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Dispute Settlement Body
16 October 1997

MINUTES OF MEETING

Held in the Centre William Rappard
16 October 1997

Chairman: Mr. Wade Armstrong (New Zealand)

Subjects discussed: Page

Prior to the adoption of the Agenda, the item entitled: "India - Patent Protection for Pharmaceutical and Agricultural Chemical Products - Panel Report: Complaint by the United States (WT/DS50/R)" was withdrawn from the proposed agenda since on 15 October 1997, India notified the DSB of its decision to appeal this Report (WT/DS50/6).

1. Surveillance of implementation of recommendations adopted by the DSB
   - Japan - Taxes on alcoholic beverages: Status report by Japan (WT/DS8/18/Add.1, WT/DS10/18/Add.1, WT/DS11/16/Add.1)

The Chairman recalled that Article 21.6 of the DSU required that: "Unless the DSB decides otherwise, the issue of implementation of the recommendations or rulings shall be placed on the agenda of the DSB meeting after six months following the date of establishment of the reasonable period of time pursuant to paragraph 3 and shall remain on the DSB's agenda until the issue is resolved". He then drew attention to document WT/DS8/18/Add.1- WT/DS10/18/Add.1- WT/DS11/16/Add.1, which contained the second report by Japan with regard to its progress in the implementation of the DSB's recommendations on this matter.

The representative of Japan said that pursuant to Article 21.6 of the DSU, his Government was required to inform the DSB of progress in implementation of the DSB's recommendations. On 6 October 1997, Japan had submitted its second status report concerning this matter. As stated in its first status report, major adjustments of the liquor tax rates had come into effect on 1 October 1997, four months before the expiry of the reasonable period of time, as the first step to implement the DSB's recommendations. Tax rates on whisky/brandy had been reduced by about 44 per cent and tax rates on Shochu A and B had been increased by 30 per cent and 48 per cent respectively. In an effort to find mutually acceptable solutions with the other parties to the dispute, Japan continued to examine possible practical options concerning the modalities for the implementation of the DSB's recommendations.

The representative of the United States said that Japan's status report had emphasized the adjustment of tax rates with regard to various categories of distilled spirits which had entered into effect on 1 October 1997. While a step in the right direction, this adjustment fell short of removing the discriminatory nature of Japan's liquor tax regime. Foreign exports continued to face discriminatory tax treatment in Japan. In addition, under Japan's implementation schedule, further adjustments in the tax rates would not be implemented until 1 October 1998, well past the 15-month reasonable period of time established by the arbitrator. The United States remained open to reaching a mutually acceptable resolution with Japan on this matter. In order to be able to meet the deadline set by the arbitrator, Japan would need additional legislation, the work on which would need to advance this autumn as part of Japan's budget cycle. Thus not much time was left. The United States looked forward to further discussions with Japan on its response to the DSB's recommendations and the arbitrator's ruling.

The representative of Canada said that his country was disappointed that Japan had not yet assured Members that it would implement the DSB's recommendations within the 15-month time period found to be a reasonable period by the arbitrator. His delegation had noted Japan's offer to hold consultations in order to settle this matter, however, it was Canada's preference that Japan take the necessary steps to bring its internal tax system on distilled spirits into conformity with the findings of the Panel and the Appellate Body. Therefore, he strongly urged Japan to take all the necessary legislative and administrative measures to implement the DSB's recommendations within the specified 15-month period.

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

2. European Communities - Regime for the importation, sale and distribution of bananas
- Implementation of the recommendations of the DSB

The Chairman said that in accordance with the DSU provisions, the DSB was required to keep under surveillance the implementation of recommendations and rulings of the DSB in order to ensure effective resolution of disputes to the benefit of all Members. In this respect, Article 21.3 of the DSU provided as follows: "... the Member concerned shall inform the DSB of its intentions in respect of implementation of the recommendations and rulings of the DSB". He recalled that at its meeting on 25 September 1997, the DSB had adopted the Appellate Body Report and the Panel Reports on "European Communities - Regime for the Importation, Sale and Distribution of Bananas" as modified by the Appellate Body Report.[1]

The representative of the European Communities reiterated his statement made at the DSB meeting on 25 September. At that meeting he had stressed the Communities' strong attachment to the DSU, its basic principles and rules. Under Article 21.3 of the DSU, the Communities had the obligation to inform the DSB of their intentions on the implementation of the DSB's recommendations. He confirmed that the Communities would fully respect their international obligations with regard to this matter. When designing the present regime, the Communities' objectives had been to support their own banana producers and to meet their international obligations, including their m.f.n. commitments under the WTO Agreement and with regard to the ACP countries under the Lomé Convention. These objectives remained unchanged.

The Communities had initiated a process which would enable them to examine all options for compliance. In the view of the internal decision-making process, he was not in a position, at this stage, to anticipate or to prejudge the results of this process. The Communities wished to draw the attention of Members to the extreme complexity of this matter. The Appellate Body had recognized that the legislative task of the Communities was difficult as they would have to respect the requirements of the Lomé Convention while simultaneously designing a single market for bananas. Therefore, the Communities, while intending to act expeditiously would require a reasonable period of time in which to examine all the options to meet their international obligations.

The representative of Guatemala, speaking also on behalf of Ecuador, Honduras, Mexico and the United States, said that the parties to the dispute had looked forward to this meeting when the European Communities had to inform the DSB of their intentions with respect to compliance with their WTO obligations. He enquired as to the extent to which the Communities valued and respected their international commitments. For the future of the WTO, it was important that a Member such as the Communities should make a clear statement at the present meeting concerning the intentions with respect to the implementation of the DSB's recommendations pursuant to Article 21.3 of the DSU. He therefore requested the Communities to state more specifically how they intended to implement the rulings of the Panel and the Appellate Body so as to bring their banana import regime into conformity with their obligations under the WTO Agreement. The term "international obligations" used by the Communities was too vague, as this matter concerned compliance with specific trade-related agreements. Article 21.3 of the DSU was very clear with regard to the granting of a reasonable period of time for the purpose of complying with the DSB's recommendations. Guatemala which had devoted more than six years to this matter wished to have more precise information as to how the Communities expected to comply with the DSB's recommendations.

The representative of the United States supported the statement made by Guatemala concerning the DSU process. The Communities had referred to their commitments to respect international obligations. He sought confirmation that it was the Communities' intention to implement

[1] WT/DS27/12.

the DSB's recommendations by making their banana import regime consistent with their obligations under the GATT and the GATS.

The representative of Honduras wished to associate her delegation with the statements made by Guatemala and the United States. Honduras was a recent participant in the international trading system having joined the GATT in 1994. Although its accession negotiations had constituted an extremely demanding process, Honduras had always respected its obligations and believed that the multilateral trading system, in particular the dispute settlement mechanism, provided the right framework for promoting its economic and trade development. The present meeting was of critical importance as this was the first case which Honduras had brought to the dispute settlement system. Both the Panel and the Appellate Body had met her country's expectations by providing an unprecedented number of recommendations and rulings with regard to the Communities' discriminatory measures. In accordance with the DSU provisions, the Communities were now required to indicate clearly and decisively how they would implement all these recommendations. Honduras did not consider that the vague references made by the Communities regarding the fulfilment of their international obligations, without linking them to the rulings of the Panel and the Appellate Body, constituted a clear declaration of their intentions within the meaning of the DSU. Furthermore, Honduras did not consider the reasonable period of time as a means which the Communities could use to postpone the implementation of the DSB's recommendations. The reasonable period of time was a period in which the Communities would be required to alter their banana import regime in order to bring it into compliance with the DSB's recommendations. She therefore sought confirmation that the Communities intended, in a timely manner, to implement all the recommendations and rulings of the Panel and the Appellate Body. As a developing country heavily dependent on access to the European market for its banana exports, Honduras believed that transparency in accordance with Article 21.3 of the DSU was fundamental for a satisfactory resolution of this dispute.

The representative of Ecuador said that his delegation could only accept the Communities' statement if their intention was to promptly implement the DSB's recommendations which required, *inter alia*, to revisit their discriminatory quota allocations, to eliminate immediately and totally the Banana Framework Agreement (BFA) as well as category B licences, activity functions, licenses for ripeners, export certificates, hurricane licenses and those ACP preferences in violation of the Lomé waiver. If the Communities' intention was different he wished to have clarification as to their plans with regard to prompt compliance.

The representative of Mexico supported the statement made by Guatemala. The Communities' intentions were not very clear. On the one hand reference had been made to Article 21.3 of the DSU, and on the other hand to fully respecting international obligations. He was not certain whether the latter referred to the recommendations of the Panel and the Appellate Body or to obligations broader than those under the WTO Agreement. The Communities had stated that they had initiated examination of all options for compliance for which they required a reasonable period of time. It was not very clear whether the Communities would implement the DSB's recommendations as stipulated in Article 21.3 of the DSU. Under the provisions of Article 21.3 of the DSU the reasonable period of time was provided only if it was not feasible to comply immediately with the recommendations and rulings, not to review and examine options for compliance. He sought clarification on the legal basis for the Communities with regard to the reasonable period of time.

The representative of the European Communities said that at present he could not provide any further information. With regard to Guatemala's question, he said that the Communities intended to fully respect their obligations. However, it was not possible to provide details in every case. For example, in the Gasoline case[2] the intentions of the parties had been broad, general and procedural. The Communities' decision-making procedures were known to be difficult and complicated, and this matter was complicated. At this stage, he could not go beyond what had been stated. The Communities intended to respect their international obligations and this phrase had been carefully selected. The Communities had many obligations and this phrase included WTO obligations. At present, the Communities were examining all options for compliance. He questioned why this period should not be used to review options, as it had not been possible to do so until after the results of the Reports. The Communities were reviewing their options which was positive and constructive and this should be accepted. It was better for the Communities to seek solutions than to state that nothing could be done. The comment made by Honduras that the Communities by asking for a reasonable period of time were postponing their action was not fair. The reasonable period of time was a right provided under the DSU, if it was not possible to comply immediately with the DSB's recommendations. It was therefore not a question of postponement but the need to find the best results. In doing so, the Communities could discuss this matter with other parties. For those seeking immediate results he recalled that the choice had been either to invoke time-consuming dispute settlement procedures or to make bilateral agreements with the Communities. He reiterated that the Communities would fully respect their obligations and would examine all options for compliance.

The representative of the United States said that the Communities' instructions had been insufficient to properly inform the DSB in accordance with the DSU procedures of the Communities' intentions. He did not wish to put pressure in order to make it difficult for the Communities, but it was known that the reasonable period of time under Article 21.3 of the DSU was not a right, as suggested by the Communities. It was available only for the purpose of implementing the DSB's recommendations. The reasonable period of time which the United States expected to negotiate with the Communities pursuant to Article 21.3 (b) of the DSU, was not a period in which to negotiate compensation or to consider non-compliance options. As stated by Ecuador, it was clear that the Communities having requested a reasonable period of time, had to fully amend their regulations in order to make them consistent with their obligations under the GATT and the GATS. The question was not that of considering options for compliance because the United States expected the Communities to move during the reasonable period of time in order to eliminate their discriminatory licensing system, including category B licences, licences for ripeners, exports certificates and hurricane licences and its discriminatory quota allocations for countries under the Lomé Conventions and the BFA. During the consultations to be held on the question of the length of the reasonable period of time, the United States expected to have greater and more specific reassurances with regard to the Communities' intentions. The US position with regard to the length of time would depend on the specificity of the Communities' plans concerning compliance.

The representative of Côte d'Ivoire said that the Communities had clearly underlined their attachment to the basic principles of the dispute settlement system and had confirmed that they would fully respect their obligations. For this purpose, they needed a reasonable period of time which should be granted to any Member in a similar situation. This would enable them to consult with all their partners in order to establish a balance between different interests, in particular those under Article 11 of the Lomé Convention. He believed that at this stage it was not possible for the Communities to take a decision and therefore it was reasonable to grant them the reasonable period of time.

[2] United States - Standards for Reformulated and Conventional Gasoline (WT/DS2).

The representative of Mexico understood that on certain occasions it was not possible for a delegation to go beyond its instructions. However, at this meeting it was very important to underline that this type of response was not satisfactory to other Members.

The representative of Ecuador said that pursuant to Article 21.3 of the DSU, the Communities were required to notify the DSB of their intentions with regard to the implementation of the DSB's recommendations. In his view, the Communities had not provided information as expected by Members and in accordance with the practice. He asked what decision would be taken by the DSB at the present meeting since the parties to this dispute did not consider this information adequate. There were two options: one that this information was sufficient, and the other that it was not. He therefore sought clarification and requested the Chairman to ask the Communities to further elaborate on this matter.

The Chairman said that he would welcome if the Communities wished to respond further but he believed that the second intervention of the Communities indicated clearly that they were not in a position to do so. He noted that in accordance with Article 21.3(b) of the DSU, a period of time mutually agreed by the parties to the dispute should be indicated within 45 days after the date of the adoption of the DSB's recommendations and that period of time had not yet expired.

The DSB took note of the statements and of the information provided by the European Communities regarding their intentions to implement the DSB's recommendations.

3. Korea - Taxes on alcoholic beverages
   (i) Request for the establishment of a panel by the European Communities (WT/DS75/6)
   (ii) Request for the establishment of a panel by the United States (WT/DS84/4)

The Chairman said that the DSB had considered this matter at its meeting on 25 September and had agreed to revert to it. He proposed that the two sub-items be considered together since they pertained to the same matter. First, he drew attention to the communication from the European Communities contained in WT/DS75/6.

The representative of the European Communities said that at the DSB meeting in September he had already provided the background of this case. At the present meeting he only wished to enumerate the following points: the long-standing irritant, major trade exports interest for the Communities, frequent bilateral consultations over a long period and unsatisfactory results leaving no alternative but to request the establishment of a panel.

The Chairman drew their attention to the communication from the United States contained in document WT/DS84/4.

The representative of the United States said that as had been stated at the previous meeting of the DSB, his country had requested the establishment of a panel to examine Korea's discriminatory taxes on distilled spirits. Under its Liquor Tax Law, Korea imposed a lower tax on the traditional Korean distilled spirit soju than the high taxes on other distilled spirits such as whisky, brandy, vodka, rum, gin and "ad-mixtures". This difference in tax burden was made even more dramatic by the application of an Education Tax. As a result, the tax burden on some US distilled spirits could be over four times greater than the tax burden on soju. The United States believed that Korea's internal taxes on distilled spirits were inconsistent with its obligations under Article III:2 of GATT 1994. On many occasions over the past years, the United States had raised this matter with Korea both informally and formally in the consultations. Since this matter had not been settled during the consultations his country requested the establishment of a panel. The United States considered that the DSB should establish a single panel pursuant to Article 9 of the DSU to examine both complaints.

The representative of Korea said that his country continued to believe that its internal tax system on alcoholic beverages was in conformity with its WTO obligations. His delegation noted that this was the meeting of the DSB following that at which the requests by the Communities and the United States had first appeared on the agenda. He therefore recognized that such a panel should be established at the present meeting in accordance with Article 6.1 of the DSU. Korea was prepared to defend its tax regime before the panel. He agreed with the US proposal that both complaints be examined by a single panel with standard terms of reference.

The DSB took note of the statements and agreed to establish a single panel pursuant to Article 9 of the DSU with standard terms of reference.

The representatives of Canada and Mexico reserved their third party rights to participate in the Panel proceedings.

The representative of Mexico clarified that his country's interest in this case concerned tequila.

The DSB took note of the statement.

4. India - Patent protection for pharmaceutical and agricultural chemical products
   - Request for the establishment of a panel by the European Communities (WT/DS79/2)

The Chairman said that the DSB had considered this matter at its meeting on 25 September and had agreed to revert to it. He drew attention to the communication from the European Communities contained in document WT/DS79/2.

The representative of the European Communities said that this was the second time that his delegation requested the establishment of a panel to examine this matter. The Communities considered that India had not satisfactorily implemented its obligations under Article 70.8 and 70.9 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). The details concerning this matter were contained in document WT/DS79/2. The Communities had held consultations with India on this matter but had not been able to find any satisfactory solution. As he had stated at the DSB meeting in September, the Communities wished to secure the same rights as any other party in the dispute settlement procedures in terms of negotiations at the stage of implementation. Therefore, the Communities decided to request a panel in addition to being a third-party in the panel on "India - Patent Protection for Pharmaceutical and Agricultural Chemical Products"[3] established at the request of the United States. His delegation believed that the DSB should establish a panel at the present meeting and any questions related to the composition of the panel and its time-table could be discussed in the coming weeks.

The representative of India noted that the Communities' request for a panel had already been considered by the DSB at its meeting on 25 September. At that meeting, India had made a detailed statement outlining the concerns and issues raised by this request for a panel with regard to a matter on which the panel established at the request of the United States had recently circulated its report.[4] As had been indicated by the Chairman at the outset of the meeting, India had notified the DSB of its decision to appeal against the report of this panel.[5] In his statement made at the DSB meeting on

[3] WT/DS50.

[4] WT/DS50/R.

[5] Notice of Appeal (WT/DS50/6).

25 September, he had implied that the resources of delegations, in particular small delegations such as India, would be put to undue strain if delegations had to participate in repetitive panel proceedings on the same matter because one aggrieved party had not decided to become a complainant or a co-complainant during the proceedings of a panel established on the same matter at the request of another aggrieved party.

In India's view the Communities' request raised fundamental systemic questions: (i) whether a Member had a right to request a re-examination of a matter on which a panel had already ruled; and (ii) if this was the case, whether the exercise of this right was permissible under the circumstances of the present case. India recognized that the DSB could not decide on these questions and had an obligation to establish a panel at the present meeting. While it accepted the Communities' request for a panel, India wished to reserve its right to request the panel, if necessary and appropriate, to examine, as a preliminary issue, whether a Member had the right to request a re-examination of a matter already decided by a panel and if so, whether the exercise of this right was permissible under the circumstances of the present case.

He reiterated that by reserving the right to raise this matter before the panel, India's intention was not, in any manner, to take away or abridge the rights of the complainant in this case. Nor had India been motivated by the sensitive nature of the subject of this dispute. As he had indicated at the DSB meeting in September, India's concerns were systemic and his delegation believed that it was in the interest of all Members to find a meaningful way of dealing with the issues and concerns involved in this request. While India accepted the establishment of a panel it wished to preserve the possibility of raising these questions before the panel as a preliminary procedural matter.

The representative of the United States said that as noted by India, in accordance with Article 6.1 of the DSU, the DSB was expected to establish a panel at the present meeting. If so, the United States would reserve its third-party rights to participate in the panel proceedings. However, in the view of the United States, this panel could not legally interfere or delay, in any way, the appeal process concerning the panel that had been established on the same matter at the request of the United States. Furthermore, the Communities' panel proceedings could not interfere or delay in any way the adoption and implementation of the panel and the Appellate Body reports concerning the United States' dispute with India with regard to the same matter.

The DSB took note of the statements and agreed to establish a panel in accordance with the provisions of Article 6 of the DSU with standard terms of reference.

The representative of the United States reserved his Government's third-party rights to participate in the Panel proceedings.

5. Argentina - Measures affecting textiles and clothing
   - Request for the establishment of a panel by the European Communities (WT/DS77/3/Rev.1)

The Chairman said that the DSB had considered this matter at its meeting on 25 September and had agreed to revert to it. He drew attention to the communication from the European Communities contained in WT/DS77/3/Rev.1 and to the correction in the title of this request indicated at the opening of the meeting. He informed Members that a corrigendum to this document without the reference to "footwear" in the title would be circulated shortly as document WT/DS77/3/Rev.1/Corr.1.

The representative of the European Communities said that he did not wish to reiterate what had been stated at the DSB meeting in September. At that meeting a scope of the request had been

discussed and as a result, the Communities held further discussions with Argentina in order to revise the text of their request. A revised text of this request was now contained in WT/DS77/3/Rev.1 and a corrigendum which would bring the title in line with this request would be shortly circulated. The present request had a less extensive scope than the previous one, but the measures subject of this complaint remained essentially unchanged. The consultations held on this matter had failed to bring a solution. Therefore, the Communities sought the establishment of a panel to examine this matter.

The representative of Argentina appreciated that the Communities had taken into account the comments and observations made by Argentina at the DSB meeting on 25 September, in the submission of a revised text of their request. With regard to the question of the timing of this request for a panel, he said that after a thorough examination of the various aspects of this issue, further doubts had arisen as to the legal justification for this process. In addition to his comments made at the previous meeting with regard to Article 9.1 of the DSU, and the Communities' assessment as to whether their action under the DSU provisions was fruitful in the light of Article 3.7 of the DSU, Argentina believed that this late request had created an imbalance in favour of the complaining party. The findings of the panel on the same subject established at the request of the United States[6], would probably be available when the first written submissions would be presented to the panel requested by the Communities or the first substantive meeting of the parties would be held. Thus, the Communities would have full knowledge of the arguments of the defendant. In addition, the work of the panel could coincide with a hypothetical appeal process thus creating a situation which would be in contradiction with the hierarchy of proceedings under the DSU provisions. Hence, not only would a single matter be examined twice by two separate panels, but in addition the issues of law and legal interpretation that might be raised before the Appellate Body could in theory be simultaneously subject to examination by a lower body: a panel. He queried whether under such circumstances this second panel should await until the Appellate Body had ruled on this matter and if so what would be the purpose of this panel to continue its work. Furthermore, he inquired how the task of the second panel would be influenced by the fact that during its work the final decision of the Appellate Body would be known. In the context of such a possible scenario, he inquired whether any decision taken by the DSB would be in line with the provisions of Article 3.2 of the DSU which stated that: "Recommendations and rulings of the DSB cannot add to or diminish the rights and obligations provided in the covered agreements", in this case the DSU. Undoubtedly, the question of timing would have implications for the dispute settlement system beyond this particular case.

At the DSB meeting on 25 September, he had stated that Argentina would be able to express its views on the Communities' request after the points concerning the terms of reference had been clarified. In the view of Argentina, document WT/DS77/3/Rev.1 met the requirements stipulated in Article 6.2 of the DSU, and therefore, his delegation did not oppose the establishment of a panel in accordance with the terms of reference set out in document WT/DS77/3/Rev.1 including the amendment to the title of the request which as announced by the Chairman would be circulated shortly in WT/DS77/3/Rev.1/Corr.1

The representative of the United States said that pursuant to Article 6.1 of the DSU it was expected that a panel would be established at the present meeting. His delegation believed that it should be clear that the establishment of a panel at the present meeting should not, in any way, delay the dispute settlement process of the panel established to examine the complaint by the United States (WT/DS56).

The representative of the European Communities thanked Argentina for its statement which in his view was constructive. He acknowledged that a number of questions related to this case might need further discussions in the coming weeks. In response to certain questions regarding the legal

[6] WT/DS56.

basis of the Communities's request he said that the Communities acted pursuant to Article 10.4 of the DSU which provided the right to any third party to request a panel to examine a measure already a subject of panel proceedings. He believed that any questions related thereto could be discussed after the establishment of a panel.

The DSB took note of the statements and agreed to establish a panel in accordance with the provisions of Article 6 of the DSU with standard terms of reference.

The representative of the United States reserved his Government's third-party rights to participate in the Panel proceedings.

6. Chile - Taxes on alcoholic beverages
- Request for the establishment of a panel by the European Communities (WT/DS87/5)

The Chairman drew attention to the communication from the European Communities contained in WT/DS87/5.

The representative of the European Communities said that this matter had been the subject of prolonged discussions between Chile and the Communities for almost ten years. This case concerned a wide gap between the tax rates imposed on imported spirits and on local produce. Whisky was taxed at 70 per cent, vodka and the majority of other imported spirits at 30 per cent while the local Pisco spirit was taxed at only 25 per cent. Pisco represented some 80 per cent of the market for all spirits in Chile, and its market share had more than trebled since the introduction of discriminatory taxation in 1974, at the expense of all imported spirit drinks. The Communities believed that the Chilean tax regime for alcoholic beverages had effectively discriminated against imported spirits, and was therefore in breach of the WTO rules, in particular Article III:2 of GATT 1994. Under the WTO Agreement, Chile was committed not to apply discriminatory taxes on imported products. The Communities and Chile had sought to resolve this issue through consultations, both bilaterally and under the provisions of the WTO Agreement. The delegations of the United States, Peru and Mexico had joined these consultations.[7] Unfortunately, in spite of these efforts, and Chile's preparation of a new legislation, it had not been possible to find a mutually acceptable solution. Therefore, the Communities had no alternative but to request the establishment of a panel.

The representative of Chile said that her delegation noted the Communities' request and wished to indicated that her Government during the first part of this year had submitted to the Chilean Congress a draft law which would amend its domestic taxation on spirits. This draft law had already been approved by the lower house of Congress. Since this draft law was in its final stages of adoption, Chile considered that it was not appropriate to establish a panel at the present meeting.

The representative of Mexico confirmed that his delegation had participated in these consultations and said that his country had a strong interest in following this case which had an effect on tequila.

The representative of the United States said that his country was also concerned about Chile's discriminatory tax regime and its implications for the US exports of distilled spirits. The United States had raised this issue on a number of occasions with Chile. He noted that the legislative reforms to the current tax regime on distilled spirits which had recently passed the Chilean Chamber of Deputies did not resolve the concerns of the United States. His country was currently evaluating its next step with Chile on this matter.

[7] United States (WT/DS87/3), Peru (WT/DS87/2) and Mexico WT/DS87/4.

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

7. India - Quantitative restrictions on imports of agricultural, textile and industrial products - Request for the establishment of a panel by the United States (WT/DS90/8)

The Chairman drew attention to the communication from the United States contained in document WT/DS90/8.

The representative of the United States said that his country requested the establishment of a panel to examine India's regime of quantitative restrictions and non-automatic import licensing on more than 2,700 tariff lines in its Schedule. These restrictions included import prohibitions, bans, restrictions, import licenses, special import licenses and the prohibition of non-commercial(sample) quantities, as well as the procedures required to implement and administer these measures. India's regime, which had been in place since the late 1940's, continued to unfairly deny India's trading partners access to its market and to shield India's industry from competition. The United States considered that India's quantitative restrictions were inconsistent with its obligations under Articles XI:1 and XVIII:11 of GATT 1994 and Article 4.2 of the Agreement on Agriculture. Furthermore, its import licensing procedures and practices were inconsistent with fundamental requirements of the WTO under Article XIII of GATT 1994 and Article 3 of the Agreement on Import Licensing Procedures.

He recalled that this matter had been discussed in the Committee on Balance-of-Payments Restrictions (BOP Committee) for more than 18 months, beginning in November 1995. Both the BOP Committee and the International Monetary Fund (IMF) had concluded that India did not have a balance of payments problems and thus the use of trade measures justified on balance-of-payments grounds was not warranted. The BOP Committee had concluded its proceedings in June 1997, without a satisfactory resolution as to the phase-out programme of India's measures.[8] The United States had hoped that this matter could be resolved in the BOP Committee. In the absence of such resolution, the logical step was to bring this matter to the DSB. His delegation continued to consult with India's delegation and hoped that this matter could be resolved on a mutually agreeable basis. However, since at this stage the matter remained unresolved, the United States requested the establishment of a panel.

The representative of India said that his delegation had carefully noted the statement made by the United States concerning its request for the establishment of a panel on the basis that the quantitative restrictions maintained by India for balance-of-payments reasons as notified in WT/BOP/N/24 (Annex I, Part B), dated 22 May 1997, were inconsistent with India's obligations under the WTO. At the present meeting, he did not wish to enter into detail of this statement but his delegation did not share all the elements contained therein. As the United States had noted, consultations had been held and continued to be held on this subject. In this context, he wished to draw attention to the sentence contained in the United States' request which stated that: " The United States and India continue to engage in promising consultations on these measures in hopes of resolving the dispute". These promising consultations were ongoing and his delegation believed that it would be worthwhile for both parties to continue to make serious efforts to resolve this dispute in a manner satisfactory to both sides. In his delegation's view, the establishment of a panel at a time when the consultations were at a crucial stage which could result in a mutually agreed satisfactory solution might not be in the interest of either party. Therefore, at the present meeting, his delegation was not in a position to accept this request. It was not India's intention to unnecessarily delay the establishment of this panel, but rather to maintain the present conducive atmosphere with a view to

[8] WT/BOP/R/32.

maximizing the chances for a mutually agreed solution. He believed that the US delegation shared India's assessment of the current status of the consultations and appreciated the positive assessment laid behind its negative response to the US request for a panel at the present meeting.

The representative of the European Communities said that his delegation had noted the United States' request. The Communities were also actively engaged in consultations with India on the same matter.[9] He interpreted the US statement in the same way as India, namely that "promising" consultations continued and that it would be possible to find solutions. He also hoped that it would be possible to find solutions to the Communities' problems. If consultations were successful it would be possible to notify to the DSB that a mutual solution had been found.

The representative of Japan said that his country had joined the consultations requested by the United States, Canada, the European Communities, Switzerland, Australia and New Zealand pursuant to Article XXII of the GATT 1994. At the same time, Japan was engaged in bilateral consultations with India. As stated by India and the Communities, his country hoped that the parties to the dispute would be able to reach a mutually satisfactory solution in the very near future.

The representative of Switzerland said his country had held consultations with India with regard to the latter's quantitative restrictions on agricultural, textile and industrial products.[10] As progress had been made during the consultations, Switzerland was confident that an agreement could shortly be reached with India.

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

8. Japan - Measures affecting agricultural products
   - Request for the establishment of a panel by the United States (WT/DS76/2)

The Chairman drew attention to the communication from the United States contained in document WT/DS76/2.

The representative of the United States said that his country requested the establishment of a panel to examine whether the import prohibition on fruits and the varietal testing requirements maintained by Japan were inconsistent with its obligations under the Agreement on the Application of Sanitary and Phytosanitary Measures, the GATT 1994 and the Agreement on Agriculture. With regard to each agricultural product for which quarantine treatment was required, Japan prohibited the importation of each variety of that product until the quarantine treatment had been tested for each variety, even though the pest was the same and the treatment had proven effective with respect to other varieties of the same fruit. This redundant testing served as a significant market access barrier. Japan had not provided any scientific evidence that the effectiveness of the quarantine treatment differed by variety. In addition, Japan's import prohibition and the absence of published regulations governing the approval of imports of fruits lacked transparency. The United States had hoped that this matter could be resolved without the need to request a panel but Japan had not been forthcoming in addressing this unfair barrier or in providing meaningful access for the commodities in question.

The representative of Japan said that his country believed that the measures at issue were in compliance with the relevant WTO provisions. At this stage, Japan considered that both parties had not exhausted all possibilities with regard to a solution to this dispute. This matter needed extensive discussions based on all relevant scientific and technical data. Japan and the United States had held

[9] WT/DS96/1.

[10] WT/DS94/1.

consultations under Article XXIII of GATT 1994 on 5 June 1997. In the consultations, Japan had answered all questions posed by the United States and had asked for the specific reasons of its request for consultations. However, to-date no answers had been received from the United States. Japan was therefore surprised that while it was waiting for a reply from the United States, the latter had requested the establishment of a panel. Japan was not in a position to accept this request at the present meeting and believed that it was in the interest of both parties to reach a mutually satisfactory solution through consultations.

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

9. Proposed nominations for the indicative list of governmental and non-governmental panelists (WT/DSB/W/62)

The Chairman drew attention to document WT/DSB/W/62 which contained additional names proposed for inclusion on the indicative list in accordance with Article 8.4 of the DSU. He clarified that the last proposal concerning the panelist from the United Kingdom should appear under the heading "European Communities". A corrigendum to this effect was made available in the room.[11] As in the past, panelists from Member states of the European Communities would appear on the indicative list under the heading he had just indicated. He proposed that the DSB approve the names contained therein.

The DSB so agreed.

The representative of Norway noted the pace with which panels were established and the number of panels established to-date. He hoped that the list of panelists contained a sufficient number of persons who could serve on panels as it was expected that more panels would still be established.

The Chairman responded that the list was still adequate but there was a significant burden of work.

The DSB took note of the statements.

[11] WT/DSB/W/62/Corr.1.