corrosion-resistant carbon steel flat products from Japan, and (ii) the US laws, regulations, general practices, including the DOC Sunset Policy Bulletin on which the decision was based, to be inconsistent with the United States' obligations under the GATT 1994, the Anti-Dumping Agreement and the Marrakesh Agreement establishing the WTO. Japan regretted that the United States had not yet addressed its concerns, and that it was necessary to move forward with a panel process. Nevertheless, Japan remained open to further discussions with the United States in order to resolve this matter in a mutually satisfactory manner, if necessary.

25. The representative of the United States said that given that a panel would be established at the present meeting, he did not wish to repeat the points made at the 17 April DSB meeting, except to reiterate that the US sunset review regime was consistent with the United States' WTO obligations, and that the United States was confident that the panel would so agree.

26. The DSB took note of the statements and agreed to establish a panel in accordance with the provisions of Article 6 of the DSU with standard terms of reference.

27. The representatives of Canada, Chile, EC, India, Korea, Norway and Venezuela reserved their third-party rights to participate in the Panel's proceedings.

4. Japan – Measures affecting the importation of apples

(a) Request for the establishment of a panel by the United States (WT/DS245/2)

28. The Chairman drew attention to the communication from the United States contained in document WT/DS245/2.

29. The representative of the United States said that his country was requesting the establishment of a panel to examine Japan's measures affecting the importation of US apples. Since 1994, Japan had maintained highly restrictive and costly measures on US apples, claiming that these were necessary to guard against introduction of the plant disease fire blight or the fire blight disease-causing bacterium. However, the published scientific evidence demonstrated that mature, symptomless apples were not carriers of fire blight. Thus, Japan's measures lacked a scientific basis and were inconsistent with the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement). The United States recognized the right of Japan and of every WTO Member to determine its appropriate level of protection. The United States was also aware of the costs that introduction, establishment, and spread of fire blight into Japan would entail. As a result, the United States had made significant efforts over many years to address Japan's concerns about fire blight, even agreeing to Japan's proposal to carry out joint research to confirm the results of earlier published scientific studies. Conducted in 2000 by the US Department of Agriculture's Agricultural Research Service and Japan's Ministry of Agriculture, Forestry, and Fisheries, the joint research did confirm that mature, symptomless apples were not carriers of fire blight. However, since the results of this research became available in February 2001, the Japanese government had continued to refuse to change its import restrictions. As a result, the United States had no choice but to proceed with this panel request. Accordingly, the United States was requesting that a panel be established at the present meeting.

30. The representative of Japan said that his country regretted that the United States had terminated consultations and had proceeded with the request for the establishment of a panel to examine this matter. At this stage, Japan could not agree to the establishment of such a panel. Fire blight, or *erwinia amylovora* was a serious disease affecting trees such as apples and pears, which spread from the East Coast of the United States to all over North America, to Europe, and even to West Asia. The sanitary and phytosanitary measures currently taken by Japan were indispensable for preventing the introduction of fire blight as it could cause grave damage to Japanese production. Japan believed that its measures were consistent with the relevant WTO rules. On the basis of this position, Japan had reiterated to the United States on many occasions its willingness to consider the possibility of amending the sanitary and phytosanitary measures, if the United States provided further information. Recently, this point had been made clear to the United States at the experts meeting in October 2001 and during the bilateral consultation held on 18 April 2002. However, no additional information had been provided by the United States. Japan had already replied to all the questions raised by the United States at the 18 April consultation. In contrast, the United States was yet to respond to Japan's request for information made at the experts meeting in October 2001, such as data concerning the occurrence of the disease in Washington and Oregon. In Japan's view, thorough discussions based on relevant scientific data should be conducted with regard to this dispute. It was appropriate and meaningful that the experts of the two sides continued consultations on technical matters. He reiterated that Japan could not agree to the establishment of a panel at this juncture as it was premature. It was in the benefit of both the United States and Japan to arrive at a mutually satisfactory solution through further bilateral consultations.

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

5. United States – Definitive safeguard measures on imports of certain steel products

(a) Request for the establishment of a panel by the European Communities (WT/DS248/12)

32. The Chairman drew attention to the communication from the European Communities contained in document WT/DS248/12.

33. The representative of the European Communities said that on 7 March 2002, the EC had requested consultations against the US steel safeguards. In the course of the joint consultations held in Geneva on 11 and 12 April 2002, the EC, together with Japan, Korea, China, Switzerland and Norway, had conveyed the common view that the protectionist US measures on steel were contrary to WTO requirements on safeguards and called for their immediate termination. Unfortunately, these consultations had not allowed an amicable solution to the matter and the US measures were still in force. The EC was therefore requesting the establishment of a panel to examine the US steel safeguard measures and was confident that the WTO would again rule against the abuse by the United States of the WTO safeguard provisions. Indeed, the Appellate Body had already found all six US safeguards brought to WTO to be inconsistent with the relevant WTO rules. These included the following cases: "Wheat Gluten", "Lamb" and "Line Pipe" on the basis of the Agreement on Safeguards and "Underwear", "Shirts and Blouses" and "Cotton Yarn" on the basis of safeguard provisions in the Agreement on Textile and Clothing. Despite these determinations, the United States repeated in the present steel case the violations of the basic WTO requirements on safeguards already condemned in previous cases. The most obvious violations included the following. First, the United States had failed to meet the requirement of "sudden, recent, sharp and significant" increase in imports. Second, the United States had once again failed to separate and distinguish the injury caused by imports from the injurious effect of "other factors", in particular of the so-called "legacy costs". Third, as a result, the US safeguard measures had gone beyond the extent necessary to prevent or remedy the injury caused by, imports. In other words, the United States simply made the rest of the world pay for the lack of restructuring of its steel industry. Fourth, the United States had chosen to exclude all the imports from FTA partners from the steel safeguards, even when the ITC had recommended the opposite. This had resulted in a violation of the "parallelism requirement" between the scope of the safeguard investigation and the scope of the safeguard measures.

34. The representative of the United States stated that it was regrettable that the EC had chosen to challenge US safeguard measures, which were fully consistent with the applicable portions of the Safeguards Agreement and the GATT 1994. The United States was confident that the dispute settlement process would ultimately reach the same conclusion, should the EC continue to pursue this matter. However, the United States could not accept the establishment of a panel at the present meeting.

35. The representative of Japan said that his delegation wished to take this opportunity to make a brief statement concerning the US measures. He said that Japan, together with the EC and other Members concerned, had held consultations with the United States in April 2002. It was regrettable that Japan could not obtain a satisfactory response from the United States. In Japan's view, the US measures were in clear violation of the WTO Agreement. Japan, therefore, urged the United States, once again, to terminate them immediately, and supported the EC request for the establishment of a panel. He said that on 21 May 2002, Japan had submitted its own request for the establishment of a panel concerning the US measures, together with a request for the convening of a special meeting of the DSB on 3 June 2002. It was Japan's intention to participate as a third party in this dispute and to work with the EC and other Members once a panel was established on the basis of the EC request.

36. The representative of Korea recalled that at the 5 April DSB meeting, under the item concerning the implementation of the DSB's recommendations in the case on "United States – Line Pipe", his delegation had made a statement in which it warned that the US action could lead to a spiral of protectionist measures in steel trade. Now this warning was becoming more and more a

reality, with China announcing its own provisional safeguard measure on steel citing the need to deal with the adverse effects of US safeguard measures on its steel industry. China's action was the latest in a series of trade restrictive measures on steel imports by different Members since the US action. Korea was concerned that this trend would continue. Korea believed that the current situation would have to be addressed on an urgent basis through the dispute settlement mechanism. Therefore, Korea had already requested a special DSB meeting to be held on 3 June to consider its request for the establishment of a panel to examine the US safeguard measure. Given the magnitude of US steel safeguard measures the panel should be established as soon as possible and issue a ruling at the earliest possible date.

37. The representative of Cuba said that her country was disappointed by some recent events that it believed threatened the atmosphere in which the negotiations recently initiated under the Doha work programme should be conducted. These included definitive safeguard measures on imports of certain steel products imposed by the United States on 5 March 2002, only four months after Ministers in Doha had given their commitment to trade policy liberalization. In Cuba's view, the imposition of these measures was in contradiction with the provisions of the Doha Ministerial Declaration and threatened the credibility of WTO commitments and of the WTO. This situation had already begun to have a distorting effect on markets. The resulting speculative activity and withholding of goods had led to an increase in the prices of steel imports into Cuba, having a damaging impact on its economy. Cuba urged the United States to abolish its safeguard measures.

38. The representative of Brazil said that on 21 May 2002, his country had requested consultations with the United States on its safeguard measures. He said that the letter containing this information would be made public shortly.

39. The representative of Venezuela said that his country supported the establishment of a panel to examine this matter. Venezuela supported the statement made by the EC and, like other countries, also believed that the US action would lead to a spiral of protectionism. It, therefore, wished to condemn the discriminatory nature of the US measures.

40. The representative of the European Communities noted that Japan and Korea had requested a special DSB meeting on 3 June 2002. In light of this, the EC wished to inform Members that it would request the inclusion of its panel request on the agenda of that meeting.

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

6. United States – Rules of origin for textiles and apparel products

(a) Request for the establishment of a panel by India (WT/DS243/5)

42. The Chairman drew attention to the communication from India contained in document WT/DS243/5.

43. The representative of India said that on 7 May 2002, his country had requested the establishment of a panel with regard to this dispute. The panel request was contained in document WT/DS243 dated 8 May 2002. India did not wish to repeat all those claims or arguments contained in its panel request. India was requesting the establishment of a panel to examine the WTO-consistency of the US rules of origin relating to textile and apparel products. His country had previously expressed its concerns that the relevant US legislation and administrative practices had resulted in extraordinarily complex rules of origin for textile and apparel products under which the criteria that conferred origin varied between similar products and processing operations. The structure of the rules of origin, their implementation and administration, the circumstances under which they had been adopted and their effect on the conditions of competition for textile and apparel products had led India to consider that the US rules of origin were being used as instruments to pursue trade objectives, and

had created restrictive, distorting and disruptive effects on international trade. In India's view, the US rules of origin relating to textile and apparel products were inconsistent with its WTO obligations, particularly those under Article 2 of the Agreement on Rules of Origin (ARO). India had held consultations with the United States on this issue, however, these consultations had not resulted in a satisfactory resolution of the dispute. India was, therefore, requesting the establishment of a panel at the present meeting.

44. The representative of the United States said that both Section 334 of the Uruguay Round Agreements Act (1996) and Section 405 of the Trade and Development Act of 2000 were fully consistent with the United States' obligations under the Agreement on Rules of Origin. His Government regretted that India had, nevertheless, chosen to request a panel. The United States urged India to reconsider its request, and thus the United States was not in a position to accept the establishment of a panel at the present meeting. Beyond this, the United States wished to raise a topic of serious concern relating to the copy of India's panel request which had been circulated by the Secretariat. The circulated copy of the panel request contained an error, namely, it referred to Article 2 of the ARO. This reference was not included in the actual panel request which had been submitted by India, but had apparently been added by the Secretariat. Panel requests were legal documents which established the terms of reference of panel proceedings. They played a central role in the legal deliberations of the panel. The DSU authorized Members alone to submit panel requests, and the Secretariat had no basis or authority for modifying such a request. The Secretariat could not, by its action, change the actual panel request submitted, nor could it change the actual terms of reference of any panel which might be established based on that request. The panel request in this dispute was that submitted by India. The United States noted that India's request did not cite a specific Article of the ARO, and that the request was deficient in this regard. However, the United States appreciated that this omission was a simple oversight on the part of India. Therefore, if India was to resubmit a corrected version of its panel request, the United States would accept the establishment of a panel at the first meeting at which that corrected request was considered.

45. The Chairman noted the statement made by the United States that it was not in a position to accept India's request at the present meeting as well as the procedural comments raised by the United States regarding the original request submitted by India which had been modified by the Secretariat.

46. The representative of the Secretariat (Legal Affairs Division) said that in order to allay any concern among delegations, he wished to clarify certain points in light of the US statement made at the present meeting. The United States had stated that the Secretariat modified the panel request submitted by India. This was a very serious charge indeed and implied that the Secretariat had been adding substantive elements to a complaint. This was not the case. In this instance, an error had been discovered by translators in India's request and had been corrected by staff based on a comparison with India's request for consultations. The request for consultations was contained in document WT/DS243/1 and read in relevant part on page 3 the following: "India therefore questions the compatibility of these changes with paragraphs (b), (c), (d) and (e) of Article 2 of the ARO." India's request for establishment of a panel contained in a letter dated 7 May 2002, stated in the last sentence: "For these reasons, India considers the United States' rules of origin for textiles and apparel products to be inconsistent with paragraphs (b), (c), (d), and (e) of the ARO." Obviously, even though the references to the subparagraphs were included, the reference to Article 2 was dropped. This error was corrected when the document was circulated. Document WT/DS243/5 read as follows: "For these reasons, India considers the United States' rules of origin for textiles and apparel products to be inconsistent with paragraphs (b), (c), (d) and (e) of Article 2 of the ARO." In the Secretariat's view, this was a correction of a typographical error, not a modification of the request for a panel. It was the normal practice of the Secretariat to ensure that such corrections were confirmed by the relevant parties prior to circulation. Apparently, India had not been contacted in this instance. The Secretariat would ensure that normal procedures would be followed in the future. Presumably, it was not being suggested that the Secretariat not follow its usual procedures. Hopefully, the demand was not that the Secretariat decline to attempt to achieve clarifications and corrections of errors. Such problems

occurred with respect to submissions by all delegations, developed and developing-country Members alike. The reason the Secretariat had accepted the Chairman's invitation and had taken the unusual step of taking the floor in this instance was that it would be unfortunate and not in the interests of the efficient functioning of the dispute settlement system, if total passivity by the Secretariat was demanded and simple errors of this type could not be corrected in due course. Again, he assured delegations that the normal procedures of contacting the relevant parties – initially, the one submitting the document – would be followed in the future. Thus, while the Secretariat accepted the criticism that its normal procedures had not been followed in this instance, it wished to emphasize that the Secretariat was not attempting to substantively modify a panel request, nor would it do so in the future.

47. The representative of Norway said that the Secretariat had done exactly what it should do and what especially smaller Members needed the Secretariat to do. He was surprised about the US criticism, the largest Member of the WTO with unlimited legal capacities, to take up such a issue. He asked the United States to reconsider its criticism. He commended the Secretariat for its action and expressed hope that the Secretariat would continue to help smaller Members in the future to correct similar errors.

48. The representative of Malaysia said that his delegation wished to be associated with the views expressed by the representative of Norway. These views should be taken into account especially the point concerning small delegations. The correction made by the Secretariat was required and, as pointed out by the Secretariat, this was not a substantive change.

49. The representative of India said that his delegation supported the statements made by Norway and Malaysia. The oversight that had taken place was a minor one and seen together with the previous document, namely, the request for consultations, the intention was clear. India believed that the Secretariat had not made any substantive change. However, India also noted the statement made by the United States that, at the next meeting of the DSB, the United States would accept India's panel request.

50. The Chairman noted the statement made by the United States that if India submitted a new request, the United States would be prepared to accept the establishment of a panel at the next DSB meeting.

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

7. European Communities – Anti-dumping duties on imports of cotton-type bed linen from India

(a) Recourse to Article 21.5 of the DSU by India: Request for the establishment of a panel (WT/DS141/13/Rev.1)

52. The Chairman drew attention to the communication from India contained in document WT/DS141/13/Rev.1.

53. The representative of India said that on 12 March 2001 the DSB had adopted the Panel Report, as modified by the Appellate Body, in the case on "European Communities - Anti-Dumping Duties On Imports Of Cotton-Type Bed Linen From India" (WT/DS141). He recalled that these Reports had concluded that the EC's imposition of definitive anti-dumping duties on imports of cotton-type bed linen from India was inconsistent with the requirements of the Anti-Dumping Agreement. In accordance with these Reports, the DSB had recommended that the EC bring its measure into conformity with its obligations under the Anti-Dumping Agreement. On 7 August 2001 the Council of the EC had adopted Regulation 1644/2001 amending the original definitive anti-dumping duties on bed linen from India, while simultaneously suspending its application. At that

time, India had strongly disagreed that this "re-determination" complied with the recommendations of the Panel and the Appellate Body. That "re-determination" also provided for the expiry of the amended measures within six months after entry into force of the amended Regulation, unless a review had been initiated before that date. Unfortunately, on 13 February 2002, the EC had initiated a so-called "partial interim review" against India, thereby compounding the problems by basing an illegal review on a flawed redetermination. On 8 March 2002 India had requested the EC to enter into consultations in order to try and solve the problems caused by the re-determination and the partial interim review. On 25 and 26 March 2002 these consultations had been held in Geneva. They had allowed a better understanding of the respective positions, but had failed to settle the dispute. This left India no choice but to seek recourse to Article 21.5 of the DSU, since "there is disagreement as to the existence or consistency with a covered agreement of measures taken to comply with the recommendations and rulings". In particular, India considered that in implementing the recommendations and rulings of the DSB in this dispute through its re-determination and further action and by initiating a partial interim review the EC: (i) continued to miscalculate and overstate the dumping margins; (ii) resorted to unwarranted cumulation by combining India's imports with a country that did not dump; (iii) overstated the volume of dumped imports from India; (iv) sought to evaluate all relevant economic injury factors even in the absence of adequate data; (v) had not demonstrated that the dumped imports caused injury; (vi) had initiated a review that is impermissible under the Anti-Dumping Agreement; and (vii) had failed to respect India's status as a developing country. For these reasons India considered that the EC had failed to comply with the recommendations of the Panel and the Appellate Body and thus had failed to comply with the DSB's recommendations and rulings. For these reasons, India was requesting that a panel be established under Article 21.5 of the DSU to determine whether the EC had complied with the DSB's recommendations and rulings by the due date and whether the EC's re-determination and its further action were consistent with the covered Agreements.

54. The representative of the European Communities said that, with great surprise, the EC had received India's request for the establishment of Article 21.5 implementation panel and this for various reasons, not least because the EC was confident that it had fully and faithfully implemented in all respects the DSB's recommendations and rulings in this case. On each occasion, the EC had provided to India all clarifications requested and showed that all relevant DSB's rulings and recommendations had been scrupulously observed. In the light of the above and taking into account, the fact that no anti-dumping duties effectively apply to the relevant Indian exports, the EC did not see any reason behind India's request for an implementation panel. Despite this, if India insisted on its request, the EC was ready to accept the establishment of the panel at the present meeting.

55. The DSB took note of the statements and agreed, pursuant to Article 21.5 of the DSU, to refer to the original Panel, if possible, the matter raised by India in document WT/DS141/13/Rev.1. The panel would have standard terms of reference.

56. The representative of the United States reserved its third-party rights to participate in the Panel's proceedings.

8. Proposed nominations for the indicative list of governmental and non-governmental panelists (WT/DSB/W/191)

57. The Chairman drew attention to document WT/DSB/W/191 which contained additional names proposed for inclusion on the indicative list in accordance with Article 8.4 of the DSU. He proposed that the DSB approve the names contained in document WT/DSB/W/191.

58. The DSB so agreed.

9. Canada – Export credits and loan guarantees for regional aircraft

(a) Statement by Brazil

59. The representative of Brazil, speaking under "Other Business", said that the Panel Report in the case on "Canada - Export Credits and Loan Guarantees for Regional Aircraft", had been circulated on 28 January 2002, and had subsequently been adopted by the DSB on 19 February 2002. In its conclusions and recommendations, the Panel had identified several sales operations of Bombardier's regional aircrafts that received prohibited subsidies from official agencies of the Canadian Government. The Panel, in accordance with Article 4.7 of the Agreement on Subsidies and Countervailing Measures (SCM Agreement) had recommended that Canada "withdraw the subsidies without delay". The Panel had established a 90-day period for this withdrawal. This 90-day period had expired on 20 May 2002. At the 8 March 2002 DSB meeting, under the agenda item "Canada - Export Credits and Loan Guarantees for Regional Aircraft: Implementation of the recommendations of the DSB", Canada had merely stated that it "... was considering its options on how best to proceed with respect to this matter". Since then, Canada had not provided Brazil in the bilateral context nor the DSB with any additional information about measures that it intended to adopt to comply with the Panel's recommendations. Thus, Brazil could only conclude that, according to Article 22.2 of the DSU, Canada had "fail(ed) to bring the measure found to be inconsistent with a covered agreement into compliance therewith or otherwise comply with the recommendations and rulings within the reasonable period of time ...". In line with these arguments, Brazil wished to reserve all its rights under Article 22 of the DSU, and in particular those related to the authorization of suspension of concessions and other obligations vis-à-vis Canada. Bilateral contacts on the civil aircraft disputes continued to take place and Brazil hoped that they would enable the parties to make significant progress towards a mutually satisfactorily solution.

60. The representative of Canada said that her country and Brazil were working toward a resolution of the aircraft dispute, one that would encompass both Canadian and Brazilian programmes. A working group from the two countries had held a constructive meeting in New York on 15 May 2002. The parties planned to meet again in Canada in June. The subsidies at issue in Canada – Aircraft case related to several transactions, some involving aircraft that had been delivered several years ago. In respect of aircraft delivered prior to 20 May 2002, Canada did not consider that it was required to take any further steps to comply with the DSB's recommendations. If Brazil agreed, it remained for the parties to find an appropriate solution to the matter of undelivered aircraft. As Canada had advised Brazil, it would honour its commitments in respect of existing contracts for the delivery of new aircraft. She noted that Canada's position in this matter was no different than the position that Brazil had taken in respect of aircraft financed under its PROEX programme. Canada hoped that the two countries could agree on a forward-looking resolution of this dispute.

61. The DSB took note of the statements.