WORLD TRADE ORGANIZATION

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Dispute Settlement Body
10 December 2003

MINUTES OF MEETING

Held in the Centre William Rappard
on 10 December 2003

Chairman: Mr. Shotaro Oshima (Japan)

Subjects discussed: Page

1. United States – Anti-dumping measures on certain hot-rolled steel products from Japan

(a) Request for modification of the reasonable period of time (WT/DS184/17)

1. The Chairman drew attention to the communication from the United States contained in document WT/DS184/17.

2. The representative of the United States recalled that at the 28 November 2002 DSB meeting, her country had reported that it had implemented the recommendations and rulings of the DSB with respect to the calculation of anti-dumping margins in the subject anti-dumping investigation of hot-rolled steel from Japan, but that it had not yet addressed all of the DSB's recommendations and rulings. The US administration had worked with Congress over the past year to complete the implementation of the DSB's recommendations and rulings. The United States intended to renew its efforts to complete implementation when Congress would resume its activities in January 2004. Therefore, after consultations with Japan, the United States was requesting that the DSB modify the "reasonable period of time" for implementation of the DSB's recommendations and rulings so as to expire on 31 July 2004. The United States believed that such an extension of time would promote a principal aim of the dispute settlement system, which was to provide mutually satisfactory solutions to disputes. The United States intended to continue discussions with Japan on implementation of the DSB's recommendations and rulings.

3. The representative of Japan said that her country deeply regretted that the first session of the 108th Congress had ended without even introduction of any specific legislative amendments necessary for compliance, despite the US administration's pledge to "support" such amendments. The United States had implemented only a part of the recommendations and rulings before the end of the original reasonable period of time. Persistent failure of the United States to ensure legislative actions necessary for the implementation of the DSB's recommendations and rulings, of which this case was a salient example, was particularly worrisome. This failure was causing serious damage to the credibility of not only the United States, but also the WTO as a whole. Japan, once again, strongly urged the United States to fully comply with the recommendations and rulings in this proceeding as soon as possible, including having statutory changes passed in the Congress. Having said this, upon instructions from her authorities, she was reporting to the DSB at the present meeting that Japan did not object to the modification of the reasonable period of time proposed by the United States, based on the consultations with the United States. Japan certainly hoped that the additional seven months given to the United States would lead to a definitive solution of this long-standing dispute. Japan looked forward to being further consulted by the United States on its concrete plans for implementation.

4. The DSB took note of the statements and agreed to the request of the United States contained in document WT/DS184/17.

2. Japan – Measures affecting the importation of apples

(a) Report of the Appellate Body (WT/DS245/AB/R) and Report of the Panel (WT/DS245/R)

5. The Chairman drew attention to the communication from the Appellate Body contained in document WT/DS245/7 transmitting the Appellate Body Report on "Japan – Measures Affecting the Importation of Apples", which had been circulated on 26 November 2003 in document WT/DS245/AB/R, in accordance with Article 17.5 of the DSU. He reminded delegations that, in accordance with the Decision on Procedures for the Circulation and Derestriction of WTO Documents contained in document WT/L/452, the Appellate Body Report and the Panel Report pertaining to this case had been circulated as unrestricted documents. He recalled that Article 17.14 of the DSU required that: "An Appellate Body report shall be adopted by the DSB and unconditionally accepted by the parties to the dispute unless the DSB decides by consensus not to adopt the Appellate Body report within 30 days following its circulation to Members. This adoption procedure is without prejudice to the right of Members to express their views on an Appellate Body report".

6. The representative of the United States said that her country was pleased to request that the DSB adopt the Reports of the Panel and the Appellate Body at the present meeting. These Reports had confirmed that Japan's measures with respect to fire blight disease in apples were not supported by scientific evidence, nor were they based on a risk assessment. Accordingly, they were inconsistent with Japan's obligations under the SPS Agreement. Both the Panel and the Appellate Body had undertaken a thorough, well-reasoned analysis of the applicable WTO obligations at issue and the detailed scientific record before them. The United States was gratified that each had agreed that this record indeed demonstrated what the United States had been saying for well over a decade, namely that Japan's burdensome and trade-restrictive requirements were not justified.

7. The United States also appreciated the care and clarity with which the Reports had set forth the applicable WTO obligations in this dispute. In particular, the Reports had addressed for the first time, several provisions of SPS Agreement Article 5.7 involving provisional measures, and, with one exception which the United States would address shortly, had correctly described and applied the analysis involved in determining whether a case was one in which "relevant scientific evidence is insufficient". These were important findings which had properly respected the balance of rights and obligations reflected in Article 5.7. The United States also wished to acknowledge the Reports for

the findings they had not made. Both the Panel and Appellate Body had correctly limited their findings to those necessary to resolve the dispute, based on the facts before them. This careful approach to dispute resolution ensured that legal findings were made with the benefit of a full understanding of their implications in light of concrete facts.

8. While these Reports were on the whole excellent, the United States wished to address two concerns. The first was the Panel's inclusion in its Article 2.2 analysis of a statement that Japan's measure was disproportionate to the scientific risk. The Appellate Body had noted that this was merely one way in which the Panel in this particular dispute had chosen to examine whether there was a rational relationship between the measure and the scientific evidence. However, the United States considered that this approach risked changing the nature of the obligation under Article 2.2 from one in which Members were required to meet a threshold of evidence "sufficient" to maintain a measure to one in which evidence was weighed, in a relative sense, against the measure. The Panel had included this concept for the first time in its final report, after the parties had had an opportunity to comment, and it was unnecessary given the Panel's other factual findings on the absence of evidence supporting the measure.

9. The second point the United States wished to note was the Panel's conclusion that the Member maintaining the measure had the burden of establishing that it met the requirements of Article 5.7. Neither Japan nor the United States had supported this conclusion, taking the position that here, as with other claims, the complaining party had to bear the burden of proving that the measure did not meet the obligations set forth in a WTO provision. This situation provided an example of how the US-Chilean proposals to provide greater flexibility and control in dispute settlement could have operated to good effect. Under those proposals, the parties could have agreed to delete those findings, or the DSB could have chosen not to adopt them. Had the parties agreed to delete the findings, it would merely have left the issue to a future panel proceeding in which the issue was actually joined. Notwithstanding these criticisms, the United States wished to reiterate that it considered these to be very high quality Reports. It wished to thank the Panel, the Appellate Body and the Secretariat for their efforts. The United States hoped that, with the benefit of the clear guidance contained in these Reports, Japan would now remove its WTO-inconsistent measures.

10. The representative of Japan said that her country wished to express its gratitude to the Panel, the Appellate Body and the Secretariat for their efforts in reviewing highly technical and complex matters of scientific nature in this case in order to issue the Reports. Japan very much regretted that the Appellate Body had upheld the Panel's conclusions that Japan's phytosanitary measure at issue was inconsistent with the SPS Agreement. For instance, Japan disagreed with the Panel and the Appellate Body on the allocation of the burden of proof. On the risk of entry into Japan of fire blight through apples other than "mature, symptomless" ones, although the United States should bear the burden to establish a prima facie case of inconsistency with the SPS Agreement, the United States had not done so. Despite this clear fact, the Panel had prematurely shifted the burden of proof to Japan, and the Appellate Body had upheld this ruling.

11. With regard to "mature, symptomless" apples, the Panel had not respected Japan's risk assessment that was based on scientific evidence, it had relied solely on the experts' views without objective assessment, and had ignored the discretion given to the importing Member under the SPS Agreement in how to choose, weigh and evaluate scientific evidence. Japan was deeply concerned about such ruling by the Panel, unfortunately upheld by the Appellate Body. Japan appreciated the clarification by the Appellate Body on the meaning of "In cases where relevant scientific evidence is insufficient" under Article 5.7 of the SPS Agreement" stating that "[t]he question is whether the relevant evidence ... is sufficient to permit the evaluation of the likelihood of entry, establishment or spread of, in this case, fire blight in Japan." However, despite unresolved uncertainty surrounding the transmission of fire blight through apple fruit, the Appellate Body had wrongly agreed with the Panel

that there was sufficient evidence to conduct a risk assessment, and that Japan's measure could not be justified.

12. Concerning Article 5.1 of the SPS Agreement, Japan welcomed the fact that the Appellate Body had agreed with Japan that the methodology of risk assessment was not directly addressed by the SPS Agreement. It was, therefore, regrettable that the Appellate Body had upheld the Panel's finding that Japan's risk assessment, which had followed the international guidelines set by the International Plant Protection Convention, did not satisfy the requirements of the SPS Agreement. Finally, the Appellate Body had ruled that the Panel in this proceeding had objectively assessed the facts against Japan's legitimate claims that the Panel had acted inconsistently with Article 11 of the DSU.

13. Japan, therefore, was deeply disappointed at the Reports of the Panel and the Appellate Body. However, neither the Panel nor the Appellate Body had ruled against Japan taking measures on apple fruit from the United States in order to prevent entry of fire blight into Japan in accordance with the appropriate level of protection for Japan. Therefore, Japan accepted the fact that the Reports would be adopted at the present meeting. Japan had always emphasized the importance of proper functioning of the DSU and faithful implementation of the DSB's recommendations and rulings. Once the Reports were adopted, Japan would of course have to implement the DSB's recommendations and rulings appropriately. Her Government was further examining the rulings by the Panel and the Appellate Body. She said that Japan shall in due course fulfill its obligation under Article 21.3 of the DSU.

14. The representative of the European Communities said that the EC had participated in this dispute between the United States and Japan mainly because of its systemic interest in the correct interpretation of the SPS Agreement. The EC considered that the conclusions of this Report were a result of the particular facts of the case and the way in which the arguments had been presented by the main parties. It would, therefore, be of limited guidance in future cases. The EC especially regretted the absence of clarity concerning the nature of the right of Members to adopt provisional measures under Article 5.7 of the SPS Agreement and the conditions that governed it. In particular it was regrettable that the Appellate Body had stated that Article 5.7 was not "triggered" by scientific uncertainty[1] even though it had subsequently suggested that it would apply where there was insufficient "reliable evidence".[2] Leaving aside semantic discussions, the EC considered that Article 5.7 had to be applicable in cases where, in spite of the existence of scientific evidence – even a "wealth" of scientific evidence – the research had, in the words of the Appellate Body, not led to "reliable or conclusive results".[3] Indeed, not all scientific studies yielded results that public authorities could rely upon because, for instance, they were limited in scope or methodology. Similarly, it was often the case that scientific research improved knowledge of a certain issue, without necessarily leading to definite and unequivocal conclusions. It was precisely for those cases that Article 5.7 of the SPS Agreement existed.

15. The representative of New Zealand said that his country welcomed the adoption of the Reports of the Panel and the Appellate Body in the case before the DSB at the present meeting. Having considered all the facts and the scientific evidence, the Panel had concluded that there was not sufficient scientific evidence that apple fruit were likely to serve as a pathway for transmission of fire blight. The Appellate Body had now confirmed that Japan's measure aimed at addressing concerns about fire blight was maintained without sufficient scientific evidence and was not based on a proper risk assessment. In addition to confirming that mature apples – the only apples in trade – posed negligible risk of fire blight transmission, the rulings of the Panel and Appellate Body had also

[1] Appellate Body Report, para. 184.
[2] *Idem* para. 185.
[3] *Idem*

provided useful clarification of important elements of the SPS Agreement. The Reports to be adopted at the present meeting served to reinforce the careful balance struck in that Agreement between the right of Members to take measures necessary to protect human, animal or plant life or health, and their other rights and obligations under the WTO Agreements. In view of the long history of dialogue about this issue and its close interest in this dispute as a third party, New Zealand hoped that Japan would move swiftly to implement these rulings and comply with its obligations under the SPS Agreement.

16. The representative of Brazil said his country had participated as a third party in this dispute and, like New Zealand, welcomed the adoption of the Reports. He recalled that Brazil had been facing for over 18 years trade barriers in the form of phytosanitary measures that impeded its producers to export mangoes to Japan. Despite the efforts made by Brazil to demonstrate to Japanese authorities that such restrictions were not necessary for the protection of human, animal or plant life or health and were inconsistent with various provisions of the SPS Agreement, access of Brazil's mangoes to Japan's market continued to be restricted based on concerns which were neither supported by scientific evidence nor justified by an appropriate risk assessment. Brazil hoped, therefore, that the findings of the Panel and the Appellate Body in this case would have a positive influence in the handling of similar situations concerning products from other countries.

17. The DSB took note of the statements, and adopted the Appellate Body Report contained in WT/DS245/AB/R and the Panel Report contained in WT/DS245/R, as upheld by the Appellate Body Report.

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

(a) Report of the Appellate Body (WT/DS248/AB/R; WT/DS249/AB/R; WT/DS251/AB/R; WT/DS252/AB/R;WT/DS253/AB/R;WT/DS254/AB/R;WT/DS258/AB/R;WT/DS259/AB/R) and Reports of the Panel (WT/DS248/R and Corr.1; WT/DS249/R and Corr.1;WT/DS251/R and Corr.1; WT/DS252/R and Corr.1; WT/DS253/R and Corr.1; WT/DS254/R and Corr.1; WT/DS258/R and Corr.1; WT/DS259/R and Corr.1)

18. The Chairman drew attention to the communication from the Appellate Body contained in document WT/DS248/19, WT/DS249/13, WT/DS251/14, WT/DS252/12, WT/DS253/12, WT/DS254/12, WT/DS258/16 and WT/DS259/15 transmitting the Appellate Body Report on "United States – Definitive Safeguard Measures on Imports of Certain Steel Products", which had been circulated on 10 November 2003, in accordance with Article 17.5 of the DSU. He reminded delegations that in accordance with the Decision on Procedures for the Circulation and Derestriction of WTO Documents contained in document WT/L/452, the Appellate Body Report and the Panel Reports pertaining to this case had been circulated as unrestricted documents. He recalled that Article 17.14 of the DSU required that: "An Appellate Body report shall be adopted by the DSB and unconditionally accepted by the parties to the dispute unless the DSB decides by consensus not to adopt the Appellate Body report within 30 days following its circulation to Members. This adoption procedure is without prejudice to the right of Members to express their views on an Appellate Body report".

19. The representative of the European Communities said that the EC wished to commend the Panel and the Appellate Body for having completed a difficult task in a complex case involving eight co-complainants and a wide range of US safeguard measures, vitiated by numerous breaches of WTO rules. The EC wished to take this opportunity to thank Japan, Korea, China, Switzerland, Norway, New Zealand and Brazil for the remarkable co-ordination achieved in the proceedings before the Panel and the Appellate Body. This cooperation had proved successful and the EC was pleased to see that the Panel, in its Reports of 11 July 2003, had agreed with the main arguments put forward by the co-complainants and had found that all the US safeguard measures were in breach of WTO rules. The

EC similarly welcomed the Appellate Body Report of 10 November 2003, which had confirmed most of the Panel's findings and had upheld its overall conclusion that all the US safeguard measures were deprived of legal basis. The EC noted that the United States had fully terminated its steel safeguards and welcomed this decision, which was indeed the only correct way to implement the rulings of the Panel and the Appellate Body.

20. The representative of Japan said that her country wished to express its gratitude to the Appellate Body, the Panel and the Secretariat for their hard work in this proceeding. The co-complainants had made unprecedented efforts at every stage of the proceeding to coordinate to the best of their abilities in order not to place excessive burden on the Panel, the Appellate Body and the Secretariat. However, given the nature of this case, full presentation of the co-complainants' claims and arguments naturally required a certain number of pages of written submissions and certain length of statements and answers to questions. Japan was truly grateful to the Panel, the Appellate Body and the Secretariat for their patience and kind cooperation. At the suggestion of the United States, all the parties, namely, the co-complainants and the United States, had agreed to have the adoption of the Reports at the present meeting, instead of doing it at the 1 December meeting as originally scheduled. Japan welcomed the fact that the Report of the Appellate Body and the Reports of the Panel would be adopted by the DSB at the present meeting. The Panel and the Appellate Body had correctly found that the safeguard measures taken by the United States in March 2002 were inconsistent with the WTO Agreement, and were deprived of any legal basis.

21. Therefore, Japan welcomed the Proclamation of the US President of 4 December 2003 that had terminated all the safeguard measures found to be WTO-inconsistent, as of midnight, 5 December 2003. At the same time, Japan noted that the licensing and monitoring of imports of certain steel products remained in effect. Japan would be very closely examining the actual implementation of this licensing and monitoring in order to ensure that it will not cause any trade distortion effects. The US safeguard measures had not only affected the steel exports to the United States, but had also triggered a wave of provisional and definitive safeguard investigations/measures by other WTO Members. Japan was very pleased that one such Member, namely, the EC, had decided to repeal its own safeguard measures. Japan expected that other Members would also be in the position to immediately terminate their own safeguard measures. Given the termination of all the measures in question by the United States, Japan refrained from exercising its right to suspend concessions or other obligations under Article 8 of the Agreement on Safeguards.

22. The representative of Norway said that his country welcomed the Report of the Appellate Body and of the Panel Reports in the case before the DSB at the present meeting and was requesting their adoption. He wished to express his country's gratitude to the Appellate Body, the Panel and the Secretariat for their hard work in this proceeding. He also wished to extend thanks to the other co-complainants in this case. The co-operation that had taken place undoubtedly simplified the task of the Panel and the Appellate Body. He recalled that the United States had imposed safeguards on certain steel products in March 2002. Norway, together with the seven other complainants, had challenged these safeguards. In July 2002 the Panel had reached the conclusion that all the US safeguards measures were devoid of legal basis. The Appellate Body had reached the same conclusion. The Reports were in conformity with already established practice of WTO panels and the Appellate Body. Termination of the measures was the only correct way to implement the rulings of the Panel and the Appellate Body. The United States had announced that, as of 5 December 2003, all the safeguards measures had been terminated. Norway welcomed this decision, and commended the United States for having done so without further delay. However, even as his country commended the United States for having terminated the safeguards measures now, it was a fact that the unjustified measures had been in place for one and three-quarters of a year, with serious consequences for Norway's steel exporters. Norway reserved its rights under Article 8 of the Safeguards Agreement and had notified the Council for Trade in Goods on 16 May 2002, in document G/C/16, of the extent of re-balancing measures which it had intended to apply as of 15 December 2003, should the

measures not have been terminated. These re-balancing measures would now not take effect. It was his country's understanding that the United States would continue to implement its licensing and monitoring system for steel imports in order to respond to import surges. Norway would follow any developments attentively. Finally, a number of other WTO Members had responded to the US safeguards by imposing their own safeguards. Norway hoped that the termination of the US safeguards would lead to the speedy termination of these safeguards too.

23. The representative of Switzerland said that this had been a complex case involving eight co-complainants and concerning numerous violation of WTO-rules. Switzerland was grateful to the Panel, the Appellate Body and the Secretariat for their hard work in this difficult proceeding. Switzerland welcomed the ruling of the Appellate Body concerning US definitive safeguard measures on imports of certain steel products. Switzerland also welcomed the adoption of the Appellate Body Report and the Reports of the Panel at the present meeting. In this case, the Appellate Body had clearly confirmed the US safeguard measures on steel to be inconsistent with WTO-rules. In confirmation of the Panel's decision of 11 July 2003, the Appellate Body had found the US Presidential Proclamation dated 5 March 2002 imposing safeguard measures on 10 steel product groupings to be in breach of numerous obligations under the Agreement on Safeguards. As the findings of the Appellate Body Report released on 10 November clearly demonstrated, none of the US safeguard measures complied with the criteria stipulated in the Agreement on Safeguards. The ruling of the Appellate Body had left the United States with no other option, but to terminate its WTO incompatible safeguard measures without delay upon the adoption of the Appellate Body by the DSB. Switzerland, therefore, welcomed the decision of the United States, as announced on 4 December, to fully lift its safeguard measures. The prompt and entire termination of its steel safeguards was in fact the only acceptable way to implement the rulings of the Panel and the Appellate Body. Switzerland also welcomed the decision by the EC to withdraw its safeguard measure. It hoped that those Members who had taken safeguard measures in response to the US measure and had not lifted them until now would promptly follow the EC's example.

24. The representative of New Zealand said that his country was among the eight complainants that had cooperated in pursuing dispute settlement against US steel safeguards. Accordingly, New Zealand very much welcomed the adoption by the DSB at the present meeting of the Reports of the Panel and the Appellate Body in the case: "United States – Definitive Safeguard Measures on Imports of Certain Steel Products". New Zealand echoed the tribute that other speakers had already paid to the Panel and the Appellate Body for their work in this large and complex case. The Panel and the Appellate Body had ruled comprehensively that the safeguard measures imposed by the United States in March 2002 were inconsistent with Article XIX of GATT 1994 and the Agreement on Safeguards, and had no legal basis. Against this background, New Zealand welcomed the recent decision by the United States, following the 10 November decision of the Appellate Body, to remove the safeguard measures. Finally, New Zealand wished to express the hope that the guidance that the Appellate Body had provided in this and other safeguards cases would be carefully heeded by all WTO Members that might be considering imposing safeguards, and it would thereby assist in avoiding the imposition of any further WTO inconsistent measures. In light of the extremely adverse effects that safeguards could have on the interests of Members, it remained vitally important that Members live up to their obligations in this area.

25. The representative of China said that his country wished to commend the Panel and the Appellate Body as well as the Secretariat for their efforts made in issuing the Reports in this dispute. This complicated case, involving eight co-complainants, thousands of pages of submissions and a wide range of legal claims, had posed unprecedented challenge to the Panel and the Appellate Body. The Panel Report, issued on 11 July 2003, had found that all the US safeguard measures were inconsistent with WTO rules. The Appellate Body Report of 10 November 2003, had confirmed most of the Panel's findings and had upheld its overall conclusion that all the US safeguard measures were incompatible with WTO rules. China, together with other co-complainants, welcomed the

forthcoming adoption of the Reports at the present meeting. The safeguard measures adopted by the United States in March 2002 had seriously distorted the world steel market and had resulted in the nullification and impairment of the benefits of other Members concerned. China noted that the United States had fully terminated its steel safeguard measures on 5 December 2003. China welcomed this decision, which was the only correct way for the United States to bring its safeguard measures into conformity with its obligations under WTO Agreements. China would not insist on taking re-balancing measures against certain products originated from the United States provided that the latter would live up to its commitment to terminate these steel safeguard measures. His country wished to express its thanks to the EC, Japan, Korea, Switzerland, Norway, New Zealand and Brazil for their cooperation extended to China in the proceedings before the Panel and the Appellate Body. Finally, China would like remind all WTO Members to be alerted to the trend of protectionism erupted in the course of international trade. China, together with other WTO Members, would be determined to stick to and improve the rule-based international trading system represented by WTO.

26. The representative of Brazil said that this had been an important and laborious case and his country was pleased to arrive at the adoption date of the Panel's and Appellate Body's Reports with the inconsistent US safeguard measures already being withdrawn. Brazil welcomed the Appellate Body's confirmation that the Panel's findings that all 10 safeguard measures imposed by the United States "were deprived of a legal basis". Brazil was truly grateful to the Panel, the Appellate Body and the Secretariat for their hard work. The WTO-inconsistent safeguard measures imposed by the United States had caused considerable disarray in the world steel market and had had a significant impact on Brazil's exports of steel. In order to challenge these safeguard measures, eight WTO Members had closely cooperated throughout the dispute proceedings for almost two years. Together, they had successfully demonstrated that none of the US measures had been taken as a result of unforeseen developments, that imports had not increased for most products and that the United States had not observed the principle of parallelism. Thus, the only appropriate form of implementation by the United States was the complete withdrawal of the measures and Brazil welcomed the decision taken by the US Government in this regard. This decision confirmed the relevance of the multilateral trading system as an efficient tool to settle disputes and constituted a positive signal to the ongoing negotiations at the WTO. The preservation of free market conditions and the observance of the disciplines of the multilateral trading system were of fundamental importance. Brazil hoped that the prompt withdrawal by the United States of the measures found to be inconsistent with the WTO disciplines would inspire WTO Members, including the United States, to act in a similar way in relation to other disputes where the DSB's recommendations had not yet been fully implemented.

27. The representative of Korea said that first his delegation wished to express its gratitude to the Panel and the Appellate Body for their high quality work in this complex case involving eight complainants as well as 10 safeguard measures on a wide range of steel products. The findings of the Panel and the Appellate Body were important contributions to WTO jurisprudence in the safeguards area and, therefore, these Reports should be adopted at the present meeting. As one of the co-complainants in the dispute, Korea was of the view that the US safeguards measures on steel imports in this case did not meet the requirements of the Agreement on Safeguards and that they should not have been put in place at all. Korea's view had been confirmed by the Panel and upheld by the Appellate Body that the US measures were devoid of legal basis. At the same time, Korea welcomed the termination of the safeguards measures by the United States as of 5 December 2003. It was encouraging to note that the United States had implemented the recommendations and rulings of the DSB before the Reports had been adopted. Korea looked forward to the same positive spirit on the part of the United States with regard to the implementation of other DSB's rulings, including the Byrd Amendment case. Finally, Korea would be watching closely the monitoring and licensing scheme on steel imports which the United States planned to maintain until March 2005.

28. The representative of Thailand said that, as a third participant, his country welcomed the findings and recommendations of the Appellate Body in this dispute, where the US safeguard

measures had been found inconsistent with the Agreement on Safeguards and the GATT 1994. Thailand thanked the members of the Appellate Body Division hearing the appeal for their time and consideration given to this appeal. Thailand highly valued that recognized authority of the Appellate Body was key to direction of WTO jurisprudence. Thailand noted with appreciation that the US Administration had decided to terminate action taken with regard to imports of certain steel products with a view to abiding by the DSB's rulings and recommendations. Thailand welcomed steps being taken to be in compliance with the WTO Agreement, and hoped that the same would apply promptly to other disputes as well.

29. The representative of Venezuela said that his country had participated as a third party in this important case concerning steel since it had a real trade interest in the matter at issue as its trade in rebar to the US market was impeded by the safeguard measures imposed by the United States pursuant to Proclamation 7529 of 5 March 2002. Venezuela wished to thank the Panel and the Appellate Body for enabling Venezuela to participate in this process. Furthermore, Venezuela welcomed the important decision taken by the US President to end safeguard measures as from 5 December 2003. Venezuela was aware, however, that the United States had announced that it would maintain a licensing and monitoring system with respect to certain steel imports. In this regard, Venezuela wished to state that its rebar producers had been reliable suppliers to the US market over the years, and had always been diligent in refraining from causing injury to the US domestic steel industry. Given the importance of the US market, Venezuela would maintain this policy.

30. The representative of the United States said that her country recognized the complexity and scale of the task confronting the Panel and the Appellate Body in this dispute. The United States appreciated their willingness, and that of the Secretariat, to undertake this task. It particularly wished to thank the Panel and the Secretariat for the work involved in issuing eight separate panel reports in a manner that was both flexible and creative. The United States wished to focus on several aspects of the Panel and Appellate Body findings in its statement at the present meeting. It was pleased that the Appellate Body had reversed the Panel's unsupported finding that the Agreement on Safeguards prohibited a Member's competent authorities from supporting a single determination with different explanations. In adopting this incorrect view, the Panel had injected into the Safeguards Agreement a requirement that was not there, namely, that the reasoning of multiple members in a decision-making body must be "reconcilable". The Appellate Body had correctly rejected this view, and had recognized that "a panel must ascertain whether a reasoned and adequate explanation for the [competent authorities'] determination is contained in the report, even if only in one of the Commissioner's individual findings."

31. The United States was also pleased that the Appellate Body had rejected the views that Article XIX of GATT 1994 and Article 2.1 of the Safeguards Agreement imposed a simple arithmetic standard for determining increased imports, or that those articles required a certain pattern of imports. Rather, whether imports were recent, sudden, sharp, and significant enough to cause serious injury was a question answered by a consideration of serious injury and causation. This finding disproved the view of some Members that they might judge for themselves whether another Member's safeguard measure had been taken as a result of an absolute increase in imports and take action under Article 8.2 of the Safeguards Agreement on the basis of that judgment.

32. That being said, the United States had a number of concerns with the Reports. To take only one example, the United States was disappointed in the Appellate Body's finding that the Safeguards Agreement required the competent authorities to provide "explicit" findings that were "clear and unambiguous" and "[do] not merely imply or suggest an explanation". None of these terms appeared in the Safeguards Agreement, which required only publication of the "findings and reasoned conclusions reached on all pertinent issues of fact and law". The ordinary meaning of these terms did not establish any level of clarity for the competent authorities or require that they state their findings with a particular explicitness. The Appellate Body had compounded its error by interpreting its

"explicit" standard in a manner that had led it to reject findings merely because they were not expressed in the words the Appellate Body was looking for. The Appellate Body's discussion of parallelism was a good example of this. Such an exaltation of form over substance should be of concern to all Members.

33. The United States also wished to take this occasion to inform Members that, on 4 December 2003, the President had issued a proclamation that terminated all ten of the safeguard measures subject to this dispute, pursuant to section 204 of the US Trade Act of 1974. In making this decision, the President had taken into account the midterm report of the US International Trade Commission and had sought the advice of the US Secretaries of Commerce and Labour. The President based the decision to terminate the safeguard measures on his determination that the effectiveness of the safeguard measures had been impaired by changed economic circumstances. The United States stood by the decision to apply the safeguard measures in March 2002. It noted that the Reports under consideration at the present meeting had endorsed the US competent authorities' finding that there was a causal link between increased imports and serious injury for seven of ten products. For two other products, the Appellate Body had reversed the Panel's finding of no causal link. The United States also noted that the safeguard measures achieved the objectives of the Safeguards Agreement – to prevent or remedy serious injury and to facilitate adjustment for industries that experienced serious injury by reason of increased imports. Over the past 20 months, US steel producers had used the breathing space provided by the safeguard measures to restructure, consolidate, and negotiate labour contracts that helped them adjust to import competition. In light of the many troubling aspects of the reports under consideration at the present meeting, the United States could not support adoption of those Reports, although it understood that the DSB would do so at the present meeting. Nevertheless, because of the President's action of 4 December 2003, no action was necessary to implement the DSB recommendations and rulings in this dispute.

34. The representative of Japan said that her delegation wished to respond to one point raised by the United States. In Japan's view, the Appellate Body had neither reversed nor upheld the findings with regard to the causal link. Therefore, Japan believed that the relevant portions of the Panel Report had not been modified and shall be adopted as such.

35. The DSB took note of the statements and adopted the Appellate Body Report contained in WT/DS248/AB/R, WT/DS249/AB/R, WT/DS251/AB/R, WT/DS252/AB/R, WT/DS253/AB/R, WT/DS254/AB/R, WT/DS258/AB/R and WT/DS259/AB/R and the Panel Reports contained in WT/DS248/R and Corr.1, WT/DS249/R and Corr.1, WT/DS251/R and Corr.1, WT/DS252/R and Corr.1, WT/DS253/R and Corr.1, WT/DS254/R and Corr.1, WT/DS258/R and Corr.1 and WT/DS259/R and Corr.1, as modified by the Appellate Body Report.