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Dispute Settlement Body
19 March 1999

MINUTES OF MEETING

Held in the Centre William Rappard
on 19 March 1999

Chairman: Mr. Nobutoshi Akao (Japan)

Subjects discussed: Page

1. Surveillance of implementation of recommendations adopted by the DSB

(a) India - Patent protection for pharmaceutical and agricultural chemical products: Status report by India (WT/DS50/10/Add.3)

(b) European Communities - Measures concerning meat and meat products (hormones): Status report by the European Communities (WT/DS26/17/Add.2 - WT/DS48/15/Add.2)

(c) Argentina - Measures affecting imports of footwear, textiles, apparel and other items: Status report by Argentina (WT/DS56/15/Add.2)

The Chairman recalled that Article 21.6 of the DSU required that, "Unless the DSB decided otherwise, the issues of implementation of the recommendations of rulings shall be placed on the agenda of the DSB meeting after six months following the date of the establishment of the reasonable period of time pursuant to paragraph 3 and shall remain on the DSB's agenda until the issue is resolved". He proposed that the three sub-items be considered separately.

(a) India - Patent protection for pharmaceutical and agricultural chemical products: Status report by India (WT/DS50/10/Add.3)

The Chairman drew attention to document WT/DS50/10/Add.3, which contained India's fourth status report regarding its progress in the implementation of the DSB's recommendations concerning patent protection for pharmaceutical and agricultural chemical products.

The representative of India said that, as outlined in the status report, a bill to replace the Patents Ordinance 1999, promulgated by the Government of India on 8 January 1999 had been introduced in the Budget Session of the Indian Parliament. That bill had recently been passed by both houses of the Parliament.

The representative of the United States said that her delegation appreciated India's status report regarding the Patents Ordinance. As stated at the 17 February meeting, the United States had consulted with India on the new legislation, and hoped to continue these bilateral consultations with a view to finding a mutually agreed solution.

The representative of the European Communities said that the EC, which had an important interest in the matter, had participated in the consultations requested by the United States, and wished to continue to be associated with these consultations.

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

(b) European Communities - Measures concerning meat and meat products (hormones): Status report by the European Communities (WT/DS26/17/Add.2 - WT/DS48/15/Add.2)

The Chairman drew attention to document WT/DS26/17/Add.2 - WT/DS48/15/Add.2 which contained the third status report by the EC on its progress in the implementation of the DSB's recommendations on measures concerning meat and meat products.

The representative of the European Communities said that further to the third status report, he wished to add that as indicated at the 17 February meeting, the EC had now started discussions with the United States and proposed to do so with Canada, with a view to evaluating the merits of the different options under consideration. In particular, a suggestion had been made regarding compensation which was one of the options envisaged in the DSU and in the EC's options paper.

The representative of the United States said that her delegation appreciated receiving the EC's third status report regarding its compliance with the DSB's recommendations. The main difference between the present report and the previous reports was that the EC had acknowledged that it could not be in compliance by the deadline of 13 May. The United States was disappointed that, once again, the EC would fail to meet its WTO-obligations and had waited nearly a year to begin consideration of possible options for compliance. She noted that during the entire period of time, the EC had not provided any scientific justification for maintaining its ban on beef from cattle to which specific hormones had been administered to promote their growth. In the status report the EC had referred to a report to the European Council and Parliament. The United States had received this report and considered it to be a positive move. It was encouraged to note that the EC supported the principles of the SPS Agreement and that the EC, as a major exporter, recognized the importance of that Agreement. The United States wished to make some comments with regard to the three options outlined in the EC's report.

One option considered by the EC related to labelling. The United States had presented to the EC a specific and formal proposal on labelling, which it believed would resolve this dispute and provide the access sought by the United States. In other words, the United States would label its beef to enable European consumers to recognize beef of US origin. This meant that the United States was willing to take a substantial step forward towards meeting EC concerns. It was obvious, however, that the EC's ban on US beef would have to be lifted for this labelling proposal to achieve access for US beef. Another option the EC was considering was compensation; i.e. reducing tariffs or other restrictions on some US exports to the EC. The United States realized that the WTO rules allowed the losing party to propose compensation. If the EC made a proposal that would provide real enhanced access for US beef, the United States would consider it and follow the WTO rules. However, the US position was clear. The EC's obligation was to comply with the DSB's rulings and to remove its ban on imports of US beef by 13 May. The United States viewed compensation as a temporary measure until the ban was lifted.

Another option outlined by the EC was invoking Article 5.7 of the SPS Agreement which allowed a Member to protect its population on a temporary basis when sufficient scientific evidence was lacking, but there might be sound reason to believe that the product was unsafe. This was clearly not the case with hormones which were among the most thoroughly tested and reviewed compounds, and which had not been found to be unsafe. Any EC attempt to invoke this provision would be entirely unjustified and completely unacceptable to the United States. Such action would make it impossible to resolve this issue and would threaten the integrity of the WTO.

She said that exports of US beef had been denied access to the EC market for a decade based on a measure that had been proven to be inconsistent with the WTO rules. However, more was at stake than market access. The fundamental principle of using science as a basis for non-tariff restrictions was in question. All Members had a serious stake in the integrity of the SPS Agreement. In each case before the WTO, the affected Members, including the United States, had complied with the WTO rulings. The WTO principles and its credibility were now on the line with the world watching how the United States and the EC would resolve their differences. The WTO rules called for the EC to comply with the DSB's recommendations and to remove the ban on US beef by 13 May 1999, a date that was fast approaching.

The representative of Canada thanked the EC for submitting its third status report. Her delegation noted that the EC had acknowledged that it might not complete its scientific studies by the deadline of 13 May. As already stated previously, Canada was extremely disappointed that instead of taking immediate steps to remove the ban, the EC had chosen to carry out further research. This, despite the conclusions of numerous studies that these hormones were safe, and the fact that in the ten-year period since the ban had been imposed, the EC had been unable to provide credible scientific evidence in support of its measure. However, the fact that this research might not be completed

before 13 May did not change the EC's obligation to comply with the DSB's recommendations by that date. It appeared that in the report prepared to the Council and the European Parliament, the EC recognized this obligation. Canada considered that the said report which outlined various options for consideration, including compensation, was a constructive basis on which to engage discussion with the EC. However, she cautioned the EC against the option of converting the current ban into a temporary one, which Canada would view as an attempt by the EC to avoid its WTO obligations. This could well lead to another bitter dispute over implementation. Her delegation noted that the EC had indicated its interest in exploring the feasibility of compensation. Canada was prepared to review any EC offers to compensate the Canadian beef industry that had been impaired by the measure, and looked forward to receiving such proposals.

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

(c) Argentina - Measures affecting imports of footwear, textiles, apparel and other items: Status report by Argentina (WT/DS56/15/Add.2)

The Chairman drew attention to document WT/DS56/15/Add.2 which contained the third status report by Argentina on its progress in the implementation of the DSB's recommendations on measures affecting imports of footwear, textiles, apparel and other items.

The representative of Argentina said that, as outlined in the status report on 11 February 1999, the President of Argentina had signed Decree 108/99, which had been published in the Official Bulletin of the Republic of Argentina on 24 February. Under this Decree, as from 30 May 1999, no import transactions covered by the statistical tax could be taxed in excess of the amounts indicated in document WT/DS56/14, which contained the agreement reached by Argentina and the United States on the implementation of the DSB's recommendations.

The representative of the United States expressed appreciation to Argentina for working closely with the United States and for its cooperation in resolving implementation issues in this case.

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

2. Korea - Taxes on alcoholic beverages

(a) Implementation of the recommendations of the DSB

The Chairman recalled that in accordance with the DSU provisions, the DSB was required to keep under surveillance the implementation of recommendations and rulings of the DSB in order to ensure effective resolution of disputes to the benefit of all Members. In this respect, Article 21.3 of the DSU provided that the Member concerned had to inform the DSB, within 30 days after the date of adoption of the panel or Appellate Body report, of its intentions in respect of implementation of the recommendations of the DSB. He recalled that on 17 February 1999 the DSB had adopted the Appellate Body Report on "Korea - Taxes on Alcoholic Beverages" as well as the Panel Report on this matter, as upheld by the Appellate Body Report. He said that the item had been inscribed on the Agenda of the present meeting at the request of Korea.

The representative of Korea said that, at the 17 February meeting, Korea had expressed its systemic concerns with regard to the Panel's and the Appellate Body's findings and rulings. However, despite its concerns, Korea had accepted the adoption of the Reports, and had stated that it would inform the DSB, pursuant to Article 21.3 of the DSU, of its intentions in respect of the

implementation of the DSB's recommendations. At the present meeting, he wished to re-confirm Korea's commitment to meet its WTO obligations with regard to this matter. Korea had already initiated a process of examining all options for compliance. However, in view of the internal decision-making process, it was not yet in a position to elaborate on any detail of the modalities for implementation. Korea's intention was to act in an expeditious manner in consultations with the other parties to the dispute. To this end, consultations had been held with the EC and the United States on 9 March in Brussels and 10 March in Geneva respectively. The second round of consultations was expected to be held later in the month. Korea would continue to work closely with the other parties to the dispute to ensure smooth progress in implementing the DSB's recommendations. He emphasized that in light of the legislative process involved in this matter, a reasonable period of time, as stipulated in Article 21.3, would be required in order to comply with the recommendations. Korea's implementing measures would be formulated on the basis of the Panel's and the Appellate Body's rulings.

The representative of the European Communities confirmed that contacts had been made with Korea and would continue to be made. He recalled the EC's position that an agreement on a reasonable period of time for implementation had to be reached, in accordance with Article 21.3 of the DSU, before 3 April. The EC was prepared to continue its contacts in order to reach an agreement. The EC considered that the implementation of the DSB's recommendations by Korea, namely to bring the present tax regime on alcoholic beverages into compliance, should be completed in a short period of time. With regard to the substance of this case, the EC believed that a specific tax regime based on alcoholic content per bottle would ensure transparency and equity of the system.

The representative of the United States said that her country welcomed the statement by Korea in which it had confirmed its commitment to implement the DSB's recommendations. Her delegation noted and appreciated that Korea had contacted the US Government, shortly after the adoption of the Reports, to begin discussions of its compliance plan. This was a good start. The United States believed that Korea could come into compliance with its WTO obligations within a very short period of time, since the panel decision dated back to July 1998. Also, Korea's budget year and National Assembly schedule permitted action in the near future. She emphasized the need for Korea to demonstrate its commitment to abide by its international obligations by eliminating the discriminatory differentials in its taxes. The United States strongly urged Korea to consider a specific tax system for alcoholic beverages because such a system was the rule rather than the exception among the OECD-countries.

The DSB took note of the statements and of the information provided by Korea regarding its intention in respect of implementation of the DSB's recommendations.

3. European Communities - Measures affecting the importation of certain poultry products

(a) Statement by Brazil concerning implementation of the recommendations of the DSB

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

The representative of Brazil said that on 6 March 1999, the EC had published in the EC Official Journal its Regulation No. 493/99, amending the EC Regulation No. 1484/95. In the EC's view, that new Regulation constituted the implementation of one of the two recommendations of the DSB with regard to its utilisation of a representative price as a basis for the application of special safeguards to imports of certain poultry products. The new regulation would become effective on 25 March 1999. Brazil was currently engaged in informal consultations with the EC to discuss

concerns related to the measure taken by the EC to comply with the DSB's recommendations with regard to the representative price. Brazil continued to hope that it would be possible to find a mutually agreed solution with regard to this matter.

The representative of the European Communities confirmed that the EC was willing to continue its discussions with Brazil in order to find a solution to this matter.

The DSB took note of the statements.

4. Japan - Measures affecting agricultural products

(a) Report of the Appellate Body (WT/DS76/AB/R) and Report of the Panel (WT/DS76/R)

The Chairman drew attention to the communication from the Appellate Body contained in document WT/DS76/7 transmitting the Appellate Body Report in "Japan - Measures Affecting Agricultural Products", which had been circulated in document WT/DS76/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 WT/L/160/Rev.1, the Appellate Body Report and the Panel Report had been circulated as unrestricted documents. He recalled that Article 17.4 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 the Members. This adoption procedure is without prejudice to the right of members to express their views on an Appellate Body Report".

The representative of the United States said that her country wished to praise the Reports which were of high quality. The Panel and the Appellate Body had to deal with very complex, technical questions and novel legal issues, which they had handled with care and precision. This demonstrated that the dispute settlement mechanism could effectively address disputes dealing with such measures. The Reports' legal analysis had underscored and clarified the basic obligation under Article 2.2 of the SPS Agreement that SPS measures could be maintained only with sufficient scientific evidence. The Reports had also provided an important clarification of the conditions to be met in order for a measure to be provisionally adopted under Article 5.7 of the SPS Agreement. The United States believed that by clarifying the nature of the SPS obligations, the work of the Panel and the Appellate Body would facilitate resolutions of disputes. The United States noted that Japan, pursuant to Article 21.3 of the DSU, would state its intentions with respect to implementation within the next 30 days. Her country was interested in working on this issue with Japan in a very constructive manner and looked forward to working together to resolve this dispute promptly.

The representative of Japan thanked the Panel and the Appellate Body for their efforts in examining this case. He recalled that on 24 November 1998, Japan had appealed the Panel Report on this matter since it had considered that the Panel had erred in its legal interpretations and findings concerning Article 2 of the SPS Agreement and other relevant provisions thereof as well as the DSU provisions. Japan regretted that the Appellate Body had upheld the Panel's finding and had not accepted Japan's arguments that the varietal testing requirement, as currently applied, was maintained with sufficient scientific evidence. At the same time, Japan was satisfied with the Panel's conclusions that it was not convinced by the US contention that "testing by product" would achieve Japan's appropriate level of protection on the grounds that there was no sufficient evidence before the Panel. Although the United States had appealed this issue, the Panel's conclusion had not been reversed because the Appellate Body had considered that this issue related to the assessment of facts and therefore fell outside the scope of appellate review. As it had been already stated, Japan regretted some of the findings of the Panel and the Appellate Body Reports. However, neither Report

prevented Japan from taking appropriate measures against the intrusion of foreign pests into its territory. Japan would respect the WTO rules and did not oppose the adoption of the Reports of the Panel and the Appellate Body. It had already begun the examination of its measures found to be inconsistent with the SPS Agreement and would inform the DSB of its intentions in respect of implementation pursuant to Article 21.3 of the DSU.

The representative of the European Communities said that the EC welcomed the rulings in this case, which had clarified some important concepts of the SPS Agreement. However, the EC had noted that, once again, the result raised questions as to the discretion left to panels in the evaluation of scientific views. In this respect, the outcome illustrated the need for a review of Article 17.6 of the DSU which should allow to appeal not only "the issues of law covered in the panel report and legal interpretations developed by the panel", but also manifestly erroneous or unreasonable characterisation or appreciation of the facts before the panel. To this effect, the EC had made a proposal in the DSU review. It was also important to review the case law on the allocation of the burden of proof, in particular in the context of the SPS Agreement. In the areas of human, animal or plant life or health, or protection of the environment, placing the burden of proof almost exclusively on the defending Member, as it had been done in the present Report, seemed to be contrary to the law and practice of almost all legal jurisdictions.

The representative of Brazil said that his country had participated as a third party in the Panel and the Appellate Body proceedings. Brazil welcomed the final results of the proceedings since the Appellate Body had upheld the main findings of the Panel with regard to the lack of scientific evidence - within the meaning of Article 2.2 of the SPS Agreement - concerning the varietal testing requirement maintained by Japan. He stressed that Brazil's interest in this case was not only of a systemic nature, but was linked to very concrete trade concerns. Since 1986, Brazilian authorities had been negotiating with their Japanese counterparts with a view to initiating exports of mangoes to Japan. Brazil had carried out the necessary research and had developed an effective treatment for a first variety of mangoes. Recently, a calendar of actions had been agreed by both sides which envisaged the opening of the Japanese market to Brazilian mangoes in the course of the second trimester of the year of 2000. If everything went well, and it was Brazil's intention to abide by the calendar agreed upon by both governments, it would have taken 14 years to get approval for the first variety of Brazilian mangoes to be sold in Japan. Since Brazil cultivated more than one variety of mangoes for exports, his country attached great importance to the Panel's and the Appellate Body's findings according to which varietal testing for apples, cherries, nectarines and walnuts was inconsistent with Article 2.2, and that the same requirements applied to apricots, pears, plums and quince were not based on a risk assessment. Brazil was aware that the terms of reference of the Panel did not extend to other fruits, but hoped that the very important principles confirmed by the findings of the Panel and the Appellate Body would guide Japanese authorities in the application of the SPS measures to all fruits, and their varieties, regardless of their origin, and would facilitate exports of fruits to the Japanese market.

The representative of Hungary said that his country had participated in the Panel proceedings as a third-party due to its trade interests in this matter. Hungary welcomed the Reports of the Panel and the Appellate Body, which had largely confirmed its assessment of the measures at issue concerning their inconsistencies with the relevant provisions of the SPS Agreement. In particular, Hungary was pleased that with regard to Article 5.7 of the SPS Agreement both the Panel and the Appellate Body had made it clear that this exception could be invoked only if all four relevant requirements were met, and that it could not be used as a kind of broad "escape clause" from the basic obligation stipulated in Article 2.2 of the SPS Agreement that any sanitary and phytosanitary measures had to be "based on scientific principles" and "not maintained without sufficient scientific evidence". Hungary considered that this interpretation together with most of the others taken by the Panel and the Appellate Body, would be instrumental for the SPS Agreement in continuing to fulfil its

fundamental rule of ensuring that SPS measures were not applied for reasons unrelated to the protection of human, animal or plant life or health.

Hungary also welcomed the Appellate Body's findings that due to the absence of risk assessment, "the varietal testing requirement as it applies to apricots, pears, plums and quinces… is inconsistent with Article 5.1 of the SPS Agreement" (paragraph 143(f)), which had corrected an error of the Panel. He noted with disappointment that this finding had not led the Appellate Body to conclude that the measure was inconsistent with Article 2.2 as well. The matter at hand was an important issue of law and not merely an assessment of the facts. Therefore, under Article 17.6 of the DSU, it could not have fallen outside the scope of appellate review. He recalled that in the Hormones case (WT/DS26/AB/R - WT/DS48/AB/R), the Appellate Body had stated that the violation of Article 5.1 "can be presumed to imply a violation of … Article 2.2." This statement had subsequently been confirmed by the Appellate Body in the Salmon case (WT/DS18/AB/R). Since in the case at hand the Appellate Body had not found that Japan had rebutted this presumption, *per analogiam*, it should have reached the same conclusion. The lack of consistency in this regard raised questions about legal certainty and predictability, which were essential elements of a credible dispute settlement system. Hungary hoped that Japan would be in a position to comply with the DSB's recommendations within a short period of time.

The DSB took note of the statements and adopted the Appellate Body Report in WT/DS76/AB/R and the Panel Report in WT/DS76/R as modified by the Appellate Body Report.

5. United States - Anti-dumping duty on dynamic random access memory semiconductors (DRAMS) of one megabit or above from Korea

(a) Report of the Panel (WT/DS99/R)

The Chairman recalled that at its meeting on 16 January 1998, the DSB had agreed to establish a panel to examine the complaint by Korea. The Report of the Panel contained in document WT/DS99/R had been circulated on 29 January 1999, and was now before the DSB for adoption at the request of Korea. In accordance with Article 16.4 of the DSU, this adoption procedure was without prejudice to the right of Members to express their views on the Panel Report.

The representative of Korea said that his delegation welcomed the adoption of the Panel Report by the DSB at the present meeting and thanked the members of the Panel and the Secretariat for their work. For many years, the United States had used its anti-dumping law as a powerful tool for closing markets to fairly traded imports. The Panel in this case, had struck down one important aspect of this abuse. Therefore, Korea was grateful for invalidating this barrier to free trade. During administrative reviews covering three-and-a-half years, the US Department of Commerce had found that two Korean companies, Hyundai Electronics and LG Semicon, were not dumping DRAMS. Nevertheless, the Department had unjustifiably refused to revoke the anti-dumping duty order. Under the US anti-dumping regulation, three years of no dumping was not enough. The US Department of Commerce would revoke an anti-dumping order, only where the exporting companies could prove to the satisfaction of the Department that they were "not likely" to dump in the future. The Panel had agreed with Korea that the "not likely" criterion in the US anti-dumping revocation regime violated Article 11.2 of the Anti-Dumping Agreement. Specifically, the Panel had rejected the US practice, finding that it improperly shifted the burden of proof to the respondent companies and required them to prove a negative, namely that they were "not likely" to dump in the future. The Panel had found that whenever an investigating authority conducted a revocation review, that authority had to bear the burden of proof, to maintain a duty, and to affirmatively find that dumping was "likely" to continue or recur if the anti-dumping duties were removed.

In addition to invalidating the US regulation, the Panel had also found that the decision of the US Department of Commerce not to revoke the anti-dumping order on DRAMS from Korea based on the "not likely" criterion was inconsistent with Article 11.2 of the Anti-Dumping Agreement. Therefore, to implement the Panel's recommendations, the United States was obliged both to amend its revocation regulation and to revoke the DRAMS anti-dumping order because, according to the Panel found, it had no legal basis. The Panel's decision had significant implications beyond this case. As currently drafted, the US sunset review regulations and procedures applied a standard very similar to that which the Panel had rejected. The United States should act promptly to revise these regulations and procedures so as to comply fully with its WTO obligations. Korea hoped that many Members would be keenly interested in how the US would act, given the large number of anti-dumping duty orders which the United States was obliged to review under the sunset provision.

Korea was concerned with the Panel's failure to accept its arguments regarding four of its claims. First, Korea had demonstrated that the US failure to self-initiate a review of whether injury to the US DRAM industry would be likely to continue or recur if the anti-dumping duty were removed, was inconsistent with Article 11.2 of the Anti-Dumping Agreement. After finding that no dumping had occurred for a period of three-and-a-half years, a review of whether dumping that would cause injury was likely to recur was "warranted". In the absence of a review to reaffirm the dated finding that US DRAM producers were being injured by dumped imports from Korea, the maintenance of the definitive anti-dumping duty was impermissible.

Second, Korea had showed that the US 0.5 per cent *de minimis* threshold for administrative reviews was inconsistent with the Anti-Dumping Agreement because any other interpretation was impermissible. The Panel's decision, in essence, was that there was no *de minimis* standard for reviews. This finding was erroneous because it would yield a result at odds with the object and purpose of the Agreement. Third, Korea established that the United States had violated Articles 2 and 3 of the Anti-Dumping Agreement when, during the third US administrative review, it had extended the scope of the proceedings to include new products not in existence at the time of the investigation. The Panel had concluded that Korea's product scope claim was inadmissible because it concerned US actions that pre-dated the entry into force of the WTO Agreement. This ruling was erroneous because it ignored the fact that the United States had taken action regarding product scope during its third administrative review, which had taken place after the entry into force of the WTO.

Korea regretted that the Panel had not addressed one of its central claims. The Panel had ignored Korea's claim that the United States had violated paragraphs 1 and 2 of Article 11 of the Anti-Dumping Agreement when it had failed to revoke the order after finding no dumping for three-and-a-half consecutive years. Korea had demonstrated that there was no dumping and thus no injury caused by dumping for such a long period, and therefore the definitive duty was not "necessary to offset dumping that is causing injury", as required by paragraphs 1 and 2 of Article 11 of the Agreement. Therefore the US Department of Commerce should be obliged to revoke the anti-dumping order.

Despite these concerns, Korea reiterated its satisfaction with the Panel's condemnation of the central element of the US revocation regulation and practice; i.e, the "not likely" criterion. Korea expected full and prompt compliance by the United States with its obligations to implement the Panel's recommendations. Article 21.3 of the DSU made it clear that the basic obligation of the United States was "to comply immediately with [*the Panel's*] recommendations and findings". Only where immediate compliance was not possible would the United States be entitled to "a reasonable period of time" for implementation. He highlighted this provision because the United States had to implement immediately the Panel's ruling regarding the determination not to revoke the DRAMS anti-dumping duty order. There was no justification under the DSU or the US legal system for delaying the minor administrative action necessary to implement this aspect of the Panel's decision by revoking the anti-dumping duty order. Korea recognized that under US law, the United States could not implement the second aspect of the Panel's decision, namely, amending its revocation regulation,

immediately. Therefore, a reasonable period of time would be required. Korea looked forward to receiving the US views about the length of this period which should be as short as possible. He noted that when the United States was a complaining party, it strenuously demanded fast and effective implementation. This had been evidenced particularly over the past several months. His delegation was confident that the United States would act as it demanded others to act, and would carry out its implementation obligations fully and promptly.

The representative of the United States thanked the members of the Panel and the Secretariat for their work on this case, which had involved many difficult issues. The United States considered that the Panel Report was of high quality and wished to make a few comments with respect to the content of that Report. First, the United States noted that the Panel had rejected the notion that the mere absence of present dumping - or even the absence of dumping for a three-year period, automatically required a finding that the continued imposition of an anti-dumping duty order was no longer justified. As the United States maintained, the absence of a present dumping duty order might be attributable solely to the existence of an anti-dumping duty order. Therefore, a proper analysis should be to determine what would happen if the order were removed. The facts of this case demonstrated why it was inappropriate to focus on what had happened in the past to the exclusion of what might happen in the future. In the fourth review of the Korean DRAMS order - the review which had immediately followed the third review at issue before the panel - the US Department of Commerce had found that the Korean exporters had, indeed, resumed dumping. Second, the United States had also noted the Panel's finding that 0.5 per cent *de minimis* standard for the post-investigative phase of an anti-dumping proceeding was not inconsistent with Article 5.8 of the Anti-Dumping Agreement.

With regard to procedural issues, the Panel had rejected Korea's request that the Panel suggest revocation of the DRAMS anti-dumping order as the way for the United States to implement the Panel's recommendation. Instead the Panel had recognized "a range of possible ways in … the United States could appropriately implement its recommendation" (paragraph 7.4). The Panel had, correctly, left it to the United States to determine in the first instance what the method might be. In addition, the Panel had rejected Korea's attempt to challenge determinations made by the US Department of Commerce during the original anti-dumping investigation on DRAMS from Korea, an investigation that had been completed well before the WTO Agreement had entered into force. The Panel had correctly found that "pre-WTO measures do not become subject to the Anti-Dumping Agreement simply because they continue to be applied on or after the date of entry into force of the WTO Agreement for the Member concerned" (paragraph 6.14). On the other hand, there was one aspect of the Panel report that the United States found troubling. Under its current regulations, the US Department of Commerce revoked an anti-dumping order after three years of no dumping only if it was satisfied that a resumption of dumping was "not likely". The Panel had found the US Department of Commerce's "not likely" standard to be inconsistent with Article 11.2 of the Anti-Dumping Agreement. In making this finding, however, the Panel had never pursued the proper question of what did the US Department of Commerce's standard mean, as applied, under US law? The United States believed that if the Panel had asked the proper question, the results might have been different. However, the United States was not interested in prolonging this dispute by means of an appeal. Therefore, while the Panel Report was not perfect, there was much in it that made it worthy of adoption and the United States could join in a consensus to adopt the Report.

The representative of Hong Kong, China said that her delegation would join in the consensus to adopt the Panel Report, and welcomed the Panel's ruling on Article 11.2 of the Anti-Dumping Agreement with regard to the "not likely" criterion. While the Panel's rulings applied to the specific case at hand, her delegation shared Korea's concerns over certain aspects concerning the interpretation of the Anti-Dumping Agreement. For example, what would warrant a self-initiated review of the need for the continued imposition of an anti-dumping duty, if not the finding that dumping had not occurred for a period as long as three-and-a-half years? Why was it logical to have a lower *de minimis*

dumping margin after a duty had been imposed, while a 2 per cent *de minimis* dumping margin could not lead to an anti-dumping duty in the first instance, and furthermore how should the Anti-Dumping Agreement effectively apply to current actions regarding pre-WTO measures? Hong Kong, China would further study the Report and would reflect on the implications thereof with regard to its position in the relevant WTO bodies.

The DSB took note of the statements and adopted the Panel Report contained in WT/DS99/R.