WORLD TRADE ORGANIZATION

RESTRICTED

WT/DSB/M/65
15 September 1999

(99-3779)

Dispute Settlement Body
26 July 1999

MINUTES OF MEETING

Held in the Centre William Rappard
on 26 July 1999

Chairman: Mr. Nobutoshi Akao (Japan)

Prior to adoption of the Agenda, the item concerning the Panel Report on "Turkey - Restrictions on Imports of Textile and Clothing Products" (WT/DS34/R) was removed from the agenda following Turkey's appeal of the Report.

Subjects discussed: Page

1. Surveillance of implementation of recommendations adopted by the DSB

(a) Indonesia - Certain measures affecting the automobile industry: Status report by Indonesia (WT/DS54/17/Add.1 - WT/DS55/16/Add.1 - WT/DS59/15/Add.1 - WT/DS64/14/Add.1)

(b) European Communities - Regime for the importation, sale and distribution of bananas - Recourse to Article 21.5 of the DSU by Ecuador: Status report by the European Communities (WT/DS27/51)

(c) United States - Import prohibition of certain shrimp and shrimp products: Status report by the United States (WT/DS58/15)

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) Indonesia - Certain measures affecting the automobile industry: Status report by Indonesia (WT/DS54/17/Add.1 - WT/DS55/16/Add.1 - WT/DS59/15/Add.1 - WT/DS64/14/Add.1)

The representative of Indonesia said that in accordance with Article 21.6 of the DSU, her country was presenting its second status report on its progress in the implementation of the DSB's recommendations on this matter, and in particular with regard to the 1993 Car Programme. She was pleased to inform the DSB that on 24 June 1999 her Government had issued a new policy package on the automotive industry (the 1999 Automotive Policy) comprising the following elements: (i) Government Regulation No. 59/1999, dated 24 June 1999, effective from the date of promulgation and published in the 1999 Statute Book of the Republic of Indonesia No. 113, which affected the Third Amendment to Government Regulation No. 50/1994 on the Implementation of Law No. 8/1993 concerning VAT on Goods and Services and Sales Tax on Luxury Goods, as amended by Law No. 11/1994; (ii) Decree of the Minister for Industry and Trade No. 275/1999, dated 24 June 1999, on the Automotive Industry, effective from 1 July 1999 and published in the State Gazette of the Republic of Indonesia, which revoked the Minister of Industry Decree No. 114/M/SK/6/1993 on the Stipulation of Local Content of Motor Vehicles or Domestic Components; (iii) Decree of the Minister for Industry and Trade No. 276/1999, dated 24 June 1999, on the Registration of Types and Variants of Motor Vehicles, effective from 1 July 1999 and published in the State Gazette of the Republic of Indonesia; and (iv) Decree of the Minister of Finance No. 344/1999, dated 24 June 1999, on the Amendment of the Decree of the Minister of Finance No. 440/1996 on Stipulation of Classification Systems of Goods and Tariffs of Import Duty on Imported Goods, effective from the date of stipulation and published in the State Gazette of the Republic of Indonesia.

In accordance with the DSB's recommendations of 23 July 1998, the new policy had removed all WTO-inconsistent elements of the 1993 Car Programme by abolishing: (i) the policy regarding the determination of local content levels of domestically made motor vehicles or components as stipulated by the Minister of Industry Decree No. 114/M/SK/6/1993 of 9 June 1993; (ii) sales tax discrimination aspects of the 1993 car policy in favour of domestic motor vehicles which incorporated a certain value of domestic products; and (iii) the local content requirements linked to sales tax benefits on finished motor vehicles incorporating a certain percentage value of domestic products, as well as custom duty benefits on imported parts and components used in finished motor vehicles which incorporated a

certain percentage value of domestic products. With the entry into force of the 1999 Automotive Policy, which was based on non-discrimination and WTO-consistent tariff and tax measures, Indonesia considered that it had now fully implemented the DSB's recommendations in the case at hand.

The representative of the European Communities said that with regard to the 1993 Programme, the EC noted the information provided by the Indonesian authorities in its letters of 14 and 15 July 1999 concerning the decrees introducing a new import tariff structure and a new luxury tax. The EC reserved its right to further comment on these two new decrees since a complete English version of the document had just been provided to it. With respect to the 1996 National Car Programme, the EC noted the different measures taken by Indonesia to implement the DSB's recommendations. At the 16 June DSB meeting, Indonesia had explained certain actions, including the confiscation of assets of PT Timor and the takeover of the board of the company, as well as its actions to recover the foregone benefits due by PT Timor. The EC was currently reviewing these measures and reserved its right to revert to this issue at a later stage.

The representative of Japan said that his Government's immediate concern was the 1996 measure. However, Japan also had an interest in the implementation of the revised 1993 measures. Japan was concerned about the uncertain nature of the new measures and would continue to closely observe these new measures and their effects.

The representative of the United States thanked Indonesia for its status report and the translated extracts of its 1999 Automobile Policy which had been received by her country on 14 July. At the present meeting, she wished to give preliminary reaction, since the United States was in the process of examining the English translations of all relevant legal instruments. The United States was awaiting inputs from these US companies which had been adversely affected by the 1993 Car Programme. However, the preliminary reaction of the United States was that Indonesia had eliminated both the local content and discriminatory tax of the 1993 Programme that were inconsistent with Article III:2 of GATT 1994 and the TRIMs Agreement. If this preliminary reaction was confirmed, Indonesia should be congratulated for having implemented the DSB's recommendations within the required time-period.

The Chairman congratulated Indonesia for implementing the DSB's recommendations prior to the expiration of the reasonable period of time. It was his understanding that some delegations still had to examine the document provided by Indonesia. Therefore, if delegations wished to raise this matter in the future, the DSB would revert to it. However, the item would not be placed automatically on the agenda of the next regular DSB meeting.

The DSB took note of the statements.

(b) European Communities - Regime for the importation, sale and distribution of bananas - Recourse to Article 21.5 of the DSU by Ecuador: Status report by the European Communities (WT/DS27/51)

The Chairman drew attention to document WT/DS27/51 which contained the EC's status report on its progress in the implementation of the DSB's recommendations with regard to its banana import regime. He recalled that prior to adoption of the agenda, Panama had raised objections with regard to the title of this item which read: "EC – Regime for the Importation, Sale and Distribution of Bananas – Recourse to Article 21.5 of the DSU by Ecuador: Status Report by the EC". This issue had been discussed at the DSB meeting on 16 June and there had been a clear understanding that, with respect to this matter, the EC would report not only on the implementation under Article 21.5, but also on the overall implementation in the banana dispute.

The representative of the European Communities noted the explanation provided by the Chairman and said that in the title, the EC was referring to Article 21.5 as that was the latest stage in the implementation process. The Panel under Article 21.5 had made recommendations and had confirmed that the actions taken by the EC in 1998 were not sufficient. However, it was clear that the EC would modify its regime as a result of the entire process. If necessary, another title could be used in light of the point raised by Panama.

The present status report outlined the EC's plan of action. In particular, as mentioned in the third paragraph, the EC had held consultations and discussions with all the main interested parties, and would continue to do so. Consultations had mainly been held in Brussels and contacts had been made in Geneva with some of the main suppliers in order to study possible effects of the various options. It was clear that the EC was trying to reach agreement with the main suppliers and the main interested parties in order to avoid the risk of another challenge. However, the problem was that the main interested parties were not in agreement as to what they expected of the EC nor did they give any clear indication of what they considered to be WTO-consistent. Therefore, this was a difficult exercise for the EC. The interests of the various parties were different. This had also hampered the EC's attempts to make a proposal in July. However, it was its intention to make a new proposal in September. At this stage, the EC was not in a position to indicate which options would be pursued. All the options were still under consideration.

The representative of Panama refered to the issue raised by her delegation prior to adoption of the agenda. She reiterated that in the context of the DSU Review, Members had agreed that cases which had not been resolved would remain on the DSB's agenda. It was her delegation's understanding that the DSB would proceed in accordance with that agreement. She therefore requested that pending issues concerning the banana case remain on the agenda until the matter had been resolved.

The representative of Ecuador noted that the status report submitted by the EC did not provide sufficient details on the EC's actions in order to assess to what extent the EC had met its obligations towards implementation. In its status report, the EC outlined the measures taken to modify its banana import regime, which had been in place for seven years and which had caused serious harm to Ecuador's trade. Following the ruling of the fourth panel on this matter, the EC had initiated contacts and had taken steps towards modifying its banana regime. However, these steps had not been sufficient and had only created uncertainty and unpredictability in the banana trade. The EC had been granted 15 months, until 1 January 1999, to bring its banana import regime into conformity with the DSB's recommendations. It now appeared that the EC was seeking, without any justification, a further period of 12 months. Ecuador was aware that the banana issue had been placed on the provisional agenda of a meeting of the EC Council of Ministers of Agriculture scheduled for 17-18 October. Furthermore, it was his understanding that the issue of adoption of modifications to the banana import regime had been placed on the provisional agenda of a meeting of the EC Council scheduled for 16-17 November. The EC could continue to rationalize its delay in the process of implementation, but it was clear that there was no will to reform its banana import regime, and that the serious damage caused to banana exporters was of little concern to the EC. Ecuador was concerned about the negative effects of unilateral measures for the multilateral trading system. He recalled that on other occasions, the EC had warned against unilateral measures. He questioned whether an additional 12 month-period for implementation was not a unilateral measure. Such a unilateral measure would cause as much or more harm to the credibility of the system than other unilateral measures about which the EC was concerned. It would be difficult to imagine the reaction of some key Members if a developing country were to use the same delaying tactics against their trade.

Ecuador considered that the status report provided by the EC was brief and inaccurate. The EC claimed that it was examining various options which, even if they were in principle WTO-compatible in their present form, were far from being acceptable and compatible with WTO rules. He

made the following observations on the EC's options: (i) the EC was examining the possibility of tariff increases to prohibitive levels that would convert tariffs into a de facto quantitative restrictions; (ii) the margin of preference under consideration for ACP countries went far beyond the authorized level; (iii) with regard to the margin of preference, the EC was prejudging the reaction of Members concerning the waiver that would shortly expire; (iv) the options based on tariff quotas were not clear since no details had been provided on the distribution of import licences; and (v) the status report incorrectly referred to the Panel's statement on the system of allocating licenses by auction. It was possible to have a system of allocation of licenses by auction that was WTO-compatible. However, the system of auctions described by the EC in its communication to the EC Council was not WTO-compatible.

In its status report, the EC claimed that the main interested parties could not agree on a WTO-consistent solution thereby placing the responsibility on them. Ecuador wished to stress that the only party responsible for compliance was the EC. After the EC had been granted a reasonable period of time for implementation, Ecuador and the other complaining parties, had made various proposals on ways in which the EC could modify its regime. Subsequently, Ecuador had submitted to the Panel under Article 21.5 of the DSU, new proposals on this matter. No solution had emerged because the EC continued to use its delaying tactics so as to perpetuate the illegality of its regime under a new disguise.

The representative of Guatemala said that his country considered that the EC's options currently under examination would reproduce the same violations. His country had shown its confidence in the dispute settlement system. However, its legitimate expectations aimed at restoring its rights had been disappointed not once, but three times. The banana dispute had been brought into the WTO under its new dispute settlement system, which was binding and mandatory, and which was intended to bring security and predictability to the multilateral trading system. No Member would be willing to resort to the dispute settlement system, if implementation was subjected to delaying tactics, or if WTO-incompatible regimes were allowed to be maintained either through an increase in bound tariffs or through solutions requiring an exemption. He believed that faithful and legitimate compliance with the DSB's recommendations and rulings was the only satisfactory outcome for this dispute.

The representative of Honduras said that, as indicated in the status report, following its contacts with the main interested parties, the EC had been obliged to conclude that there was no solution on which all parties could agree. Honduras, which was an interested party in the settlement of this dispute, and despite the losses which the EC's banana regime had caused to his country, had not been consulted. His Government was obliged to raise its objections in a letter addressed to the President of the EC Council of Ministers of Agriculture, dated 17 June. It had also taken the initiative of meeting some officials of the EC member States in order to ensure that this dispute would be settled within the WTO, and that none of the options currently under examination were suitable for achieving that objective. A document describing the options indicated that the level of protection sought for ACP countries would be the same as the one under the previous system which had been declared to be inconsistent with WTO rules. The cost of maintaining the protection would not be borne by the EC but by Latin American countries and, to this end, options were being explored that violated the WTO obligations of Members. Without entering into detail, he wished to point out that all the options were WTO inconsistent. It would appear that there would be a need to extend the waiver and to increase bound tariffs. Furthermore, the system for administering licences would continue to hamper Honduran exports. Members should not accept this result since time and effort had been invested in pursuing this complaint in order to restore their rights. The EC's regretted that it had not been possible to achieve an acceptable solution, which would take into account the interests of all the banana suppliers. However, it had not provided any information about seeking a solution which would meet the requirements of the WTO Agreement, and which would restore the credibility of the dispute settlement system.

The representative of Japan said that his Government urged the parties concerned to make further efforts towards a prompt settlement of this dispute.

The representative of Panama wished to associate her delegation with the statements made by Ecuador, Guatemala and Honduras. Panama wished to underline that none of the options currently under examination were WTO-compatible. She reiterated that Panama was concerned about the additional time taken by the EC to comply with its obligations. In particular, Panama was concerned that the EC would again disregard the concerns of Members about the measures proposed. The current proposals made by the EC would not solve this dispute. Panama therefore requested the EC to try to make further efforts aimed at concluding this dispute as soon as possible.

The representative of Mexico said that it was his delegation's understanding that the EC had contacted all the main interested parties and that there was no agreement among those parties. His delegation was not clear what was meant by all the main interested parties. He observed that the EC could have had referred to the suppliers with substantial interest since Mexico had not been consulted. Mexico had been invited to only one or two informal contacts and had not received a copy of some of the communications sent by the EC to specific Members requesting them to provide their views on the options under consideration. Mexico was a complaining party in this dispute and had reserved its rights under Article 21.5 of the DSU. The fact that the parties could not agree seemed more like an excuse. Mexico, together with the other complaining parties continued to work closely to protect its WTO rights. He noted that there was no need to agree or to negotiate when a Member applied a WTO-consistent measure. If the EC considered that it was not in a position to design a WTO-consistent regime, there was a need to consult with other Members. Mexico believed that the EC as an important Member of the WTO should set the example that the DSB's recommendations had to be implemented in accordance with the letter and spirit of the WTO Agreement.

The representative of the United States welcomed the EC's status report concerning its efforts to amend its banana import regime. The United States had held discussions with the EC on the various options for a WTO-consistent solution to this dispute. These included a single tariff option and a quota option. The United States was concerned about the EC's selective interpretation of the Panel report in an effort to justify a discriminatory approach. The United States was also disappointed that the EC had focused on three options that appeared to be aimed at repeating – or enhancing – the current discrimination against the import, sale and distribution of trade in Latin American bananas. The EC's status report mentioned that the broad range of so-called "interested parties" in this dispute could not agree on a single WTO-consistent solution. The EC's difficulties did not lie in determining which WTO-consistent solution would satisfy the complaining parties. The EC had, on several occasions, reiterated that it did not have to satisfy other Members; it only had to comply with its WTO obligations. The EC's problem was that it was trying to match its WTO obligations with the objective of long-protected domestic interests, whether European banana producers or distributors of EC and ACP bananas. As long as these remained important EC's objectives, it was understandable that the EC's internal deliberations would continue to produce only WTO-inconsistent options. However, the United States hoped that a solution to this dispute would be found once the EC recognized that eliminating such obvious protectionism at home was a small price to pay for the vast benefits provided by the WTO Agreements.

The representative of Colombia said that his Government had been contacted by the EC representative and had been invited on two occasions to Brussels. During these consultations, the scope and content of some of the options had been examined. Colombia's concern was to find the ways and means to ensure a WTO-consistent implementation of the DSB's recommendations. Through a letter from the Minister of External Trade of Colombia, his country had had an opportunity to carry out a detailed analysis of these options and to explain its views thereon. However, on the basis of the statements made at the present meeting, it was clear that the EC had not begun its negotiations with interested parties. It had only requested those parties to provide their comments on the options. However, these options had been found to be potentially inconsistent and would result in

similar difficulties as those existing in the past. Therefore, the EC statement that the main interested parties had not been in a position to agree left the impression that negotiations were underway. The parties had not reached any agreement due to fact that the EC's options would be WTO-inconsistent. Colombia welcomed the consultations on the EC's options. The EC had received views on these options and should now make a proposal which would lead to a WTO-consistent regime and which would be acceptable to the parties concerned.

The representative of the Philippines referred to the point made by Panama concerning the inclusion of this item on the agenda. He said that Article 21.6 of the DSU provided two sets of rules. First, any Member could raise this matter after the adoption of the panel report. Second, there was an obligation that the item be inscribed on the agenda six months after the expiry of a reasonable period of time. The EC had made the report on its progress in the implementation of the Article 21.5 panel's recommendations. However the item should have been included on the agenda without a Member's request. The Philippines believed that although it was prudent for a complying Member to consult with all the parties involved, this should not be an excuse for that Member not to comply with its obligations. The fact that the parties could not agree did not exempt that Member from its responsibilities to comply with its obligations.

The representative of the European Communities said that the EC did not contest that this item should be on the DSB's agenda of each meeting. The only question was whether the EC should ask for it, or whether it should be placed on the agenda automatically. With regard to the substance, the EC accepted its obligation to bring its regime into conformity and was trying to do this in an intelligent manner. However, the implementation process in 1998, which had been based on the best legal advice, had been challenged. Some delegations had stated that the EC was taking a unilateral measure. This was no more unilateral than any other element of trade policy of any country. In the EC's view comments made by some delegations were encouraging the EC to act unilaterally. Three delegations had stated that none of the EC's options were WTO-compatible. However, two of those options had been suggested by the Panel. The third one had been developed from an idea which had been put forward by the Panel but was not recommended by it. There were some difficulties since it was not possible to determine what would be acceptable and what would be WTO-consistent. He believed there was some confusion since those delegations who had stated that the options were not WTO-consistent, meant that they would not be satisfied with that solution. The EC would continue to do its best and was aware that there was a time obligation. He noted that these were institutional problems. This was not an excuse, but it was not easy at this stage to get proposals through the EC's decision-making bodies. Any delegation wishing to convey its views to the EC on the options, was welcome to do so. If the five complainants would like to submit a joint submission, his delegation would welcome it.

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

The Chairman said that at the next regular meeting of the DSB this item would appear on the agenda as "European Communities - Regime for the Importation, Sale and Distribution of Bananas: Status Report by the EC". He recalled that the issue had been discussed and no delegation had been opposed to the idea that such items should be placed on the agenda automatically. However, in the course of the discussions on implementation in the DSU review, it had not been possible to reach an agreement on who should place such items on the agenda. In accordance with Article 21.6 of the DSU, "… the issue of implementation shall be placed on the DSB agenda after six months following the date of establishment of the reasonable period of time". Many delegations stated that the issue should be placed on the agenda automatically. This would imply that any Member, the Chairman or the Secretariat could place it on the agenda. However, a few delegations had stated that this could only be done by the parties to the dispute.

The DSB took note of the statement.

(c) United States - Import prohibition of certain shrimp and shrimp products: Status report by the United States (WT/DS58/15)

The Chairman drew attention to document WT/DS58/15 which contained the United States' status report on its progress in the implementation of the DSB's recommendations with regard to the US import prohibition of certain shrimp and shrimp products.

The representative of the United States said that in accordance with Article 21.6 of the DSU, her country was submitting its first status report on the implementation of the DSB's recommendations in the shrimp case. As the status report made clear, she wished to highlight that the US process was very open and provided opportunities for input from all interested parties. The implementation of the DSB's recommendations and rulings in this matter had several distinct elements which would continue to include opportunities for input from the parties to the dispute. The steps taken by the United States to implement the findings and recommendations included several actions. First, on 8 July 1999, the US State Department had issued revisions to its guidelines implementing the US Shrimp/Turtle Law. The revised guidelines, in accordance with the DSB's recommendations and rulings were intended to: (i) introduce greater flexibility by taking into account foreign programmes as well as the US programme; and (ii) outlined a timetable and procedures for certification of decisions, including an expedited timetable to apply only in 1999. These changes were designed to increase the transparency and certainty of the certification process and to afford foreign governments seeking certification a greater degree of due process. Second, the United States had doubled the efforts that it had begun in 1996 to negotiate an agreement with governments of the Indian Ocean region on the protection of sea turtles in that region. The United States was cautiously optimistic that these efforts would yield positive results. Third, the United States was offering technical training in the design, construction, installation and operation of Turtle Excluder Devices (TEDs) to any government upon request. Any government wishing to receive such training should make a request to the United States in writing through diplomatic channels, and the United States would make every effort to meet such requests. The United States believed it had made important strides in meeting its implementation commitment and appreciated the constructive input received from the parties to the dispute throughout this process.

The representative of Thailand thanked the United States for its statement and considered that the steps it had taken constituted a move in the right direction. Thailand appreciated the US intentions to implement the DSB's recommendations and rulings and acknowledged the steps taken thus far by the US State Department. In particular, Thailand welcomed the opportunity to provide comments on the new US Guidelines for the Implementation of Section 609 of Public Law 101-162 before it had been published on 8 July 1999. His delegation noted, as indicated in the US status report, that the revision of the guidelines was just "one key element " of the US implementation. Thailand also noted the US intentions regarding negotiations of conservation agreements as well as technical assistance. In particular, his delegation noted that Section II:B of the guidelines would allow harvesting nations not using TEDs to be certified pursuant to Section 609, if that nation enforced a regulatory programme to protect sea turtles which was comparably effective to that of the United States. Thailand considered that if the United States was to use a mathematical approach in determining comparability in this regard, that approach would have to be supported by credible scientific and objective evidence. In addition to the revised guidelines, negotiations on conservation agreements and technical assistance, Thailand wished to have further clarification on whether there was any other element concerning the US implementation. In accordance with the Appellate Body's ruling, the US shrimp embargo, as applied, violated Article XI of GATT 1994 and was not justified by Article XX. Therefore, the US embargo would have to be lifted as part of implementation in good faith. The United States should also consider a review of Section 609 of Public Law 101-162. This legislation was subject to a pending litigation in the US Court of International Trade. He pointed out that the judgment rendered in this litigation would have some effects on US domestic procedures in implementing the DSB's rulings and recommendations.

The representative of India welcomed the first status report submitted by the United States. India noted the US intentions to implement the DSB's recommendations in a manner which would be consistent with its commitment to the protection of endangered species, including sea turtles. However, his delegation wished to point out that what was at issue in the Panel and the Appellate Body reports was the question of the United States bringing its measure found to be inconsistent with Article XI of GATT 1994 and not justified under Article XX of GATT 1994, into conformity with the United States' WTO obligations. In India's view there was no contradiction between the US obligations to fully abide by WTO rules and its commitments to the protection of endangered species, including sea turtles. His delegation noted some "several distinct elements" provided in the US status report. In particular, India appreciated the opportunity given to the other parties to the dispute to provide inputs to the implementation process. His delegation also noted "one key element" of implementation, namely the revision of guidelines pursuant to the DSB's rulings and recommendations to implement the US Shrimp/Turtle Law. It also noted other elements such as efforts of the US Government to negotiate an international agreement with the countries of the Indian Ocean Region for the protection of sea turtles in that area and the US offer of technical training to the personnel of other countries in designing and using TEDs. However, India wished to join and support the statements made by Thailand and other delegations requesting the United States to disclose other elements of its implementation. This would enable the DSB to determine whether the US measures were in full conformity with the DSB's recommendations as well as with its obligations under the WTO Agreement. He recalled that the last paragraph of the Appellate Body Report endorsed the Panel's findings that the US measure in the form of import prohibition was inconsistent with Article XI of GATT 1994. Furthermore, it found that the US measure was not justified under Article XX of GATT 1994. Therefore, the United States had to lift the import prohibition as part of implementation in good faith. Furthermore, the United States would also have to review Section 609 of the Public Law 101-162, which at present constituted the legal basis for the import prohibition and the dispute.

The representative of Malaysia said that, like Thailand and India, his country appreciated the US intention to implement the DSB's rulings and recommendations. Malaysia also acknowledged the steps taken thus far by the US State Department. In particular, his country welcomed the opportunity to provide comments on the Revised Guidelines for the Implementation of Section 609 of Public Law 101-162 Relating to the Protection of Sea Turtles in Shrimp Trawl Fishing Operations. Malaysia noted that, as stated in the status report, the Revised Guidelines constituted "one key element" of the US implementation. It also noted the US intentions regarding negotiations on conservation agreements as well as technical assistance. However, he reiterated that in order to give effect to the DSB's rulings and recommendations, the import prohibition had to be lifted immediately. Under the Revised Guidelines, Malaysia and other harvesting nations would still be subject to the annual certification and rigorous assessment by the United States. Therefore, Malaysia urged the United States to lift the import prohibition immediately in order to comply with the DSB's rulings and recommendations. He reserved his country's right to raise these issues in the appropriate forum.

The representative of Pakistan said that, like Thailand, India and Malaysia, his country welcomed the US status report outlining details concerning its intentions to implement the DSB's rulings and recommendations in this dispute. As stated in the Appellate Body report, the US measure violated Article XI of GATT 1994 and was not found to be justified under Article XX of GATT 1994. It had therefore been found necessary to recommend that the United States bring its measure in conformity with its WTO obligations. Like Thailand, Malaysia and India, Pakistan noted with appreciation the opportunity provided to the parties to the dispute to comment on the implementation process, and the US intention regarding negotiations on conservation agreements. Pakistan strongly supported Thailand, Malaysia and India in requesting that the United States immediately lift its import prohibition as part of implementation in good faith. Pakistan supported Thailand's request that the United States unveil other elements of the implementation process in order to enable the DSB to make an appropriate and full assessment of its consistency with the United States' WTO obligations. It was Pakistan's understanding that even under the Revised Guidelines, the harvesting nations would still be

subject to annual certification and rather rigorous assessment formalities, which in itself, had the potential of disrupting trade. Therefore, Pakistan requested that the United States revise Section 609 of the Public Law 101-162.

The representative of Australia said that his country, as a third party in this dispute, welcomed the Revised Guidelines issued by the US State Department on 8 July. In particular, Australia noted that these revisions involved some important improvements in the transparency, administration and procedural fairness of the US regulations governing access to the US shrimp market. His country hoped that these Revised Guidelines would enable the US State Department to make an early determination which would allow Australia to export shrimp from the Spencer Gulf region. Shrimp from the Spencer Gulf region had been denied access to the United States despite the fact that there were no sea turtles in this fishery. He expressed his country's regret that it had taken the United States so long to revise its guidelines to address this particular anomaly but welcomed the advice that it had made some important changes in this regard. Australia also expected that the shrimp from its Northern Prawn Fishery could be exported to the United States once this fishery had introduced mandatory use of TEDs as from April 2000. Therefore, Australia would be closely watching implementation of the US measure to ensure that the legitimate access concerns of both the Spencer Gulf and the Northern Prawn Fishery were expeditiously addressed. While his country welcomed some aspects of the US approach to implementation, it remained concerned that the United States apparently intended to maintain an import ban that enforced a unilaterally determined environmental standard. It wished to remind the United States of the strong recognition by the international community, expressed in principle 12 of the Rio Declaration that " Unilateral actions to deal with environmental challenges outside the jurisdiction of the importing country should be avoided. Environmental measures addressing transboundary or global environmental problems should, as far as possible, be based on an international consensus". This principle was clearly applicable to the issues raised by sea turtle conservation. Respect for this principle would do much to help ensure that trade and environment policies were mutually supportive. Australia recognized the important issues raised by sea turtles conservation. In October 1999, Australia would host a workshop to examine policy options for enhanced Indian Ocean cooperation on sea turtle conservation in that region. If the United States wished to pursue its concerns about sea turtles conservation, Australia would encourage it to adopt a more forthcoming approach to dialogue and cooperation with other countries. His country found it difficult to reconcile the US maintenance of an import ban on shrimp with a real commitment to cooperation and dialogue with other countries. Australia appreciated the strong public interest in this dispute and the difficulties involved in promoting an informed public debate on the WTO's role. However, one had to take a long-term view and seek ways of reconciling legitimate trade and environmental concerns. In Australia's view, a cooperative rather than trade-restrictive approach to addressing sea turtle conservation concerns would provide a means to pursue these concerns that would be both fully consistent with WTO obligations and most effective from an environmental prospective. Australia urged the United States to examine these issues carefully and would be looking closely at future status reports in order to follow developments in the US approach to implementation and to assess what further steps might be necessary in the light of these developments.

The representative of the United States thanked Malaysia, Thailand, India, Pakistan and Australia for their statements. With regard to their comments concerning additional implementation steps, she believed that her earlier statement and the status report generally covered the areas in which the United States would focus its implementation efforts in the future. With respect to the request that US implementation should result in an immediate lifting of the import ban, the United States noted that the procedures in place under the revised guidelines would permit a process under which non-certified Members could apply for certification and that if certified, this would permit the shipment of their shrimp to the United States. Regarding the statement that the United States should revise the Shrimp-Turtle Law, i.e. Section 609, she recalled that the Appellate Body report had found no inconsistency between the US legislation at issue and its WTO obligations. Rather, the Appellate Body had found fault with certain aspects of the way the law was administered and, as reported at the present meeting, the United States was taking steps to address these findings within the reasonable

period of time agreed between the United States and the complaining parties. With respect to the comment by the complaining parties concerning the US Court of International Trade, her delegation noted that the case was still in litigation. Therefore, it was not appropriate for the United States to comment on the case or any possible outcome thereof.

The representative of Ecuador said that his country was a third party in this dispute and, as one of the major suppliers of shrimp to the US market, would carefully follow the implementation of the DSB's recommendations.

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

2. Argentina - Measures affecting the export of bovine hides and the import of finished leather

(a) Request for the establishment of a panel by the European Communities (WT/DS155/2)

The Chairman recalled that the DSB had considered this matter at its meeting on 16 June and had agreed to revert to it. He drew attention to the communication from the European Communities in document WT/DS155/2.

The representative of the European Communities said that this long-standing matter had been discussed with Argentina for some time. At some stage, the EC had believed that there was an agreement to the effect that the measures would be phased out, but that was a misunderstanding. The recent efforts by the EC to discuss this matter with Argentina had not resulted in any proposal. Therefore, at the present meeting, the EC was requesting the establishment of a panel to examine this matter.

The representative of Argentina said that, during its consultations with the EC after the 16 June DSB meeting Argentina had made efforts to clarify some aspects concerning this dispute. These included the following elements. First, as a result of its two-year negotiations and discussions with the EC, in the context of the EC investigation (Council Regulation (EC) No. 3286/94), Argentina had modified its system of duties on leather exports. However, although a phase-out had been introduced, the situation remained unchanged. The EC no longer questioned the export duties *per se*, but Argentina's customs decision authorizing the participation of the tanning industry in the export of hides. Argentina had repeatedly explained in detail the significance of this regulation and had stressed that the technical experts of the raw and semi-tanned hide industry did not have any legal authority to prevent exports. This was also clear from Argentina's legislation. Furthermore, the fact that hides had been exported in 1999 to Italy, contested the EC's assertion that there was a de facto prohibition on exports. Second, Argentina considered that the EC's argument with regard to the advance payment of VAT and profit tax was a systemic complaint not significant from a commercial point of view. Taxes in the Argentine leather manufacturing sector were probably greater for domestic producers than for importers of such goods. With regard to advance payment of these two taxes, domestic producers received similar treatment. The EC appeared to continue to harbour doubts about the content of Argentina's legislation. Third, Argentina was aware that since the EC's request was on the agenda for the second time, the DSB would have to establish a panel at the present meeting. Argentina considered the EC's request to be inappropriate, but would not oppose the establishment of a panel, and was ready to defend its measures. Argentina hoped that it would still be possible to find a solution to enable the parties to settle this dispute by mutual agreement.

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.

3. United States – Anti-Dumping Act of 1916

(a) Request for the establishment of a panel by Japan (WT/DS162/3)

The Chairman recalled that the DSB had considered this matter at its meeting on 16 June and had agreed to revert to it. He drew attention to the communication from Japan contained in document WT/DS162/3.

The representative of Japan said that, as stated at the 16 June DSB meeting, his Government considered that the US Anti-Dumping Act of 1916 was neither consistent with, nor justified by the relevant provisions of the WTO Agreement. Although the United States insisted that its 1916 Act was not directed at dumping and therefore was not an anti-dumping statute, Japan believed that the US 1916 Act was not only directed at antitrust, but was directed at dumping. Japan had tried to resolve this matter with the United States. However, the consultations held in Geneva on 17 March 1999 had failed to settle this dispute in a satisfactory manner. Since its request was on the agenda for the second time, Japan expected that a panel would be established at the present meeting.

The representative of the United States expressed his country's disappointment that Japan had taken the step of requesting a panel. The United States believed that the 1916 Act was fully consistent with its WTO obligations. Furthermore, in the 82 years since the enactment of this Act, no party had ever been awarded money damages or any form of relief. Thus, the trade effects from the statue were *de minimis*. If Japan decided to pursue this dispute, the United States would actively defend the law.

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 representatives of the European Communities and India reserved their third-party rights to participate in the Panel's proceedings.

4. United States – Definitive safeguard measures on imports of wheat gluten from the European Communities

(a) Request for the establishment of a panel by the European Communities (WT/DS166/3)

The Chairman recalled that the DSB had considered this matter at its meeting on 16 June and had agreed to revert to it. He drew attention to the communication from the European Communities contained in document WT/DS166/3.

The representative of the European Communities said that the EC maintained its request for a panel since no new developments had taken place after the 16 June DSB meeting. It was the EC's expectation that a panel would be established at the present meeting.

The representative of the United States said that his country believed that it had complied with all its WTO obligations in structuring a safeguard measure that would remedy the serious injury suffered by its domestic industry, while at the same time, ensuring Members' continued access to the US market. The United States had implemented this measure only after its competent authorities, the US International Trade Commission, had conducted an exhaustive investigation of the domestic industry. The US system was fully transparent, and the EC's domestic industry had actively participated in the proceedings. Moreover, the United States had consulted with the EC prior to implementing its measure. In allocating its quota, the United States had used the average of imports in the last three representative years for which statistics were available, as required under the Safeguards Agreement. Moreover, the United States had properly notified the Committee on

Safeguards of the proposed and final measure, as required by Article 12 of the Safeguards Agreement. The United States would actively defend its safeguard measure.

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 representatives of Australia and New Zealand reserved their third-party rights to participate in the Panel's proceedings.

5. Korea – Measures affecting imports of fresh, chilled and frozen beef

(a) Request for the establishment of a panel by Australia (WT/DS169/5)

The Chairman drew attention to the communication from Australia contained in WT/DS169/5.

The representative of Australia said that his country's concerns about the Korean market for imported beef had a long history. In 1989 Australia had taken successful action in the GATT to have Korea lift its import ban on beef. However, the ban on beef imports had been replaced with a quota and a number of restrictions on the import and distribution of foreign beef. Although Korea had an obligation to eliminate all restrictions on imported beef by 1 January 2001, it had imposed a range of measures which impeded market access. These measures included regulations affecting the sale, display and distribution of beef which discriminated against the imported product. In particular, a requirement that imported beef be sold in specialist beef import stores subject to regulations not applied to domestic beef. Korea maintained a number of other impediments to the sale of imported beef, including limiting import authority to a small number of entities so that the purchase of imported beef was confined to limited wholesale, and retail distribution channels, volumes and prices of imported product were controlled in a manner which limited the opportunities available for imported beef. Korea also applied charges on imported beef not provided for in its schedule of concessions. Furthermore, in 1998 Korea had increased the amount of domestic support to its beef industry to levels which had resulted in its failure to meet its reduction commitments under the Agreement on Agriculture. All these measures had severely limited the opportunities of exporters to participate in the Korean market, and were contrary to Korea's WTO obligations. They had also placed in doubt Korea's commitment to fully liberalize trade in imported beef by the deadline of 2000. Australia had raised its concerns with Korea bilaterally on several occasions and consultations had been held on 28 May 1999. However, no action had been taken by Korea to address Australia's concerns. Accordingly, Australia was requesting that a panel be established to examine this issue.

The representative of Korea said that his country was convinced that its system of beef importation and distribution, which included maintenance of a quota system, separation of sales outlets, limitation of import authority, imposition of a mark-up, domestic support for the cattle industry etc., was in full conformity with its WTO obligations. Despite its sincere efforts to resolve this issue amicably through consultations with Australia, Korea regretted that the parties had failed to reach a mutually satisfactory solution. Since the request was on the DSB agenda for the first time, Korea had the right not to agree to the establishment of a panel in accordance with Article 6.1 of the DSU. However, on 26 May 1999, at the request of the United States, a panel had been established to examine the same matter. Therefore, pursuant to Article 9.1 of the DSU, Korea was prepared to agree to the establishment of a panel at the present meeting, provided that Australia and the United States agreed that a single panel examine both complaints for the sake of judicial economy.

The representative of the United States said that Australia's decision to request a panel on this matter underscored the serious concerns that Korea's trading partners had with the impediments to market access that Korea had created. More than four years ago, Korea had made its commitment to

complete liberalization of the market for beef and to end quantitative restrictions on beef by 1 January 2001. As that date was approaching, the goal appeared increasingly elusive since Korea had instituted new measures to restrict trade rather than dismantling those that already existed. Korea had excluded imported beef from almost 90 per cent of the sales outlets in which meat was sold. Imported beef could not be sold alongside Korean produced beef. Even in the very few stores in which both imported and Korean beef might be sold, they had to be sold in separate display cases in identified sales areas. Those, and other WTO-inconsistent measures, could not be allowed if one were to achieve an open trading system in which imported products were treated no less favorably than domestic products. The United States joined with Australia and Korea in requesting that the panel established on 26 May 1999 also examine the matter raised by Australia in WT/DS169/5 and that a single panel be established pursuant to Article 9.1 of the DSU. By taking such action, the matters in dispute could be addressed in the most efficient manner.

The DSB took note of the statements and agreed that Australia's request for the establishment of a panel with standard terms of reference be accepted, and that as provided for in Article 9 of the DSU in respect of multiple complainants, the panel established on 26 May 1999 to examine the complaint by the United States contained in document WT/DS161/5 would also examine Australia's complaint contained in document WT/DS169/5.

The Chairman recalled that at the 26 May DSB meeting Australia, Canada and New Zealand reserved their third-party rights to participate in the proceedings of the Panel established at the request of the United States. He noted that at the present meeting Canada, New Zealand and the United States reserved their third-party rights to participate in the proceedings of the Panel established at the request of Australia.

The DSB took note of the statement.

6. Guatemala – Definitive anti-dumping measure on grey Portland cement from Mexico

(a) Request for the establishment of a panel by Mexico (WT/DS156/2)

The Chairman drew attention to the communication from Mexico contained in WT/DS156/2.

The representative of Mexico said that his country had asked for the inclusion of this item on the agenda in order to request the DSB to establish a panel to examine this matter. Mexico hoped that Guatemala would accept the establishment of a panel at the present meeting since, although the request was on the DSB agenda for the first time, there was nothing new about the issue. He said that since 15 October 1996, the anti-dumping investigation had been challenged by Mexico and according to the panel which had reviewed it at the time, "rested on an insufficient basis and therefore should never have been conducted". The Appellate Body had considered that the Mexican request was not properly before it, while at the same time, pointing out that Mexico could bring forward another claim under the dispute settlement mechanism. Should Guatemala not accept the establishment of a panel at the present meeting, Mexico reserved the right to submit this request to the DSB when appropriate.

The representative of Guatemala said that his country objected to Mexico's request because during the consultations held on 23 February 1999, Guatemala had clearly expressed its readiness to bring this dispute to an end on a basis which would provide legal certainty for the parties involved. His country's position was determined by the fact that in Guatemala, the definitive anti-dumping measure was currently being reviewed by a judicial tribunal. If the same dispute was being examined by two different fora, the solution to the problem as proposed by Guatemala in the consultations would have to cover both fora. Failing this, any solution under the dispute settlement system would be meaningless since the dispute would subsist in Guatemala. Although Mexico had stated that it would examine Guatemala's offer, his Government had never received any reply. Guatemala was

therefore surprised that Mexico should now be insisting on a dispute settlement procedure even though the spirit of the system was to favour solutions mutually acceptable to the parties to the dispute and consistent with the covered agreements. Mexico's request was contrary to the spirit of the dispute settlement system. Faced with this situation, Guatemala had been obliged to bring the above facts to the attention of the DSB, in particular because two fora would be examining the same dispute and if the allegedly affected party were to seek a review of the anti-dumping measure in Guatemala, there was no reason to bring the case into the WTO until that procedure had been completed. Otherwise, there might be contradictory judgements. Guatemala would also like to record two important points. First, although in its request for the establishment of a panel, Mexico summarized some of the findings of the Panel in the case against the provisional measure, the fact was that these findings had been invalidated by the Appellate Body. Second, in conducting its anti-dumping investigation, Guatemala had adhered to the provisions of the Anti-Dumping Agreement. At the present meeting, Guatemala was opposed to the establishment of the panel since it had offered a mutually satisfactory solution which merely required procedural certainty.

The representative of Mexico said that his country considered that the objections raised by Guatemala at the present meeting lacked any legal basis. Consultations had been held to seek a mutually agreed solution but these consultations did not constitute any impediment with regard to the establishment of a panel. Mexico was open to any proposal from Guatemala in an effort to find a mutually agreed solution even if a panel were to be established.

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

7. Canada – Term of patent protection

(a) Request for the establishment of a panel by the United States (WT/DS170/2)

The Chairman drew attention to the communication from the United States contained in WT/DS170/2.

The representative of the United States said that under the TRIPS Agreement Members were required to grant a term of protection for patents that run for twenty years after the filing date of the patent application. The Agreement had also required that Members grant this minimum term to all patents existing at the time the Agreement entered into force for Members. Canada had been obliged to apply the TRIPS Agreement in full since 1 January 1996. Yet, the Canadian Patent Act provided a protection term of only 17 years to patents in which the application were filed prior to 1 October 1989. The Canadian Patent Act was clearly in violation with Canada's obligations under the TRIPS Agreement, and the results of a panel proceeding were not in doubt. The Canadian Patent Act was explicit in its provision of 17 years and the TRIPS requirement of 20 years of patent protection was, in this case, incapable of alternative interpretation. Since no settlement had been reached in the consultations, the United States had no choice but to request the establishment of a panel at the present meeting. Given the expected outcome, the United States urged Canada to reconsider settling this matter promptly. There was no need to unnecessarily burden the WTO's limited resources. The United States did not need to win this dispute and Canada did not need to lose it. However, if it had to, the United States would actively seek to enforce its rights under the TRIPS Agreement.

The representative of Canada said that her country regretted that the United States had decided to proceed with its request for the establishment of a panel to examine the term of protection under Canada's Patent Act. Canada's patent regime created a healthy environment for innovation, investment and research and development. Canada believed that its patent regime was consistent with its international obligations. Canada could not agree to the establishment of a panel at the present meeting.

The representative of the Philippines said that developing countries had an interest in this case in light of their obligations under the TRIPS Agreement as from 1 January 2000. This case related to the issue of what would happen to patents that had been filed or had been granted prior to 1 January 2000.

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

8. Argentina – Measures affecting imports of footwear

(a) Request for the establishment of a panel by the United States (WT/DS164/4)

The Chairman drew attention to the communication from the United States contained in WT/DS164/4.

The representative of the United States said that her country looked forward to the establishment of a panel to determine whether Argentina's modification of its safeguard regime in November 1998 was consistent with its obligations under Articles 7.4 and 12 of the Safeguards Agreement. In addition to its concerns that this measure had not been immediately notified to the Committee on Safeguards in accordance with the requirements of Article 12 of the Safeguards Agreement, the United States found it difficult to grasp how Argentina's November modification could be understood to be in compliance with Article 7.4 of the Agreement which stated that safeguard measures shall be progressively liberalized at regular intervals during the period of application. An earlier panel on the same matter[1] had concluded that the definitive safeguard measure on footwear imports based on Argentina's investigation and determination was inconsistent with Articles 2 and 4 of the Safeguards Agreement. The United States had actively participated as a third party in that proceeding and was now seeking recourse to normal dispute settlement proceedings, as provided for under Article 10.4 of the DSU, which stated that, "If a third party considers that a measure already the subject of a panel proceeding nullifies or impairs benefits accruing to it under any covered agreement, that Member might have recourse to normal dispute settlement procedures". The United States would have preferred to resolve this issue without proceeding to formal dispute settlement procedures, but its efforts to engage Argentina in meaningful discussions of these concerns had failed, as illustrated by their exchange in Geneva on 24 March. The United States hoped that these proceedings would finally lead Argentina to correct the apparent inconsistencies with its WTO obligations.

The representative of Argentina said his country had, on numerous occasions, expressed its concern at repeated panel proceedings on the same matter. The panel proceeding was being initiated by the United States at a time when the Panel requested by the EC on the same measure had already circulated its final report, and the only available option at this stage was an appeal procedure. While Argentina recognized the US right to request the establishment of a panel, it wished to point out that under the present circumstances, the US request amounted to legal abuse of the DSU. Argentina had already submitted a proposal in this connection in the context of the DSU review. He proposed that in order to avoid the initiation of this process, the United States could agree to suspend the proceedings of that panel until the procedures of the Panel established at the request of the EC had been finalized. It this was possible, Argentina would not oppose to the establishment of a panel at the present meeting.

The Chairman said that Argentina was ready to accept the establishment of a panel at the present meeting provided that the United States agreed to certain conditions. He asked Argentina to confirm his understanding.

[1] WT/DS121/R

The representative of Argentina said that his country was ready to accept the establishment of a panel at the present meeting. However, as a pragmatic solution, and in light of the earlier Panel on the same matter, he proposed that the United States agree to suspend the proceedings of the panel to be established at the present meeting until the first case had been terminated.

The representative of the United States said that her country would continue its discussions with Argentina and would examine its proposal. The United States wished that the panel be established at the present meeting.

The representative of Indonesia said that his country had similar concerns about the WTO-consistency of Argentina's measures referred to by the United States. Indonesia had requested the establishment of a panel to examine this matter, but subsequently that request had been withdrawn pending the final decision of the DSB on the Panel report concerning the dispute between the EC and Argentina. Indonesia was still carefully examining the report as to whether the measures affecting its trade interest were fully covered by the report. His country wished to ensure that its concerns were taken into account by the Panel before deciding on any further action.

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

9. European Communities – Measures concerning meat and meat products (hormones)

(a) Recourse to Article 22.7 of the DSU by the United States (WT/DS26/21; WT/DS26/ARB)

(b) Recourse to Article 22.7 of the DSU by Canada (WT/DS48/19; WT/DS48/ARB)

The Chairman proposed that the DSB take up these two sub-items together since they pertained to the same matter. He recalled that at the DSB meeting on 3 June 1999, the United States and Canada had requested the DSB to authorize suspension of the application to the European Communities and its member States of tariff concessions and related obligations under the General Agreement on Tariffs and Trade. He also recalled that at that meeting, the European Communities had objected to the level of suspension proposed by the United States and Canada, and had requested that each matter be referred to arbitration by the original Panel in accordance with Article 22.6 of the DSU. The Decisions of the Arbitrators with respect to these matters were subsequently circulated on 12 July 1999 in documents WT/DS26/ARB and WT/DS48/ARB. He drew attention to the communication from the United States contained in document WT/DS26/21.

The representative of the United States thanked the Arbitrators for their work and timely report. The United States appreciated that the Arbitrators had met the DSU deadline. Pursuant to the 12 July 1999 Decision of the Arbitrator, the United States was requesting that the DSB authorize it to suspend the application to the EC and certain of its member States, of tariff concessions and related obligations with respect to imports of products from the EC in an amount of US$116.8 million. As determined by the Arbitrators, this level of suspension was equivalent on an annual basis to the level of nullification or impairment of benefits accruing to the United States resulting from the EC's failure to bring its measures into compliance with the DSB's recommendations and rulings. The EC had failed to comply with its WTO obligations to lift its ban on beef from animals treated with hormones by the 13 May 1999, the date of expiry of the reasonable period of time. The United States was disappointed that, after 15 months, the EC was still unable to come into compliance with its WTO obligations. Nor had the United States been able to reach agreement on acceptable compensation. The United States intended to implement this suspension of tariff concessions and related obligations with respect to goods entered or withdrawn from warehouses on or after 29 July. The United States would direct the US Customs Service to impose 100 per cent *ad valorem* duties in excess of bound rates on a list of products to be drawn from the preliminary list submitted to the DSB in document

WT/DS26/19. On 19 July, one week after the Decision of the Arbitrators, the United States had determined the particular products on which concessions and related obligations would be suspended. Nonetheless, the US objective was not to withdraw concessions, which did not help its exporters and was not to the benefit of its importers. The United States would prefer to settle this dispute and would continue to strive to reach a mutually acceptable solution with the EC.

The Chairman drew attention to the communication from Canada contained in document WT7DS48/19.

The representative of Canada said that his country was requesting authorization to suspend the application to the EC and its member States of tariff concessions and related obligations due to the EC's failure to implement the DSB's rulings and recommendations in the hormones case. As indicated in its communication, Canada was proposing to suspend concessions by imposing 100 per cent tariffs on products from the EC covering trade in an amount of Can$11.3 million per year. In accordance with the provisions of Article 22.7 of the DSU, Canada's request was consistent with the decision of the Arbitrators. Canada would make an announcement on the final list of products that would be subject to tariff increases by the end of July. The final list would reflect the comments received in response to Canada's domestic consultation process, and the amount of suspension authorized by the DSB. Canada was forced to take such an exceptional action in response to the EC's intransigence throughout this dispute. First, the Panel had found that the EC was in violation of its WTO obligations. Second, following an appeal by the EC, the Appellate Body had confirmed that the EC's ban on beef produced with growth hormones was contrary to the EC's WTO obligations. Third, the EC had sought to delay compliance with the DSB's rulings and recommendations by requesting an unprecedented four-year period of time for implementation. Finally, despite the decision of the Arbitrators to give the EC 15 months, until 13 May 1999, to bring its measure into conformity with its WTO obligations, the EC had failed to comply with its obligations. Canada urged the EC to comply with its WTO obligations and to restore access to Canadian beef. He recalled that Canada remained open to discussing meaningful compensation as an interim solution, until full compliance by the EC had been achieved. He also wished to make some comments on the Arbitrators' award which had been made on 12 July 1999. Canada was disappointed with the level of nullification or impairment found by the Arbitrators in the case of Canada. In Canada 's view, the award had not adequately taken into account lost opportunities suffered by Canada. In this regard, he noted that Canada's annual beef exports to the EC in the period 1986-88 before the ban had been imposed were Can$9.2 million. The amount of Can$11.3 million authorized by the Arbitrators was barely sufficient to account for inflation since 1986-88 and underestimated the amount of trade lost by Canada. Nevertheless, Canada accepted the Arbitrators' decision as final.

The representative of the European Communities noted the Decision of the Arbitrators and the fact that the level of impairment of nullification awarded was considerably lower than that requested by the United States and Canada. The EC noted that the United States had provided the list of products on which tariff concessions would be suspended. It also noted the Arbitrator's views on the question of possible changes to the list of products on which higher tariffs would be applied ("carousel" approach) The EC had also noted that in the arbitration process, the United States had stated that it had no intention of taking this approach. Like the Arbitrators, the EC had no reason to doubt the good faith of the United States on this matter. With respect to Canada, the EC regretted that European exporters were still uncertain as to which specific products would be affected. Since the initial list provided by Canada exceeded by far the amount of suspension determined by the Arbitrator, European operators were now experiencing a situation in which the predictability and security of the WTO were nullified. However, the EC remained convinced that it was both in the interests of the parties concerned and the WTO system that compensation through trade concessions, rather than retaliation, be the preferred option under the current circumstances. The EC remained ready to hold meaningful discussions with the complainants. In the meantime, the EC continued to study the scientific evidence available to it in order to evaluate on this basis, and in the light of any new relevant information, what steps might be necessary to preserve its WTO rights and obligations.

The representative of Australia said that the DSB had an important role to play in ensuring that the level of suspension of concessions was not exceeded after authorization had been granted, and in ensuring that any retaliatory action was suspended on implementation. Australia recognized that the DSB did not become involved in determining the nature of the concessions to be suspended. However, there could be no confidence in a system that authorized the suspension of concessions in the abstract. Accordingly, Australia considered that full transparency should apply to the DSB authorization process under Article 22. Consistent with Article 22.4 of the DSU, the DSB could not authorize a level of suspension of concessions in excess of the level of nullification or impairment. While the DSB might be confident about the level of suspension authorized, it could have no confidence that this level would not be exceeded, unless the party taking the measures provided details, at the time of its request for authorization, of the action to be taken and its application to specific products. From a systemic perspective, one could ask what guarantees were there to ensure that the level of retaliation authorized would not exceed the equivalent level of nullification or impairment? Also from a systemic prospective, Australia would like to know of the mechanisms, if any, that had been put in place to ensure the removal of the retaliatory measures immediately upon implementation, as required by Article 22.8 of the DSU.

The Chairman noted that some of the issues raised by Australia were currently being discussed in the context of the DSU review.

The DSB took note of the statements and, pursuant to the requests under Article 22.7 of the DSU by the United States (WT/DS26/21) and Canada (WT/DS48/19), agreed to grant authorization to suspend the application to the European Communities and its member States of tariff concessions and related obligations under GATT 1994, consistent with the Decisions of the Arbitrators contained in documents WT/DS26/ARB and WT/DS48/ARB respectively.

10. Time-periods under Article 16.4 of the DSU expiring in the month of August

(a) Statement by the European Communities

The Chairman said that the item was on the Agenda of the present meeting at the request of the European Communities.

The representative of the European Communities drew attention to the fact that the time-periods under Article 16.4 of the DSU in respect of three Reports of Panels in which the EC was a complainant would expire in August. These Panel Reports were the following: (i) "Chile – Taxes on Alcoholic Beverages" (WT/DS87/R – WT/DS110/R); (ii) "Argentina – Safeguard Measures on Imports of Footwear" (WT/DS121/R); and (iii)"Korea – Definitive Safeguard Measure on Certain Dairy Products" (WT/DS98/R). In order to comply with the requirements of Article 16.4, the EC would have to request three special DSB meetings during the month of August. To avoid problems which such meetings could create for the WTO's work, the EC would be prepared to accept the postponement of consideration of these Panel Reports and the extension of the corresponding time-periods for appeal to a future meeting of the DSB at the beginning of September. He underlined that such extension would be granted by the DSB on the understanding that the rights of the parties to the disputes with respect to adoption or appeal of these Panel Reports were preserved, as if such adoption had been requested within the 60-day period specified in Article 16.4 of the DSU. In order to do so it would be necessary for the DSB to agree by consensus to extend the time-periods in question.

The Chairman said that the EC had made a practical proposal to postpone consideration of three Panel Reports on the understanding that the rights of the parties to appeal the Reports would be preserved.

The representative of Korea said that his delegation was aware that the deadline for the adoption of the Panel Report on "Korea – Definitive Safeguard Measure on Imports of Certain Dairy Products" would expire in the month of August. Like the EC, Korea would also have some practical difficulties if the panel or Appellate Body proceedings were to be initiated during the Summer break. However, despite this potential logistical problem, Korea could go along with the proceedings according to the time-frame stipulated in Article 16.4 of the DSU. Nonetheless, if a consensus was reached on the EC's proposal, Korea was prepared to join the consensus, provided that its right to appeal was fully preserved.

The representative of Argentina said that his delegation supported the EC's proposal to extend the deadline under Article 16.4 of the DSU. However, it should be clear that the rights of the parties to appeal the Panel Reports were preserved even if the DSB was convened after the 60-day period required under Article 16.4 of the DSU.

The representative of Chile said that his country would not object to a consensus on the EC's proposal, if such a consensus was reached. However, it should be clear that this proposal concerned three specific Panel Reports, and if there was a consensus, the DSB's decision should refer to these three specific cases. He noted that this was the first time that the DSB was extending a 60-day time-period stipulated in Article 16.4 of the DSU.

The Chairman noted that three countries, which had been involved in the cases referred to by the EC, had no objections to the EC's proposal. He asked whether any other delegations had any objections to the EC's proposal.

The representative of Mexico said that his delegation had no objections to proceed as proposed by the EC provided that, as stated by Chile, reference was made to the three cases and that this was an agreement between the parties to the dispute.

The representative of the Philippines said that his delegation would not object to the consensus on this matter provided that it was understood that this would not establish a practice of requiring the DSB consent to extend specific time-periods under the DSU when the parties to the dispute had reached agreement. This should not constitute a precedent.

The DSB took note of the statements and agreed to the EC proposal to postpone the consideration of the three Panel Reports referred to by the European Communities.

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

(a) Reasonable period of time

The representative of the United States, speaking under "Other Business", wished to inform the DSB of an agreement on a reasonable period of time reached by Korea and the United States in the DRAMS case on 13 May 1999. Korea and the United States had agreed that the United States would have eight months as a reasonable period of time to implement the DSB's rulings and recommendations. In accordance with that agreement, the reasonable period of time would end on 19 November 1999.

The representative of Korea appreciated the statement made by the United States. It was Korea's understanding, that the date of the agreement reached by the United States and Korea was 19 May 1999. He noted that the first status report under Article 21.6 of the DSU would have to be made at the DSB meeting after 19 November. He also noted that the reasonable period of time would expire on 19 November. Accordingly, the DSB might not have the opportunity to be informed of any

US measures before the expiry of the reasonable period of time. Korea therefore urged the United States to implement the DSB's recommendations in a transparent manner and to provide a comprehensive and detailed status report at the first DSB meeting after 19 November in order to enable Members to make timely assessment of the conformity of US measures.

The representative of the United States said that her delegation would be glad to provide the necessary information. She confirmed that as stated by Korea, an agreement on a reasonable period of time had been reached on 19 May 1999.

The DSB took note of the statements.