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WT/DSB/M/28

21 February 1997

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WORLD TRADE ORGANIZATION

DISPUTE SETTLEMENT BODY
22 January 1997

MINUTES OF MEETING

Held in the Centre William Rappard
on 22 January 1997

Chairman: Mr. Celso Lafer (Brazil)

Subjects discussed: Page

1. Surveillance of implementation of recommendations adopted by the DSB
   - United States - Standards for reformulated and conventional gasoline: status report by the United States (WT/DS2/10)

The Chairman said that this item was on the Agenda pursuant to Article 21.6 of the DSU which stated 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 time-period pursuant to paragraph 3 and shall remain on the DSB's agenda until the issue is resolved". He recalled that at the DSB meeting on 3 December 1996, the United States had stated that it would provide the DSB, at its meeting in January 1997, with a status report of its progress in the implementation of its recommendations. At the present meeting, this status report was before the DSB in document WT/DS2/10.

The representative of the United States said that pursuant to Article 21.6 of the DSU, his country had submitted, in document WT/DS2/10, its first status report on the implementation of the recommendations of the DSB. As outlined in this report, the implementation process initiated by the US Environmental Protection Agency (EPA) was very open, which provided an opportunity for input from all interested parties during the time-period specified therein.

The representative of Brazil expressed his country's concern at the apparent delay in the effective implementation by the United States of the Appellate Body report which had upheld the conclusions of the panel on this matter. He recalled that the panel report had been circulated on 29 January 1996, and the Appellate Body report on 29 April 1996. Brazil had welcomed the United States' intention to implement the recommendations. In December 1996, the United States had affirmed that it needed 15 months to fully implement the recommendations. Although Brazil believed that this time-period was excessive, it had not formally made any objection because it understood that such implementation could take time. He expressed concern that the United States might be falling behind the 15-month implementation period.

As stated in WT/DS2/10, in June 1996, the EPA had invited comments from all interested parties to be submitted by September 1996, on how the United States should implement the recommendations. Four months after the receipt of these comments, the United States had still not put forward any specific proposal for the implementation of the recommendations. It was Brazil's understanding that under the US domestic law a number of steps had to be taken before the gasoline rule could be changed and that minimum time-frames were required for these steps. These procedures delayed the implementation process which imposed costs on Brazilian exporters of gasoline. As it was over two years since the gasoline rule had become effective, Brazilian exporters queried how much more time was required for this discriminatory rule to be made consistent with Article III of GATT 1994. Therefore, Brazil requested the United States to inform the DSB of: (i) where the matter presently stood; (ii) when would the proposed changes to the gasoline rule be issued; (iii) what steps would be taken following publication of the proposed rule; (iv) what would be the time-limits in law or regulation for those steps, and could those time-limits be exceeded; (v) what time would be required for any other steps; and (vi) the intended date when a rule implementing the DSB recommendations would become effective.

The representative of Venezuela thanked the United States for the status report in WT/DS2/10. His delegation noted the United States' assurance that its implementation process was well under way, and that the United States did not anticipate any problems in fully implementing the recommendations within the 15-month period, as agreed by both governments. His delegation would be interested in the answers to the questions raised by Brazil with regard to alleged delays in the implementation process.

The representative of the United States said that the EPA was currently reviewing regulatory options open to it. He was therefore not in a position at the present meeting to indicate the timing of the next steps in the review process. All information currently available to his delegation had been provided in document WT/DS2/10. Nevertheless, his delegation would maintain the dialogue with Brazil and Venezuela concerning the points which had been raised. He requested Brazil to provide its questions in writing. He would recommend to his authorities to make every effort to respond to these questions by the time of the next regular DSB meeting. Notwithstanding the concerns raised by Brazil, he wished to assure Members that the United States was currently on schedule in the 15-month period as it had anticipated when it had announced the implementation of the recommendations.

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

2. Hungary - Export subsidies in respect of agricultural products
   - Request by Australia for the establishment of a panel (WT/DS35/4)
   - Request by New Zealand for the establishment of a panel (WT/DS35/5)
   - Request by the United States for the establishment of a panel (WT/DS35/6)
   - Request by Argentina for the establishment of a panel (WT/DS35/7)

The Chairman proposed that the above-mentioned requests be considered together since they pertained to the same matter. He then drew attention to the communication from Australia in document WT/DS35/4.

The representative of Australia said that his country and some other Members had held several consultations with Hungary with regard to its export subsidies on agricultural products. Parties to the dispute had actively sought to work with Hungary in order to find a mutually satisfactory solution to the matter. It was disappointing that after a lengthy process of consultations, both formal and informal, including in the Committee on Agriculture and under the DSU procedures, as well as informal discussions between the complainants and Hungary, it had not been possible to find a mutually acceptable solution to the problem of Hungary's breach of its export subsidy commitments. Efforts had included a proposal by the complainants for a temporary waiver which would require Hungary to bring its export subsidy commitments into conformity with its WTO obligations.

Australia therefore requested the establishment of a panel. The basis of its complaint was that Hungary was providing export subsidies on agricultural products in excess of the budgetary outlay and quantity commitment levels specified in its Schedule annexed to the Marrakesh Protocol to the GATT 1994, and not specified therein. Accordingly, these subsidies appeared to be inconsistent with the Agreement on Agriculture, including but not limited to Articles 3.3, 8 and 9.2 thereof. It was important that all Members fully honoured their Uruguay Round commitments on agriculture and in particular on export subsidies. His country hoped that a mutually satisfactory solution to this dispute might still be found which would be consistent with the Agreement on Agriculture and other WTO Agreements.

The Chairman then drew attention to the communication from New Zealand contained in document WT/DS35/5.

The representative of New Zealand endorsed the statement made by Australia. This long-standing dispute had been raised for the first time in September 1995 in the Committee on Agriculture. It had related to Hungary's provision of export subsidies with respect to agricultural products, which since the beginning of the implementation period had exceeded both the budgetary outlay and quantity commitment levels specified in its Schedule. Since then, New Zealand together with some other

Members, had been actively engaged both formally and informally in the process aimed at assisting Hungary to bring its export subsidy regime into conformity with the WTO. In March 1996, New Zealand had requested consultations pursuant to Article XXII of GATT 1994. Over the past year, regular consultations had been held resulting in a proposal made by the complainants for a temporary waiver. At that time it had been made clear that if Hungary declined this proposal there would be not other option than to request the establishment of a panel. Regrettably, the dispute had not been resolved.

This dispute was the first real test of the Agreement on Agriculture. There was no need to elaborate on the importance that New Zealand attached to this Agreement, in particular the export subsidy disciplines in agriculture which were a key result of the Uruguay Round. Therefore, New Zealand requested the establishment of a panel to examine this matter and to find that Hungary was in breach of its export subsidy commitments. With such an outcome, Hungary would have to accept that its export subsidy Schedule was a binding commitment that must be observed.

The Chairman then drew attention to the communication from the United States contained in document WT/DS35/6.

The representative of the United States said that, as noted by previous speakers, the United States and other interested Members had worked long and extensively with Hungary to resolve this dispute. His delegation regretted that those efforts had been unsuccessful. The United States supported the requests for a panel by Australia, New Zealand and Argentina. It believed that the market distortions resulting from Hungary's agricultural export subsidies were of concern to all Members. His delegation requested that a panel be established at the present meeting since the consultations with Hungary had extended over a long period of time and therefore there was no reason for any further delay.

The Chairman finally drew attention to the communication from Argentina contained in document WT/DS35/7.

The representative of Argentina said that his delegation had requested the inclusion of this item on the agenda for the reasons outlined by previous speakers, following an evaluation of trade and systemic implications for Argentina, and after having exhausted a lengthy consultation process. On several occasions, his country had stated that it attached importance to the full implementation of the Uruguay Round commitments, and in particular in the area of agriculture which had been brought for the first time under the GATT/WTO disciplines. Export subsidy disciplines under the Agreement on Agriculture constituted a major advance in this sector. Any alteration to commitments in this area, which were not renegotiable, would affect the overall balance of all the Uruguay Round Agreements.

Between 1993 and 1995, 33.66 per cent of Argentine exports had been in agricultural commodities. Despite the increased diversification of its exports, the share of the agricultural sector had reached 39 per cent between January and August 1996. Therefore, the failure by Hungary to fulfil its subsidy reduction commitments contained in its Schedule, and by granting subsidies to products not specified therein affected Argentina's specific trade interests. His country would have preferred to avoid the establishment of a panel, but it considered that it had exhausted a consultation process that had lasted over one and a half years.

He recalled that this issue had been discussed in the Committee on Agriculture for the first time in September 1995. The request for consultations under Article 4 of the DSU and Article 19 of the Agreement on Agriculture had been made on 27 March 1996. Consultations had been held with Hungary as late as the previous week in order to find a solution to this matter. Regrettably, the most recent arguments submitted by the latter did not indicate that Hungary was willing to bring its export subsidy commitment into conformity with its WTO obligations. His government had therefore reached

the conclusion that the only alternative to resolve this dispute was to request the establishment of a panel with standard terms of reference in accordance with Article 7 of the DSU.

The representative of Hungary said that his country fully respected the rights of Members to request the establishment of a panel after consultations had failed to settle the dispute. However, Hungary was concerned that some of the complaining parties had decided to proceed to a panel stage. Hungary did not believe that this was the best way to reach a positive solution to this unique situation which had arisen from an erroneous establishment of its Schedule in the area of export subsidies. The underlying background of this situation was well known to the DSB members as Hungary had provided a detailed account thereof to the Committee on Agriculture and to the General Council.[1]

Hungary believed that all possibilities for a solution had not yet been exhausted. The requests for the establishment of a panel had been made a few days after Hungary had submitted its latest proposal for a mutually satisfactory solution. His country had no intention of delaying the DSU procedures. However, some reflection would be required to determine whether the panel procedures were appropriate to provide a positive solution to this dispute. Therefore, Hungary was not in a position at the present meeting to join in a consensus for the establishment of a panel.

The representative of the United States said that in accordance with the DSU, Hungary had the right not to participate in the consensus to establish this panel. However, he noted that pursuant to Article 6 of the DSU a panel to examine this dispute would be established when this request appeared on the agenda of the DSB meeting for a second time.

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

3. Turkey - Taxation of foreign film revenues
   - Request by the United States for the establishment of a panel (WT/DS43/2)

The Chairman drew attention to the communication from the United States contained in document WT/DS43/2.

The representative of the United States said that, as indicated in document WT/DS43/2, Turkey had maintained a 25 per cent municipality tax on box-office receipts generated from the showing of foreign-origin films, but had not imposed such a tax on box-office receipts generated from the showing of domestic-origin films. The United States considered this to be inconsistent with Turkey's obligations under Article III of GATT 1994.

On 12 June 1996, the United States had requested consultations with Turkey on this matter which had been held on 25 July 1996. His country had entered into consultations with Turkey with the aim of resolving this dispute, but no mutually acceptable solution had been found in the six months since these consultations had taken place. Accordingly, the United States requested the establishment of a panel to examine this matter.

The representative of Turkey said that, on 25 July 1996, the United States and his country had held consultations regarding the municipality tax imposed by Turkey on box-office revenues generated from the showing of foreign-origin films. The Turkish authorities were considering the steps to be taken in light of the views expressed by the United States. His delegation hoped that it would be in

[1]WT/L/144

a position to report on the results in the near future. Therefore, Turkey believed that it was not necessary at this stage to establish a panel and would not join in a consensus to this end.

The representative of the United States said that his country was always prepared to find a mutually acceptable solution to any dispute like the one under consideration and hoped to be able to resolve this matter with Turkey. Pursuant to Article 6 of the DSU, his delegation noted that a panel to examine this dispute would be established when the US request would appear next on the agenda of a meeting of the DSB.

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

4. Argentina - Measures affecting imports of footwear, textiles, apparel and other items
- Request by the United States for the establishment of a panel (WT/DS56/5)

The Chairman drew attention to the communication from the United States contained in document WT/DS56/5.

The representative of the United States said that, as indicated in WT/DS56/5, Argentina had imposed specific duties on imports of footwear, textiles and apparel in excess of its tariff commitments. In addition, it had imposed a statistical tax of 3 per cent ad valorem on imports of textiles, apparel, footwear and other items. The United States believed that these measures violated: (i) Articles II, VII, VIII and X of GATT 1994; (ii) Articles 1 to 8 of the Agreement on Implementation of Article VII of GATT 1994; and (iii) Article 7 of the Agreement on Textiles and Clothing.

On 4 October 1996, the United States had requested consultations with Argentina which had been held on 12 November 1996. As stated in document WT/DS56/5, the United States had been satisfied with the information provided by Argentina that it had modified its labelling regime. However, his country had entered into consultations with Argentina with the aim to resolve this dispute in its entirety. Despite the resolution of the issue concerning labelling, the consultations had not produced a mutually acceptable solution with respect to Argentina's specific duties and statistical tax. Therefore, while the United States continued to hope that a mutually acceptable solution might be found it had no other option but to request the establishment of a panel to examine this matter.

The representative of Argentina said that his delegation noted the request for a panel made by the United States. It was, however, not in a position at the present meeting to accept this request. As indicated by the United States, Argentina also believed that continuing informal consultations would enable a mutually satisfactory solution to be found.

The representative of the United States said that his country was prepared to continue to work with Argentina with the intention to resolve this dispute before the next meeting of the DSB. His delegation noted that a panel to examine this matter would be established when the US request appeared next on the agenda of a meeting of the DSB.

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

5. United States - Import prohibition of certain shrimp and shrimp products
- Request by Malaysia and Thailand for the establishment of a panel (WT/DS58/6)

The Chairman drew attention to the communication from Malaysia and Thailand contained in WT/DS58/6.

The representative of Thailand, speaking also on behalf of Malaysia, said that the embargo on the importation of certain shrimp and shrimp products imposed by the United States pursuant to Section 609 of Public Law 101-162 amending the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) was inconsistent with the US obligations under the GATT 1994, including, but not limited to, Articles I:1, X:1 and XIII:1. Aiming to protect sea turtles outside its territory, the United States had imposed a complete embargo on wild-caught shrimp and shrimp products on imports from countries not certified as meeting the US sea turtle protection programme. In order to be certified, a country had to meet certain standards determined unilaterally by the United States as set forth in the implementing regulations to the Act.

Under Article XI:1 of GATT 1994 "no prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licenses or other measures shall, be instituted or maintained by any contracting party on the importation of any product of the territory of any other contracting party…" The scope of Article XI:1 was comprehensive, applicable to all measures which prohibited or restricted imports, other than duties, taxes or other charges. The embargo on shrimp imports maintained by the United States clearly violated this fundamental GATT provision. Article I:1 of GATT 1994 required m.f.n treatment. By permitting imports of wild-caught shrimp from certain Members and denying that privilege to others, the United States had also violated the m.f.n. treatment.

Under Article XIII:1 of GATT 1994 "no prohibition or restriction shall be applied by any contracting party on the importation of any product of the territory of any other contracting party…., unless the importation of the like product of all third countries….is similarly prohibited". The US embargo violated this provision as it discriminated between the imports of like products, allowing entry of shrimp and shrimp products from countries which the United States had certified while denying such entry to physically identical products from countries that had not been certified. Malaysia and Thailand believed that the measures maintained by the United States could not be justified by any other GATT provisions, including the exceptions contained in Article XX. Moreover, these actions nullified or impaired benefits accruing to Malaysia and Thailand under GATT 1994 and the WTO Agreement.

On 8 October 1996, in an effort to resolve this matter, India, Malaysia, Pakistan and Thailand had requested consultations with the United States[2]. These consultations had been held on 19 November 1996, and subsequently letters had been exchanged. However, it had not been possible to reach a mutually agreed solution. Therefore, Malaysia and Thailand requested that a panel be established with standard terms of reference.

The representative of the United States said that the scope of the import prohibition at issue in this dispute was currently the subject of pending litigation in the US courts. The United States' understanding was that under the most recent decision of the US Court of International Trade, Section 609 of Public Law 101-162, which authorized the prohibition, had only a small effect on trade between the United States and the countries requesting a panel. Furthermore, because Thailand had been certified under Section 609, presently this Section had absolutely no effect on trade from Thailand. His delegation

[2] WT/DS58/1

was disappointed that Malaysia and Thailand had requested a panel in this particular case. At this stage, the United States was not in a position to agree to the establishment of a panel.

The representative of the Philippines said that, her country had requested separate consultations with the United States on this matter[3], but had participated together with other complainants in the consultations held on 19 November 1996. These consultations had failed to settle the matter due to divergent views on the consistency of the application of the measure with the WTO Agreement. Malaysia and Thailand had the right to request the establishment of a panel. The Philippines was currently making an assessment of subsequent developments, in particular the Order of the US Court of International Trade issued on 25 November 1996, which clarified and revised an earlier decision of 8 October 1996. This Court Order had made certain changes in the manner in which the measure was enforced. The Philippines was in the process of evaluating the implications of these changes in light of previous panel reports on related issues.

Subsequent to the consultations, the United States had requested the Philippines, and other countries in the region, to consider the possibility of concluding a treaty on the protection of sea turtles. In a spirit of comity and in pursuit of its own environmental objective of protecting sea turtles, the Philippines would keep an open mind to such initiatives. However, her country considered a treaty on the protection of sea turtles as a separate issue from the consistency of disputed measures with the WTO Agreement. The Philippines would continue its evaluation and would monitor further developments on this matter. Her delegation reserved its rights to revert to this matter at a future date.

The representative of Pakistan said that his country supported the statement made by Thailand. Pakistan believed that the measure taken by the United States violated, *inter alia*, the following Articles of GATT 1994: (i) Article I concerning the m.f.n. treatment; (ii) Article XI pertaining to the general elimination of the quantitative restrictions; and (iii) Article XIII concerning non-discriminatory administration of quantitative restrictions. Pakistan's shrimp exports to the United States had been adversely affected by the above-mentioned embargo. Therefore, along with India, Malaysia and Thailand, his country had requested consultations with the United States in October 1996, with the aim to resolve this matter. These consultations had been held on 19 November 1996. Despite the fact that in Pakistan preventive procedures were utilized for shrimp fishing without any mechanical retrieval system, the consultations had failed to resolve this matter. Therefore, Pakistan wished to join the request by Malaysia and Thailand for the establishment of a panel. His delegation would shortly submit this request in writing.[4]

The representative of Australia said that if a panel were established Australia would reserve its third-party rights. Although his country's direct interest in the US prawn market was small, Australia had significant interest in this issue due to possible secondary market effects, and to the systemic issues raised by the US measures.

The representative of India recalled that his country along with Malaysia, Thailand and Pakistan had requested consultations with the United States on this matter. He regretted that the joint consultations had failed to find an understanding on this matter and indicated that this issue was under review by his authorities. His delegation shared the points made by the Philippines. Since the decision to establish a panel would be made at a later date, India wished to reserve its rights to pursue this matter as appropriate.

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[3]WT/DS61/1

[4]Subsequently circulated as WT/DS58/7.

The representative of Thailand, speaking also on behalf of Malaysia, requested that the DSB revert to this matter at its next regular meeting.

The representative of Hong Kong said that his authorities had trade and systemic interests in this matter. Hong Kong had participated in the consultations, as the US attitude was open and reasonable respecting the rights of Members to participate therein. Efforts to provide oral answers to questions raised had been made though they might not be entirely satisfactory. Hong Kong believed that the US Administration had made efforts in good faith to seek modifications to the measures with the view to resolve this matter. Since important principles were involved if a panel were established to examine this matter, Hong Kong would reserve its third-party rights.

The representative of Mexico said that his country, though not affected by the embargo, had both trade and systemic interests in this matter as an exporter of this product. Therefore, if a panel were established his country would reserve its third-party rights.

The representative of Singapore said that though his country had not participated in the consultations it had trade and systemic interests in this matter, and if a panel were established it would reserve its third-party rights.

The representative of Colombia said that his country had followed with great interest the developments in this matter and if a panel were established it would reserve its third-party rights.

The representative of the European Communities said that, like other Members, the Communities also had an economic interest in this matter and might therefore wish to participate as a third party in a panel to be established.

The representative of Ecuador said that his delegation also wished to indicate his country's interest in reserving its third-party rights.

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

6. Brazil - Export financing programme for aircraft
- Statement by Canada

The Chairman recalled that the DSB had considered this matter at its meeting on 27 September 1996. At that meeting, Canada had agreed to narrow the scope of its complaint and circulate a new request for a panel under Article 4 of the Agreement on Subsidies and Countervailing Measures (SCM). Subsequently, this request had been circulated in document WT/DS46/4. The matter had been on the agenda of the DSB meeting on 16 October 1996. However, at the request of Canada it had been removed from the agenda on the understanding that the withdrawal would be without prejudice to Canada's right to revert to this matter at a later stage. The inclusion of this item on the Agenda of the present meeting was at the request of Canada.

The representative of Canada said that his country had requested the inclusion of this item on the Agenda in order to report on the status of consultations held currently pursuant to Article 4 of the SCM Agreement, with regard to Brazil's export subsidies under PROEX[5]. In response to Brazil's request that further consultations be held to find a negotiated solution, Canada had withdrawn its request for

[5]Programa de Financiamento às Exportações

the establishment of a panel from the agenda of the DSB meeting on 16 October 1996. It had taken this action because it believed, and continued to believe, that the DSU had been designed to encourage consultations to find mutually agreed solutions. Despite two draft proposals and several meetings, his country was disappointed with the results of the negotiations with Brazil. Canada had recently received a communication from Brazil to which it would shortly respond, but at this stage there were no positive details to report after seven months of consultations.

His country was particularly concerned at apparent misperceptions in the marketplace caused by the withdrawal of its request for a panel. It had been suggested that the WTO had rejected Canada's case against PROEX based on its merits, a characterization which was not accurate and which might reflect a lack of understanding by industry of the WTO dispute settlement process. Canada registered once more its concerns with regard to payments under the Interest Rate Equalization System component of PROEX. His country believed in the merits of a negotiated solution and hoped that such a solution could be found, but might need to consider other options available under the WTO.

The representative of Brazil said that, as stated previously in the DSB, Brazil believed that PROEX was fully consistent with Article 3 of the SCM Agreement and even if it were not, any inconsistencies could be justified by Article 27 of that Agreement. His country hoped that a mutually agreed solution to this problem could be found. However, regardless of the consistency of PROEX with Article 3 of the SCM Agreement, the increased subsidies that Canada seemed to provide to its industry, which far exceeded any benefits from PROEX, might create difficulties to find a solution.

In accordance with the information provided by Brazil's aircraft industry, Canada had granted its industry: (i) US$ 87 million in October 1996; (ii) US$ 57 million in December 1996; and (iii) US$ 147 million in January 1997. He regretted such subsidization by a developed country. This suggested that Canada was not observing the disciplines of the SCM Agreement with regard to incentives to its exports of civil aircraft. Brazil hoped to explore with Canada this information as well as other reports of possible subsidies to the Canadian aircraft industry in the context of the consultations on PROEX. He agreed with Canada's statement that "the DSU was designed to encourage consultations and mutually agreed solutions". Brazil was prepared to continue working in this direction.

The representative of Canada believed that, based on the current information, PROEX was an export subsidy. He noted Brazil's statement concerning certain Canadian programmes which he would report to his authorities. He reiterated that this item had been included on the Agenda to report to the DSB on the consultations that Canada carried out with Brazil on PROEX. Canada did not consider any of its programmes to be inconsistent with its WTO obligations, and should any of them be challenged it would fully defend them.

The DSB took note of the statements.

7. Proposed nominations for the indicative list of governmental and non-governmental panelists (WT/DSB/W/46)

The Chairman drew attention to document WT/DSB/W/46 which contained additional names proposed for inclusion on the indicative list of governmental and non-governmental panelists in accordance with Article 8.4 of the DSU. He proposed that the DSB approve the names contained therein.

The DSB so agreed.

The Chairman recalled that in accordance with the proposal for the administration of the indicative list of panelists approved by the DSB on 31 May 1995[6], the list should be completely updated every two years. Within the first month of each two-year period, Members would be required to forward updated curricula vitae of persons contained on the indicative list. The current indicative list had been constituted on 27 September 1995. Therefore, the Secretariat would circulate an updated list in September 1997.

The DSB took note of this information.

8. European Communities - Duties on imports of grains

The representative of the United States, speaking under "Other Business", expressed his country's increasing concern with respect to the continued delay by the European Communities to fully implement its market access concessions on grains. In the Uruguay Round, the Communities had granted tariff concessions on grain imports limiting the total duty to be paid based on the landed, duty-paid price of the grain. However, the Communities had adopted a reference price system, and had failed to implement fully these concessions.

On 19 July 1995, the United States had requested consultations with the Communities on this matter. As these consultations had not resulted in a mutually satisfactory solution, the United States had requested the establishment of a panel on 28 September 1995. This request had been considered for the first time by the DSB at its meeting in October 1995. Subsequently, in November 1995, the United States and the Communities had reached a settlement of the matter. The settlement took the form of an exchange of letters which provided for a number of undertakings on the part of the Communities to be implemented by the EC Commission. The exchange had also stated that the United States would withdraw its request for a panel, which it would not reintroduce "provided that there is effective implementation of the provisions of this Agreement". Unfortunately, to date, there had been no effective implementation of the settlement agreement. This 14-month period of inaction on the part of the Communities deeply concerned the United States. Therefore, his country intended to renew its request for a panel at the next meeting of the DSB in February 1997, unless the Communities immediately took steps to implement the settlement agreement.

The representative of the European Communities noted the intentions of the United States with regard to the next meeting of the DSB. The Communities believed that as a procedural matter it would normally be necessary for the United States to re-introduce its request to invoke the dispute settlement machinery *ab initio*. This would reflect faithfully the fact that the United States should have withdrawn its request for a panel on the understanding that it would retain its right to re-introduce its request if it judged that the Communities had not met its obligations under the exchange of letters. The United States had not withdrawn its request for a panel. Therefore, there was a need for further clarification on this procedural point. Prior to the DSB meeting on 3 December 1996, his delegation had circulated a communication in document WT/DS13/3 concerning this matter. The Communities stood by its obligations under the exchange of letters and hoped to find a mutually satisfactory solution to any outstanding problems.

The DSB took note of the statements.

[6]Annex to WT/DSB/5

9. Election of Chairperson

The Chairman, speaking under "Other Business", recalled that in accordance with the Rules of Procedure for meetings of the DSB[7], the election of its Chairperson should take place at the first meeting of the year. The Chairman of the General Council was currently conducting informal consultations on a slate of names for appointment as chairpersons to WTO bodies. The proposed nominations would be submitted for approval by the General Council at its meeting on 7 February 1997. He therefore proposed that the DSB formally elect its Chairperson at its next meeting following the meeting of the General Council to be held on 7 February.

The DSB so agreed.

10. Statement by the outgoing Chairman of the DSB

The outgoing Chairman of the DSB, Mr. C. Lafer (Brazil) made a concluding statement subsequently circulated in document WT/DSB(97)ST/1.

The representative of Canada, said that he believed he could speak on behalf of DSB members to thank the outgoing Chairman for his outstanding service to the WTO and his work for the DSB over the past year. The Chairman's statement was an eloquent expression of how well-suited he had been for this task. This had been a very important year in the evolution of the dispute settlement system which was a corner-stone of the WTO Agreement. Through his work over the past year, the manner in which he had handled the DSB, his professionalism in dealing with Members, the Chairman had made an invaluable contribution to the strengthening of the dispute settlement mechanism and in reinforcing its role in the WTO.

The DSB took note of the statements.

[7]WT/DSB/9