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Dispute Settlement Body
12 December 2000

MINUTES OF MEETING

Held in the Centre William Rappard
on 12 December 2000

Chairman: Mr. S. Harbinson (Hong Kong, China)

Prior to the adoption of the agenda, the item concerning the Panel Report on "European Communities – Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India" was removed from the agenda following the EC's decision to appeal the Panel Report.

Subjects discussed: Page

1. Surveillance of implementation of recommendations adopted by the DSB

(a) European Communities - Regime for the importation, sale and distribution of bananas: Status report by the European Communities

(b) Japan - Measures affecting agricultural products: Status report by Japan

(c) Canada - Measures affecting the importation of milk and the exportation of dairy products: Status report by Canada

(d) India - Quantitative restrictions on imports of agricultural, textile and industrial products: Status report by India

(e) Turkey - Restrictions on imports of textile and clothing products: Status report by Turkey

(f) Chile – Taxes on alcoholic beverages: Status report by Chile

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

(a) European Communities – Regime for the importation, sale and distribution of bananas: Status report by the European Communities (WT/DS27/51/Add.14)

2. The Chairman drew attention to document WT/DS27/51/Add.14 which contained the status report by the European Communities on its progress in the implementation of the DSB's recommendations concerning its banana regime.

3. The representative of the European Communities said that, in previous meetings, the EC had informed the DSB of its intentions regarding the implementation of its new banana import regime which it considered to be fully in compliance with the DSB's recommendations. Since then the EC had continued to hold discussions both internally and with interested parties with a view to finalizing the new banana import regime. The EC had done everything it could to find a solution in the consultations with interested Members and, in particular, with the two Members who had successfully challenged the present regime. He regretted that the consultations had revealed deep divisions among countries and that demands had been made to change certain commitments which had not been suggested by the Panel. The EC continued its internal discussions with the most interested parties and hoped that it would soon be in a position to inform the DSB that a successful conclusion had been reached in this case.

4. The representative of Colombia reiterated his country's surprise that although the European Commission had received a mandate to explore three possible options for resolving the banana dispute, thus far, it had concentrated on a first come, first served system. Colombia stressed that the majority of non-preferential suppliers and the United States had expressed serious doubts about this

system. It was important to ensure that this process was not concluded without an agreement with the United States and the other parties to the dispute.

5. The representative of Panama noted that according to the EC there were two categories of parties to the dispute. One category was considered to be the most interested parties. In the EC's view, the most interested parties were those who had been authorized to impose sanctions. However, this was incorrect. For example, Panama which had not requested such an authorization was considered to be a less interested party in this dispute. If the EC continued to insist on this, retaliatory measures could be taken and the situation would become even more complicated. Panama was disappointed with the course of action taken by the EC and urged the EC to enter into discussions with all the parties in order to find a solution. At the 17 November DSB meeting suggestions and proposals had been made by Members and Panama had stated that discussions should be carried out on the basis of the Caribbean proposal. Since the EC's status report did not contain any new information, Panama reiterated its statement made at the 17 November DSB meeting.

6. The representative of the United States said that, once again, the EC had nothing new to report since the 17 November DSB meeting. Her country was particularly disappointed that the EC was once again proceeding with a solution that would not resolve this dispute. The United States, together with the Latin American and Caribbean countries, had developed a viable alternative as a final solution to this long-standing dispute. The United States urged the EC to reconsider its position.

7. The representative of Guatemala said that the EC's status report did not contain any new information on the progress in its implementation. In its report, the EC had limited itself to stating that it was finalizing its internal decision-making process, but contrary to what had been asserted, given that more than three years had lapsed since the adoption of the Reports, the EC's internal process was not aimed at implementing rapidly a new WTO-compatible banana import regime. The EC's procrastination harmed the complainants. Guatemala believed that the EC's proposal to put in place a first come, first served system would not bring its banana import regime into conformity with the WTO rules.

8. In an effort to help finding a final solution to this dispute, Guatemala had sent letters to the European Commission and to the Ministers of the member States responsible for this matter. In those letters, Guatemala had stated its objections with regard to the first come, first served system, to the high level of preferences, and, in general, to other elements that would preserve a discriminatory system which had repeatedly been condemned. Furthermore, the Latin American Ministers had met with the EC's officials and had made public statements condemning the EC's proposal. Moreover, while expressing its reasoned and legally justified dissent, Guatemala had also indicated its flexibility by stating that the Caribbean proposal, submitted in December 1999, could be used as a basis for a new banana import regime. Guatemala hoped that these efforts would reverse the situation, otherwise it would have to have recourse to the DSU provisions. It was up to the EC member States, even at this very late stage, to restore the credibility of the dispute settlement system by bringing their banana import regime into conformity with the WTO rules.

9. The representative of Honduras expressed her country's dissatisfaction with the progress report submitted by the EC at the present meeting. The report did not contain any information on progress in the implementation. On the contrary, the information contained therein constituted a step backwards in terms of the EC's discrimination against bananas from Honduras and ultimately against her country's economy. She recalled that the proposal currently being examined by the EC contained a multitude of discriminatory elements. First, it comprised a first come, first served system of administration of licences, which in reality constituted a system of simultaneous examination and discriminated according to the origin of the fruit. That system was opposed by the Caribbean and European countries, the United States and the Latin American countries. Second, the level of preferences was excessively high and illegal. Third, the three quotas' structure were designed in such

a way so as to undermine, as much as possible, the market share of her country's exports. One could also point to further illegalities. The EC did not seem to have the political will to comply with the DSB's rulings and to bring its banana import regime into conformity with the WTO rules. First, it was delaying the implementation process at every stage since the period for implementation had elapsed. Second, every time a new scheme had been proposed, such a scheme was even more illegal and discriminatory than the previous one. Honduras urged the EC to comply rapidly with the WTO rulings and to refrain from schemes which served only to aggravate the discrimination. It wished to point out to the EC that at this point it did not have any discretion as to whether or not to comply, it had to comply.

10. The representative of Mexico noted that, since the 17 November DSB meeting, no consultations had taken place between his country and the EC. He reiterated that the EC did not need to seek a consensus on its implementation, but to ensure that its measures were in conformity with its WTO obligations. He reiterated that Mexico's preference was a tariff-only system at a level that would ensure access to the EC's market.

11. The representative of Ecuador said that the EC's status report did not contain any new information and its non-compliance continued to persist. He noted that negotiations were ongoing, however, no new disciplines or obligations should be envisaged while the EC continued its non-compliance with the WTO rules. The EC should reflect on the systemic implications of its actions. On the one hand, developing countries were obliged to comply with the WTO rules, and on the other hand, there was one Member who had no intention to do so. In its statement, the EC had referred to its consultations. He underlined that during these consultations, the EC had not provided any answers to the questions previously raised by Ecuador.

12. The representative of Jamaica said that her country, like many other countries, was anxious for a speedy and lasting resolution of this dispute. Jamaica remained committed to work with all the parties concerned to find an equitable arrangement so as to safeguard the legitimate trading interest of all suppliers and to preserve market access on a viable basis.

13. The representative of the European Communities said that his delegation had noted the statements made at the present meeting, which would be conveyed to his authorities. In response to Panama's comment, he said that all countries who had made statements at the present meeting were considered by the EC to be interested parties in this dispute. The EC had tried, for a long time, to square the circle but the exporting countries had different interests and there were deep divisions among them. If it was easy to solve this case, a solution would have already been found a long time ago. He noted that some countries were not happy with the process and with the solution pursued at this stage. The EC would continue to try to find a WTO-compatible solution to this matter in the near future.

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

(b) Japan – Measures affecting agricultural products: Status report by Japan (WT/DS76/11/Add.10)

15. The Chairman drew attention to document WT/DS76/11/Add.10 which contained the status report by Japan on its progress in the implementation of the DSB's recommendations with regard to its measures affecting agricultural products.

16. The representative of Japan said that his country had held consultations with the United States in a constructive and friendly manner. However, despite those efforts some technical issues still had to be resolved. He assured Members that both Japan and the United States had been doing their best

in order to reach a mutually satisfactory solution in the near future. Japan would notify the DSB of the result of the consultations with the United States as soon as a satisfactory agreement was reached.

17. The representative of the United States said that her country also hoped to conclude its work with Japan in the near future.

18. The representative of the European Communities said that his delegation welcomed the fact that Japan had started informal contacts with the EC in November in the area of agriculture and that those contacts were ongoing. The EC looked forward to a resolution of this matter and continued to watch this matter very closely.

19. The representative of Australia reiterated his country's expectation that any new measure would be implemented consistently with paragraphs 5 and 7 of Article 3 of the DSU.

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

(c) Canada – Measures affecting the importation of milk and the exportation of dairy products: Status report by Canada (WT/DS103/12/Add.5 – WT/DS113/12/Add.5)

21. The Chairman drew attention to document WT/DS103/12/Add.5 – WT/DS113/12/Add.5 which contained the status report by Canada on its progress in the implementation of the DSB's recommendations with regard to its measures affecting the importation of milk and the exportation of dairy products.

22. The representative of Canada said that over the past year, as described in previous status reports, Canada's industry stakeholders had taken steps to implement new mechanisms for the commercial export of milk. On 7 and 8 December 2000, another set of consultations had been held with the United States and New Zealand, in accordance with the terms of the implementation agreement reached between the parties pursuant to Article 21.3(b) of the DSU. During these consultations, the parties had mutually agreed to extend the reasonable period of time for implementation until 31 January 2001. A copy of the letter notifying the Chairman of the DSB of this modification to the agreement between the parties would be circulated to all Members.[1] Canada reaffirmed its commitment to implement fully the DSB's recommendations and rulings in this case.

23. The representative of New Zealand said that, as noted by Canada, consultations had been held on 7-8 December 2000 between Canada, the United States and New Zealand to discuss this matter. Notwithstanding these consultations New Zealand's concerns about the steps that Canada had taken in response to the rulings of the Panel and the Appellate Body remained. As had been indicated at previous DSB meetings, New Zealand had regretted that Canada had, in recent months, introduced new export mechanisms for dairy products which did not comply with the rulings of the Panel and the Appellate Body. Accordingly, New Zealand continued to reserve all its WTO rights in relation to this matter.

24. The representative of the United States said that, in the past week, Canada, New Zealand and the United States had held final consultations under the implementation agreement concluded in December 1999. The United States regretted that the parties had failed to reach a consensus as to whether Canada's new provincial measures were in compliance with the DSB's recommendations. As noted by the United States in previous DSB meetings, Canada had not brought its export regime for dairy products into compliance with its export subsidy obligations under the Agreement on Agriculture. As not much time was left, it appeared unlikely that this would be accomplished.

[1] WT/DS103/13 – WT/DS113/13.

Despite its disagreement with Canada regarding the adequacy of its actions taken to implement the DSB's recommendations, the United States wished to acknowledge and commend the spirit in which Canada had approached the consultative process provided for in the implementation agreement. Over the past year, Canada had regularly advised the parties of the steps it was taking in the process, and had engaged in a candid and constructive exchange of views regarding those actions.

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

(d) India – Quantitative restrictions on imports of agricultural, textile and industrial products: Status report by India (WT/DS90/16/Add.4)

26. The Chairman drew attention to document WT/DS90/16/Add.4 which contained the status report by India on its progress in the implementation of the DSB's recommendations with regard to its quantitative restrictions on imports of agricultural, textile and industrial products.

27. The representative of India said that his country's status report was brief but clear. India was committed to removing restrictions maintained for balance-of-payments reasons in two instalments in a balanced fashion. On 1 April 2000, India had already removed 50 per cent of the residual quantitative restrictions and the reasonable period of time for the remaining quantitative restrictions would expire in April 2001. Thus India was on course in implementing its commitments.

28. The representative of the United States said that her country looked forward to future reports from India as the deadline of 1 April 2001 was approaching.

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

(e) Turkey – Restrictions on imports of textile and clothing products: Status report by Turkey (WT/DS34/12/Add.4)

30. The Chairman drew attention to document WT/DS34/12/Add.4 which contained the status report by Turkey on its progress in the implementation of the DSB's recommendations with regard to its restrictions on imports of textile and clothing products.

31. The representative of Turkey said that, as stated in the status report, his country's relevant authorities had intensified their work on different aspects of the implementation. Turkey was aware of the time-period for implementation and expected that the results of the work would be revealed in due course.

32. The representative of India said that a reasonable period of time for implementation in this case, as mutually agreed with Turkey, would expire on 19 February 2001. She noted that the status reports previously submitted by Turkey, including the one submitted at the present meeting, had not given any indication of the details on the progress made thus far. India was deeply disappointed that the implementation reports had been sketchy and that Turkey had merely indicated its "intentions of finding the most appropriate solution", and that details would be revealed in due course. India urged Turkey to submit details regarding its implementation of the DSB's rulings and recommendations. As the expiry of the reasonable period of time drew close, she reiterated India's expectation that Turkey would fully comply with its WTO obligations by 19 February 2001.

33. She also wished to underline India's concern with regard to the restrictions imposed recently by the Turkish authorities on imports of fabrics from India. It seemed that the Turkish licensing authorities were now seeking an undertaking from applicants for a "Teshvik licence" that they would

not import fabrics from India. She said that a " Teshvik licence" permitted a Turkish exporter to import fabrics without any tax or quota obligation. The recently introduced undertaking from applicants not to import fabrics from India amounted to a selective restriction and discriminated against Indian suppliers of fabrics. It evidently lacked legal basis under the Agreement on Textiles and Clothing and the GATT 1994. India therefore requested Turkey to clarify this situation.

34. The representative of Turkey said that his delegation would look into this alleged discriminatory treatment accorded to products originating in India. His authorities would be in touch with India's authorities in order to clarify this issue.

35. The representative of Australia said that his country regarded this as an important case with significant implications for the WTO. In light of the recent discussions in the General Council on regional trading arrangements, and the work of the Committee on the Regional Trade Agreements, he wished to reiterate Australia's strong systemic interest in ensuring that Members involved in the regional trading arrangements and customs unions acted consistently with Article XXIV of the GATT 1994 and Article V of the GATS.

36. The representative of Turkey noted that any systemic issues concerning regional trade agreements and arrangements would be discussed in relevant fora.

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

(f) Chile – Taxes on alcoholic beverages: Status report by Chile (WT/DS87/17 – WT/DS110/16)

38. The Chairman drew attention to document WT/DS87/17 – WT/DS110/16 which contained the status report by Chile on its progress in the implementation of the DSB's recommendations with regard to taxes on alcoholic beverages.

39. The representative of Chile noted that a reasonable period of time for implementation in this case would expire on 21 March 2001. His authorities were currently in the process of drafting a legislation which would ensure full compliance with the DSB's recommendations. Efforts were being made to ensure that all interested parties agree to the content of that legislation in order to reach consensus which would expedite the approval of the legislation by the parliament. Work continued to this effect and he believed that the parties were close to reaching a consensus. His country had also been in very close contact with the EC in order to ensure that the draft legislation was consistent with the EC's views in order to avoid future disputes.

40. The representative of the European Communities said that the EC was confident that Chile would comply with the WTO ruling by 21 March 2001. The EC hoped that as the deadline for implementation was approaching, a bill would soon be sent to Congress for approval. He underlined that in order for a new tax system to be WTO-compatible a harmonized and uniform tariff rate should be applied on spirits and any discrimination against EC producers should be avoided.

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

2. Guatemala – Definitive anti-dumping measures on grey Portland cement from Mexico

(a) Implementation of the recommendations of the DSB

42. 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 should inform the DSB, within 30 days after the date of adoption of the panel or Appellate Body report, of its intentions in respect of implementation of the DSB's recommendations and rulings. He recalled that at its meeting on 17 November 2000, the DSB had adopted the Panel Report on "Guatemala – Definitive Anti-Dumping Measures on Grey Portland Cement from Mexico". In accordance with Article 21.3 of the DSU, he invited Guatemala to inform the DSB of its intentions in respect of implementation of the DSB's recommendations.

43. The representative of Guatemala said that in order to strengthen the dispute settlement system her country did not wish to delay the implementation in this case. She recalled that at the 17 November DSB meeting, Guatemala had explained why it had decided not to appeal the Panel Report. Likewise, recognizing that prompt compliance with the DSB's recommendations and rulings was essential, Guatemala had decided not to seek a reasonable period of time for implementation. At the present meeting, pursuant to Article 21 of the DSU, Guatemala wished to inform the DSB that, by Resolution 1128, dated 2 October 2000, it had repealed the definitive anti-dumping duty imposed on all imports of grey portland cement entering Guatemala's territory and coming from the Mexican company Cooperative La Cruz Azul S.C.L. This was due to the fact that the conditions that had given rise to the anti-dumping duty had changed as a result of the supply situation in the domestic market. In accordance with a procedural requirement, a copy of this Resolution had been published in the Diario de Centroamérica. This action demonstrated that Guatemala had effectively implemented the DSB's recommendations and rulings in this case.

44. The representative of Mexico thanked the delegation of Guatemala for the information provided at the present meeting. Mexico welcomed the expeditious manner in which Guatemala had withdrawn its measure.

45. The DSB took note of the statements and of the information provided by Guatemala regarding its implementation of the DSB's recommendations.

3. Brazil – Export financing programme for aircraft

(a) Statement by Brazil concerning implementation of the recommendations of the DSB

46. The Chairman said that the item was on the agenda of today's meeting at the request of Brazil.

47. The representative of Brazil said that since the circulation of the Appellate Body Report pursuant to Article 21.5 proceedings on " Brazil - Export Financing Programme for Aircraft", Brazil and Canada had held consultations with a view to finding a mutually satisfactory solution. At the 4 August 2000 DSB meeting, when the Reports of the Appellate Body and the Panel had been adopted, his delegation had unequivocally stated that Brazil would bring all its future PROEX operations in line with the DSB's recommendations. At the same time, Brazil had reaffirmed that it would honour its commitments with regard to the previously concluded operations. Brazil had faithfully abided by those statements. In fact, a Monetary Council Resolution enacted last week (Banco do Brasil Resolution N. 002799, dated 6 December 2000) had put into force new regulations for PROEX which had brought Brazil into full conformity with its WTO obligations. Brazil had held active consultations with Canada on adequate compensation for commitments incurred under previous PROEX regulations. He believed that such compensation would benefit not only Bombardier, a Canadian corporation interested in this dispute, but also a number of other Canadian companies and economic sectors. The envisaged compensation would be fully consistent with Brazil's obligations under the multilateral trading disciplines and would constitute a "win-win" scenario for the two economies. He stressed that, from the outset, Canada had accepted the option of compensation and the two countries had worked constructively towards that goal. However, efforts to find a mutually

satisfactory solution had been hampered by Canada's unreasonable demands concerning the regulations of a modified PROEX.

48. Brazil could have implemented the DSB's recommendations immediately. However, the parties had entered into consultations on both compensation and modifications of PROEX. High-level delegations from the two capitals had met several times, in New York, Geneva, Montreal, São Paulo, New York again, and Rio de Janeiro, with a view to creating a confidence-building atmosphere in order to reach a comprehensive negotiated solution. He regretted that these discussions had not been successful. Canada had always insisted on *sine qua non* conditions that had clearly gone beyond the parameters set forth in the Reports. In this process Canada had tried to obtain certain outcomes such as a verification mechanism that would imply commitments neither provided for in the DSB's recommendations nor in the WTO Agreements. In addition, Canada had argued that Brazil should observe the Panel's findings declared by the Appellate Body to be "moot, and, thus, of no legal effect". Under Canada's proposals, financing support to the Brazilian exporter would have to observe limitations that the Canadian export credit agency had admittedly never followed.

49. Given the lack of progress of in the bilateral negotiations, as well as the need to urgently comply with the DSB's recommendations, Brazil had no choice but to proceed with its adjustments of PROEX. As he had already stated, a Monetary Council Resolution with new PROEX regulations had been approved in the past week and was now fully operational. Under the revised programme, no equalization would be authorized in amounts that would bring the net interest rate below the relevant Commercial Interest Reference Rate (CIRR). He recalled that the Appellate Body had found that to establish that PROEX payments "... are not used to secure a material advantage in the field of export credit terms, Brazil must prove either: that the net interest rates under the revised PROEX are at or above the relevant CIRR ... or, that an alternative 'market benchmark', other than the CIRR, is appropriate, and that the net interest rates under the revised PROEX are at or above this alternative market benchmark". In implementing the Appellate Body's finding, Brazil, instead of using any "alternative market-benchmark", had chosen to revise PROEX in order not to allow for payments that resulted in interest rates below the relevant CIRR. Furthermore, the Committee on Export Credits would approve equalization for regional aircraft financing having as a benchmark the financing conditions existing in the international market. With these parameters, PROEX had been brought into full conformity with Brazil's obligations under the SCM Agreement and the GATT 1994.

50. The representative of Canada said that Brazil had announced that it had revised the PROEX programme in such a way so to bring itself into compliance with the WTO rulings. In an attempt to resolve the dispute over the PROEX programme, Canada and Brazil had held extensive consultations. Canada was aware of the broad outlines of the proposed revisions to PROEX, and looked forward to studying carefully the details. However, on the basis of its initial assessment, Canada considered that Brazil's proposal did not constitute compliance. During the six negotiating sessions no details had been provided by Brazil on its replacement measure other than to state that the CIRR would be the applicable reference rate. Canada did not consider that the simple insertion of CIRR as a minimum rate below which PROEX would not buy down export financing constituted compliance. Rather, it was a continued debasing of the market. Full and complete compliance on the part of Brazil would require the introduction of a number of additional disciplines to PROEX, as outlined in the Panel and the Appellate Body rulings, and as Canada had indicated repeatedly to the Brazilian authorities. Brazil had persistently stated that it would not comply with these other conditions, which Canada considered to be essential to a compliant export financing transaction.

51. While the dispute under consideration was about export subsidies on aircraft, the PROEX programme also applied to most other Brazilian exports. In fact, Canada had recently taken a countervailing duty action against imports of certain steel products from Brazil which had received subsidies, including under the PROEX programme. On a more general level, one should also keep in mind that there had been four separate multilateral determinations on the WTO-inconsistency of the

PROEX programme: twice by the Panel and twice by the Appellate Body. Therefore, a mere unilateral assertion of compliance by Brazil did not, and could not, change this. Indeed, a Member could not seek to escape indefinitely the consequences of its non-compliance simply by asserting that it had complied as soon as the complaining member invoked its right to impose countermeasures. If Brazil believed that the revised PROEX programme was WTO-consistent, then it should be prepared to demonstrate this through an appropriate panel process. However, this had no bearing on the decision of the DSB with regard to Canada's request for countermeasures. It was clear that provided that Canada's request for countermeasures was consistent with the decision of the Arbitrators – which was the case – then the DSB would have to grant the authorization for countermeasures, unless there was a consensus to reject the request. There were no other options. He noted that this matter would be taken up under item 6 of the agenda of the present meeting.

52. Brazil had stated that it would honour its previous commitments and that it would provide PROEX payments found to be a prohibited export subsidies as a result of possible implications under its domestic law. It was well established that domestic law could not be used to avoid international obligations. He noted that Canada had been faced with a similar conflict between domestic and international obligations with regard to its modifications to Technology Partnerships Canada. At that time, Canada had not hesitated and contracts had been reopened and payments had been cancelled. Brazil had also referred to a WTO-plus issue. He said that Canada had entered into negotiations with Brazil with the sincere desire to find a mutually satisfactory resolution to this long-standing dispute. In the discussions on compensation, a number of areas of complementarity between the two economies had been identified which could have provided the basis for a WTO-consistent negotiated settlement. However, from the start of the negotiations, Canada had explicitly made its position that a successful resolution of the dispute was predicated on full and complete compliance for the PROEX export subsidy programme. Canada had not gone beyond the DSB's recommendations, but insisted and continued to insist on full compliance, which Brazil appeared unwilling to undertake. The comments that Canada's offer was simply impossible for the Brazilian side should be categorically refused.

53. The representative of the European Communities said that since the adoption of the Article 21.5 Panel and the Appellate Body reports, the EC had looked forward to a clear indication from Brazil as to how it intended to bring itself in compliance with the DSB's recommendations and rulings. The EC expected that Brazil would refrain from issuing NTN-I bonds for the sale of the outstanding aircrafts for which commitment had been made and would stop providing new export subsidies under the mandated PROEX scheme. Moreover, the EC believed that changes to the PROEX scheme should take into account the OECD provisions on interest rates and those on the duration and the basic conditions of the loans. The EC would monitor closely Brazil's compliance with the Panel and the Appellate Body Reports and reserved its rights on this matter.

54. The representative of Brazil said that he wished to respond to some comments made by Canada. First, Brazil had not made a unilateral declaration regarding its compliance in this case. On the contrary, Brazil strictly followed the Appellate Body's recommendations. Members were aware of the course of action under item 6 of the agenda of the present meeting, and this was the price to be paid for "wilder manifestation of unilateralism". Although the DSB's decision under item 6 would be automatic, it did not mean that Brazil was in agreement with Canada's assertions. On the contrary, Brazil believed that Canada was making a unilateral determination regarding Brazil's implementation in this case. As had been stated previously, Brazil would honour its past commitments. For that reason Brazil was willing to offer to compensate and Canada seemed to be agreeable to this idea. He did not agree with the comment made by Canada concerning the conflict between domestic and international law. The question of honouring previous commitments was not a question of domestic versus international law, but a question of general principles of law. If Canada was prepared to undertake discussions on compensation, he questioned whether it wished to disguise the fact that it used retaliation for one purpose and tried to justify it with another. Canada was free to do so but there

was a price to pay in terms of consistency and coherence. Canada had paid that price when it had insisted on certain sequencing of events which did not correspond to its position on the application of the DSU rules.

55. Canada had referred to countervailing duties that had been applied under the PROEX programme to items other than aircraft. He was not aware whether this was the case. Brazil was carefully examining other aspects of the Reports such as the Appellate Body's view that some of Canada's practices with regard to the Export Development Corporation constituted a prima facie evidence of possible subsidies. Brazil would examine carefully this issue while pursuing its efforts to find a constructive solution to this dispute. He noted that this was a case between a developed country which had thus far the monopoly of a certain field of technology and a developing country which was successful in defining that monopoly. He believed that by avoiding to end this dispute through negotiations, Canada wished to suffocate the Brazilian aircraft industry. Nevertheless, Bombardier would continue to exist along with Embraer. He believed that Brazil had a better and cheaper plane, and that that plane would continue to exist in the market.

56. The representative of Canada said that Brazil's comment that Canada "used wild unilateralism" was unfortunate and incorrect. He noted that five different and well-reasoned panel decisions had been made in this dispute. With regard to the issue of compensation, he recognized that, as stated by Brazil, the issue of compensation had been put on the table by both parties to the dispute.

57. The Chairman noted that Brazil had requested a point of order.

58. The representative of Brazil said that he had not stated that Canada threatened Brazil with wilder unilateralism but that the dispute settlement procedures constituted an insurance policy against wilder unilateralism. When Members had decided in 1994 to accept the automatic dispute settlement procedures the objective was to avoid wilder manifestations of unilateralism, and that was why they had paid the price of accepting such automatic dispute settlement procedures.

59. The Chairman said that it was his understanding that the question of wilder unilateralism had not been directed specifically at Canada but it was a general statement.

60. The representative Canada said that the issue of compensation had been put on the table by both parties to the dispute. As he had stated in his opening statement, Canada had never deviated from its insistence on full compliance with the WTO's rulings and that was why it had referred to the question of unilateralism. With regard to a request for retaliation and its coherence as well as the issue of sequencing, he would provide elaborated explanation thereon under item 6. With regard to the reference in the context of the PROEX programme to steel products, he believed that it was relevant to mention this and there was a need to be objective. When Brazil had referred to the EDC, the Canada Account, which was part of this original decision provided clear evidence. Canada was in the process of drafting a compliance measure that would ensure that Canada Account transactions in the regional aircraft sector complied fully with its WTO obligations and with the rulings of Article 21.5 Panel in the Canada Aircraft case. Since the Article 21.5 Panel's rulings had been issued, only one Canada Account transaction had taken place in the regional aircraft sector and that transaction had been carried out so as to comply fully with the Panel's ruling. He assured Brazil, as well as other Members, that any additional transactions to be completed prior to finalization of the implementing measure would fully comply with the Panel's rulings.

61. Brazil had alleged that Bombardier was trying to suffocate Embraer and he believed that this was a serious and "wild" allegation. He underlined that Canada was only asking the Brazilian aircraft manufacturer and Brazil to abide by the WTO rules. Brazil had to comply fully with the WTO rules. Whether Embraer could produce a cheaper aircraft without subsidies remained to be seen and whether

it was a better aircraft would be determined by the market. The Canadian Bombardier had no insecurity in competing on the market. This was not a question of suffocation but a question of respecting the WTO rules. Equally, it was also not an issue, as alluded to by Brazil, of a large developed country trying to go after a developing country's status. It was neither an issue of special and differential treatment for developing countries. In certain circumstances such treatment was provided for in the SCM Agreement as long as certain preconditions were met. However, both the panel and the compliance panel had found that Brazil had lost its developing country exemption for PROEX, in part, because it had increased its level of export subsidies. Therefore, Brazil had failed to comply with the conditions set out in Article 27.4 of the SCM Agreement. Consequently, Brazil by its own actions disentitled itself to special and differential treatment for developing countries under the SCM Agreement.

62. The DSB took note of the statements.

4. Chile – Measures affecting the transit and importation of swordfish

(a) Request for the establishment of a panel by the European Communities

63. The Chairman recalled that the DSB had considered this matter at its meeting on 17 November 2000 and had agreed to revert to it. He drew attention to the communication from the European Communities contained in document WT/DS193/2.

64. The representative of the European Communities recalled that at the 17 November DSB meeting, he had stated that on the EC's preference was that Chile enter into negotiations with the EC and all other parties concerned with a view to achieving within a reasonable delay an agreement on the long term conservation of sustainable use of swordfish resources in the South Pacific, while allowing, in the meantime, a limited and regulated access to exports for the EC's vessels. This position had once again been detailed and put forward as a compromise proposal by the EC Commissioners in a joint letter of the 28 November 2000 addressed to the Chilean Deputy Minister of Foreign Affairs. This letter which contained a proposal both reasonable in terms of a sustainable management of the swordfish resources in the South East Pacific and respectful of Chile's and EC's respective rights and obligations under the UN Convention of the Law of the Sea and the WTO, constituted a last stage effort by the EC to find a mutually acceptable solution. The EC hoped that on this basis it would be able to reach an agreement with Chile within the shortest possible period and thereby resolving this dispute. The EC hoped that a solution could still be found before the constitution of a panel. He emphasized, once again, the EC's firm belief that the most effective way to tackle international environmental issues such as the conservation of migratory stock was to do so multilaterally within the framework of a negotiated agreement, and ensuring that any trade measures contained therein were agreed by consensus. This was the best way to guarantee against unilateral and discriminatory actions and the use of trade measures for protectionist purposes. In the meantime, pending a satisfactory solution, the EC reiterated its request for the establishment of a panel.

65. The representative of Chile said that the EC's panel request should remain outside of the WTO and should not have been placed on the DSB's agenda for the second time. While Chile could not oppose the request at the present meeting, it wished to stress once again that it was committed and resolved to working with the EC and all interested countries so as to achieve an understanding for the conservation of a marine resource that was currently being exploited. Chile believed that there was room for such an agreement, and the EC's proposals, including those posted on the Internet, as well as its response, the text of which was available to all Members, contained all the elements for attaining the overriding objective of swordfish conservation with the least possible trade distortions.

66. Chile had taken strict conservation measures which, *inter alia*, barred Chilean-registered vessels from landing swordfish caught on the high seas when obtained in violation of the conservation

measures in force. In its discussions with the EC a few years ago, Chile had not been able to obtain statistics concerning the EC's catches on the high seas adjacent to Chile and still less on the conservation measures applied by the EC. He questioned whether Chile should discriminate against its own fishermen by allowing port access to foreign ships that had been unable to demonstrate that they had fulfilled the slightest conservation measures.

67. Chile had had recourse to the procedure provided for in the Convention on the Law of the Sea in order to force the EC to fulfil its obligations, i.e. to cooperate with Chile in conserving a marine resource. Under the WTO provisions it was not possible to oblige the EC to conclude conservation agreements but only to discourage irresponsible, unregulated and untransparent fishing. Chile and the EC had signed an agreement on an *ad referendum* basis for a special Chamber of the Tribunal for the Law of the Sea to examine this case. Chile believed that this special Chamber of the Law of the Sea Tribunal should examine this issue prior to a panel, establishing the ways and means and content of conservation efforts for this resource if the parties failed to reach agreement on the issue, while leaving for consideration within the WTO, including by recourse to a panel, if necessary, those issues that properly fell within its sphere of competence.

68. This would also ensure the necessary accommodation and complementarity between the WTO rules and those under multilateral environmental agreements. Both Chile and the EC as well as many other Members had argued that two systems should be mutually supportive. Chile believed that it is important to stress its readiness to negotiate an agreement to end this dispute taking into account three elements: (i) both parties should agree on the priority objective of protecting this highly migratory resource in the high seas adjacent to Chile's exclusive economic zone, as demonstrated by the communications that had been exchanged; (ii) the priority should be to consider this issue in the framework of the Convention on the Law of the Sea; and (iii) the desirability of achieving a solution that was in line with the WTO's stated objective of promoting sustainable development.

69. 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.

70. The representatives of Australia, Canada, Ecuador, Iceland, India, Norway and the United States reserved their third-party rights to participate in the Panel's proceedings.

71. The representative of the European Communities said that Chile and the EC had shared objectives as far as the conservation of swordfish resources were concerned and had discussed this matter for a very long period of time. However, there were still some divergences as to how this should be done. He was optimistic that once the panel had been established discussions would continue. He hoped that it would be possible to move closer to a solution and that it would not be necessary to pursue panel procedures until the end.

72. The DSB took note of the statement.

5. Mexico – Measures affecting telecommunications services

(a) Request for the establishment of a panel by the United States

73. The Chairman drew attention to the communication from the United States contained in document WT/DS204/2.

74. The representative of the United States said that her country was requesting the establishment of a panel to examine Mexico's measures affecting telecommunications services. Mexico's telecommunications regime prevented service suppliers from availing themselves of key GATS commitments undertaken by Mexico. For instance, Mexico's International Long Distance Rules

prevented service suppliers from stippling cross-border telecommunications services over leased lines. These rules also prevented service suppliers from obtaining competitive rates and conditions for such telecommunications traffic. In addition, it appeared that Mexico had failed to abide by its key obligations under the Reference Paper, particularly with respect to ensuring timely and cost-oriented interconnection with Telmex – Mexico's major telecommunications supplier. For example, competitive service providers had been unable to obtain local interconnection with Telmex in a timely manner – in one case for over a year. Competitive service providers had also been unable to obtain from Telmex cost-oriented rates for interconnection at the local, long-distance, and international levels, including for calls to regions where competitors lacked their own facilities. These measures denied the service suppliers the opportunity to supply the Mexican markets consistent with Mexico's GATS commitments.

75. The United States acknowledged the positive steps taken by Mexico in the past few months to issue rules to regulate the anti-competitive practices of Telmex and to reduce long-distance interconnection rates for 2001. Notwithstanding these steps forward the United States remained concerned as to whether these steps would be implemented, given Telmex's legal challenges against both measures and Mexico's apparent reluctance to enforce its new rules against Telmex. The United States was also concerned that Mexico had not yet addressed Telmex's failure to ensure timely interconnection at the local level and the lack of competitive alternatives to the above-cost rates for phone calls between the United States and Mexico. The United States considered that its dialogue with Mexico had been useful and appreciated its cooperation on this issue. However, unfortunately it had not yet been possible to reach a mutually satisfactory solution. Therefore, the United States had to conclude with regret that its interests were best served by moving forward with its panel request at this time. It had therefore taken the logical step of bringing this matter before the DSB. The United States remained open to further discussions with Mexico and expected that both sides would continue their efforts to resolve this matter on a mutually agreeable basis. However, since the matter remained unresolved at this time, the United States was requesting the establishment of a panel.

76. The representative of Mexico said that his delegation had noted the US statement requesting the establishment of a panel pursuant to document WT/DS204/2. However, his authorities had instructed him not to agree to the establishment of a panel at the present meeting. Notwithstanding the fact that Mexico was not obliged to accept the establishment of a panel at the present meeting, his delegation wished to point out that the US request did not specify the problem clearly, as required under Article 6.2 of the DSU. Thus, for example, in its request, the United States had repeatedly stated that Mexico appeared to have failed to do certain things, which from the very peculiar US viewpoint should have been done in order to comply with what the United States considered to have been agreed in the GATS. While the United States had indicated what it would like Mexico to do, these apparent failures had not been clearly linked to any specific measure which would enable the problem to be presented clearly. Furthermore, both the request for consultations and the panel request had sought to widen the matter that was the subject of the dispute by undue recourse to expressions such as "including" or "among other things" which only created confusion as to which concrete measures were at issue and the legal basis for the US complaint.

77. Mexico had hoped that the consultations held on 10 October 2000 in Guadalajara, Jalicso could have served to remove the US doubts. Unfortunately, although during the consultations a full and detailed explanation had been given of the nature and scope of its obligations in the telecommunications sphere and the reasons why Mexico had fully complied with each and every one of its GATS obligations, the United States had only partly understood these reasons. Consequently, instead of entirely withdrawing its complaint, it had confined itself to reducing the number of its original assertions and requesting the conduct of new consultations on further measures in the area of telecommunications services. Mexico considered that since the United States had presented this second request for consultations on the same day as it had submitted its request for the establishment of a panel showed once again that the United States did not have a very clear idea of the basis for its

complaint is. It would be most useful for the United States to review the actual situation before again requesting the establishment of a panel. This could save the resources of the WTO as well as those of Mexico and the United States.

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

6. Brazil – Export financing programme for aircraft

(a) Recourse by Canada to Article 22.7 of the DSU and Article 4.10 of the SCM Agreement (WT/DS46/25)

79. The Chairman recalled that at the DSB meeting on 22 May 2000, Canada had requested authorization from the DSB to take appropriate countermeasures against Brazil pursuant to Article 4.10 of the SCM Agreement and Article 22.2 of the DSU. At that meeting Brazil had objected to Canada's proposed level of suspension and the matter was referred to arbitration in accordance with Article 22.6 of the DSU. He drew attention to document WT/DS46/ARB which contained the Arbitrators' decision on this matter as well as to the communication from Canada contained in document WT/DS46/25.

80. The representative of Canada said that, at the present meeting, his country was requesting authorization to take countermeasures against Brazil as a result of its failure to comply with the WTO rulings in the PROEX aircraft dispute. His country sought authorization from the DSB to suspend the application to Brazil of tariff concessions or other obligations covering trade in a maximum amount of Can$344.2 million per year. Such a suspension of concessions constituted "appropriate countermeasures" within the meaning of Article 4.10 of the SCM Agreement. He emphasized that despite the step that Canada had been forced to take to protect its rights in this dispute, it continued to enjoy excellent relations with Brazil. There were longstanding close links between the two countries who cooperated closely on a wide range of bilateral and multilateral issues. At the same time, he stressed that Brazil had to comply with its binding obligations under the Agreement. The reason for Canada's action was due to one irrefutable fact: Brazil provided illegal export subsidies in the regional aircraft sector under its PROEX programme. This had been affirmed repeatedly by the Arbitrator.

81. He then provided a brief history of some of the key points in relation to this long-standing dispute. Canada had first requested consultations with Brazil in 1996. It had also requested the establishment of a panel in 1996, but subsequently the panel request had been withdrawn in an effort to seek a negotiated solution. In 1998, after negotiations had failed to resolve the dispute, Canada had requested a panel. In April 1999, the original Panel had found that Brazil violated its obligations under Article 3 of the SCM Agreement by providing prohibited export subsidies to regional aircraft under PROEX. In August 1999, the Appellate Body had upheld this finding. Brazil had been required to withdraw its illegal export subsidies within 90 days, or by 18 November 1999. However, it had failed to do so. In May, 2000, the Article 21.5 Panel had found that Brazil's measures to comply with the DSB rulings either did not exist or had not been consistent with the SCM Agreement, and that Brazil had failed to withdraw the export subsidies. In July 2000, the Appellate Body had upheld the findings of the Article 21.5 panel that Brazil had not implemented the DSB's rulings. In August 2000 an arbitrator had determined that the suspension by Canada of tariff concessions or other obligations in a maximum amount of Can$344.2 million per year would constitute "appropriate countermeasures" within the meaning of the SCM Agreement. Thus, there had been five separate rulings against Brazil in this case: twice by the original Panel, twice by the Appellate Body, and once by the Arbitrators. The decisions had been clear and overwhelming, but nothing had changed. Contrary to its previous statement, Brazil had not respected the rulings of panels and the Appellate Body and had not withdrawn its prohibited export subsidies.

82. He emphasized that when Canada had first made its request for appropriate countermeasures in May 2000, it had made it clear that it would fully respect the principle of sequencing, and that it would not apply any countermeasures unless and until the Appellate Body had affirmed the conclusions of the Article 21.5 Panel on the WTO-inconsistency of the Brazilian measures. Since then, the Appellate Body had circulated its Report. Thus Canada's request for suspension of concessions was fully consistent both with the determinations of the Appellate Body on the WTO-inconsistency of the Brazilian measures, and with the conclusions of the Arbitrators as to what constituted appropriate countermeasures in this case. He noted that although the Arbitrators' Report had been issued more than three months ago, Canada had not sought the DSB's authorization to impose countermeasures immediately. Instead it had tried, as it had done so in the past, to seek a negotiated solution with Brazil. It had negotiated in the utmost of good faith in an effort to reach a settlement. The last set of negotiations had taken place as recently as in the past month. However, Brazil had repeatedly demonstrated its unwillingness to comply with its obligations.

83. As noted under item 3, Brazil continued to make payments that had been found to comprise prohibited export subsidies. The ongoing damage to Canadian interests as a result of Brazil's illegal measures was real. Every month, 13 new Brazilian regional aircraft were being delivered, with this number slated to increase by 2001. Moreover, every month, Brazil was granting more than Can$35 million worth of illegal subsidies. As stated at the May 2000 DSB meeting, retaliation was not Canada's preferred option. But Brazil now gave Canada no choice but to request the DSB's authorization to impose appropriate countermeasures so as to preserve Canada's rights under the WTO Agreement.

84. Brazil's failure to comply was not just damaging to the commercial interests of Canada as a complaining party. It also inflicted institutional harm on the WTO, and the integrity of the dispute settlement process. He stated that if, a Member disregarded the binding rulings of the DSB, the credibility of the WTO dispute settlement system and the respect for the rule of law would be affected. The report of the Arbitrators included a reminder that Article 22.8 of the DSU states that: "the suspension of concessions or other obligations shall be temporary and shall only be applied until such time as the measure found to be inconsistent with a covered agreement has been removed …". Canada needed no reminder of this. Indeed, Canada would like nothing better than to terminate the suspension once Brazil had complied fully with its WTO obligations. Yet it would be up to Brazil, not Canada, to determine how long the suspension of concessions would last. It was up to Brazil to respect the commitments it had undertaken when it had accepted the WTO Agreement. Some regard retaliation as the final stage in a dispute. Canada did not. In Canada's view, the final stage was not retaliation but compliance. Canada was therefore taking the penultimate step by seeking countermeasures. It called on Brazil to take the final step by complying with its obligations and thereby bringing this long dispute to an end.

85. The representative of Brazil recalled that under item 3 of the agenda, he had announced that a Monetary Council Resolution which had been enacted in the past week had put in force new regulations for PROEX that had brought that programme in full conformity with its WTO obligations. Canada had accepted the option of compensation for the past contracts and that the two countries had worked constructively towards that goal. Nevertheless, Canada was now seeking authorization to suspend concessions or other obligations and/or to take countermeasures, pursuant to Articles 22.7 of the DSU and 4.10 of the SCM Agreement, under the presumption that the new PROEX did not constitute compliance with the DSB's recommendations. Therefore, Canada had unilaterally determined that the measure that had never been subject to a multilateral review was inconsistent with the WTO Agreement. He underlined, once again, that the revised PROEX was operating under the parameters that were different from those examined by the Panel and the Appellate Body pursuant to Article 21.5 procedures.

86. Under item 3 of the agenda, he had outlined the main characteristics of the new programme which was fully compatible with Brazil's obligations under the SCM Agreement and the DSB's recommendations. It was unacceptable for Canada to unilaterally determine that the new measures did not comply with the DSB's recommendations simply because it could not have persuaded Brazil to accept unwarranted demands that would amount to a WTO-plus framework. This undermined the multilateral nature of the dispute settlement mechanism and of the WTO. This was one of the first cases in which retaliation would be authorized against a developing country. In Brazil's view, the amount determined by the Arbitrators was very high and unjust but he did not wish to dispute it. The decision would penalize developing countries' efforts to compete in a high-technology area and in the market for medium-sized passenger airplanes which was monopolized by a developed country. This was done on the basis of the rules that were against the interests of developing countries which had neither participated nor had access to details regarding the OECD. Brazil was also concerned that litigation and threat of countermeasures were preferred to negotiations and compromise. In particular since this had gone beyond what was reasonable and fair. This would not be beneficial for the future of the WTO.

87. The representative of Japan said that his country recognized Canada's rights under Article 22.7 of the DSU and Article 4.10 of the SCM Agreement. However, Japan was not quite comfortable that Canada had requested the DSB's authorization to impose countermeasures based on its unilateral determination concerning compliance of the new measures taken by Brazil with the DSB's recommendations. He underlined that Japan did not wish to take sides either with Canada or Brazil. Its intention was only to highlight another systemic shortcoming of the DSU provisions. The current DSU rules did not provide Members with an appropriate mechanism to deal with such situations. This case once again demonstrated that there was a need to reflect seriously on how the DSU provisions could be improved.

88. The representative of the European Communities said that in his delegation's view, Canada's request for authorization to impose countermeasures should have specified not only the amount of trade to be covered in line with the Arbitrators' rulings, but also the type of countermeasure for which it was seeking authorization. If countermeasures were in the form of suspension of tariff concessions, Canada should have indicated the list of products and the way it had calculated the amount of trade affected so that the DSB could verify that amount corresponded with the Arbitrators' findings. If Canada intended to apply countermeasures by suspending obligations under the Textile Agreement or the Agreement on Import Licensing Procedures, it should have also indicated how it would respect the amount determined by the Arbitrators.

89. The representative of the Philippines said that his country had two systemic concerns. First, the Philippines supported the concerns expressed by Japan with regard to the shortcomings of the DSU provisions. Second, his country was concerned about the Arbitrators' rulings to the effect that countermeasures could go beyond reparations of nullification and impairment. The Arbitrators' decision seemed to endorse a concept that the suspension of concessions had a punitive character. He believed that this matter required further discussions in the DSB. The WTO system provided reciprocal concessions. If a Member's benefits were adversely affected it was expected that compensation or suspension of concessions would only be to the extent of the level of nullification or impairment. However, as it appeared in the Report, the suspension of concessions could go beyond nullification and impairment and could thus have a punitive character.

90. The representative of Australia said that his country wished to be associated with the statement made by Japan. Australia encouraged the parties to the dispute to continue to seek a pragmatic resolution of the issue as quickly as possible through further recourse to an expedited dispute settlement process.

91. The representative of Canada said that his comments made under item 3 with regard to the unilateral determination on conformity of the implementing measures were relevant with respect to the present item. Brazil had stated that this case involved the question of developed versus developing countries. It had also stated that Brazil's plane was the biggest, the best, the fastest and the cheapest. However, this case was not about developing country issues but about the need to respect the rules. Brazil had stated that Bombardier had sought to monopolize the market for medium-sized passenger airplanes. He believed that this was not the case as the company only sought to produce a quality product. The success of the product or lack thereof would be determined by the market. The intention was not to monopolize the market but to ensure that all including Bombardier played by the same rules. He assured that Canada had resorted to retaliation in this case as a last resort. However retaliation was not Canada's preferred option. After four years of negotiations and panel decisions it had become clear that Canada continued to remain prepared to settle this issue honourably. However, at the same time, Canada had to protect its rights under the WTO and that was why, at the present meeting, it was seeking authorization to impose countermeasures.

92. The representative of the United States said that the consensus rule under Article 22.7 of the DSU entitled Canada to receive authorization to suspend concessions, if it so requested. A simple declaration of compliance was not enough to prevent such an authorization. The United States was following this case with interest and hoped that Canada and Brazil would ultimately find a way to resolve their differences.

93. The representative of Brazil said that in response to Canada's statement he wished to clarify that he had only stated that the Brazilian plane was the best and the cheapest. He believed that this case was about developing versus developed countries. He recognized that Brazil's argument to continue using exports subsidies was disqualified because there were two possible ways to look at this matter: i.e. budget allocations or actual expenditures. The Panel had referred to this and the Appellate Body had upheld the way which did not favour Brazil. Nevertheless, his country was free to make comments as to what was fair or unfair. His statement with regard to fairness and developed versus developing countries was not only about competition between products, but about competition between financial packages. It was much more difficult for a developing country which had not participated in the establishment of the rules that had been made for developed countries. Brazil had signed the Uruguay Round Agreement but considered that now it was a learning process. There was a need to change the rules on export finance which were not fair for developing countries. One had hoped that they might have been interpreted in different ways and, at different stages of this dispute, Brazil had hoped that this would be the case. Therefore, first statements made by the Appellate Body were encouraging. However, the quasi-judicial process, which was complicated, did not favour Brazil. There was a fundamental imbalance that had to be corrected. For that reason, he had emphasized the question of developed versus developing countries.

94. Brazil wished to be associated with the systemic concerns raised by the Philippines and supported the statement made by Japan. At the present meeting, he did not wish to further elaborate on the question raised by the Philippines, but to underline that it was important to keep in mind what retaliation was meant to be in the WTO system. Several references had been made to be punitive character of retaliation. Even if the word punitive was not used and instead the word to induce compliance were to be used that word was being used for sanctions in the Security Council. He believed that this was not the objective of the dispute settlement mechanism in the WTO. He hoped that there would be further possibilities that this matter be considered by Members in a more conceptual manner.

95. The Chairman said that he was not in a position to sum up and touch on all of the points made at the present meeting. He only wished to draw attention to a few general points. A number of delegations had expressed some concerns as to whether the procedure in the DSU, as it stood, were fully able to deal with the situation at hand where authorization to suspend concessions was more or

less automatic while one of the parties felt that it was either in compliance or in the process of complying with the DSB's recommendations. This was an interesting question. For a party finding itself in that situation the provisions of the DSU were available if it felt that its rights were being transgressed but whether these provisions were adequate in this situation was another matter. There were also some concerns as to the manner in which the suspension of concessions might be implemented. This was another point for reflection. He drew attention, as Canada had done, to the final report of the Arbitrators which quoted from Article 22.8 of the DSU to the effect that "the suspension of concessions shall be temporary and only apply until such time as the measure found to be inconsistent has been removed." Finally, assuming that the DSB authorized this it was only an authorization and it was not an actual trigger of the implementation of suspensions of concessions. A number of Members had expressed hopes that Canada and Brazil would find a way to resolve their differences. He then drew attention to paragraph 7 of Article 22 of the DSU which stated that "the DSB shall be informed promptly of the decision of the arbitrator and shall upon request grant authorization to suspend concessions or other obligations were the request is consistent with the decision of the arbitrator, unless the DSB decides by consensus to reject the request." He believed that there was no consensus to reject the request. Therefore, he proposed that the DSB take note of the statements and pursuant to Canada's request under Article 22.7 of the DSU and Article 4.10 of the SCM Agreement contained in document WT/DS46/25, dated 1 December 2000, agree to grant authorization to suspend the application to Brazil of tariff concessions or other obligations consistent with the Arbitrators' decision contained in document WT/DS46/ARB.

96. The DSB so agreed.

7. Proposed nominations for the indicative list of governmental and non-governmental panelists

97. The Chairman drew attention to document WT/DSB/W/150 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/150.

98. The DSB so agreed.

8. Special meeting of the DSB

99. The Chairman, speaking under "Other Business" said that two Appellate Body reports had recently been circulated: (i) Korea – Measures Affecting Imports of Fresh, Chilled and Frozen Beef and (ii) United States – Import Measures on Certain Products from the European Communities". Those reports together with the relevant Panel reports would have to be adopted by the DSB at the latest on 10 January 2001. In order to convene the meeting on 10 January 2001, the airgram would have to be issued on 29 December 2000. Since this was a holiday period, he proposed that the Secretariat circulate the airgram for that meeting on Friday, 22 December 2000, which was the last working day before the Christmas holiday.

100. The DSB took note of the statement.