10 May 2000

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Report of the Appellate Body

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holding in UES. In December 1988, the British government completed the privatization through a sale of BSplc shares on the stock market.[4] The United States Department of Commerce ("USDOC") found that the sale of BSplc shares was at arm's length, for fair market value and consistent with commercial considerations.[5] On 20 March 1995, BSplc purchased GKN's holding in UES, whereupon UES was renamed British Steel Engineering Steels ("BSES").[6]

3. Countervailing duties on imports of leaded bars were originally imposed in 1993.[7] Since then, the USDOC has undertaken a number of annual reviews of the countervailing duties applied to imports of leaded bars originating in the United Kingdom. The European Communities' claims in this case relate to the countervailing duties imposed following administrative reviews initiated in 1995, 1996 and 1997, which dealt with leaded bar imports in the calendar years 1994, 1995 and 1996, respectively.[8] In each of these reviews, the USDOC applied its allocation methodology for untied, non-recurring subsidies to determine the amount of the benefit from the pre-1986 subsidies to BSC allocable to the relevant period of review.[9] The USDOC also applied its "change-in-ownership" methodology to determine the extent to which the pre-1986 subsidies granted to BSC "travelled" to

5. The Panel recommended that the United States bring its measures into conformity with the (the " ").[13] The Panel suggested "that the United States [take] all appropriate steps, including a revision of its administrative practices, to prevent the aforementioned violation of Article 10 of the SCM Agreement from arising in the future."[14]

6. On 27 January 2000, the United States notified the Dispute Settlement Body (the "DSB") of its intention to appeal certain issues of law covered in the Panel Report and certain legal interpretations developed by the Panel, pursuant to paragraph 4 of Article 16 of the (the "DSU"), and filed a Notice of Appeal pursuant to Rule 20 of the (the " "). On 7 February 2000, the United States filed its appellant's submission.[15] On 21 February 2000, the European Communities filed its appellee's submission.[16] On the same day, Brazil and Mexico each filed a third participant's submission.[17]

7. The oral hearing in the appeal was held on 13 March 2000. The participants and third participants presented oral arguments and responded to questions put to them by the Members of the Division hearing the appeal.

8. On 19 March 2000, Mr. Christopher Beeby, a Member of the Division hearing this appeal, passed away. On 20 March 2000, the Appellate Body, pursuant to Rule 13 of the , selected Mr. Julio Lacarte-Muró to replace Mr. Beeby. In view of these extraordinary circumstances, the newly-constituted Division decided, pursuant to Rule 16(1) of the , and in the interests of fairness and orderly procedure in the conduct of this appeal, to hold another oral hearing on 4 April 2000. On that date, the participants and third participants presented oral arguments and responded to questions put to them by the Members of the newly-constituted Division. Due to these same extraordinary circumstances, the participants in this appeal, the European Communities and the United States, agreed to a two week extension of the 90-day time limit for the consideration of this appeal, and thus agreed that this Report should be circulated no later than 10 May 2000.[18]

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[13]Panel Report, para. 8.1.

[14] ., para. 8.2.

[15]Pursuant to Rule 21 of the .

[16]Pursuant to Rule 22 of the .

[17]Pursuant to Rule 24 of the .

[18]WT/DS138/7, 4 April 2000.

A.

1. Standard of Review

9. The United States argues that the standard of review set forth in Article 17.6 of the (the " ") applies to panel review of WTO Members' countervailing duty

demonstration" that the original benefit still constitutes an advantage to the relevant company, it would become "nearly impossible" to administer countervailing duty laws. The United States also asserts that the panel report in (" ")[19] supports the view that, due to a lack of express guidelines in the , subsidy benefits may be allocated over time without revisiting the benefit issue.

13. According to the United States, the context provided by other provisions of the , in particular Articles 14 and 27.13, supports this interpretation. Article 14, which describes how an investigating authority should measure the benefit of subsidies, looks only to the time of the subsidy bestowal, and not to any subsequent point in time. The United States also argues that the wording of Article 27.13 strongly implies a general rule that subsidies bestowed on a government-owned company prior to privatization actionable after privatization.

14. In the view of the United States, the provisions relied on by the Panel as evidence that a benefit must be demonstrated again after a change in ownership – Articles 10, 19.1, 19.4 and 21.1 of the and Article VI:3 of the GATT 1994 – do not provide guidance on this issue. Finally, the United States notes that the practice of investigating authorities in the European Communities confirms that there is no need to re-evaluate a subsidy's benefit after it is bestowed.

15. With respect to the Panel's finding that UES and BSplc/BSES received no benefit, the United States asserts that the Panel engaged in a flawed analysis that led directly to its erroneous conclusion that pre-privatization subsidies are automatically "extinguished" when a subsidized company is sold for fair market value. According to the United States, the Panel first found that the USDOC must establish that the company that produced or exported the relevant products "personally received" the benefit. Then, the Panel decided that the successor, privatized company was not the same company as the predecessor, government-owned company because the two companies had different owners. The Panel then asked itself whether the privatization transaction itself conferred a benefit on the post-privatization company. The United States argues that this analysis confuses old subsidies and new subsidies, and wrongly switches the focus from the company that received the subsidy to its new owners. According to the United States, whether a privatization transaction confers a "new" subsidy is unrelated to whether the transaction eliminates the unamortized portion of "old" subsidies.

[19]Panel Report, WT/DS126/RW, adopted 11 February 2000.

16. In the view of the United States, the provides that subsidies are bestowed upon . Since a mere change in ownership does not have an automatic or immediate effect upon production which has benefitted from subsidies, there is no basis in the Agreement for the Panel's conclusion that the purchase of a subsidized company for fair market value automatically extracts the benefit of that subsidy from the production of that company. Rather, Article 10 of the and Article VI:3 of the GATT 1994 make clear that it is a company's that are relevant to the determination of whether a subsidy exists under Article 1.1. The United States adds that, to the extent that the requires a connection between subsidies and producers, rather than between subsidies and production, legal successorship to a subsidized company is sufficient. Furthermore, the United States points out that, for both state aid and countervailing duty purposes, the law of the European Communities treats changes in ownership as irrelevant to the question of whether prior subsidies are actionable.

17. The United States contends that the Panel's conclusions are contrary to the object and purpose of the . As established in the panel report in (" ")[20], the object and purpose of the is "to offset government subsidies that distort trade, thereby causing injury to competing industries in other countries."[21] Subsidies, particularly when they reach high levels, create and maintain injurious production that would not otherwise have existed, and this defeats the essential purpose of the . The United States stresses that the sale of a subsidized company at a fair market price does not automatically undo these changes, or eliminate the subsidies' benefit to production.

18. The United States also makes two arguments of an essentially procedural nature with respect to the Panel's finding that UES and BSplc/BSES received no benefit from the pre-privatization subsidies granted to BSC. First, the United States argues that the Panel erred in making findings that were not necessary to resolve this dispute. As it had already found that the USDOC erred in failing to establish the continued existence of a benefit, and therefore resolved the dispute, the Panel had no authority to make further rulings, as demonstrated by Articles 3.2, 3.4, 3.7, 3.9 and 11 of the DSU and Article IX of the . In the present case, the Panel "made law" by going on to rule that no benefit from pre-privatization subsidies can be attributed to UES or BSplc/BSES. During the 13 March oral hearing, the United States explained that this argument is based on the principle that panels may not render advisory opinions, which is found in Article IX of the and Article 3.9 of the DSU, as recognized by the Appellate Body in

[20]Panel Report, WT/DS70/R, adopted 20 August 1999, as upheld by the Appellate Body Report, WT/DS70/AB/R.

[21]United States' appellant's submission, para. 46.

(" ").[22] In this case, the United States contends, the Panel "exceeded its authority" by, in effect, dictating a methodology that a privatization at fair market value automatically precludes any benefit from pre-privatization subsidies from being attributed to the successor, privatized company.

19. Second, in its appellant's submission, the United States claims that the Panel "violated its mandate" under Article 11 of the DSU in finding that, as a factual matter, fair market value was paid for the productive assets, goodwill, etc., employed by UES and BSplc/BSES in the production of leaded bars, and that these findings did not have support in the record. In response to questioning at the 13 March oral hearing, the United States acknowledged that it is not challenging these factual findings in and of themselves. Rather, the United States contends that these factual findings were brought up in, and made in the context of, the Panel's finding that the companies concerned received no benefit.

B.

1. Standard of Review

20. The European Communities requests the Appellate Body to uphold the Panel's conclusion that Article 11 of the DSU establishes the proper standard of review. The standard in Article 11 applies to all disputes under the covered agreements unless otherwise expressly provided. Moreover, in the view of the European Communities, Article 30 of the provides that the DSU shall apply to all disputes arising under that Agreement, except as otherwise provided therein.

21. According to the European Communities, if WTO Members had wanted the standard articulated in Article 17.6 of the to apply to countervailing duty disputes, they would have written this standard into the . The accompanied the

(the " "). While the and the contain hortatory language expressing the desire of Members for consistency in the resolution of disputes arising from anti-dumping and countervailing duty measures, neither evidences agreement on any single standard of review to be applied in such cases. The European Communities also points out that the issue of the possible application of Article 17.6 of the to other covered agreements has been considered and rejected by the Appellate Body in both

[22] Appellate Body Report, WT/DS33/AB/R, adopted 23 May 1997, pp. 19-20.

( ) (" ")[23] and
(" ").[24]

2. Articles 21 and 1.1(b) of the

22. According to the European Communities, the Panel properly concluded that the United States' practice of "irrebuttably" presuming the existence of a benefit during a period of review, without regard to changes in ownership at fair market value, violates the . As the Appellate Body Report in demonstrates, the use of the present tense in Article 1.1 of the does not indicate that the required determinations of financial contribution and benefit should only be made as of the moment a financial contribution was made.[25] Rather, the use of the word "thereby" in Article 1.1 shows that the financial contribution is the cause and the benefit is the effect. The European Communities also agrees with the Panel that Article 14 of the does not allow investigating authorities to ignore fundamental changes in circumstances in determining whether a benefit and thereby a subsidy exists during a period of investigation or review. Similarly, Article 27.13 of the does not support the position of the United States. Article 27.13 applies only to developing country Members and does not address the question of subsidies granted to a state-owned company prior to privatization and unconnected with the privatization.

23. The European Communities asserts that Articles 10, 19 and 21 of the and Article VI:3 of the GATT 1994 are central to the issue of when benefit must be determined under the . Article 10 requires that "Members shall take all necessary steps to ensure" that their imposition of countervailing duties is consistent with the provisions of Article VI of the GATT 1994 and the terms of the . The prohibits the imposition of countervailing duties where there is no subsidy or the subsidy has been withdrawn (Articles 19.1 and 19.4), and requires that duties not be imposed in excess of the amount of any subsidy that does exist (Article 19.4). The obligation under Article 10 to "take all necessary steps" is continuous; countervailing duty measures may remain in effect "only as long as and to the extent necessary to counteract subsidization which is causing injury" (Article 21.1).

24. The European Communities believes that the United States is not assisted by its references to the allocation practices of WTO Members, the panel report in , or the

[23]Appellate Body Report, WT/DS26/AB/R, WT/DS48/AB/R, adopted 13 February 1998, para. 114, footnote 79.

[24]Appellate Body Report, WT/DS121/AB/R, adopted 12 January 2000, para. 118.

[25]Appellate Body Report, WT/DS70/AB/R, adopted 20 August 1999.

C.

36. On 7 February 2000, we received two documents, described in their respective covering letters as " briefs", from the American Iron and Steel Institute and the Specialty Steel Industry of North America. On 15 February 2000, the European Communities filed a letter arguing that these briefs are "inadmissible" in appellate review proceedings, and stating that it did not intend to respond to the content of the briefs. According to the European Communities, the basis for allowing briefs in proceedings is Article 13 of the DSU, as explained in . The European Communities notes that Article 13 of the DSU does not apply to the Appellate Body and that, in any case, that provision is limited to , and would not include received from non-Members. Furthermore, the European Communities contends, neither the DSU nor the allow briefs to be admitted in Appellate Body proceedings, given that Article 17.4 of the DSU and Rules 21, 22 and 28.1 of the confine participation in an appeal to participants and third participants, and that Article 17.10 of the DSU provides for the confidentiality of Appellate Body proceedings.

37. By letter dated 16 February 2000, we requested the United States, Brazil and Mexico to comment on the arguments made by the European Communities. Brazil, in its third participant's submission, and Mexico, in a letter submitted to us on 23 February 2000, agree with the European Communities that the Appellate Body does not have the authority to accept briefs. Brazil and Mexico emphasize that neither the DSU nor the allow the Appellate Body to receive factual information of the type contemplated by Article 13 of the DSU, much less briefs from private entities containing legal arguments on the issues under appeal. Mexico underlines that the DSU and the limit participation in appellate proceedings and require those proceedings to be confidential. Brazil adds that Members of the WTO and, in particular, parties and third parties to a dispute, are uniquely qualified to make legal arguments regarding panel reports and the parameters of WTO obligations.

38. In a letter submitted on 23 February 2000, the United States argues that the Appellate Body has the authority to accept briefs, and urges us to accept the briefs submitted by the steel industry associations. The United States notes that, in the Appellate Body explained that the authority to accept unsolicited submissions is found in the DSU's grant to a panel of " by which it informs itself both of the relevant facts of the dispute and of the legal norms and principles applicable

to such facts."[32] To the United States, it is clear that the Appellate Body also has such authority, given that Article 17.9 of the DSU authorizes the Appellate Body to draw up its own working procedures, and Rule 16(1) of the authorizes a division to create an appropriate procedure when a question arises that is not covered by the . The United States does not agree that acceptance of an unsolicited brief would compromise the confidentiality of the Appellate Body proceedings, or give greater rights to a non-WTO Member than to WTO Members that are not participants or third participants in an appeal.

39. In considering this matter, we first note that nothing in the DSU or the specifically provides that the Appellate Body may accept and consider submissions or briefs from sources other than the participants and third participants in an appeal. On the other hand, neither the DSU nor the explicitly prohibit acceptance or consideration of such briefs. However, Article 17.9 of the DSU provides:

> Working procedures shall be drawn up by the Appellate Body in consultation with the Chairman of the DSB and the Director-General, and communicated to the Members for their information.

This provision makes clear that the Appellate Body has broad authority to adopt procedural rules which do not conflict with any rules and procedures in the DSU or the covered agreements. [33] Therefore, we are of the opinion that as long as we act consistently with the provisions of the DSU and the covered agreements, we have the legal authority to decide whether or not to accept and consider any information that we believe is pertinent and useful in an appeal.

40. We wish to emphasize that in the dispute settlement system of the WTO, the DSU envisages in panel or Appellate Body proceedings, as a matter of legal right, by parties and third parties to a dispute. And, under the DSU, Members of the WTO have a legal right to participate as parties or third parties in a particular dispute. As we clearly stated in :

> … access to the dispute settlement process of the WTO is limited to Members of the WTO. This access is not available, under the and the covered agreements as they currently exist, to individuals or international organizations, whether governmental or non-governmental.[34]

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[32] Appellate Body Report, , footnote 29, para. 106. (emphasis added by the United States)

[33] In addition, Rule 16(1) of the allows a division hearing an appeal to develop an appropriate procedure in certain specified circumstances where a procedural question arises that is not covered by the .

[34] Appellate Body Report, , footnote 29, para. 101.

We also highlighted in that:

> … under the DSU, only Members who are parties to a dispute, or who have notified their interest in becoming third parties in such a dispute to the DSB, have a to make submissions to, and have a to have those submissions considered by, a panel. Correlatively, a panel is in law to accept and give due consideration only to submissions made by the parties and the third parties in a panel proceeding.[35]

41. Individuals and organizations, which are not Members of the WTO, have no legal to make submissions to or to be heard by the Appellate Body. The Appellate Body has no legal to accept or consider unsolicited

44. The United States argues that the Panel erred in applying the standard of review set forth in Article 11 of the DSU, rather than the standard of review set forth in Article 17.6 of the .

45. To determine the standard of review that applies in disputes involving countervailing duty measures under Part V of the , we begin with Article 1 of the DSU, which provides, in relevant part:

> 1. The rules and procedures of this Understanding shall apply to disputes brought pursuant to the consultation and dispute settlement provisions of the agreements listed in Appendix 1 to this Understanding (referred to in this Understanding as the "covered agreements"). …
>
> 2. The rules and procedures of this Understanding shall apply subject to such special or additional rules and procedures on dispute settlement contained in the covered agreements as are identified in Appendix 2 to this Understanding. …

We also note that Article 30 of the specifies:

> The provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Dispute Settlement Understanding shall apply to consultations and the settlement of disputes under this Agreement, except as otherwise specifically provided herein.

We further note that the does not contain any "special or additional rules" on the standard of review to be applied by panels.

46. We recall that, in our Report in , which concerned a dispute that arose under the , we stated that Article 11 of the DSU:

> … bears directly on [the] matter [of standard of review] and, in effect, articulates with great succinctness but with sufficient clarity the appropriate standard of review for panels in respect of both the ascertainment of facts and the legal characterization of such facts under the relevant agreements.[37]

More recently, in our Report in , which involved a dispute under the , we observed that:

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[37] , footnote 23, para. 116.

> We have stated, on more than one occasion, that, for all but one of the covered agreements, Article 11 of the DSU sets forth the appropriate standard of review for panels.[38]

47. Article 17.6 of the sets out a special standard of review for disputes arising under that Agreement. The

(the "

This provides for review of the standard of review in Article 17.6 of the to determine if it is "capable of general application" to other covered agreements, including the . By implication, this

… fair market value was paid for all productive assets, goodwill etc.

54. Setting aside the issue of injury, which does not arise in this case, we note that in order to establish the continued need for countervailing duties, an investigating authority will have to make a finding on , i.e., whether or not the subsidy continues to exist. If there is no longer a subsidy, there would no longer be any need for a countervailing duty.

55. Article 1.1 of the defines a "subsidy" as follows:

> For the purpose of this Agreement, a subsidy shall be deemed to exist if:
>
> (a)(1) there is a financial contribution by a government or any public body within the territory of a Member …
>
> and
>
> (b) a benefit is thereby conferred.

The existence of a "financial contribution" is not at issue in this appeal. The principal issue in this appeal concerns the interpretation of the term "benefit" in Article 1.1 above.

56. The United States argues, on the basis of footnote 36 to Article 10 of the and Article VI:3 of the GATT 1994, that the relevant "benefit" is a benefit to a company's , rather than, as the Panel held, a benefit to .[44] It is true, as the United States emphasizes, that footnote 36 to Article 10 of the and Article VI:3 of the GATT 5713.5 0 TD/F5 11.25 Tf [illegible]

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We find support for this reading in Article 14 of the , which constitutes context for the interpretation of "benefit" in Article 1.1(b). Article 14 reads, in relevant part:

> For the purpose of Part V, any method used by the investigating authority to calculate the benefit to the recipient conferred pursuant to paragraph 1 of Article 1 shall be provided for in the national legislation or implementing regulations of the Member concerned and

60.

> … when an investigation or review takes place, the investigating authority must establish the existence of a "financial contribution" and "benefit" during the relevant period of investigation or review. Only then will that investigating authority be able to conclude, to the satisfaction of Article 1.1 (and Article 21), that there a "financial contribution", and that a "benefit" thereby conferred. [52]

We do not agree with the Panel's implied view that, in the context of an administrative review under Article 21.2, an investigating authority must establish the existence of a "benefit" during the period of review an investigating authority must establish a "benefit" in an original investigation. We believe that it is important to distinguish between the original investigation leading to the imposition of countervailing duties and the administrative review. In an original investigation, the investigating authority must establish that conditions set out in the for the imposition of countervailing duties are fulfilled. In an administrative review, however, the investigating authority must address those issues which have been raised before it by the interested parties or, in the case of an investigation conducted on its own initiative, those issues which warranted the examination.

64. Having found that, in the particular circumstances of this case, the USDOC, in its 1995, 1996 and 1997 administrative reviews, should have examined the continued existence of a "benefit" to UES and BSplc/BSES, the Panel subsequently examined whether the "financial contributions" bestowed on BSC between 1977 and 1986 could be considered to confer a "benefit" on UES and BSplc/BSES. The Panel found that:

> … fair market value was paid for all productive assets, goodwill etc. employed by UES and BSplc/BSES in the production of leaded bars imported into the United States in 1994, 1995 and 1996. In these circumstances, we fail to see how pre-1985/86 "financial contributions" bestowed on BSC could subsequently be considered to confer a "benefit" on UES and BSplc/BSES during the relevant

[52]

65. In examining this issue, we note that, according to the Panel:

> The United States has not denied that the BSC spin-off was negotiated for fair market value.[54]

and that:

> Both parties agree that the privatization of British Steel plc was "at arm's length, for fair market value and consistent with commercial considerations".[55]

However, the United States, in its appellant's submission, argued that the Panel engaged "in a review" and made factual findings "not adequately supported by the record" by finding "that the purchase price in each of the two BSC privatization transactions was a 'fair market value' purchase price".[56]

66. During the oral hearing of 13 March, the United States acknowledged that the Panel's findings that fair market value was paid for all productive assets, were findings. The United States also acknowledged during the oral hearing that it does not challenge these findings. In view of the United States' acknowledgement, we consider that the issue raised in its appellant's submission has become moot. For the same reason, the contention of the European Communities that the "claim" made by the United States with regard to these findings was not properly before the Appellate Body because the United States failed to raise this issue in its Notice of Appeal, has also become moot.

67. Therefore, the issue before us is whether, given these factual findings, the Panel erred in finding that the "financial contributions" bestowed on BSC could not be considered to confer a "benefit" on UES and BSplc/BSES.[57] We note that in our Report in , we stated:

> … the word "benefit", as used in Article 1.1(b), implies some kind of comparison. This must be so, for there can be no "benefit" to the recipient unless the "financial contribution" makes the recipient "better off" than it would otherwise have been, absent that contribution. In our view, the marketplace provides an appropriate basis for comparison in determining whether a "benefit" has been "conferred", because the trade-distorting potential of a "financial contribution" can be identified by determining whether the recipient has received a "financial contribution" on terms more favourable than those available to the recipient in the market.[58]

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[54] ., para. 6.81.

[55] ., para. 2.3.

[56] United States' apppellant's submission, paras. 88-91.

[57] Panel Report, para. 6.81.

[58] , footnote 25, para. 157.

68. The question whether a "financial contribution" confers a "benefit" depends, therefore, on whether the recipient has received a "financial contribution" on terms more favourable than those available to the recipient in the market. In the present case, the Panel made factual findings that UES and BSplc/BSES paid fair market value for all the productive assets, goodwill, etc., they acquired from BSC and subsequently used in the production of leaded bars imported into the United States in 1994, 1995 and 1996. We, therefore, see no error in the Panel's conclusion that, in the specific

resolve the dispute between the parties. We do not agree with this characterization of our findings. In that appeal, India had argued that it was entitled to a finding by the Panel on each of the legal claims that it had made. We, however, found that the principle of judicial economy allows a panel to decline to rule on certain claims.

72. In this case, the European Communities' is that the countervailing duties imposed on imports of leaded bars produced by UES and BSplc/BSES as a result of the 1995, 1996 and 1997 administrative reviews were inconsistent with the obligations of the United States under the , and, in particular, with Articles 1.1(b), 10, 14 and 19.4 of that Agreement.[61] The European Communities relied upon two principal in support of that claim. First, the European Communities argued that the USDOC was, in the circumstances of this case, required to examine whether there was any continuing "benefit" to UES and/or BSplc/BSES from the "financial contribution" to BSC. Second, the European Communities argued that, given that the USDOC had itself found that the sale of assets to UES and the privatization of BSC were arm's length transactions for fair market value, no benefit could have accrued to UES or BSplc/BSES.

73. In order to resolve the claim of the European Communities, the Panel deemed it necessary to address the two principal arguments made in support of this claim. In doing so, the Panel acted within the context of resolving this particular dispute and, therefore, within the scope of its mandate under the DSU.

74. On the basis of the above reasoning, we uphold the Panel's finding that, in the particular circumstances of this case, the USDOC should have examined in its 1995, 1996 and 1997 administrative reviews whether a "benefit" accrued to UES and BSplc/BSES following the changes in ownership; as well as the Panel's finding that, on the facts of this case, no "benefit" was conferred on UES or BSplc/BSES as a result of the "financial contributions" made to BSC.

75. For the reasons set out in this Report, the Appellate Body:

(a) concludes that the Panel was correct in applying the standard of review set forth in Article 11 of the DSU to this dispute arising under Part V of the ;

(b) upholds the Panel's finding that, in the particular circumstances of this case, the USDOC should have examined in its 1995, 1996 and 1997 administrative reviews

[61]See WT/DS138/4 on the terms of reference of the Panel, which refers to the request for the establishment of a panel, WT/DS138/3 and WT/DS138/3/Corr.1.

whether a "benefit" accrued to UES and BSplc/BSES following the changes in ownership; and

(c) upholds the Panel's finding, that, on the facts of this case, no "benefit" was conferred on UES or BSplc/BSES as a result of the "financial contributions" made to BSC.

76. The Appellate Body that the DSB request the United States to bring its measures found in the Panel Report, as upheld by this Report, to be inconsistent with its obligations under the , into conformity with its obligations under that Agreement.

Signed in the original at Geneva this 10th day of April 2000 by:

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Mitsuo Matsushita
Presiding Member

_____ _____

Said El-Naggar
Member

Julio Lacarte-Muró
Member