WORLD TRADE ORGANIZATION

RESTRICTED

WT/DSB/M/98
20 March 2001

(01-1359)

Dispute Settlement Body
1 February 2001

MINUTES OF THE MEETING

Held in the Centre William Rappard
on 1 February 2001

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

Prior to the adoption of the agenda, the item concerning the Panel Report on "United States – Safeguard Measures on Imports of Fresh, Chilled or Frozen Lamb Meat from New Zealand and Australia" was removed from the agenda following the US decision to appeal this 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.15)

2. The Chairman drew attention to document WT/DSD27/51/Add.15 which contained the status report by the European Communities on its progress in the implementation of the DSB's recommendations concerning its banana import regime.

3. The representative of the European Communities said that since the 12 December 2000 DSB meeting, the EC had taken some important steps with a view to finding a permanent solution to the banana dispute, which would be compatible with its international obligations towards both WTO Members and ACP partners. The EC's banana trade regime was based on Council Regulation (EEC) No. 404/93, amended in 1998, and on the Commission's regulations concerning the administration of tariff quotas established by the Council Regulation. On 29 January 2001, the Council had adopted a

legal amendment to Regulation (EEC) No. 404/93. Accordingly, the three tariff quotas would be open to all banana imports regardless of their origin. The adoption of this Council Regulation would ensure the swift adoption of the regulation concerning the administration of tariff quotas, which would be based on a first come, first served (FCFS) system. He recognized that some Members would prefer a different system of administration. However after many years of negotiations, a system based on the agreement of all parties to the dispute was highly unrealistic, given the widely divergent interests of certain Members and the companies concerned.

4. This case had been going on far too long and it was time that a permanent solution was found which would be compatible with all international obligations of the EC. The EC had no other option but to establish a system of quota administration which, as recognized by all, was WTO-compatible. The EC was currently finalizing the technical details for effective implementation of this regime, which would be put in place shortly. Given the importance of the subject, he wished to spell out in detail the modifications of the EC's banana import regime. These modifications covered three tariff quotas open to all imports irrespective of their origin: (i) there was no longer a quantity reserved for ACP imports; (ii) a first tariff quota of 2,200,000 tonnes at a rate of €75/tonnes bound under the WTO and a second autonomous quota of 353,000 tonnes at a rate of €75/tonnes; and (iii) a third autonomous quota of 850,000 tonnes at a rate of €300/tonnes. A tariff preference of €300/tonnes would be given to ACP imports. This level of preference would protect ACP interests without involving a level of tariff which would be prohibitive. In case this assessment proved to be incorrect, the European Commission would have the power to reduce the maximum level of tariff during the year.

5. He noted that tariff quotas were a transitional measure leading ultimately to a flat tariff. Before a flat tariff could be applied, the European Commission would have to conduct negotiations with the main suppliers under Article XXVIII of the GATT 1994. The European Commission had to report on the result of these negotiations to the Council for its approval. The application of an FCFS system had several positive characteristics: (i) it was WTO-compatible and was recognized as a valid instrument for quota management following the Panel's rulings on the EC's banana regime; (ii) it was a straightforward, transparent and flexible way of administering quotas with no special management tools (e.g. licence allocation or definition of operator); and (iii) the current distinction between traditional operators and newcomers would disappear. He drew attention to the following main characteristics of the envisaged FCFS system: (i) three quotas which would be managed on a fortnightly or weekly basis (sub-quotas) to ensure a regular import flow to the EC market; (ii) a requirement to commit bananas to the vessel before submitting a declaration of intent to import and to lodge a sufficiently high security would be part of the system. This measure was aimed at deterring speculation and fraud; and (iii) a pre-allocation procedure based on operators declaring their intention to import a specified quantity. The pre-allocation would be decided when vessels were at a sailing distance from Europe to avoid discrimination against countries that were further away.

6. He recalled that in October 2000, after more than one year of discussions and negotiations, the European Commission had drawn its conclusion on another option based on historical performance. This conclusion was still valid. However, in view of the Panel's condemnation of the present system, a method based on historical references carried a risk of being challenged either before domestic courts or the WTO. The only realistic chance to avoid challenges would be to ensure the agreement of all Members concerned. However, such an agreement had been impossible to obtain. Therefore, the EC had to choose a management method that could be implemented on an autonomous basis and was widely used and recognized as being WTO-compatible. That method was also specifically referred to as a WTO-compatible allocation system by the Article 21.5 panel pertaining to the complaint by Ecuador. An FCFS system was fully non-discriminatory, because it was based only on a product and not on the quality or origin of the importer or trader. It was also straightforward and transparent.

7. He noted that some delegations had made claims about discrimination. For example, at the 20 December 2000 DSB meeting, Panama had stated that an FCFS method was discriminatory, but had not provided any legal reasoning to this effect. At the 12 December 2000 DSB meeting, Honduras had alleged that the adapted FCFS system would amount to a system of simultaneous examination which would perpetuate a de facto discrimination. This was not correct because the system was based on effective commitments to import bananas, requiring the physical presence of the bananas on the vessel in the port of destination, backed by documentation and guaranteed by an appropriate security: this would eliminate speculative requests. Furthermore, the subdivision of the TRQs over the year in weekly or fortnightly allocations would ensure the smooth functioning of the quota system. Another criticism made by the United States and Honduras was that the level of the tariff preference for ACP imports in the third quota maintained a de facto discrimination in favour of ACP bananas. This was not correct since the proposed tariff was not prohibitive for Latin American bananas and there was a guarantee that Latin American bananas would effectively compete in the third quota.

8. The representative of Colombia said that, as indicated in the status report, legal instruments modifying the EC's banana import regime would be adopted in the near future. He noted that the delay was due to technical and administrative adjustments. The obstacles relating to the lack of on-line customs, insufficient control, serious risks of fraud and other types of difficulties that would result from the implementation of the new regime, had not yet been resolved. His country was concerned about the economic and social implications of a regime based on an FCFS system. Such a regime would have a negative impact on the price of bananas. Colombia was also analysing carefully the high tariff under quota C and the discrimination that would result from a new regime in countries with limited logistical capacity. Colombia continued to believe that it would still be possible to enter into negotiations in which the interests of all parties in this dispute could be taken into account.

9. The representative of the United States thanked the EC for its detailed statement. The United States regretted that no mutually acceptable solution had yet been found in this long-standing dispute, and hoped that more could be made to resolve this dispute in the near future.

10. The representative of Honduras expressed his country's dissatisfaction with the status report submitted by the EC at the present meeting. His country had previously pointed out that the EC's status reports lacked content. Honduras objected to this report because it was devoid of content and was proposing a system that would destroy the banana industry in Honduras as well as in many other countries. That system would have negative effects not only on bananas but on many other agricultural products. It was paradoxical that, month after month, an illegal regime was gradually being replaced with another that was even worse while the views of Latin American countries who had rejected this system, had not been taken into account. The administration of import licences under the EC's proposal which was based on an FCFS system, had been described by the EC as a procedure for simultaneous examination with pre-allocation of licences. He reiterated that this system would lead to a result whereby the ACP countries would receive licences because their access was greater than their production and, therefore, it would not be necessary for them to load a vessel with bananas above that volume. On the other hand, bananas from Latin American countries would be eliminated from the EC's market. This would be illegal. The FCFS system violated Articles I and XIII of the GATT 1994. It was also an infringement of Articles I, II and XVII of the GATS since bananas from Latin America would be discriminated against because of their origin.

11. The representative of Guatemala said that the status report submitted by the EC indicated that important steps had been taken by the EC in its decision-making process. However, she pointed out that this decision-making process was unilateral since the EC had disregarded the views, proposals and positions of the majority of the parties involved in this case. It was regrettable that the EC continued to undermine the credibility of the dispute settlement system. The system proposed by the EC was incompatible with the WTO rules and had been rejected by most of the countries which, like

Guatemala, were prepared to take legal action against it. Guatemala urged the EC to take into account the views expressed by the banana-producing Latin American countries, the United States, the Caribbean countries and some African countries. The EC should also take into account the views of many of its member States who had spoken out against that system. There was a need to resolve this dispute. However, this would only be possible when the EC ceased to follow the course it had taken thus far and took into account in its internal decision-making process the views of other parties representing the greater part of banana production and marketing.

12. The representative of Panama said that, as had already been stated by previous speakers, the EC had not taken any steps forward towards a mutually acceptable solution that would be in line with WTO rules and its WTO commitments. At the present meeting, the EC had stated that Panama had not provided any legal reasoning regarding its criticism of a new system. He noted that many legal arguments had already been made in bilateral, multilateral and plurilateral discussions held on this subject. He regretted that the legal arguments made by the Latin American countries had not been taken into account by the EC. Panama wished to have more information on the three tariff quotas under this new system which would be open to all, irrespective of the origin of the product. More details were required on how exactly the EC intended to achieve this objective with the €300 tariff in the third tariff quota. Honduras and Guatemala had already stated that Latin American bananas would be eliminated from the EC's market and, therefore, it was difficult to envisage how an increase in the tariff would improve the situation. The EC blamed countries which suffered from discrimination for that situation. The EC had also stated that under the new regime it would not be necessary to decide on who would receive licences on the basis of an agreed definition. He had some doubts about who would provide a licence for products already on board and who would take a decision thereon. Panama wished to join the previous speakers who had urged the EC to try, in good faith, to reach a solution which was compatible with its obligations. If the EC were to replicate the features of the system already declared as illegal there would be a problem. He noted that there was a discrepancy between the English and the Spanish versions of the EC's status report. In the English version the system was described as "first come, first served", but in the Spanish version as a "chronological order of receipt of requests". He sought clarification on this point.

13. The representative of Jamaica said that her country noted the decision of the Agricultural Council of the EC to direct the Commission to prepare a revised EC banana import regime based on the principle of FCFS. Jamaica did not believe that the proposal was consistent with the EC's commitment under the Cotonou Agreement "aimed at ensuring the continued viability of (ACP) banana export industries and a continuing outlet for their bananas on the Community market". Jamaica believed that the FCFS proposal would lead to the destruction of the local banana industry and would result in severe economic and social damage and dislocation. If the EC were to opt for an FCFS-based system, it should include appropriate provisions to ensure market access and a viable return for banana growers in the Caribbean. Caribbean banana exporting countries had suggested several approaches which would achieve a mutually acceptable solution. In Jamaica's view, the most effective means to ensure access was through an appropriate tariff quota allocated primarily on the basis of past trade. Jamaica noted with regret, the failure of EC/US negotiations to arrive at such a solution. Jamaica strongly urged that negotiations be resumed among the EC, the US and other key interested parties in a constructive spirit. An FCFS-based system that did not ensure continued access to the EC's market on an economically viable basis would turn the banana trade into a lottery for Caribbean growers with the odds stacked against them and in favour of dominant Latin American traders.

14. The representative of Saint Lucia, speaking also on behalf of Dominica, said that there had been few certainties in the long and damaging banana dispute characterized by dubious decision-making, unparalleled misinformation and distortion of facts and most worryingly, special interests becoming a proxy for responsible national decision-making. However, there was now one certainty and that was that the parties were now into the "end game". Perhaps, the end would be a

system unimpeachable under WTO rules which would once and for all put the dispute to rest. Sanctions had taken their toll, as too had all the bickering. In such circumstances, the search for a system unimpeachable under WTO rules might, unwittingly, be tainted by a measure of callousness in defining a WTO-compatible solution. The countries in question had continued to advance a vision of WTO-compatibility that protected the legitimate interests of all parties – not one which foretold a quick and cataclysmic demise for some. She drew attention to headlines[1] regarding multinationals on the verge of bankruptcy protection, "like a banana boat captain hit by a hurricane" – the apparent "first casualty" of the banana war. If those in the Press would visit the Islands their reporting would be a bit better informed. The ongoing attacks on the banana regime had cost the Windward Islands proportionately more than any other. In 1991, they accounted for almost 10 per cent of banana imports into the EC, its sole market. Now, there were down to 4.5 per cent. In the past, they had presented details of the contribution of bananas to employment and foreign earnings and would not repeat these statistics. It was sufficient to remind that they were overwhelmingly dependent on their banana exports to the EC market and would suffer a veritable catastrophe, if they were to lose that which was their only market. The stability of their economies depended on market access on a predictable and viable basis. This would necessitate taking into account their inherent vulnerability. Vulnerability, some suggested was simply a "non-trade concern" – a subject for deliberations in the Special Session on Agriculture. She, like virtually every farmer in the Windward Islands, hoped that the FCFS system was never implemented, otherwise there would be no trade concerns to discuss in any negotiations. In December 2000, the US and the EC negotiators had made considerable headway in the search for a resolution to this dispute on the basis of past trade and in a manner which could be fair to suppliers whilst offering market access on a predictable and remunerative basis. The only prospect of averting calamity would be for those discussions to resume, but this time with a clear commitment to being flexible, to compromise and to safeguard the interests of supplying states, especially the most vulnerable.

15. The representative of Ecuador said that his delegation had taken note of the statement made by the EC. He acknowledged the information which had been given on the latest steps taken by the EC and its member States to modify its illegal banana import regime. It was difficult to justify the EC's banana import regime which had entered into force with Regulation 404/93 in 1993. Further illegalities were subsequently added through the 1994 Framework Agreement on Bananas. The Banana III case in 1997 had produced a non-exhaustive list of the regime's illegalities. In January 1999, with the expiry of the reasonable period of time for the EC to modify its regime for the importation of bananas two additional regulations had been introduced, namely, Council Regulation (EC) No. 1637/98 and Commission Regulation 2362/98. Under Article 21.5 of the DSU, Ecuador had obtained a multilateral determination that the EC's banana import regime continued to maintain a considerable number of illegalities which, in a discriminatory manner, were harmful to exports of bananas from Ecuador. Regardless of the information provided at the present meeting, these two Regulations – 1637/98 and 2362/98 – were still in force for an indefinite period of time. The new Regulation adopted on 29 January 2001 by the EC Council was not yet in force and was designed to modify only partially the previous regulations, which remained in force. In Ecuador's view, many of the illegalities had not been eliminated, and Ecuador had doubts as to the way in which the EC planned to correct them with the proposed regulation. Ecuador did not exclude the possibility that what the EC was now proposing might correct the current situation which was causing serious damage to Ecuador. With regard to the distribution of import licences to administer tariff quotas, the EC had provided very little information, and the questions raised by Ecuador in previous DSB meetings still remained to be answered.

16. He noted that the Panel that had examined the EC's banana import regime had pointed out that there were various methods for distributing import licences for the allocation of tariff quotas. It had also pointed out that the way in which the EC applied one method for distributing licences was

[1] Richard Miniter, Thursday, 25 January 2001 (The Scotsman).

WTO-inconsistent. The fact that the EC was ready to adopt another of the possible methods of distributing licences did not mean that that method would automatically be consistent with WTO rules. At this point, it was difficult to give the EC the benefit of the doubt in this respect. Thus far, the EC had neither modified its Regulation 2362/98, which established the way in which licences were distributed, nor the illegal manner in which the tariff quotas were subdivided. In Ecuador's view the EC was still far from meeting its obligations. The Regulation recently adopted by the EC still raised many doubts. While it might contain certain elements that would suggest that what had been proposed could be better than the current situation, there were still many details which gave rise to serious concerns. The new regulation reduced by 7,000 tonnes the total imports of bananas to the EC market under tariff quotas. It imposed one quota, a tariff of €300 per tonne, and increased the preference for ACP countries from €75 to €300 per tonne. These levels could not be accepted as favourable changes for the countries that had challenged the illegality of the EC's banana import regime. Without any justification, the EC had increased the preference for ACP countries in terms of tariff levels and market access volume. The EC had simply raised the price of the exemption required under the regime and hoped to unload the additional cost of this new exemption on Latin American countries, while many of them were poorer than a number of the ACP countries benefiting from the EC's preference. There was no other option but to wait while the EC continued to report on its inability to meet its WTO obligations, to the detriment of developing countries, which could derive benefits from fairer trade in their efforts to overcome their extreme poverty.

17. The representative of Costa Rica said that his country had noted the decision taken by the EC at the Council of Ministers in December 2000 and was concerned about the future banana import regime of the EC. Although no regulation had yet been available he was aware that such a regulation was likely to contain certain elements which implied that a new banana regime might continue to create problems. Costa Rica would examine this in a more comprehensive manner at an appropriate time once the legislation was available. Costa Rica was particularly concerned that the discriminatory measures against exports from the most efficient producers, namely, Latin American countries had been made even more stringent in terms of volume. With the enlargement of the EC, the volume had increased while the volume of exports of other countries had not. Furthermore, the way in which high tariffs had been established could also put constraints on the expectations of Latin American countries to expand their exports because any increase in demand should be supplied by the most efficient producers. Once the full legislation was available Costa Rica would refer to this issue in greater detail.

18. The representative of Mexico said that his delegation had noted the concerns expressed at the present meeting and that some Members had stated that consultations should be held on possible modifications to the EC's banana import regime. Mexico's position was well-known in this regard and his country also wished to participate in such consultations.

19. The representative of the European Communities said that on the basis of the statements made at the present meeting one could be left with the impression that the EC was closing its market. However, this was not the EC's intention. The EC was and would remain an important importer of bananas and its consumers appreciated bananas from different origins. If this was an easy case it would have been settled a long time ago. The fact that a good deal of the exports of bananas were managed by US companies should not be overlooked as well as the fact that all parties sought the biggest market share. A dispute like the one at hand should be settled politically and efforts should be made to obtain a negotiated settlement. However, in spite of its efforts, the EC had not been able to come to that point due to many contradictions and many different interests of exporters. The EC hoped that until the implementing regulation was adopted it would still have an opportunity to discuss this matter with its partners.

20. There were a number of misconceptions regarding the possible effects of an FCFS system. It was only in practice that EC partners and exporters would be able to appreciate whether or not that

system could ensure fair and equitable treatment of exporters currently supplying the EC's market. He underlined that the quotas would be managed in such a way as to ensure a fair deal for ACP countries while not being prohibitive *vis-à-vis* other trading partners. However, one had to see in practice whether this new system would be managed in a fair and equitable manner. He recognized that it would have been preferable to reach a political solution, but since this had not been possible, it was necessary to resort to the DSU provisions.

21. The representative of Brazil said that, like Mexico, his country had a potential interest in this matter because it had initial negotiating rights regarding the subject.

22. The representative of Ecuador said that the date for the entry into force of this new system to be governed by tariffs could be brought forward. This would clarify the situation. The banana case did not help to build confidence among Members. Developing countries wished to export and to have market access to the EC's market, but had not been able to obtain that access nor had due account been given to WTO Agreements which prevented Members from placing restrictions against the exports of developing countries. This was a clear demonstration of the failure to apply certain WTO Agreements. It also prevented developing countries from reaping benefits in accordance with their comparative advantage. There was a lack of equity not only from a systemic point of view but also from a trade point of view.

23. The representative of Honduras said that the arguments had been made by ACP countries claiming poverty. He therefore wished to highlight that this was not a race in terms of who was the poorest. He noted that the Windward Islands had a three times higher per capita income than Honduras. This was not a question of who was the poorest but a question of market access.

24. 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.11)

25. The Chairman drew attention to document WT/DS76/11/Add.11 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.

26. The representative of Japan said that, as indicated in the status report, his country was holding consultations with the United States in a constructive and friendly manner. At the present meeting, he wished to inform the DSB that all the remaining technical issues had basically been resolved. There was only one procedural or administrative matter that still had to be straightened out. In view of this development Japan hoped that the two countries would be able to finalize their consultations in a very near future. He was aware that other countries also wished to know the outcome in this case. For the sake of transparency, Japan would notify the DSB of the results of its consultations with the United States as soon as their agreement had been finalized.

27. The representative of the United States said that, as stated by Japan, all technical issues had been resolved. The United States believed that Japan would proceed as expeditiously as possible with all administrative steps necessary to complete the implementation of its new quarantine methodologies.

28. The representative of Australia said that his country was one of the countries which Japan had acknowledged had a substantial interest in this case. He noted that the reasonable period of time for implementation had now expired and that from the status report provided by Japan there was an expectation that an agreed solution had been reached, but that there were some procedural matters that

remained outstanding. Australia would therefore appreciate an elaboration by Japan of the main elements of its proposed implementation as soon as possible.

29. 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.6 - WT/DS113/12/Add.6)

30. The Chairman drew attention to document WT/DS103/12/Add.6 – WT/DS113/12/Add.6 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.

31. The representative of Canada said that his country was submitting a final status report on its implementation of the DSB's rulings and recommendations. He recalled that Canada had held another set of consultations with the United States and New Zealand on 7 and 8 December 2000, 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 to 31 January 2001.[2] At the present meeting, Canada wished to confirm that it had implemented fully the DSB's recommendations and rulings. The process for marketing milk for use in dairy products exported from Canada had changed dramatically in order to respond to the DSB's rulings. The prices and volumes of such milk sales were determined commercially between the producer and the processor. The government did not decide the volume of exports nor did it negotiate the export price. In other words, it had no role in these commercial contracts. This complete lack of government involvement confirmed that exports under these commercial contracts were taking place in Canada free of export subsidies. Accordingly, Canada was now compliant with its obligations under the Agreement on Agriculture not to provide export subsidies beyond its reduction commitments.

32. The representative of New Zealand recalled that on 19 January 2001, Canada had circulated its final status report pursuant to Article 21.6 of the DSU. In that report, Canada had affirmed "that it will be in full compliance with the rulings and recommendations of the DSB by the conclusion of the implementation period" on 31 January 2001. At this stage, he wished to indicate that New Zealand very much appreciated the spirit in which Canada had participated in the regular consultations held between New Zealand, Canada and the United States to discuss the state of implementation. He regretted that these discussions had not resolved the ongoing difference of view regarding the consistency of Canada's implementation with its WTO obligations. Accordingly, New Zealand could not agree with Canada's view that it had fully complied with the DSB's recommendations and rulings in this case. In substitution for the dairy export measures that had been ruled in contravention of Canada's WTO commitments, Canada had put in place new measures for the export of dairy products. In New Zealand's view, these new measures, which were comprised of new provincial schemes that were designed to provide ongoing support to Canadian dairy exports, equally involved the provision of export subsidies within the meaning of Article 9.1 or Article 10.1 of the Agreement on Agriculture. The effect of these schemes was that Canada was still exporting subsidized dairy products without counting these against its export subsidy reduction commitment levels. As a result, Canada was again in violation of its obligations under Article 3.3 and Article 8 of the Agreement on Agriculture. Faced with this situation, New Zealand was compelled to seek further consultations with Canada. As envisaged in the 21 December 2000 agreed procedures between New Zealand and Canada, should these consultations not result in an acceptable solution, New Zealand would request the establishment

[2] WT/DS103/13-WT/DS113/13.

of a panel under Article 21.5 of the DSU to review Canada's implementation of the DSB's recommendations and rulings.

33. The representative of the United States said that in December 2001 the United States, Canada, and New Zealand had held their final consultation under the implementation agreement concluded at the end of 1999. The United States regretted that the parties had failed to reach a consensus as to whether Canada's new provincial measures implemented the DSB's recommendations in this dispute. As noted at previous DSB meetings, in the US view Canada had not brought its export regime for dairy products into compliance with its export subsidy obligations under the Agreement on Agriculture. Indeed, Canada's provinces had introduced programmes that in effect continued the previous export subsidies and had made the changes necessary at the federal level to accommodate the provincial initiatives. While it might be true that elements of the Special Class Export Subsidy Programme had been altered, this did not disguise the fact that Canada's milk regime still functioned to provide exporters with milk at prices that were below those prevailing on Canada's domestic market. Access to such low priced milk appeared to be entirely contingent on its export. In fact, dairy processors who exported were prohibited from selling products made from such milk into Canada's domestic market. It was thus with a profound sense of disappointment that the United States was informing the DSB that it found it necessary to request Canada to consult further on this matter. The United States would be submitting its request to Canada in the very near future. In the absence of a resolution of their differences in such consultations, the United States would have no choice but to request, pursuant to Article 21.5 of the DSU that a panel be established at a future DSB meeting to review Canada's compliance with the DSB's recommendations and rulings.

34. The representative of Canada expressed his country's disappointment that there was still a difference of views on the changes that had been made. Canada looked forward to trying to bridge the gap between those views in the consultations to be held shortly.

35. The DSB took note of the statements.

(d) India – Quantitative restrictions on imports of agricultural, textile and industrial products: Status report by India (WT/DS90/16/Add.5)

36. The Chairman drew attention to document WT/DS90/16/Add.5 which contained the status report by India on its progress in the implementation of the DSB's recommendations with regard to quantitative restrictions on imports of agricultural, textile and industrial products.

37. The representative of India said that his country's sixth status report contained in document WT/DS90/16/Add.5 was brief but clear. India was committed to removing quantitative restrictions maintained for balance-of-payments reasons in two instalments in a balanced fashion. Fifty per cent of the residual quantitative restrictions had been removed on 1 April 2000 and a reasonable period of time for the remaining quantitative restrictions would expire by April 2001. Thus, India was on course in implementing its commitments.

38. The representative of the United States thanked the delegation of India for its status report. He noted that the implementation deadline of 1 April 2001 was now just two months away. The United States would therefore appreciate hearing details of India's implementation plans at the next DSB meeting.

39. 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.5)

40. The Chairman drew attention to document WT/DS34/12/Add.5 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 and clothing products.

41. The representative of Turkey said that, as indicated in the status report, the relevant Turkish authorities had continued their work on all aspects in full cognizance of the time-period, and were making efforts to resolve the issue.

42. The representative of India thanked Turkey for its status report informing that the Turkish authorities had arrived at a "highly advanced stage in their work" with the intention of finding the most appropriate solution to this dispute. He recalled that a reasonable period of time for implementation, mutually agreed between Turkey and India, would expire on 19 February 2001. Status reports submitted by Turkey under Article 21.6 of the DSU for each of the meetings of the DSB, including the one submitted at the present meeting, had not given any clear indication of the details of the progress made in implementing the DSB's rulings and recommendations. India was disappointed and concerned about this matter and looked forward to full and timely compliance by Turkey with the DSB's rulings and recommendations. Timely implementation of the DSB's rulings and recommendations by Turkey continued to be a matter of utmost importance to India. At the same time, he reiterated India's concern, already highlighted at the 12 December DSB meeting with regard to additional restrictions recently imposed by the Turkish authorities on imports of fabrics from India. It was India's expectation that Turkey would fully comply with the DSB's rulings and recommendations by the deadline of 19 February 2001.

43. The representative of Turkey said that since the reasonable period of time for implementation in this case would expire on 19 February 2001, it was therefore still possible to find a solution. Recently, there had been some developments which his authorities viewed as positive, and India was fully aware of these developments. However, at the present meeting he wished to exercise restraint in order not to jeopardize the chances of reaching a mutually agreed solution in this case. With regard to the other restrictions referred to by India, he did not think that any discriminatory treatment had been accorded to India. He noted that Turkey had given sufficient explanation to India on this matter at a bilateral level.

44. 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/Add.1 - WT/DS110/16/Add.1)

45. The Chairman drew attention to document WT/DS87/17/Add.1 – WT/DS110/16/Add.1 which contained the status report by Chile on its progress in the implementation of the DSB's recommendations with regard to its taxes on alcoholic beverages.

46. The representative of Chile said that since the previous status report submitted at the 12 December DSB meeting, the Bill aimed at bringing the Additional Tax on Alcoholic Beverages into line with WTO rules had been adopted by a clear majority in both the Chamber of Deputies and the Senate. Its full entry into force now awaited only the promulgation by the President of the Republic and a publication in the Official Journal. Under this legislative reform, the current tax rate of 27 per cent would be maintained for pisco and from 21 March 2003, the same rate would be applied to other alcoholic beverages. In the meantime, the tax applied to those spirits would be progressively reduced to 27 per cent. Thus, among the possible alternatives, it had been decided to

establish the lowest tax rate applicable prior to the entry into force of the new tax scheme. This solution which satisfied different interests required a considerable effort on the part of the Chilean tax authorities as their tax revenue would decrease by about US$10 million per year. Once again Chile was fulfilling its international obligations and reaffirmed its commitment to the multilateral trading system. His country wished to thank the EC for its flexibility which was necessary to reach a solution which would ensure a satisfactory conclusion to this dispute.

47. The representative of the European Communities said that the EC was pleased with the adoption by the Chilean Congress of the new alcoholic tax law on the terms agreed by both parties. This case demonstrated the EC's willingness to find amicable solutions to disputes, which took into account the interests of both parties and respected the WTO Agreements.

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

2. Korea – Measures affecting imports of fresh, chilled and frozen beef

(a) Implementation of the recommendations of the DSB

49. 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 date of adoption of the panel or Appellate Body report, of its intentions in respect of implementation of the recommendations and rulings of the DSB. He recalled that at its meeting on 10 January 2001, the DSB had adopted the Appellate Body Report on "Korea – Measures Affecting Imports of Fresh, Chilled and Frozen Beef" and the Panel Reports on the same matter, as modified by the Appellate Body Report. He invited Korea to inform the DSB of its intentions in respect of implementation of the DSB's recommendations.

50. The representative of Korea said that the Panel and the Appellate Body Reports on "Korea - Measures Affecting Imports of Fresh, Chilled and Frozen Beef" had been adopted at the 10 January DSB meeting. At the present meeting, he wished to express Korea's intention to implement the DSB's recommendations in a manner which respected Korea's WTO obligations. Korea had already implemented the DSB's recommendations regarding the Simultaneous Buy and Sell System and the distribution system involving the Livestock Products Marketing Organization for imported beef. As for the dual retail system, Korea had initiated a process to examine different options for compliance with the DSB's recommendations. Korea thus needed a reasonable period of time for implementation and, to this end, it was ready to enter into consultations with Australia and the United States in a very near future.

51. The representative of the United States said that his delegation noted Korea's statement regarding its intention to comply with the DSB's rulings and recommendations. The United States expected that Korea would implement those recommendations promptly. Early implementation of the DSB's recommendations relating to Korea's separate retail sales regime for imported and domestic beef was essential to establishing equal competitive opportunities for imported beef in the Korean market. The United States commended Korea on the action already taken to eliminate its import quota on beef and to remove the requirement that all beef be imported either through the Livestock Products Marketing Organization or a very limited number of government approved importers. The United States looked forward to continuing discussions with Korea on a reasonable period of time for implementation in this case. As implementation of the DSB's recommendations and rulings relating to the dual store retail regime required only modifications to the applicable regulations, the United States anticipated that the appropriate changes could be made expeditiously.

52. The representative of Australia said that his delegation noted Korea's statement and welcomed its advice that it intended to implement the DSB's recommendations and rulings in this case. Australia stood ready to discuss with Korea issues relating to implementation and a reasonable period of time.

53. The DSB took note of the statements and of the information provided by Korea regarding its intentions with respect to implementation of the DSB's recommendations**.**

3. Canada – Measures supporting exports of aircraft

(a) Statement by Brazil

54. The Chairman said that the item was on the agenda of the present meeting at the request of Brazil.

55. The representative of Brazil said that on 10 January 2001, the highest official of the Canadian Ministry of Industry had publicly announced that Canada would use the Export Development Corporation (EDC) loans and loan guarantees from Investissement Quebec to "match" financing offers made by the Brazilian aircraft manufacturer to Air Wisconsin. In his statement, the Minister of Industry had publicly announced that Canada would be "... using the borrowing strength and the capacity of the government to give a better rate of interest on a loan than could otherwise be secured by Bombardier." Furthermore, he had made clear that the measure was " ... a specific response, to a specific company, and a specific country." His reference was directed at Brazil. Thus, Canada had finally decided to publicly concede the nature of its practices with regard to regional jets. For more than four years, Embraer had been vigorously complaining about the overly generous financial support granted by the Canadian Government to its rival, Bombardier. Despite the absolute secrecy of the programmes supporting the Canadian company, the presence of an elusive but heavy hand in the market of regional jets had always been felt. Therefore, what had recently been announced was not a surprise. It was what Canada had been doing since Embraer had become a player in the market. In this sense, Canada's announcement conveyed no revelations. The events had just provided further proof that Canada's resourcefulness in the area of export support was without limits, and that Canada was determined to impose its views by force in blatant disregard for the multilateral trading system.

56. He said that the announcement of the Canadian Minister of Industry and subsequent press reports contained some elements to which he wished to draw Members' attention at the present meeting. First, while accusing Brazil of providing "below market" financing, Bombardier's CEO had affirmed to the press that EDC's "matching" loan ... "is not illegal in the way it is being structured". Countries were accustomed to this line of reasoning. According to Canada, two equivalent loans were covered differently by the WTO disciplines. Brazil's loan was obviously portrayed as illegal, while Canada's loan was presented as fully consistent with the WTO Agreements. Canada seemed to believe that the means mattered not the outcome; the form not the substance. In Canada's reasoning, a developed country could slash down prices of each aircraft by US$2 million, using credit guarantees that a developing country could not possibly "match", even if it wished to do so. However, if a developing country was forced to spend more resources in an attempt to offer the very same financing terms with a different financing structure, this developing country was violating the SCM Agreement. According to Canada, what mattered was the way one participated in the market and not how a programme measured up to the market.

57. Second, the Canadian Minister of Industry had also stated that Canada was retaliating. His precise words were as follows: "what we are doing is retaliating". In response to a question regarding the legality of such action, that official had explained that Canada was "... given consent, permission by the WTO to impose sanctions", and had further pointed out that the Canadian Government "... would soon come forward with further proposals for additional retaliation, as has been granted to

Canada by the WTO". Brazil noted that the DSB had not approved any sanctions of the nature announced by Canada on 10 January 2001 or at any other occasion. Furthermore, such retaliation was not contemplated under the WTO Agreements. The measures announced were not only unilateral, but they also constituted an act of economic violence without precedent. The Canadian authorities were fully aware that the proclaimed targeted and non-authorized retaliation was a flagrant violation of Canada's obligations under the WTO Agreements.

58. Third, the Canadian press had widely reported that the EDC loans announced on 10 January 2001 would be provided through the Canada Account. He noted that this programme had been ruled to be inconsistent with the WTO Agreements three times. Canada's implementation of the DSB's recommendations was long overdue. Throughout the bilateral consultations held after completion of the Article 21.5 process, the Canadian authorities had assured their Brazilian counterparts that the programme would be changed and that new regulations were being drafted. Brazil had taken those assurances at face value and had avoided any further action in the WTO regarding the programme. However, Brazil had proved to be wrong and it was, therefore, re-examining all its options. These recent developments demonstrated the empty Canadian commitments to follow WTO rules. Unlike Brazil, who had revised its PROEX programme, Canada had never made any attempt to change Canada Account. Complementing this unabashed disregard for the DSB's recommendations, Canada had tried to force Brazil into following the findings of the Panel that the Appellate Body had ruled to be "moot" and "of no legal effect". He noted that Canada would have liked Brazil to follow the Panel's conclusions that the Appellate Body had unequivocally overruled, and had not been adopted by the DSB. Frustrated by Brazil's refusal to agree to "WTO-plus" conditionalities, Canada had been escalating its belligerent and unilateral actions in order to force Brazil into following financing parameters that had never been adopted by the DSB, and would severely and unfairly tilt the playing field in favour of the Canadian aircraft exporter.

59. Brazil firmly believed that the multilateral trading system could only be effective if all Members were truly and equally committed to observe its disciplines. Unlike Canada, Brazil had revised the programme found to be inconsistent with its obligations under the WTO Agreements in accordance with the DSB's recommendations. With regard to past transactions, Brazil had stated that its commitments would be honoured and had carried out consultations with Canada on the subject of adequate compensation. Canada, however, had never altered Canada Account regulations, despite all promises to this effect, and it was very clear that its other programmes were also being used in ways that were inconsistent with the SCM Agreement and, thus, further distorted the market in favour of Bombardier. In order to clarify this matter, Brazil had submitted its request for consultations with Canada, which had been circulated on 25 January 2001 in document WT/DS222/1.

60. The representative of Canada said that, in response to Brazil's statement, he welcomed the opportunity to inform Members of the details of this export financing proposal. He was also pleased to be able to put this transaction in its proper context. First, he wished to briefly raise several essential points. On 10 January 2001, Canada had announced that for one specific transaction, it would be prepared to provide financing on the same terms that Brazil was now using to support the sale of Embraer aircraft under its PROEX programme. He emphasized that this was a measured and focused response to Brazil's persistent refusal to withdraw PROEX financing for regional aircraft and its latest modifications to its PROEX programme made in December 2000. What Canada was proposing to do was nothing more than what Brazil was now doing under this latest version of PROEX. If Brazil considered Canada's actions to be WTO-inconsistent, Canada was at a loss as to Brazil's justification of its latest PROEX scheme. If Brazil's programme was now WTO-consistent, as Brazil contended, Canada was puzzled by Brazil's complaint against Canada for doing the same.

61. With respect to the specific transaction about which Brazil had complained, he noted that the Canadian aircraft company involved in this bid, Bombardier, had initially approached the buyer, Air Wisconsin, with a proposal that had not involved any government financing. However, it had quickly

become evident that, as in other past contracts, Brazil had been offering the buyer a financing package in support of Embraer that had made it impossible for Bombardier to compete fairly for this sale. The financing that Canada had proposed to Air Wisconsin mirrored the terms and conditions that had been offered to Air Wisconsin by Brazil. In other words, Canada had sought merely to level the playing field. As Canada's Minister of Industry had made clear in the past month after more than four years of negotiations and dispute settlement proceedings, Canada was not prepared to stand idly by while Embraer was winning major contracts with the assistance of Brazilian export subsidies.

62. Therefore, Canada was prepared to act to protect Canadian interests, including Canadian jobs. He wished to clarify that Canada's decision to provide financing equivalent to that available under the latest version of PROEX was a response to different Brazilian subsidies than those for which Canada had received authorization to take appropriate countermeasures. He recalled that there had now been no fewer than five separate rulings against the PROEX programme: twice by the original Panel, twice by the Appellate Body, and once by an arbitrator. He also recalled that the DSB had authorized Canada 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. That authorization had been granted for Brazil's failure to withdraw the prohibited subsidies under its earlier PROEX schemes. Brazil had been granting, and had stated that it would continue to grant, illegal subsidies under those schemes pursuant to Embraer sales contracts made prior to Brazil's December 2000 PROEX revisions, in blatant disregard of the DSB's rulings. For example, in the latter half of 2000, Brazil had used PROEX to enable Embraer to secure at least two deals: one with China Southern Airlines and the other with South African Airlink. On 31 December 2000, the Brazilian newspaper Folha de São Paulo had carried out an interview with the then Minister of Foreign Affairs who had stated that: "our defeat by Canada was expected. Our granting of subsidies was flagrant". It would therefore appear that this senior Brazilian official had no longer even maintained a pretence as to the WTO-consistency of the ongoing illegal subsidies under the earlier PROEX scheme. Canada had not yet imposed the authorized countermeasures in relation to these earlier PROEX schemes, but retained the full right to do so at any time.

63. Brazil had also referred to its status as a developing country being a relevant factor in this dispute. Brazil had made two principal points in this regard. First, it had argued that PROEX subsidies were necessary to compensate for the higher cost of borrowing for a developing country – the so-called "Brazil's risk". Second, Brazil had argued that the special and differential treatment provisions of the SCM Agreement should apply. With respect to Brazil's risk, he emphasized that the PROEX programme did not compensate for Brazil's higher cost of borrowing. The programme was not used to buy down the interest rates from the level that Brazil, as a developing country, had to borrow. Instead, the programme had been used to buy down the interest rates applied to loans assumed by Embraer customers outside Brazil. As previously noted the subsidy amounted to a transfer of resources from a developing country and its taxpayers to prosperous North American and European airlines. The subsidy was also prohibited by the SCM Agreement. Equally, the special and differential treatment provisions of the SCM Agreement were not relevant. All panels which had examined this case had found that Brazil had lost its developing country exemption for PROEX, in part because it had increased its level of export subsidies. Thus, Brazil had failed to comply with the conditions set out in the Agreement. He noted that Canada had proposed to establish a bilateral, third party verification procedure to ensure that all financing offers to purchasers of regional aircraft occurred at market rates. Yet Brazil had not accepted this offer. The offer remained on the table and would provide a credible means to ensure that the disciplines of the SCM Agreement were fully respected. Canada believed there was only one viable solution to this dispute, namely, Brazil had to comply with its obligations, as the WTO had ruled repeatedly. The onus remained on Brazil to respect and implement fully the DSB's rulings and to bring to an end the systemic use of its aircraft subsidies. He also stressed that, as had been repeatedly made clear to Brazil, Canada remained willing and able to negotiate in good faith in an effort to reach a mutually satisfactory solution. However, any such solution had to be premised on compliance by Brazil with its WTO commitments.

64. The representative of Paraguay said that his delegation had followed and continued to follow all disputes which had been brought into the WTO because it believed that this was the only forum for small and developing countries which could enable them to ensure the effectiveness of the existing rules to solve disputes. Paraguay was concerned about the use of the term "retaliation". It believed that actions authorized by the DSB in this regard usually referred to compensation. It was not customary to refer to retaliation. This term and the use thereof was of concern to developing countries. Paraguay did not like the use of the term "retaliatory measures" and believed that the term "compensation" as specified in the DSU should be used. Paraguay was also concerned about the use of subsidies in international trade. This problem was linked to other areas such as agriculture where subsidies were distorting international trade. He believed that this use was unjustified and for that reason it wished to register his country's concern in this regard.

65. The Chairman noted that, in accordance with the Rules of Procedure, delegations should try to the extent that the situation permitted to keep their oral statements brief. However, there was always the possibility to develop a position on a particular matter through a written version, which could be incorporated in the record of the meeting.

66. The representative of Brazil said that the consultations recently requested by his country would cover some points referred to by Canada at the present meeting. With regard to Canada's reference to a statement made by the Brazilian Minister, although he was confident that the translation services of the Canadian Embassy in Brasilia were of very high standard, he wished to note some misleading elements contained in the reference made by Canada. In this regard, he believed that the word "flagrant" had been translated incorrectly. He recalled that the subsidies initially given under the PROEX programme were transparent, but Brazil had thought that it was acting in accordance with WTO rules, particularly in the light of the provisions of Article 27 of the Subsidies Agreement. However, in the course of the dispute as to whether one should use budget or real outlays it had been proved that Brazil was incorrect. Therefore, the meaning of this word only implied that, as had been considered initially by Brazil, those subsidies were transparent and legitimate. It was thus misleading to state that the Brazilian authorities had now admitted that Brazil knew it was violating WTO rules. He also pointed out that Canada's reasoning in this case could be reversed; i.e. Canada considered that Brazil's action was illegal and had decided to do something equally illegal. However, if Canada considered that what Brazil was doing was legal then its decision to seek authorization from the DSB to suspend concessions was questionable.

67. The representative of Canada said that his country's action was based on measured reasons and noted that under item 7 of the agenda, Canada would seek a multilateral determination of Brazil's implementing measures. Responding to remarks regarding the Canada Account, he explained that Canada was in the process of drafting compliance measure that would ensure that the Canada Account transactions in the regional aircraft sector complied fully with Canada's WTO obligations and the rulings of the Article 21.5 Panel in the Canada – Aircraft case. With regard to the reference to the statement made by the Brazilian official, he clarified that when some of the quotes had been handed over to him in preparation for this particular meeting, the quote which had caught his eye was the one to which he had referred and he had sent it back to his Embassy in Brasilia to make sure that this quote taken from a newspaper, dated 31 December 2000, was correct. It had come back and it was double checked and it was very clear and categorical: "our defeat by Canada was expected. Our granting of subsidies was flagrant". He had not taken this quote loosely, but had checked it because he did not wish to put words in anyone's mouth.

68. The DSB took note of the statements.

4. Brazil – Measures affecting patent protection

(a) Request for the establishment of a panel by the United States (WT/DS199/3)

69. The Chairman recalled that the DSB had considered this matter at its meeting on 19 January 2001 and had agreed to revert to it. He drew attention to the communication from the United States contained in document WT/DS199/3.

70. The representative of the United States said that, as mentioned at the 19 January DSB meeting, his country was requesting the establishment of a panel because it had considered that Brazil's law discriminated between patented products that were imported and those that were locally produced. Brazil required that all patented products be manufactured in Brazil, or else the patent would be compulsorily licensed. This requirement was in apparent violation of Articles 27.1 and 28.1 of the TRIPS Agreement. He noted that at the 19 January DSB meeting, Brazil had claimed that the US patent law discriminated against imported products. These assertions were inaccurate as well as irrelevant. The United States welcomed the establishment of a panel at the present meeting. At the same time, it would also welcome any additional clarifications that Brazil wished to make regarding its law and stood ready to resolve this dispute with Brazil if a settlement agreement could be reached. Until then, the United States would continue with this panel process.

71. The representative of Brazil said that his country disagreed with the US decision to seek the establishment of a panel on this matter. As stated at the 19 January DSB meeting, Brazil had hoped that the United States would have given more emphasis to discussions in order to understand more clearly the consistency of the Brazilian Law on Industrial Property with the TRIPS Agreement, rather than resort to litigation. His country firmly believed that the United States had not given careful consideration to the political implications of its decision, nor had it examined the many technical aspects of the case. He recalled that the TRIPS Agreement reflected a delicate balance that had taken developing countries to the limits of acceptability. This delicate balance was reflected, in the case of Brazil, in internal legislation which was fully consistent with the letter and the spirit of the TRIPS Agreement. The United States was now seeking an interpretation of the TRIPS Agreement which threatened to upset this balance. Brazil was confident that a panel would only confirm that its legislation was fully consistent with the TRIPS Agreement and that the US action amounted to a demand for commitments which went beyond the Agreement through resort to dispute settlement procedures. As stated previously, this was not only legally unfounded, but might also prove politically disastrous. He said that under "Other Business" Brazil would inform the DSB of its request for consultations with the United States regarding the US Patent Code.

72. 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.

73. The representatives of the Dominican Republic, Honduras, India and Japan reserved their third-party rights to participate in the Panel's proceedings.

5. Belgium – Administration of measures establishing customs duties for rice

(a) Request for the establishment of a panel by the United States (WT/DS210/2)

74. The Chairman drew attention to the communication from the United States contained in document WT/DS210/2.

75. The representative of the United States said that his country was requesting the establishment of a panel to examine Belgium's measures relating to the imposition of customs duties on imports of US rice. For certain shipments of rice imported from the United States, between 1 July 1997 and

31 December 1998, Belgian customs authorities had rejected transaction values for purposes of establishing the relevant customs values. By failing to use transaction values for purposes of assessing duties, the Belgian customs authorities had assessed duties on imports of US rice higher than those permitted under Belgium's WTO obligations. In addition, the Belgian customs authorities' actions with regard to these imports of rice from the United States had raised questions regarding Belgium's treatment of confidential customs valuation information, (i) its provision of written notice to the affected importer; (ii) the uniform, impartial and reasonable administration of its customs valuation determinations; and (iii) use of specific and limited product characteristics for purposes of determining customs value. The United States considered that these measures were inconsistent with Belgium's obligations under the Customs Valuation Agreement, the GATT 1994, and the Agreement on Technical Barriers to Trade. The United States also considered that the Belgian measures were nullifying or impairing benefits accruing to the United States directly or indirectly under the cited agreements, within the meaning of Article XXIII:1(b) of the GATT 1994. The United States continued to hope that this matter could be resolved without recourse to a panel and remained open to further discussions with Belgium towards that end.

76. The representative of the European Communities said that the EC was more than a little bewildered by the US request since it had not been able to identify the exact reasons for which the United States was reproaching the Belgian customs authorities. He noted that the US request contained a number of allegations of violation of several WTO Agreements without any precise indication as to which measures supposedly caused such violations. The EC had noted that reference had been made to the Belgian authorities' refusal to use a certain transaction value for customs valuation. However, this could not be the subject of the present dispute since the rejection in question had taken place only in November 2000. The US request for consultations was dated 12 October 2000, therefore, the measure the US wished to challenge should have been in place earlier and not later than the date of the request. The EC had also noted that the United States had referred to the Commission Regulation No. 703/97, which was dated 18 April 1997. However, this could not be the incriminated measure since that Regulation had expired on 31 December 1998 and thus was no longer in force at the time the request for consultations had been made. Consequently, the EC was opposing the establishment of a panel requested by the United States. The EC also considered that the US request did not conform to the criteria laid down in Article 6.2 of the DSU and could not, therefore, constitute the first request for the establishment of a panel.

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

6. Chile – Price band system and safeguard measures relating to certain agricultural products

(a) Request for the establishment of a panel by Argentina (WT/DS207/2)

78. The Chairman drew attention to the communication from Argentina contained in document WT/DS207/2.

79. The representative of Argentina said that pursuant to Article XXIII of the GATT 1994, Articles 4 and 6 of the DSU, Article 19 of the Agreement on Agriculture and Article 14 of the Agreement on Safeguards, his country was requesting the establishment of a panel to examine Chile's price band system, the provisional and definitive safeguard measures on imports of wheat, wheat flour and edible vegetable oils, and the extension of those measures. In Argentina's view, the price band system applied by Chile, Laws 18.525, 18.591 and 19.546, and the regulations and complementary provisions and/or amendments did not ensure certainty in respect of market access for agricultural products and had resulted in a breach of Chile's commitments on tariff bindings in relation to the concessions set forth in its Schedule. Therefore, the above-mentioned legislation was inconsistent with Article II of the GATT 1994 and Article 4 of the Agreement on Agriculture. With respect to

safeguards on imports of wheat, wheat flour and edible vegetable oils, on 26 November 1999 Chile had adopted provisional measures which had become definitive on 18 January 2000 and had been extended on 25 November 2000 after consultations with Argentina. His country considered this measures to be inconsistent with the obligations imposed by the Agreement on Safeguards for the reasons set forth in its request for the establishment of a panel contained in WT/DS207/2. Argentina considered that the safeguards in question were inconsistent with, *inter alia*, Articles 2, 3, 4, 5, 6 and 12 of the Agreement on Safeguards and with Article XIX, paragraph 1(a) of the GATT 1994.

80. On 5 October 2000, Argentina had requested consultations with Chile in respect of both the price band system and the safeguard measures imposed, with a view to seeking a mutually satisfactory solution. These consultations had taken place on 21 November 2000, but the parties had been unable to reach any understanding. In fact, Argentina and Chile had held informal consultations on these matters for more than a year. In a broader sense, he stressed that Argentina was concerned about Chile's persistent recourse to protectionist mechanisms in the agricultural sector. This concern, which was shared by other Members, had led to the submission of other requests for consultations with Chile.

81. For more than a year Argentina had been exploring options and alternatives for negotiations. First at the bilateral level and then in the framework of the various instruments to which both Argentina and Chile were parties and finally within the WTO system, but without success. On the contrary, after each set of consultations, Chile had systematically stepped up its protectionist measures in what would appear in some cases to be a sort of retaliation against the concerns expressed by Argentina. In the light of the above considerations, Argentina had no choice but to request the establishment of a panel with standard terms of reference. At the same time, Argentina remained open to dialogue in order to try to find a mutually satisfactory solution to this dispute.

82. The representative of Chile said that he wished to raise a number of points with regard to Argentina's request for the establishment of a panel. Argentina had a commercial interest in trade with Chile of products such as wheat, wheat flour and vegetable oils. The situation had obliged Chile to adopt such exceptional measures as safeguards which had prompted Argentina to take action and to request a panel. Chile had to face international prices which were highly distorted for these and other products, and this was something which did not benefit Chile or Argentina. On the contrary, it was extremely harmful. This was directly linked to the impact of substantial subsidies on exports and production used by the major trading powers in the context of their agricultural policies. This was why two neighbouring developing countries, which had a close economic and political relationship, had been moved to adopt measures and to react to them as a result of circumstances which had nothing to do with them. This should be noted as a further benefit of multi-functionality of specificity, or non-trade concerns with which certain parties claimed to justify the maintenance of policies and instruments that caused distortion. It was ironic and certainly unjust.

83. This situation demonstrated once more the pressing need for progress in negotiations on agriculture which would allow similar instruments to be eliminated. In addition, he pointed out that since mid-December 2000 the total level of tariff protection for wheat and wheat flour was well below the level of Chile's tariff binding, i.e. 31.5 per cent. With regard to vegetable oils, the situation was different, since, although Chile was above the binding level, this had not prevented Argentina from continuing to supply 95 per cent of oils imported into Chile (January-September 2000, Central Bank of Chile). He wished to emphasize the fact that Argentina's panel request included the extension of the safeguard measures in question, which had not been the subject of the consultations held in November 2000 – and could hardly have been, since that measure had been adopted thereafter and had resulted from a new investigation which in turn had resulted in the extension of the measure for a second year. Chile believed that there was a need to clarify whether the subject of the extension of the measure was included in Argentina's request for consultations. If not, there might be a procedural problem. On 21 November 2000 a productive consultation meeting had been held at which both

parties had expressed their points of view. Therefore, the bilateral route was not yet closed. There had been recent meetings between the respective authorities the conclusions of which had given hope that a mutually satisfactory solution was not far away. Therefore, in order to allow time to find a bilateral solution it was not appropriate to establish a panel at the present meeting.

84. The representative of Argentina said that the subject of the extension of the measure was included in the request for consultations since there was a legal similarity between the original measure and the subsequent extension thereof.

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

7. Brazil – Export financing programme for aircraft

(a) Recourse to Article 21.5 of the DSU by Canada (WT/DS46/26)

86. The Chairman drew attention to the communication from Canada contained in document WT/DS46/26.

87. The representative of Canada said that his country was requesting an Article 21.5 panel to examine the WTO-consistency of Brazil's latest revisions to its PROEX programme. At the 12 December DSB meeting, Brazil had explained that, in its view, the revised PROEX programme was now fully consistent with its obligations under the SCM Agreement. Canada remained unconvinced. For the past four years, Brazil had insisted that the previous versions of its PROEX subsidy programme were fully consistent with the SCM Agreement. After the Panel and the Appellate Body had ruled against Brazil in 1999, Brazil had modified the original programme and had claimed that it was now acting consistently with its obligations. When the Panel and the Appellate Body had again ruled against the second version of PROEX, Brazil had refused to comply with the DSB's recommendations and rulings. In December 2000, Brazil's then Foreign Minister had admitted that "our granting of subsidies was flagrant" and that Brazil had expected to lose the case. In the same month, Brazil had modified its PROEX scheme, which it had again asserted was fully consistent with its WTO obligations. This claim was no more credible than Brazil's previous claims regarding the earlier versions of PROEX. Brazil had now admitted it knew that its claims were false when it had made them.

88. In Canada's view, Brazil had not complied with the DSB's rulings, and continued to violate its obligations under the SCM Agreement. This position would be raised vigorously before the Article 21.5 panel. He underlined that Canada was invoking Article 21.5 of the DSU in the interest of further legal clarity. As noted in the request, this new Article 21.5 proceeding was in no way a precondition to the implementation of the authorized countermeasures. That authorization had been granted as a result of Brazil's ongoing failure to withdraw the prohibited subsidies under its earlier PROEX schemes. Brazil had been granting, and had stated that it would continue to grant, illegal subsidies under those schemes pursuant to Embraer sales contracts made prior to Brazil's latest PROEX revisions, in disregard of the DSB's rulings. Although Canada had not yet imposed the authorized countermeasures, it retained the full right to do so at any time. There was no legal obligation to seek another panel ruling before implementing countermeasures. Without prejudice to its legal rights, Canada was prepared to have a panel examine the latest version of PROEX. Brazil insisted that the changes it had made to the PROEX programme brought it into full conformity with its WTO obligations with respect to new transactions. Now Brazil could try to prove it to the Article 21.5 panel.

89. The representative of Brazil said that at the 12 December DSB meeting, his country had announced that a Monetary Council Resolution - Banco do Brasil Resolution No. 002799, dated 6 December 2000 – had put in force new regulations for PROEX that had brought that programme

into full conformity with Brazil's WTO obligations. Brazil had informed Members that under the revised programme, no equalization payments under PROEX would be authorized in amounts that could bring the net interest rate of the supported loan below the relevant Commercial Interest Reference Rate (CIRR). This action was entirely consistent with the findings of the Appellate Body, which had stated that: "to establish that subsidies under the revised PROEX are not 'used to secure a material advantage in the field of export credit terms', Brazil must prove ... that the net interest rates under the revised PROEX are at or above the relevant CIRR". This standard set by the Appellate Body had been introduced into PROEX regulations on 6 December 2000.

90. However, Canada seemed to disagree that a net interest rate above CIRR constituted appropriate implementation of the DSB's recommendations. Canada's views relied on the findings of the Panel that the Appellate Body had ruled to be "moot, and, thus, of no legal effect". Canada wanted Brazil to follow the Panel's conclusions that the Appellate Body had unequivocally overruled, and that consequently had not been adopted by the DSB. These overruled Panel conclusions with no legal effect, would require Brazil to adhere strictly to OECD consensus regulations that would severely and unfairly tilt the playing field against the Brazilian exporter. He noted that Canada did not follow those regulations since its programmes operated in the so-called "market window"; i.e. under terms that were by definition more generous than those allowed by the OECD consensus. This was a strange notion of fairness and equity. Since the Monetary Council Resolution had been published, no operation had been, or would be approved that might result in net interest rates below CIRR. This had been publicly announced on 12 December 2000. Brazil was therefore surprised when Canada had decided to seek authorization to apply countermeasures even after Brazil's announcement that it had implemented the DSB's recommendations. Brazil had consistently affirmed that it would honour commitments regarding "old" contracts and, in line with standard WTO procedures, it had entered into consultations with Canada with a view to agreeing on compensation. Canada, however, was seeking authorization to retaliate on the grounds that the revised PROEX was not in conformity with the DSB's recommendations.

91. Brazil considered that Canada was, in effect, making a unilateral determination of non-conformity by the Panel. He therefore noted with satisfaction that now Canada had opted for the course of action it should have taken from the outset. He wished to draw attention to some developments which had taken place since the 12 December meeting. As he had pointed out under item 3 of the present meeting, on 10 January 2001, the highest official of the Canadian Ministry of Industry had publicly announced that Canada would use EDC loans and loan guarantees from *Investissement Quebec* to match financing offers made by the Brazilian aircraft manufacturer in a recent contract bid. As he had already mentioned, Canada had not fulfilled pledges to alter the Canada Account Programme, which seemed to be one of the main sources of support in the illegal "retaliation" package announced on 10 January. Furthermore, it was apparent that other Canadian programmes were also being used to support Bombardier in ways that were inconsistent with the SCM Agreement. In order to clarify this situation and to pave the way for any further action, Brazil had requested consultations with Canada (WT/DS222/1). Given this outlook of acute uncertainty and lack of transparency concerning the present situation of the regional aircraft market, and since the functioning of the market had been and would continue to be a crucial element in the deliberations of this dispute, Brazil believed that consultations on this matter were essential. Since Brazil had also requested consultations on a number of Canadian programmes affecting the regional aircraft industry, it considered that it would be useful to hold formal bilateral consultations on the revised Brazilian export financing programme. However, although consultations would be helpful in the process of achieving a mutually agreed solution, Canada had not requested such consultations. Canada's request for a panel referred exclusively to Article 21.5 of the DSU which provided that the disagreement of the parties "shall be decided through recourse to these dispute settlement procedures". It was Brazil's understanding that Canada was not resorting to, and could not resort, to the procedures of Article 4.4 of the SCM Agreement. Article 4.1 consultations had not been held – which was a requisite for action under Article 4.4 – and the SCM Agreement did not differentiate between procedures in the original

dispute and the Article 21.5 review process. Brazil's understanding that Canada was not proceeding under Article 4 of the SCM Agreement was also supported by the fact that Canada's request for a panel did not refer to that provision. This did not exhaust Canada's options. Brazil recognized, that under Article 6.1 of the DSU a panel "shall be established at the latest at the DSB meeting following that at which the request first appears as an item on the DSB's agenda". Consequently, Canada was free to submit a second request for the establishment of the panel at a future DSB meeting when, according to the DSU provisions and DSB precedents, the panel would be established unless the DSB decided otherwise by consensus. However, a better option would have been to follow the normal procedures set out in Article 4 of the SCM Agreement and to hold consultations. Either way, Brazil did not agree to the establishment of the panel at the present meeting.

92. The representative of Japan said that his country was concerned that the disputes between Brazil and Canada continued without arriving at definitive resolutions. This situation was affecting the credibility of the dispute settlement system and was against the spirit of the DSU, which stipulated that "the prompt settlement of situations" was "essential to the effective functioning of the WTO". Japan urged both Brazil and Canada to redouble their efforts to obtain, through bilateral consultations, a mutually satisfactory solution for a full compliance of the DSB's recommendations. However, in case the Article 21.5 process was to be initiated, once again, he believed that it was necessary and appropriate for the panel to provide clear and specific guidance in order to enable the parties to resolve these disputes.

93. The representative of the United States said that his country had been following this dispute with interest and hoped that Canada and Brazil would ultimately find a way to resolve their differences. The United States believed that it was in keeping with the intent of the drafters of Article 21.5 of the DSU to promote expedited resolutions of disputes over compliance with the DSB's rulings and recommendations. Therefore protracted delays in the treatment of Article 21.5 requests should be avoided as they only undermined the dispute settlement process and the credibility of the WTO. Furthermore, with respect to consultations, it was the US view that it was up to a panel to decide on this issue in accordance with the past practice.

94. The representative of the European Communities said that the EC shared the concern expressed by Japan to the effect that the parties to the dispute should try to find an amicable solution. The EC also shared the position of Brazil that under Article 21.5 of the DSU consultations would be necessary.

95. The representative of Argentina said that while the questions raised at the present meeting were still pending clarification, his country believed that it was preferable that decisions on those issues were not taken by panels but by Members. Argentina therefore considered that the parties should exercise extreme caution and resolve such problems through consultations which should be as exhaustive as possible with a view to reaching an agreement.

96. The representative of Uruguay said that his country shared the concerns expressed at the present meeting not only with regard to this case but also with regard to the impact which such prolonged cases had on dispute settlement procedures and on the WTO's image. The pressure which the system was being subjected to was a threat to its integrity and undermined the confidence that many Members had in the system which enabled them to defend and promote their interests. In an effort to defend their interests some delegations had pushed the limits of the DSU text too far due to existing ambiguities. He reiterated that it was up to the General Council to interpret the WTO rules. The aim of the dispute settlement system was to help Members to solve disputes, not to give legitimacy to trade disputes and that was why it was even more important for the parties to exhaust all possible remedies in an effort to finding a solution and consultations were one of those remedies. He therefore believed that such consultations should be held in all cases. The two parties to the dispute had stated more than once that they were prepared to discuss this matter and to hold consultations.

Uruguay strongly encouraged them to do so, and hoped that through these consultations they would be able to solve the problems before proceeding to a panel. Some delegations had asked that the panel provide clarification on this issue, but his delegation believed that it was not up to a panel to do so.

97. The representative of Canada said that his delegation had noted the statements made by some Members in which they had referred to the need to protect the credibility of the system. He stressed that Canada had always stood ready to do that. He wished to respond to one procedural argument raised by Brazil, namely, the need for two DSB meetings in order to refer the matter to the original Panel in accordance with Article 21.5 of the DSU. In Canada's view there was no need for two DSB meetings in order to do so. No such a requirement was stipulated in Article 21.5 of the DSU. The object and purpose of Article 21.5 of the DSU, as pointed out by the United States, was to provide for a rapid adjudication of an implementation dispute. Since the process was only 90 days it would be absurd to read into Article 21.5 the requirement for two DSB meetings. He believed that many Members would consider this highly undesirable precedent with concern. The fact that Brazil claimed to be in full compliance puzzled Canada because if this was the case why did it want to delay the process in the first place. He therefore questioned Brazil's intentions since, on the one hand, it claimed full compliance and, on the other hand, it sought to delay a multilateral process under an Article 21.5 panel.

98. The representative of Brazil noted that, as indicated in the minutes of the 21 December 1998 DSB meeting, in the context of the item on "European Communities – Regime for the Importation, Sale and Distribution of Bananas" the Chairman had stated that there was no consensus on the establishment of an Article 21.5 panel and had proposed that the DSB take note of statements, agree to revert to the matter and that consultations would be held before the next meeting with a view to finding an agreement on pending issues. At the subsequent meeting reference had been made to the fact that this was a second DSB meeting at which the item was on the agenda. He noted that many delegations had appropriately emphasized the need for prior consultations. Brazil was confident that it was in full compliance with the DSB's recommendations but, based on its experience, it believed that it would take a long time to convince Canada that this was the case.

99. The representative of the European Communities reiterated that his delegation shared the point made by Brazil with regard to the need for consultations. The EC believed that the provisions of Article 6 of the DSU prevailed and were part of the Article 21.5 procedure. However, since the Article 21.5 process was short the parties could agree that such consultations be carried out within a relatively short period of time.

100. The representative of Canada said that the problem for Brazil was not that it had been unable to convince Canada, but that it had been unable to convince five Panels. A number of Members had referred to the need for consultations as well as for two DSB meetings in order to refer the matter to the original panel in accordance with Article 21.5 of the DSU. It was not that Canada did not wish to hold discussions with Brazil. The parties had been discussing this matter for five years. However, Canada fundamentally disagreed with the view that Article 4 consultations were a precondition to the establishment of an Article 21.5 panel. No such agreement was stipulated in Article 21.5 of the DSU. Moreover, there had been several panels established under Article 21.5 despite the fact that no consultations had preceded such panel requests. These included the Salmon case (WT/DS18), the Australian Leather case (WT/DS126) and the Shrimp case (WT/DS58) as well as the two previous panels pertaining to both Aircraft cases. To require prior consultations would not be in keeping with the object and purpose of such consultations which was to enable Members to clarify and resolve complaints prior to a panel process. After more than four years of dispute settlement and its own intransigence, Brazil could not possibly pretend that it required clarification as to the nature of Canada's complaint or that another set of consultations were now a prerequisite to a solution to this dispute. Furthermore, a requirement for prior consultations would run counter to the object and purpose of Article 21.5, which as pointed out by some Members provided for a rapid adjudication of

an implementation dispute. Since the entire process was only 90 days it would be absurd to read into Article 21.5 the requirement of a 60-day consultation period. Therefore, in the absence of a requirement for consultations, the DSB had no choice but to apply the negative consensus rule and to refer the matter to the original Panel.

101. The representative of Brazil said that if Canada had requested the Article 21.5 panel before seeking authorization to retaliate, he believed that his country would not have objected to it. However, the procedural sequencing in this case was incorrect. Canada had first asked for authorization to retaliate and then there had been an announcement that Canada was already retaliating. In other words, it was trying to legitimize something it had already done. Canada could try to do it but should not expect Brazil to have the same attitude as it would have had if this request had been made before the request for authorization to retaliate and before the actual demonstration of willingness to retaliate. Legal arguments had been made in this regard and there were some precedents. He reiterated that Brazil could not agree to the establishment of a panel at the present meeting.

102. The representative of Canada said that Canada had obtained authorization to retaliate in relation to the earlier PROEX schemes. However, the purpose of this new Article 21.5 panel was to examine the most recent modifications made to PROEX.

103. The Chairman proposed that the DSB take note of the statements. Since Canada's request for an establishment of an Article 21.5 panel remained on the table he also proposed that the DSB agree to revert to this matter at its next meeting.

104. The DSB so agreed.

8. United States – Anti-dumping measures on stainless steel plate in coils and stainless steel sheet and strip from Korea

(a) Report of the Panel (WT/DS179/R)

105. The Chairman recalled that at its meeting on 19 November 1999, the DSB had agreed to establish a panel to examine the complaint by Korea. The Report of the Panel contained in document WT/DS179/R had been circulated on 22 December 2000. He reminded delegations that in accordance with the Decision on Procedures for the Circulation and Derestriction of WTO Documents contained in WT/L/160/Rev.1, the Panel Report had been circulated as an unrestricted document. The Panel Report was now before the DSB for adoption at the request of Korea. In accordance with Article 16.4 of the DSU, the adoption procedure was without prejudice to the right of Members to express their views on the Panel Report.

106. The representative of Korea expressed his country's gratitude to the Panel and to the Secretariat for their work. The parties to this dispute had submitted extensive and complex arguments on a number of issues of anti-dumping law. It was clear from the Report that the Panel had dealt with these arguments fully and fairly. Korea appreciated the Panel's diligence in carrying out its functions. With this decision, the Panel had affirmed the importance of the dispute settlement system in the anti-dumping area. While scrupulously adhering to the deferential standard of review stipulated in the Anti-Dumping Agreement, the Panel had nevertheless been able to effectively ascertain whether or not the methodology used by the investigating authority to measure the "margin of dumping" conformed with WTO disciplines. He then drew attention to the three key conclusions of the Panel. First, with respect to sales that POSCO[3] made to a US customer that the later had gone bankrupt without paying POSCO, the investigating authority had treated the full costs arising from the

[3] Pohang Iron and Steel Company.

non-payment as "direct selling expenses" and had taken those costs into account in the comparison of export price to normal value. The investigating authority had done so, even though it had conceded that there was no reason for POSCO to have known when it had made the sale that the customer would not pay. The Panel had concluded that it was wrong for the investigating authority, under those circumstances, to attribute the unanticipated cost of the customer's failure to pay as a cost to POSCO in the price comparison.

107. Second, with respect to so-called "multiple averaging", the investigating authority had divided the periods of investigation into two sub-periods, before and after the devaluation of the Korean Won in late 1997. The investigating authority had then calculated a separate dumping margin for each sub-period, treated a sub-period of "negative dumping" as that of "zero dumping", and had then recombined the separate calculations into a total figure that was higher than would have resulted from the calculation of a single average for the entire period. The Panel had concluded that it was wrong for the investigating authority to "split the period" in this manner, because a single average should be calculated for all comparable sales and the change in the value of the Korean Won did not affect the comparability of the sales. Korea noted that the Panel had not made any finding in this dispute on the issue of "zeroing". In the case on the EC – Bed Linen (WT/DS141), the Panel had recently found the practice of "zeroing" to be inconsistent with the Anti-Dumping Agreement. Korea strongly supported that conclusion.

108. Third, with respect to sales in Korea that had been invoiced in US dollars, the investigating authority looked past the dollar price on the invoice to the Won amount recorded in POSCO's accounting records and then converted that Won price into dollars. The effect, therefore, was not to include in the price comparison the actual dollar-denominated value of these home-market sales. Instead, a "double converted" amount had been included, i.e. the dollar price from the invoice had been converted into Won at one exchange rate in POSCO's records and that amount had then been converted back to dollars at a different exchange rate. The Panel had concluded that such "double conversions" were inconsistent in principle with the Anti-Dumping Agreement. If one were to attempt to find a common theme among these three conclusions, it would be this: an exporter should not be found to be dumping based on factors beyond its control. The "margin of dumping" was to be determined by a price comparison between the exporter's home-market prices (normal value) and export prices. That comparison should not be influenced by extraneous factors, such as a customer's failure to pay. In particular, the price comparison should not be done in a manner susceptible to distortion, such as could arise from the vagaries of exchange rates if "double conversion" were permitted or from "zeroing" if "splitting the period" were permitted.

109. There were certain aspects of the Panel's reasoning with which Korea disagreed. Some of these had been reflected in the comments that Korea had made at the interim stage. But that was only to be expected in a complex case raising so many issues. In general, Korea was fully satisfied with the Panel's decision. With the adoption of the Panel Report, Korea looked forward to the prompt implementation of the Panel's recommendations. In view of the nature of the violations found by the Panel, Korea considered that the United States ought to be able to complete its implementation within a few months.

110. The representative of the United States said that his country wished to thank the Panel and the Secretariat for its work. He noted that this dispute involved some very technical aspects of particular anti-dumping investigations and, at the same time, the technical aspects meant that the Panel's findings were limited to the unique facts of this case. Therefore, he wished to reflect the US view that the Panel's conclusions should be narrowly interpreted upon the basis of those facts. The United States appreciated the Panel's acceptance of the US position that the use of multiple averaging periods in the plate and sheet investigations had not been inconsistent with Article 2.4.1 of the Anti-Dumping Agreement, or with the first sentence of the chapeau of Article 2.4. He believed that the Panel was correct in concluding that adjustments for constructing export price sales were not limited based on

whether the adjustment arose between import and sale in a strictly temporal sense. The United States also believed that the Panel had correctly concluded that Article X of the GATT 1994 did not provide a proper basis for examining the consistency with domestic law of an anti-dumping determination. However, he wished to register the US continued disagreement with certain aspects of the Panel's conclusions concerning the treatment of bad debt and certain local sales. In particular, the United States wished to note its disagreement with the Panel's conclusion on the use of multiple averaging periods. It continued to believe that the United States' determination in these investigations – that sales before a severe currency devaluation were not comparable to sales after the devaluation – rested on a "permissible" interpretation of Article 2.4.2, within the meaning of Article 17.6(ii) of the Anti-Dumping Agreement. In view of these continuing concerns, the United States did not join in a consensus to adopt the Panel Report, but recognized that, in the absence of a consensus to reject it, the Report would be adopted at the present meeting. The United States would follow the procedures in the DSU for stating its intentions in a timely manner with respect to implementation, bearing in mind that the Panel had explicitly declined Korea's request for a panel to suggest that the United States revoke the anti-dumping duties at issue in this dispute.

111. The DSB took note of the statements and adopted the Panel Report contained in WT/DS179/R.

9. Proposed nominations for the indicative list of governmental and non-governmental panelists (WT/DSB/W/155)

112. The Chairman drew attention to document WT/DSB/W/155 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/155.

113. The DSB so agreed.

10. Statement by Brazil concerning the US Patents Code

114. The representative of Brazil, speaking under "Other Business", said that his country had detected several discriminatory provisions in the US Patents Code, (United States Code – Title 35 – Patents), in particular those of Chapter 18 [38] – "Patent Rights in Inventions Made with Federal Assistance". The United States Patents Code stipulated that no small business firm or non-profit organization which received title to any subject invention and no assignee of any such small business firm or non-profit organization should grant to any person the exclusive right to use or sell any subject invention in the United States, unless such person agreed that any products embodying the subject invention or produced through the use of the subject invention would be manufactured substantially in the United States. In addition, each funding agreement with a small business firm or non-profit organization should contain appropriate provisions to effectuate the above-mentioned requirement. The Patents Code also imposed statutory restrictions which limited the right to use or sell any federally owned invention in the United States only to a licensee that agreed that any products embodying the invention or produced through the use of the invention would be manufactured substantially in the United States. In this sense, Brazil had requested consultations with the United States in order to examine these and other provisions of the US Patents Code, with a view to understanding how the United States justified the consistency of such requirements with its obligations under the TRIPS Agreement, especially Articles 27 and 28, the TRIMs Agreement, Article 2, in particular, and Articles III and XI of GATT 1994.

115. The representative of the United States said that his delegation noted the clarification provided by Brazil. This was obviously a reaction by Brazil to the panel that had been established under item 4 of the present meeting with regard to Brazil's local manufacturing requirement. However, there was no parallel between these two laws. The chapter of the US law that was of

concern to Brazil contained contractual terms for anyone who wished to license a patent owned by the US Government, or would like the US Government to fund their research and development projects. These were contractual agreements that anyone could voluntarily enter into. They were not conditions on the enjoyment of patent rights. This was a "far cry" from Brazil's requirement that all patents, regardless of who owned them or who funded their creation, be subject to compulsory license unless locally manufactured. The United States was confident that its patent law was consistent with its WTO obligations, and would be glad to consult with Brazil on this matter.

116. The DSB took note of the statements.