WORLD TRADE ORGANIZATION

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Dispute Settlement Body
28 April 1999

MINUTES OF MEETING

Held in Centre William Rappard
on 28 April 1999

Chairman: Mr. Nobutoshi Akao (Japan)

Subjects discussed: Page:

Prior to adoption of the agenda, the United States had requested that the item concerning the Panel Report on "India- Quantitative Restrictions on Imports of Agricultural, Textile and Industrial Products" be removed from the proposed agenda.

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.4 - WT/DS79/6)

(b) European Communities – Measures concerning meat and meat products (hormones): Status report by the European Communities (WT/DS26/17/Add.3 - WT/DS48/15/Add.3)

(c) Argentina – Measures affecting imports of footwear, textiles, apparel and other items: Status report by Argentina (WT/DS56/15/Add.3)

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 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.4 - WT/DS79/6)

The Chairman drew attention to document WT/DS50/10/Add.4 - WT/DS79/6 which contained India's 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 recalled that at its meeting on 16 January 1998, the DSB had adopted the Appellate Body Report and the Panel Report, as modified by the Appellate Body Report, pertaining to the US complaint. On 13 February 1998, India had informed the DSB of its intentions to meet its WTO obligations with respect to this matter. On 22 April 1998 India and the United States, in a joint statement, had informed the DSB that they had agreed that a reasonable period of time for implementation would be 15 months; i.e. until 19 April 1999. The EC had initiated separate panel proceedings with regard to India's lack of fulfilment of its obligations under Articles 70.8 and 70.9 of the TRIPS Agreement. On 22 September 1998 the DSB had adopted the Panel Report (WT/DS79/R) pertaining to this matter. On 21 October 1998, India had informed the DSB of its intention to meet its WTO obligations with respect to this matter. On 25 November 1998, India and the EC, through a joint statement, had informed the DSB that they had agreed on a reasonable period of time until 19 April 1999, in line with the time-period for implementation agreed by India and the United States.

He underlined that the dispute on India's implementation of its obligations under Articles 70.8 and 70.9 had not resulted from India's unwillingness to acknowledge its obligations or to abide by them. The dispute on Article 70.8 had concerned the question of the legal basis for the mailbox system operated by India. The dispute on Article 70.9 had concerned the question of when the Indian Executive required the legal authority to implement the provisions of that Article. The Panels in both disputes had found that the mailbox, operated by India on the basis of administrative instructions, had not provided the required degree of legal security for mailbox applications. India's position that since no application for exclusive marketing rights had been filed thus far, and therefore there was no violation, had not been accepted. It had been considered that the legal requirement to make exclusive marketing rights available applied immediately from the entry into force of the WTO Agreement.

With respect to the US complaint, the Appellate Body had recommended that the DSB request India to bring its legal regime into conformity with its obligations under Articles 70.8 and 70.9. With respect to the EC complaint, the Panel had recommended that the DSB request that India bring its transitional regime for patent protection into conformity with its obligations under the TRIPS

Agreement. In both cases the DSB recommendations were identical. He recalled that in its second status report (WT/DS50/10/Add.1) India had informed the DSB that, on 8 January 1999, it had promulgated an Ordinance in order to amend the Patents Act to comply with its obligations under Articles 70.8 and 70.9, and that a bill to replace the Ordinance, which had a limited period of validity, would be introduced in the Budget Session of the Parliament.

On 14 January 1999, the United States had requested consultations under Article 4 of the DSU with India on the Patents (Amendment) Ordinance 1999 (WT/DS50/11). That request was without prejudice to the US position that Article 21.5 of the DSU did not require the United States to enter into consultations with India prior to a review of implementing measures. India had responded positively to the US request for consultations since by promulgating the Ordinance, it had taken certain measures to meet its obligations. The EC had participated in these consultations which had been held in Geneva on 11 February 1999.

As stated in the final status report, the amendments to the Patent Act, 1970 passed by both Houses of the Indian Parliament, had been approved by the President of India and had been notified in the Gazette of India on 26 March 1999 as the Patents (Amendment) Act, 1999. This Amendment Act had effected certain amendments to the Patents Act, 1970 in accordance with the DSB's recommendations in both cases. With the coming into force of the Patents (Amendment) Act 1999, the earlier Ordinance promulgated when the Parliament was not in session had been repealed. He noted that the provisions of the Patents (Amendment) Act 1999 were the same as those contained in the Ordinance. He expressed India's gratitude to the United States and the EC for ensuring that the consultations had been used to appreciate the concerns of all parties, and to reach mutually meaningful solutions. India was glad that these cooperative efforts had enabled the parties to arrive at a result, which was both consistent with the DSB's recommendations and satisfactory to all parties.

The representative of the United States said that her country was pleased to address the issue of the measures taken by India to implement the DSB's recommendations and comply with the requirements of Articles 70.8 and 70.9. Both provisions concerned certain transitional obligations with regard to patent protection for pharmaceutical and agricultural chemical products. In June 1996 the United States had requested consultations with India on this matter. On 16 January 1998, the DSB had adopted the Reports of the Panel and the Appellate Body recommending that India bring its regime into compliance with Articles 70.8 and 70.9. A reasonable period of time for compliance had expired on 19 April 1999. In the beginning of 1999, India had promulgated a temporary Ordinance to meet its obligations, and in the past month it had enacted permanent legislation entitled the Patents (Amendment) Act, 1999. This had enabled India to establish a mechanism for the filing of a so-called mailbox patent application, and a system for granting exclusive marketing rights for pharmaceutical and agricultural chemical products. During its consultations with India in January 1999, the United States had made it clear that it continued to have serious concerns on certain aspects of India's new law regarding exclusive marketing rights.

The United States believed that the TRIPS Agreement did not permit Members to grant compulsory licenses or to impose other exceptions or limitations on exclusive marketing rights. Nor did it allow Members to impose conditions on the granting of exclusive marketing rights beyond those described in Article 70.9. She recognized that although the US interpretation of the TRIPS Agreement had not changed, the consultations held with India over the past three months had been very productive. Both parties had worked hard to achieve a practical resolution of this matter. In light of the discretionary nature of some of the problematic provisions of the Indian law, as well as the significant steps that India had taken or had pledged to take to mitigate the impact of others, the United States was pleased to conclude that no further action by the United States or the DSB would be required at this stage. However, the United States wished to reserve its rights under the DSU should any of the problematic provisions in the Indian law be invoked to the detriment of US right holders in the future. The United States thanked India for its cooperation and constructive approach towards

addressing US concerns, and for its willingness to consult closely with US officials throughout the past three months of the implementation period.

The representative of the European Communities said that the EC had an interest in this case since a significant number of patent product applications had been filed by European right holders. His delegation welcomed India's final status report and expressed appreciation for the way in which India had completed its full legislative procedure on this complex and technical matter, namely, within a relatively short period of time and against the background of a difficult political situation in India. He expressed his delegation's satisfaction with the high quality of the legislation, in particular, the additional legislative measures proposed by India. Since the Commission had not yet completed its assessment of the legislative and regulatory package, he reserved the EC's rights with regard to this matter. In the area of intellectual property, a lot depended not only on legislative provisions but on the practical application of those provisions. One area of interest to the EC was the way in which exclusive marketing rights would be handled.

The DSB took note of the statements.

(b) European Communities - Measures concerning meat and meat products (hormones): Status report by the European Communities (WT/DS26/17/Add.3 - WT/DS48/15/Add.3)

The Chairman drew attention to document WT/DS26/17/Add.3 - WT/DS48/15/Add.3) which contained the EC's status report 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 as indicated in the status report, the EC had prepared a report listing a number of options which were currently under consideration, and continued to hold discussions with the complaining parties. The various options had already been discussed at the 19 March meeting. Since then the EC had held further discussions with both complaining parties, and had made it clear that on the assumption that it would not be in a position to implement the DSB recommendations by 13 May, it was willing to consider compensation pending such implementation. Since no agreement had yet been reached with the parties concerned these discussions would continue.

The representative of the United States said that her delegation had noted with interested the fourth status report submitted by the EC. The United States had to conclude that the EC would not be in compliance with the DSB's recommendations by 13 May. She expressed her country's disappointment that, once again, the EC would fail to meet its WTO obligations. The United States was concerned that the EC was trying to interpret the WTO rulings to imply that it could come into compliance by performing a risk assessment. In both its third and fourth status reports, the EC had noted that its "risk assessment may not be completed by May 13", as if it would have been in compliance, had the risk assessment been completed. The Arbitrator had made it clear in his report that "it would not be in keeping with the requirements of *prompt* compliance, to include in the reasonable period of time, time to conduct studies or to consult experts to demonstrate the *consistency* of a measure already judged to be *inconsistent*" (paragraph 39). It was not necessary for the EC to undertake new risk assessments since over four decades of scientific research had found no justification for the EC's ban. The United States was concerned about the lack of transparency of the EC's risk assessment studies. The United States had sought a resolution of this issue for over a decade. It had informed the EC of its willingness to be flexible with regard to examining solutions to its concerns. The United States had recently held discussions with the EC and had tried to address the concerns of European consumers by proposing a labelling system. These discussions would continue. However, the dispute could not be resolved until US beef obtained access to the EC market.

The representative of Canada said that as indicted by the EC representative, it was evident that the EC would not be in compliance with the DSB recommendations by 13 May. He regretted this outcome and said that this matter should be of concern not only to Canada but to all Members. Prompt compliance was critical in maintaining the integrity of the dispute settlement mechanism and in this regard the text of Article 21 of the DSU was clear. The Arbitrator had concluded that there were no particular circumstances justifying the EC request to be granted four years for implementation. The Arbitrator's reasoning was the commissioning of scientific studies or consultations with experts was not pertinent to the determination of the reasonable period of time. The Arbitrator had stated that "it would not be in keeping with the requirements of *prompt* compliance to include in the reasonable period of time, time to conduct studies or to consult experts to demonstrate the *consistency* of a measure already judged to be *inconsistent*" (paragraph 39). On the basis of the four status reports provided by the EC since January 1999, it appeared that the EC had chosen to ignore the Arbitrator's decision. The EC had continued to state that it had initiated a complementary risk assessment. There had been no indication that the EC had begun considering or analysing implementation options with respect to the removal of its WTO-inconsistent import prohibition. Due to the lack of compliance by the EC two options were available for Canada under the DSU provisions; i.e. negotiating an acceptable compensation package or requesting authorization to suspend concessions. At the 19 March meeting, Canada had indicated that it was prepared to review compensation offers that would be of benefit to the Canadian meat industry. His country remained open to this option. He noted that the EC representative had indicated that the EC was willing to envisage compensation. At the same time, Canada had begun a domestic consultation process on possible suspension of concessions. On 17 April, his Government had published in the Canada Gazette, a Notice of Intention to increase tariffs in response to the EC's ban on imports of beef produced with hormones. Tariffs of 100 per cent would be imposed on listed products from EC member States. Interested parties had been invited to provide their views on the list by 17 May. As indicated at the 17 February meeting, Canada was prepared to exercise its rights under the DSU, and would request authorization to suspend concessions, if no acceptable resolution was found.

The representative of Australia said that his delegation had noted the status report submitted by the EC at the present meeting. He said that that the EC implementation choices, including on compensation, had to be consistent with the EC's obligations under the covered agreements and should not nullify or impair benefits accruing to any Member under those agreements.

The representative of Japan urged the parties to the dispute to continue their discussions in order to find an acceptable solution without undermining the dispute settlement mechanism.

The representative of the European Communities said that the parties to the dispute were aware that it was not the intention of the EC to ignore the Arbitrator's decision. However, the EC was facing a political situation in which a removal of the ban could not be accepted by Parliament and consumers, unless scientific studies had demonstrated that hormone-treated beef was safe. The EC had sought further studies in order to be able to implement, not to avoid implementation. At this stage, the EC was not in a position to implement the DSB recommendations. The EC would try to proceed as rapidly as possible, and hoped to provide shortly an interim assessment in order to consider other solutions such as labelling. However, until such an assessment was made, the political question remained. It was not the EC's intention to undermine the dispute settlement system or the WTO, but there was a major political problem in an area where trade rules were linked to public health considerations. It was not clear whether sound science was always the safest way. He believed that sound science not accompanied by sound control systems could raise problems of its own. Therefore, it was not the intention of the EC to refuse to implement or to disregard the Arbitrator's decision. The EC was doing its best and was willing to meet its commitments by compensating for the implementation that could not be achieved immediately. It was, however, up to the parties concerned to either retaliate or to negotiate compensation. The EC had proposed to compensate as a temporary

solution as well as to explore how a labelling system could be organized. In that respect, the US offer was inadequate because consumers would not be able to identify beef treated with hormones.

The representative of the United States wished to make some additional comments with regard to one of the options considered by the EC, namely compensation. As the WTO rules allowed for compensation, the United States would be willing to consider a package of compensation that would be appropriate in the amount and value. However, the EC's WTO obligation was clear: the EC had to comply with the DSB rulings by removing its ban on imports on US beef by 13 May. Compensation was only acceptable as a temporary measure until the EC had complied with the WTO rulings by lifting the ban. While the United States recognized that the EC would need some time to complete its internal procedures, it could not accept a lengthy period and an uncertain outcome.

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.3)

The Chairman drew attention to document WT/DS56/15/Add.3 which contained Argentina's status report 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 reiterated his statement made at the 19 March meeting that as a result of Decree 108/99, imports covered by the statistical tax would be taxed in the amount agreed by Argentina and the United States. That Decree would come into effect on 30 May 1999. He provided this information in conformity with Article 21.6 of the DSU.

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

2. Argentina - Safeguard measures on imports of footwear

(a) Request for the establishment of a panel by Indonesia (WT/DS123/3)

The Chairman drew attention to the communication from Indonesia contained in document WT/DS123/3.

The representative of Indonesia said that his Government was requesting the establishment of a panel to examine the provisional and definitive safeguard measures and the subsequent modification imposed by Argentina on imports of footwear. Indonesia was a significant exporter of footwear to Argentina. In the period of 1994-95, his country had been the second biggest footwear supplier to Argentina, but had become the third one in the period of 1996-1997. In terms of value, Indonesia's exports of footwear to Argentina had continued to decline from US$24.1 million in 1994 to US$23.7 million in 1995; US$22 million in 1996, and US$20.7 million in 1997. Indonesia believed that the main reason for this decline was the safeguard measures imposed by Argentina. Since 1993 Indonesia's exports of footwear to Argentina had continued to encounter restrictions. In December 1993, specific duties had been imposed on Indonesia's exports of footwear to Argentina. Although Argentina had withdrawn its high specific duties on footwear and had reduced its 3 per cent statistical tax after the United States had challenged these measures in October 1996, it had notified in July 1997 the WTO that it had replaced its specific duties with equally restrictive specific duties in the form of a "safeguard measure". This regime had caused further substantial decline in Indonesia's footwear exports to Argentina, both in terms of volume and value. Mindful of its rights under the DSU and of

the inconsistencies of the measures taken by Argentina with its WTO obligations, Indonesia had participated as a third party in the panel established on 23 July 1998, at the request by the EC. Despite the fact that that panel had yet to make its decision, in November 1998 Argentina had adopted a new measure (Resolution 1506/98), which in essence had modified the disputed measure (Resolution 987/97), and had imposed a tariff-rate quota on imports of footwear in addition to the safeguard duties previously applied. Moreover, the new measures had postponed any liberalization of the original safeguard duty until 25 February 2000, and would allow the liberalization of the tariff-rate-quota only once during the existence of the measure. In addition, until the present meeting, Indonesia was not aware whether Argentina had notified this measure to the WTO. On 22 April 1998, Indonesia had requested consultations with Argentina with a view to reaching a mutually satisfactory solution to this matter. These consultations had been held on 21 May and 7-8 September 1998 in Geneva, but had not resulted in a satisfactory resolution of the matter. On 18 December 1998, Indonesia had requested supplementary consultations with Argentina regarding its tariff-rate-quota imposed in November 1998. These consultations had been held on 11 January and 2 February 1999 in Geneva. Indonesia regretted that the consultations had not led to a satisfactory resolution of the matter. As contained in WT/DS123/3, Indonesia believed that the measures taken by Argentina were in breach of its obligations under the provisions of the Agreement on Safeguards and in violation of Article XIX of GATT 1994. Therefore, Indonesia was requesting the establishment of a panel with standard terms of reference to consider and decide on the consistencies of those measures with Argentina's WTO obligations.

The representative of Argentina said that his delegation had two concerns with Indonesia's request for a panel. The first was a systemic concern with regard to the timing of the panel request, and the second related to the proposed terms of reference of the panel. With regard to the timing of the request, the safeguard measure on imports of footwear challenged by Indonesia was currently being examined by the Panel established at the request of the EC and its work would soon be completed. He expressed Argentina's concern about repeated panel proceedings against the same Member on issues that were already the object of a panel proceeding in the late stage, and which placed an excessive burden on the respondent. In the case at hand, the Panel established at the request of the EC would be adopted by the DSB before the new proceeding requested by Indonesia was completed. Therefore, the panel requested by Indonesia would become a moot case. Besides, repeated panel proceedings could modify the balance of rights under the DSU with regard to the submissions of parties. This late panel request would create an imbalance in favour of the complainant who had already participated as a third party in the first Panel on the same matter. The findings of that Panel would be known at a time when the first written submissions would be made to the panel requested at the present meeting, or when the first substantive meeting of the parties would be held. As a result, Indonesia would have full knowledge of the respondent's arguments. He asked whether, under the DSU, the respondent had to reiterate its arguments already submitted to the first Panel in which Indonesia had participated as a third party. In practice, the respondent would have to defend itself twice on the same matter against two different parties since the timing of the second complaint had not allowed for a single panel proceeding under Article 9.1 of the DSU. Repeated panel proceedings could undermine the dispute settlement mechanism, in particular, when the respondent was a developing country with limited resources. This was a systemic issue and as such should be resolved in the DSU review. Although Argentina considered that this request would result in a misallocation of resources both for the Secretariat and Members, it recognized Indonesia's right to request a panel.

Argentina considered that the terms of reference proposed by Indonesia did not constitute standard terms of reference as stipulated in Article 6.2 of the DSU. While Indonesia's request had reflected the discussion in the various rounds of consultations, it had not complied with the requirements of Article 6.2 of the DSU, since the specific measures at issue had not been clearly identified. Indonesia requested that the Panel find that Argentina was in breach of its obligations with respect to "any other measure based upon the determination of serious injury notified by Argentina in

G/SG/N/8/ARG/1". This implied that hypothetical measures had been included in the terms of reference. It was not known what specific measure was at issue, within the meaning of Article 6.2, that would have to be submitted for examination by the panel. It was also not clear what legal basis of the complaint might be invoked in the case of a measure that did not exist. He asked whether the hypothetical measure referred to by Indonesia could be declared to be in breach of the Agreement on Safeguards. If the expression "…any other measure based upon the determination of serious injury notified by Argentina …" refered to the measures mentioned in the document, then it was redundant. If, on the contrary, it refered to measures that did not exist it should not be included within the terms of reference under Article 6.2 of the DSU. The aim of the dispute settlement mechanism was to find a positive settlement to disputes. In the absence of a mutually agreed solution, the first objective of the dispute settlement mechanism was to secure the withdrawal of the measures concerned if these were found to be inconsistent with the provisions of any of the covered agreements (Article 3.7 of the DSU). The DSB could not rule on the withdrawal of hypothetical or future measures. Taking into account that the prompt settlement of disputes was essential for the effective functioning of the WTO (Article 3.3), Argentina was prepared to accept the establishment of a panel at the present meeting, provided that Indonesia agreed to modify the terms of reference of the panel by deleting the expression "any other measure based upon the determination of serious injury notified by Argentina …".

The representative of the European Communities said that as indicated by Argentina, the EC had requested the establishment of a panel to examine the same matter and that panel had been established at the DSB meeting on 23 July 1998 to consider the legality or otherwise of the safeguard measures taken by Argentina. The work of the Panel would soon be completed. The modifications introduced by Argentina to the disputed measures had also been considered by the Panel. Under the existing DSU rules, it was not possible to inform third parties of the results of the Panel's work at this stage. However, he believed that the work of the Panel and its results would shed considerable light on these measures, as well as on Argentina's modifications thereto which, the EC continued to believe, were not consistent with the WTO rules.

The representative of Indonesia said that in light of the statements made by Argentina and the EC, her delegation was willing to consider the proposal by Argentina. However, she was not in a position to decide on this issue at the present meeting, and had to consult with her authorities. She added that Indonesia, as a third party in the Panel established at the request of the EC, was not fully aware of any developments concerning the ongoing Panel's proceedings.

The representative of Uruguay shared the systemic concerns raised by Argentina with regard to repeated panel proceedings.

The representative of Hong Kong, China said that his delegation had no trade interest with regard to the dispute in question. However, since Argentina had raised a systemic issue, his delegation wished to express its view with regard to the systemic implications of this matter. His delegation considered that, in accordance with Article 10.4 of the DSU, Indonesia had the right to request a separate panel on the subject-matter already examined by another Panel.

The representative of Argentina said that his country considered that Article 10.4 of the DSU was not applicable in this case. Article 10.4 referred to measures taken in the past which had already been the subject of panel proceedings. It did not refer to a measure which was being examined by the ongoing panel as in the case at hand. Furthermore, this interpretation was in line with the logic of Article 10.4 because if the parties wished to seek a solution to a dispute, a third party should wait until the proceedings had been terminated and the respondent had implemented DSB recommendations.

The Chairman said that the systemic issue raised by Argentina could be taken up in the DSU review. He noted that this issue had been placed on the agenda of the next informal DSB meeting on

the DSU review. In the meantime, it was necessary to find a practical solution. Since Indonesia was not in a position at the present meeting to respond to the proposal by Argentina, the DSB would have to revert to this matter at its next regular meeting.

The representative of Indonesia said that Argentina had not objected to Indonesia's request for a panel, but had proposed some changes with regard to the terms of reference suggested by Indonesia. She proposed that the DSB establish a panel at the present meeting and that its terms of reference be discussed at a later date before the next regular meeting.

The representative of Argentina said that his delegation could agree to the establishment of a panel provided that the terms of reference of the panel were to be discussed in accordance with Article 7.1 of the DSU.

The Chairman said that it was his understanding that Argentina could agree to the establishment of a panel on the understanding that the parties to the dispute reached an agreement on the terms of reference. In the absence of such an agreement standard terms of reference would apply in accordance with Article 7 of the DSU.

The representative of Argentina reiterated that his delegation could agree to the establishment of a panel at the present meeting but not to the terms of reference proposed by Indonesia. The terms of reference had to be discussed by the parties to the dispute within the 20 day period referred to in Article 7.1 of the DSU. For that purpose, Argentina requested that the DSB authorize the Chairman to draw up the terms of reference of the panel in consultation with the parties to the dispute.

The representative of Indonesia said that her country's position was to request the establishment of a panel with the terms of reference contained in WT/DS123/3. She reiterated that she was not in a position to make a commitment with regard to any changes to be proposed by Argentina. However, her delegation was willing to consider the proposal by Argentina. She therefore proposed that the DSB establish a panel with the terms of reference proposed by Indonesia.

The representative of Argentina asked whether Indonesia was prepared to discuss the terms of reference of the panel within the next 20 days, as set out in Article 7.1 of the DSU. If not, then Argentina could not agree to the establishment of a panel at the present meeting with the terms of reference proposed by Indonesia.

The representative of Indonesia said that she had to consult on this matter with her authorities. At the present meeting her instructions were clear, namely, that a panel be established with the terms of reference proposed by Indonesia whether or not it wished to discuss Argentina's proposal.

The Chairman said that Argentina had only asked whether Indonesia was in a position to discuss the terms of reference with Argentina in accordance with Article 7.1.

The representative of Indonesia said that her country was not in a position to accept Argentina's proposal to discuss the terms of reference.

The representative of Venezuela said that both parties had agreed to the establishment of a panel, but their positions concerning the terms of reference were different. Indonesia had to consult with its capital on this matter. He drew attention to Article 7.3 of the DSU, that the DSB could authorize the Chairman to draw up the terms of reference of the panel in consultation with the parties to the dispute. Therefore, Argentina's proposal was justified.

The representative of Indonesia said that her delegation was not in a position to agree to the proposal.

The Chairman reiterated that Indonesia was not in a position to discuss the terms of reference with Argentina and therefore a panel could not be established at the present meeting. He proposed that the DSB revert to this matter at a later date.

The DSB took note of the statements and to agreed revert to this matter at a later date.

3. United States - Section 110(5) of US Copyright Act

(a) Request for the establishment of a panel by the European Communities and their member States (WT/DS160/5)

The Chairman drew attention to the communication from the European Communities and their member States contained in document WT/DS160/5.

The representative of the European Communities said that Section 110(5) of the US Copyright Act had resulted in a situation where bars, restaurants and retail stores, as well as major retail store corporations were exempted from paying royalties while the music played on their premises contributed to their profits. In addition, the EC deplored the fact that the challenged statute had recently been amended in order to apply to an even larger share of restaurants, bars, and retail stores throughout the United States, to the detriment of the legitimate rights of authors of music works. The statute had not only entailed economic losses to the EC music industry, it had also violated several provisions of the Bern Convention for the Protection of Literary and Artistic Works as incorporated into the TRIPS Agreement through its Article 9.1. Since the consultation with the United States had failed to reach a mutually acceptable solution, the EC was requesting the establishment of a panel.

The representative of the United States said that her delegation could not accept the establishment of a panel at the present meeting. The United States considered that Section 110(5) of the US Copyright Act was fully consistent with its obligations under the TRIPS Agreement. The TRIPS Agreement specifically permitted Members to provide limitations and exceptions to the exclusive rights of copyright holders. Section 110 (5) was a reasonable limitation. The "Fairness in Music Licensing Act" passed by US Congress in Autumn 1998, had amended Section 110(5) but had not affected its consistency with the TRIPS Agreement.

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

4. Korea - Measures affecting imports of fresh, chilled and frozen beef

(a) Request for the establishment of a panel by the United States (WT/DS161/5)

The Chairman drew attention to the communication from the United States contained in document WT/DS161/5.

The representative of the United States said that Korea had a history of restraining beef imports. Its ban on beef imports, which had only been removed in 1989, had been replaced with a temporary quota and severe restrictions on the ability to import and distribute foreign beef. Although the quota had to be terminated by 1 January 2001, Korea had instituted various other measures that were currently impeding market access and had placed in doubt its commitment to fully liberalize trade in imported beef by the deadline of 2000. Korea had severely restricted import authority to a small number of governmental and commercial entities, thus, effectively controlling both wholesale

and retail channels of distribution, as well as the volume and price of imported beef admitted to enter the market. Korea had further confined the opportunity available to imported beef by requiring that foreign beef might only be sold in specialized import stores that were subject to a regulatory regime that discriminated against imports. Imports had been further restricted by the imposition of other charges not provided for in its schedule of concessions. Korea had also significantly expanded its domestic support to cattle producers in 1998. As a result, Korea had failed to meet its domestic support reduction commitment under the Agreement on Agriculture. Together with its trade restrictive measures, this action had seriously jeopardized the opportunity of exporters to participate in Korea's market. The United States believed that Korea's measures with respect to beef were inconsistent, in important respects, with its WTO obligations. Since Korea had not taken action to address its concerns in this area despite numerous bilateral and multilateral discussions during 1998, the United States was making its first request for a panel on this matter.

The representative of Korea said that his delegation was not in a position to consent to the establishment of a panel at the present meeting. Korea believed that its system concerning imports of beef, which included separation of sales outlets, maintenance of a quota system, imposition of a mark-up, limitation of import authority and domestic support to the cattle industry, was in conformity with Korea's WTO obligations. Korea had made sincere efforts to seek an amicable and mutually satisfactory solution to this issue through consultations with the United States pursuant to the provisions of Article 3.7 of the DSU. Therefore, Korea regretted that the United States had opted to resort to a panel process at this stage.

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

5. Proposed nominations for the indicative list of governmental and non-governmental panelists (WT/DSB/W/99)

The Chairman drew attention to document WT/DSB/W/99 which contained additional names proposed for inclusion on the indicative list in accordance with Article 8.4 of the DSU. He proposed that the DSB approve the names contained in document WT/DSB/W/99.

The DSB so agreed.

6. Korea - Taxes on alcoholic beverages

(a) Announcement by Korea

The representative of Korea, speaking under "Other Business", said that pursuant to Article 21.3 of the DSU, the EC, the United States and Korea had agreed on 23 April 1999 to appoint Mr. C. Ehlermann who had served as a member of the division during the Appellate review of the case on "Korea - Taxes on Alcoholic Beverages", as arbitrator with the task of determining a reasonable period of time for implementation of the DSB's recommendations with regard to this case. The arbitrator's ruling would be provided by 7 June 1999. His delegation was informing the DSB of the agreement for the sake of transparency.

The DSB took note of the statements.