WORLD TRADE ORGANIZATION

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Dispute Settlement Body
24 February 2000

MINUTES OF MEETING

Held in the Centre William Rappard
on 24 February 2000

Chairman: Mr. Kåre Bryn (Norway)

Subjects discussed: Page

1. Surveillance of implementation of recommendations adopted by the DSB

(a) European Communities - Regime for the importation, sale and distribution of bananas: Status report by the European Communities (WT/DS27/51/Add.5)

(b) Japan - Measures affecting agricultural products: Status report by Japan (WT/DS76/11/Add.1)

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

(a) European Communities - Regime for the importation, sale and distribution of bananas: Status report by the European Communities (WT/DS27/51/Add.5)

2. The Chairman drew attention to document WT/DS27/51/Add.5 which contained the status report by the European Communities on its progress in the implementation of the DSB's recommendations concerning the EC's banana import regime.

3. The representative of the European Communities said that, as his delegation had already stated on previous occasions, the proposal to amend the EC banana regime, which had been made in November 1999 and which was still under discussion within the EC institutional framework, specifically foresaw consultations with the interested parties. The procedure outlined in the proposal reflected two specific aspects of this difficult issue. First, it reflected the fact that while most of the interested Members favoured a tariff-rate quota system, at least in the short term, there was widespread disagreement on how the import licences, an inevitable element of a feasible tariff-rate quota system, should be allocated between importers. Second, it also reflected the fact that the EC had been severely criticized in the DSB for not having consulted adequately with interested parties before making its previous proposal. Presently, the EC was being again criticized for either consulting too much or not enough. The EC had received many suggestions and was examining them all. Unfortunately there was no unanimous position among the interested parties to which the EC could subscribe in full respect of its internal and external legal obligations.

4. The ongoing consultation process would continue in an effort to finding a solution which would be acceptable to all the interested parties, if at all possible. However, it was clear that this process could not continue indefinitely. The EC was the party with the most interest in solving this problem, and wished to solve it in such a way so as to ensure that there would be no further challenges. The EC would continue discussions with the interested parties until it was satisfied that all available elements had been carefully considered in preparing the final decision to amend the banana regime. If no feasible administrative solution for a tariff-rate quota system was found, it would not be possible to maintain the proposal for a transitional regime. In such a situation, Article XXVIII negotiations would be initiated with a view to replacing the current regime with a flat tariff.

5. The representative of Colombia said that his delegation wished to ask some questions. He noted that recently there had been no discussions between the EC and Colombia as well as with the other Latin American countries, which supplied bananas on a non-preferential basis and which had signed the joint declaration on bananas at the time of the Seattle Ministerial Conference. He, therefore, wished to know when the EC would renew its dialog with the non-preferential suppliers. He noted that the draft plan by the Development Committee of the European Parliament had not yet been considered by the Committee on Agriculture and Rural Development, and the final report would

only be considered by the Parliament in April 2000. Therefore, the future banana regime would not enter into force by 1 April 2000, a target date previously set by the Commission for replacement of the current system. He, therefore, wished to know what, under the circumstances, would be the new target date. The proposal adopted by the Commission on 10 November 1999 would unbind the bound volume of 2,553,000 tonnes, by reference to an assumed "autonomous quota" of 353,000 tonnes. The draft plan of the Development Committee would take the unbinding process further, by recommending a differential in-quota tariff of EUR 275/tonne instead of the uniform level of EUR 75/tonne, which currently applied up to the amount of 2,553,000 tonnes. Colombia wished to know whether it was the intention of the EC to initiate consultations with substantial suppliers under Article XXVIII, and if and when such unbinding would be given a concrete form in the new regime.

6. Many of the difficulties in reconciling the differences between the parties with regard to the allocation of licences concerned both the relevant reference period - before or after 1993 - and the definition of primary importer. He asked whether the EC considered that a suitable definition of primary importer could resolve the dispute about the reference period without detriment to the parties and, in particular, without reducing in overall or individual terms their level of effective access to the first two quotas. If so, Colombia wished to know if the EC would be willing and able to hold discussions for that purpose with the non-preferential suppliers. The EC's proposal also provided for a de facto increase in the established level of access for preferential bananas, by not limiting such access within the first two quotas and eliminating any individual allocation within the third quota as well as for discriminatory use of an auction-type system for preferential bananas and a "first-come, first-served" system for non-preferential bananas. Colombia wished to know whether such differential treatment would be consistent with Articles I and XIII of GATT 1994.

7. The representative of Guatemala said that on the basis of the EC's status report it was clear that her country's efforts, made over the past seven years, would not be brought to an end. Guatemala continued to expect that the dispute settlement system was efficient and binding. However, the reality was different because with only a few days left before the expiry of the Lomé waiver, the recommendations and rulings of the Panel and the Appellate Body had not yet been implemented. Guatemala had participated actively in the negotiation of that waiver. She recalled that the EC banana import regime had been condemned twice under the GATT system. However, under the previous rules it had not been possible to adopt decisions of panels. The language of the waiver had been negotiated carefully. Guatemala had joined in the consensus with the confidence that the terms of the waiver were clear and precise. The matter had been considered for the third time in the WTO since the terms of the waiver had not been observed. A number of years had passed and the situation that had prevailed under the GATT continued. In fact, the EC's non-compliance was a source of greater frustration because the decision in the third dispute had been adopted by the DSB. These discouraging events should be taken into account by Members not only because a wide range of products of interest to them was involved, but also because they all had a stake in the credibility of the system. No further waiver would be accepted as long as the rulings of the third panel were not implemented.

8. The representative of Honduras said that, as indicated in the EC's status report, no progress had been made since the previous report. At the present meeting, he did not wish to refer to his country's efforts aimed at resolving this dispute. He wished to focus on one issue, namely, a request for a new waiver to be made by the EC to justify its violations condemned by the Panel and the Appellate Body. Honduras' main concern with regard to a new waiver was related to bananas. However, the fact that implementation could be deferred for more than 30 months or indefinitely would have an impact on the credibility of the system. Furthermore, Members should reflect on the fact that a new waiver would cover many other products of interest to a number of countries. It was in the interest of all Members that the coverage of a new waiver be discussed in detail in order to take into account different interests. It should also be borne in mind that any waiver was a derogation from the WTO obligations and that the WTO procedures had to be faithfully adhered to. He pointed out

that there should be no derogation from the WTO obligations as long as the EC continued to refuse to comply with the DSB's recommendations.

9. The representative of Ecuador said that the EC had stated that thus far no new development had taken place in the bananas dispute. The EC remained in breach of its WTO obligations. The EC's status report at the present meeting was similar to its previous reports and did not contain any new information. The EC continued to defend its lack of willingness to remedy the situation by means of two excuses. The first was that the interested parties were not in agreement and the second that the EC was consulting with the parties with a view to finding a solution. This was not accurate since neither of the two excuses reflected the real situation. With regard to the first excuse, the solutions proposed by the EC were designed to maintain excessively high levels of protection under its illegal regime. The reforms currently considered by the EC would perpetuate a variety of unlawful actions. The EC wished that the complainants reach agreement on how to accept those unlawful actions and excessively high levels of protection. The EC also hoped to be exempted from its obligations. If that was the EC's intention it would have to keep hoping for a long time. Although the EC was aware of this, it continued to maintain its line of action. His delegation, therefore, questioned whether the EC's intention was to maintain the current situation.

10. With regard to the second excuse, he noted that the consultations referred to by the EC had not been held in the WTO. Ecuador was informed of the joint consultations between the United States and the EC which had been carried out by means of a series of video-conferences between Washington and Brussels. Providing information on these consultations was not the same as holding consultations with Ecuador. This was clear since no account had been taken of Ecuador's comments on the proposed reforms under consideration by the EC. Ecuador had expressed its interest in joining the consultations held between the United States and the EC. However, despite the facts of the case, there was still no awareness that many interests were at stake in this dispute not only those represented by the two largest Members. Consequently, the excuse that consultations were being held merely reflected the fact that there was no genuine interest on the part of the EC to take into account the views of all the interested parties. He emphasized that Ecuador was making efforts to assert its WTO rights with regard to this case.

11. In its status report, the EC had stated that if no agreement was reached with the parties, it would have to introduce a tariff-only regime and to that end it would enter into Article XXVIII negotiations. Ecuador's position was that the EC could apply a tariff-only system without initiating Article XXVIII negotiations. If the EC decided to enter into such negotiations that would be because it wished to modify its schedule of tariff bindings. In that case, the rights of Ecuador, as a principal supplier of bananas to the EC market, would be strengthened and his country would be prepared to participate in those negotiations. If the EC chose that approach, it would not be exempted from its obligations and would have to take into account the views of the interested parties. A solution to this dispute did not lie in adhering to the position maintained by the EC thus far. The EC could not continue to insist on maintaining the present banana regime. It was unacceptable that the EC continued its non-compliance to disguise unlawful actions or excessively high levels of protection.

12. The representative of Panama expressed his country's objections with regard to the information provided by the EC as well as to its continued lack of compliance with the Panel and Appellate Body reports. The EC's non-compliance reflected its lack of willingness to comply with its WTO obligations. Panama and other Latin American countries had made it clear that the EC's proposal was inconsistent with the WTO Agreement and had, therefore, been rejected by them. In addition, the Commission had been unable to obtain the necessary support for the proposal, due to other reasons. The EC's proposal, which had been rejected by all parties, would only benefit the interests of a few traders and would not bring a definitive or satisfactory solution, in particular to those affected countries that for so many years had been subject to unlawful discrimination. As stated in the report, the Commission had held discussions with the interested parties and would continue to

do so. In Panama's view, the Commission had not held serious discussions with the Panamanian negotiators on the present or any other proposal. His country considered that the EC's approach towards Panama, a substantial supplier, indicated the lack of interest in finding an acceptable settlement to this dispute. Panama had expressed its willingness to cooperate and to contribute towards establishing an acceptable regime. It had done so by submitting, together with other Latin American producers, joint proposals which had found a response from different producers and marketers. The EC had stated that because of differences of opinion regarding details, it had been unable to implement an acceptable solution. While blaming those who suffered discrimination as a result of its non-compliance, the EC had not stated that these differences were such so as to prevent it from finding a WTO-consistent solution. The Commission had repeatedly taken decisive action to devise various inconsistent regimes.

13. Compliance with the findings of the Panel and the Appellate Body was closely related to another matter of importance to Panama and other developing countries, namely, a request for the extension of the existing waiver in order to maintain preferences for the ACP countries. On 3 February 2000, discussions had been held on a new ACP-EC Partnership Agreement, which was to be signed shortly in Fiji. The finalized sections of the Agreement, on the basis of which the EC would request the waiver, explicitly referred to the undertaking to guarantee the preferential access for ACP countries under the terms of a future banana regime. Panama's acceptance of a future waiver would depend on its acquaintance with all the details of that Agreement. It would not be in a position to consider a waiver without first being satisfied with the details of a future banana regime and preferences. Panama would be concerned if the EC tried to obtain a waiver without first complying with the recommendations and rulings in this case.

14. While Panama understood and accepted that some ACP countries required assistance or preferential access due to the sensitive nature of the banana production for their economies, there were some limits thereto. Assistance or preferential access could not be granted in total disregard of the rights of other developing countries, for which exports to the EC market were equally important. Panama was taking the responsible attitude of defending the commercial interests of its citizens and, more importantly, had to protect its workers and their families who depended on the existing banana plantations. Panama was obliged to refute the EC's reports and condemned the long-standing unwillingness of the EC to comply with the DSB's recommendations. His delegation regretted its critical tone at the present meeting. However, Panama's statement was motivated solely by its frustration resulting from the lack of interest on the part of an important developed country Member in complying with its obligations vis-à-vis some developing countries. He pointed out that the EC's status report, once again, did not reflect the reality of its non-compliance. Panama, therefore, rejected the content of the report. Panama urged the EC to reconsider its position and to enter forthwith into serious and open-ended discussions with the affected parties, the Latin American producers. Panama urged the member States of the EC to demonstrate their willingness to uphold and enforce their WTO obligations. He noted that if a request for a waiver was made, such a request had to be reviewed exhaustively and critically in order not to cause more harm to the interests of other developing countries.

15. The representative of Costa Rica said that his country had held consultations with the EC and, on several occasions, had expressed its concerns about certain elements with regard to the EC's proposal. Costa Rica had stated its views both bilaterally and multilaterally with the parties concerned. His country was prepared to discuss the new banana regime proposed by the EC, which he hoped would be in line with the DSB' s rulings and recommendations.

16. The representative of the United States said that the EC's proposal of November 1999 was not WTO-consistent and would not resolve the dispute. She noted that in spite of the video conferences between Washington and Brussels to-date there were no WTO-consistent alternatives from the EC. The Commission continued to manufacture divergence among the complaining parties that did not

exist. Had the EC accepted the Caribbean proposal as the basis for its new banana import regime, it would have found a large measure of convergence around a WTO-consistent proposal that protected the interests of the most vulnerable Caribbean suppliers.

17. The representative of Mexico noted that the EC's status report did not contain many changes as compared to its previous report. The only difference was that the present status report was more specific. Mexico wished to participate in the consultations to be held by the EC. He reiterated that a tariff-only system at an accessible level was his country's preferred option.

18. The representative of the European Communities said that his delegation noted the statements made at the present meeting. With regard to Colombia's questions, he was not in a position to reply to them in detail at the present meeting. He asked Colombia to provide its questions in writing. Since similar discussions had already taken place in many past DSB meetings, he did not wish to reiterate the EC's position at the present meeting. The EC was ready to consult with delegations in Brussels or Geneva, if they so wished. His delegation believed that due to many technical issues involved in this case, such consultations should be held in Brussels. At this stage, it was necessary to consider technical solutions which would be viable and legally acceptable. The process was time-consuming, but thus far no consensus among the interested parties had been reached on a solution. For these reasons, other options had to be taken into account. Several proposals open to amendments were on the table and the EC was awaiting comments from delegations. At the present meeting, some delegations had referred to a new waiver and he had referred to Article XXVIII negotiations. These were only possibilities. With regard to any of these options, the EC would scrupulously respect its WTO obligations, and he assured that the rights of the parties concerned would be respected.

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

(b) Japan - Measures affecting agricultural products: Status report by Japan (WT/DS76/11/Add.1)

20. The Chairman drew attention to document WT/DS76/11/Add.1 which contained the status report by Japan on its progress in the implementation of the DSB's recommendations concerning its measures affecting agricultural products.

21. The representative of Japan said that since the 27 January DSB meeting his country and the United States had been consulting in a constructive and friendly manner. Although some progress had been made, it had not been possible to conclude these consultations. Japan hoped that a mutually satisfactory solution would be found in the near future and would make its utmost efforts towards that end.

22. The representative of the United States thanked Japan for its report and its continued cooperation on implementation issues in this case. The United States also hoped to be able to resolve the remaining technical issues in the very near future.

23. The representative of Australia said that his delegation noted Japan's status report. Australia was concerned that it contained no further information on the details of Japan's implementation plans. Australia was also concerned that it provided no assurance, as sought by his country at the 27 January DSB meeting, that any new measures would be applied on an MFN basis. He therefore wished to take this opportunity to reiterate Australia's request made at the 27 January DSB meeting that Australia, as an exporter of fruit and other horticultural products to Japan, be consulted on the new quarantine methodology proposed for detecting coddling moth. Australia also sought clarification of Japan's proposed approach for varietal testing for other fruits as well as for other pests affecting fruit varieties.

24. The representative of Japan said that he wished to respond to some questions raised by Australia. As the consultations were still underway, he did not wish to go into details. Japan would notify the DSB of its agreement with the United States as soon as such an agreement was reached. Once a new quarantine methodology was introduced on the eight products on which the consultations were being held, it would be applied in accordance with Article 2.3 of the SPS Agreement which provided that: "Members shall ensure that their sanitary and phytosanitary measures do not arbitrarily or unjustifiably discriminate between Members where identical or similar conditions prevail". If Japan were requested by an exporting country to lift its import prohibition on certain products from that country, it would enter into consultations with that country in order to establish a necessary quarantine methodology, based on scientific and technical considerations. If such an exporting country wished to adopt a methodology similar to that chosen by the United States, such a methodology would be adopted after scientific and technical examination and confirmation of its applicability.

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

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

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

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

27. The representative of Korea said that at the 27 January DSB meeting his country had stated that the United States had failed to faithfully implement the DSB's recommendations and rulings in this case. He did not wish to reiterate Korea's detailed statement, which demonstrated the obvious failure of the United States to implement the DSB's recommendations and rulings. Despite Korea's request at the 27 January DSB meeting that the United States respect the DSB's recommendations and rulings, no new action had been taken by the United States since then. Nor had there been any indication of the United States' intention to act in order to faithfully implement the recommendations and rulings. Therefore, Korea had no other option but to seek recourse under Article 21.5 of the DSU. Korea would submit a formal request to reconvene the original panel to review the measures taken by the United States purportedly to comply with the DSB's recommendations and rulings.

28. The representative of the United States said at the 27 January DSB meeting, in accordance with Article 21.6 of the DSU, the United States had stated that it had fully complied with the DSB's recommendations. The panel had found that the relevant regulation of the US Department of Commerce (the US Department) was inconsistent with Article 11.2 of the Anti-Dumping Agreement (ADA). In order to remedy this inconsistency, the US Department had amended its antidumping regulations so as to expressly incorporate into those regulations the "necessary" standard of Article 11.2 of the ADA. Having amended its regulations, the US Department had made a revised determination in its third administrative review of the DRAMS anti-dumping order in which it had applied the new WTO-consistent regulation to the facts of the case, and had found that a resumption of dumping by the Korean companies was likely. Subsequently, the US Department had concluded that the continued imposition of antidumping duties on DRAMS from Korea was still necessary. The documentation submitted by the United States to the DSB showed that the entire process had been completely open and transparent. Prior to issuing its amended regulation and its revised determination in the DRAMS case, the US Department had given the Korean Government and the Korean DRAMS exporters opportunities to comment. Both the Government and the exporters availed themselves of these opportunities and the US Department had taken their comments into account. The US Department had made its revised determination with an open mind. However, the fact that

the bottom line result did not change should not come as a surprise because the evidence had shown that a resumption of dumping by the Korean DRAMS exporters was likely. Thus, making the continued imposition of anti-dumping duties necessary. In commenting on the US Department's analysis of the evidence, the Korean exporters repeated arguments that they had previously made to the panel and that the panel had rejected. Indeed, to the extent that the panel had addressed factual issues in this case, it had upheld the US Department consideration of the facts.

29. The DSB took note of the statements.

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

(a) Request for the establishment of a panel by Japan (WT/DS184/2)

30. The Chairman drew attention to the communication from Japan contained in document WT/DS184/2.

31. The representative of Japan said that his country was requesting the establishment of a panel to examine this matter. Japan's claims were contained in document W/DS184/2, which had been circulated on 11 February 2000. The measures at issue were the determinations made by the United States in the investigation of dumping and injury of hot-rolled flat-rolled carbon-quality steel products from Japan, as well as the underlying laws, regulations, policies and procedures. In its determination of the dumping margin, the United States had failed to base its calculation on a fair comparison of export price and normal value. The US actions were inconsistent with the WTO Agreement and included use of a methodology which treated in an unfair manner transaction prices between affiliated parties and abusive application of facts available to Japanese companies. In its determination of injury, the United States had based its decision on methodologies that were neither fair nor objective. Moreover, the United States had departed afar from its conventions in its investigations and determinations by, for example, basing its determination of critical circumstances on a mere "threat of injury." In November 1999, Japan had requested consultations with the United States, which had been held on 13 January 2000. These consultations had failed to settle the dispute. In the course of the consultations, it had became clear to Japan that the difference of views over the issues was far too wide for any further consultations to be meaningful. Accordingly, Japan was requesting that a panel be established at the present meeting with the standard terms of reference.

32. The representative of the United States said that her delegation had carefully noted Japan's statement. The United States had held extensive consultations on the issues referred to by Japan. At the present meeting, she did not wish to address the details of this dispute, but it was sufficient to state that the United States did not agree with Japan's position. Her country strongly believed that the actions taken by the US Department of Commerce and the US International Trade Commission were fully consistent with the provisions of WTO Agreements. The United States was not in a position to consent to the establishment of a panel at the present meeting.

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

4. Argentina - Transitional safeguard measures on certain imports of woven fabrics of cotton and cotton mixtures originating in Brazil

(a) Request for the establishment of a panel by Brazil (WT/DS190/1)

34. The Chairman drew attention to the communication from Brazil contained in document WT/DS190/1.

35. The representative of Brazil said that his country was requesting the establishment of a panel pursuant to Article XXIII of GATT 1994, Article 6 of the DSU and Article 8 of the Agreement on Textiles and Clothing (ATC) with respect to transitional safeguard measures established by Argentina on certain imports of woven fabrics of cotton and cotton mixtures originating in Brazil. The full basis of Brazil's complaint was contained in its request for a panel, which had been circulated in document WT/DS190/1 on 11 February 2000. At the present meeting he did not wish to repeat the full extent of that document but just to underline a few basic elements supporting Brazil's position. The transitional safeguard measures had been imposed on five categories or groups of categories of textile imports from Brazil. In accordance with Article 6.11 of the ATC, Argentina had requested consultations with Brazil which had failed to result in a mutually-agreed solution. Brazil had notified the Textiles Monitoring Body (TMB) of the results of these consultations and had referred the matter to the TMB in accordance with Article 6.11 of the ATC. At its meeting of 18-22 October 1999, the TMB had conducted a review of Argentina's measures and had recommended that Argentina should rescind its transitional safeguards. Despite such recommendation, Argentina had notified the TMB that it had considered itself unable to conform to them, in accordance with Article 8.10 of the ATC. Subsequently, the TMB had conducted a review of the reasons given by Argentina and had recommended that Argentina reconsider its position and rescind forthwith the transitional safeguards. Thus far, the matter remained unresolved in spite of the mentioned TMB recommendations. Therefore, Brazil was requesting that a panel be established to examine this matter, with standard terms of reference in accordance with Article 7 of the DSU.

36. The representative of Argentina said that his delegation noted the statement made by Brazil and its panel request. In accordance with Article 6.1 of the DSU, Argentina was not in a position to accept the establishment of a panel at the present meeting. With regard to the claims set out in document WT/DS190/1, he underlined that Argentina did not share the conclusions reached by the TMB and disagreed with the interpretations made with respect to Article 6 of the ATC for the reasons already stated before the TMB.

37. The representative of Pakistan said that Argentina had taken a transitional safeguard measure on imports from Brazil and Pakistan under the regulation referred to by Brazil in its request. Therefore, Pakistan had a substantial interest in the matter and wished to reserve its third-party right to participate in the proceedings of the panel, if and when it was established.

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

5. Mexico - Anti-dumping investigation of high fructose corn syrup (HFCS) from the United States

(a) Report of the Panel (WT/DS132/R)

39. The Chairman recalled that at its meeting on 25 November 1998, the DSB agreed to establish a panel to examine the complaint by the United States. The Report of the Panel contained in document WT/DS132/R had been circulated on 28 January 2000, and was before the DSB for adoption at the request of the United States. In accordance with Article 16.4 of the DSU, this adoption procedure was without prejudice to the right of Members to express their views on the Panel Report. He noted that document WT/DS132/R contained a typographical error, namely, the Note by the Secretariat at the foot of page 1 indicated that the Report had to be adopted within 30 days after the date of its circulation instead of 60 days. A corrigendum correcting that error would be circulated by the Secretariat.

40. The representative of the United States was pleased that the Panel Report would be adopted at the present meeting. The Panel had found that Mexico had violated numerous provisions of the Anti-Dumping Agreement (AD). The WTO allowed dumping duties to be imposed only if dumping and

injury, including the threat of injury to the domestic industry were established. Mexico had not properly established injury and that was the focus of the US challenge. The Panel had agreed with the United States that Mexico's threat of injury was flawed in several respects. First, the Panel had found that Mexico's determination did not properly reflected its consideration of the fact under AD Agreement owned to the economic conditions of the Mexican sugar industry. This was critical because otherwise the AD authority could find injury, as done improperly by Mexico, without undertaking to examine the actual condition of its industry. Second, the Panel had agreed with the United States that the AD Agreement required authorities to examine injury to the whole industry not just part of it. The Panel had also agreed that Mexico had not properly determined that there was a likelihood that imports of HFCS would increase. When the alleged dumped imports were not injuring an industry, a finding that the imports would increase was a vital aspect of threat of injury determination. At issue were also two additional WTO violations committed by Mexico in applying anti-dumping measures. First, Mexico had left its provisional measure in place far too long. In accordance with the AD Agreement, Members could only apply provisional anti-dumping measures for the shortest possible period of time from four to six months. Mexico had violated this rule by leaving its provisional anti-dumping measures for more than six months. Second, Mexico had improperly applied final anti-dumping duties. Normally, in the case of threat of injury, anti-dumping duties could be imposed only on products that entered after the final determination. Mexico had applied these anti-dumping duties to entries during the period between its provisional and final measures without making the required finding that dumped imports would have led to a determination of material injury with an extra imposition. Finally, the Panel had properly rejected a series of preliminary objections made by Mexico. In particular, the Panel had properly found that the US request for a panel was in full compliance with the DSU and the AD Agreement.

41. The representative of Mexico said that his country wished to thank the members of the Panel for the time and effort devoted to this case as well as the Secretariat for its assistance. Mexico recognized that the Panel had been faced with the difficult task of examining highly diverse aspects of a complex anti-dumping investigation. Mexico noted with satisfaction that, on the fundamental issue: i.e. the initiation of the investigation, the Panel had confirmed, after examining the complaints by the United States and the actions of the competent Mexican authorities, that the HFCS investigation was initiated on the basis of strict compliance with the relevant provisions of the AD Agreement. Unfortunately, the Panel had not agreed with Mexico's arguments on other matters within its purview, where Mexico considered that its actions were consistent with its rights and obligations under the AD Agreement. Moreover, Mexico considered that the Panel's findings with regard to the shortcomings of the US request for a panel were based on incomplete and in some cases even superficial reasoning. Mexico maintained that the United States had not fulfilled the requirements concerning panel requests, as laid down in the DSU and the AD Agreement, which had to be applied jointly. Nevertheless, his delegation had been instructed not to oppose the adoption of the Panel Report in order to demonstrate its support for the multilateral trading system. Mexico decided not to prolong this dispute and instead to concentrate on an internal assessment of the most appropriate means of remedying the inconsistencies which, according to the Panel, had been generated in the course of this arduous and complex investigation.

42. The representative of Turkey said that the implementation of the AD Agreement was a source of controversy and heated discussions in the WTO. His delegation maintained that a reasonable degree of restraint needed to be exercised before Members could invoke the provisions of the AD Agreement. Members should initiate antidumping investigations measures only when unfair trade practices genuinely distorted conditions of competition. When those conditions prevailed beyond any doubt, then the provisions of the AD Agreement had to be implemented in accordance with the spirit and the letter of that Agreement and should not to be invoked for protectionist purposes. Therefore, Turkey considered that the Panel's decisions would have positive implications. Turkey believed that as panels and the Appellate Body dealt with more trade disputes in relation to the AD Agreement and took decisions which would set precedents, uncertainty and lack of clarity surrounding the relevant

issues arising from the AD Agreement would be gradually reduced. Turkey welcomed the Panel Report which had dealt with some important issues. At the present meeting, he wished to touch upon some of those issues that were related to Articles 3 and 10 of the AD Agreement and were particularly important.

43. Article 3 of the AD Agreement was one of the key Articles which set the main criteria for levying anti-dumping duties. The Agreement on anti-dumping practices set forth a strict principle that anti-dumping duties on dumped imports could not be levied solely on the ground that a product was being dumped. Anti-dumping duties could be levied only when it was established after an investigation that dumped imports were causing material injury to that industry. Article 3 provided that determination of whether dumped imports were causing injury to a domestic industry, should be made on the basis of all relevant factors having a bearing on the state of industry. The Panel Report had dealt, in considerable details, with issues related to Article 3. The Panel had concluded that Mexico's imposition of the definitive anti-dumping measure on imports of HFCS from the US was inconsistent with the provisions of Article 3.1, 3.2, 3.4 and 3.7 of the AD Agreement. The Panel had arrived at an important conclusion that the investigating authorities needed to look at all the provisions of Article 3 in its entirety during the process of an anti-dumping investigation. Within this context, the Panel had concluded that a determination of threat of injury could not be based only on an examination of the factors set forth in Article 3.7 of the Agreement. Rather, a determination of threat of injury also required an assessment of the impact of imports on the domestic industry through an examination of the relevant economic factors in Article 3.4.

44. Another important determination was with respect to Article 10 of the AD Agreement on the question of retroactivity. The Panel had firmly established that the AD Agreement authorized provisional measures to be taken in the form of cash deposits and bonds, when the investigating authorities judged that such measures were necessary to prevent injury being caused during the investigations. However such provisional measures should be taken only after the investigating authorities had made a preliminary determination of dumping and consequent injury. Within this context, Mexico's retroactive imposition of anti-dumping duties was found to be inconsistent with the provision of Article 10.2. Hence, its failure to release bonds or cash deposits collected under the provisional measure was also found not to be consistent with Article 10.4 of the Anti-Dumping Agreement. Finally, he wished to express his country's appreciation to the Panel for their high quality report, as well as the Secretariat for its meticulous work and contribution.

45. The DSB took note of the statement and adopted the Panel Report in WT/DS132/R and Corr.1 to be shortly circulated by the Secretariat.

6. Proposed nominations for the indicative list of governmental and non-governmental panelists (WT/DSB/W/120; WT/DSB/W/123)

46. The Chairman recalled that at its meeting on 27 January 2000, the DSB had agreed to postpone consideration of the item concerning proposed nominations for the indicative list of panelists contained in WT/DSB/W/120 and to revert to this matter at the present meeting. He drew attention to document WT/DSB/W/120, which contained additional names proposed for inclusion on the indicative list of panelists in accordance with Article 8.4 of the DSU. He also drew attention to document WT/DSB/W/123, which contained additional names proposed for inclusion on the list in accordance with the above-mentioned procedures. Unless there is any objection, he proposed that the DSB approve the names contained in documents WT/DSB/W/120 and WT/DSB/W/123.

47. The DSB so agreed.

7. Argentina - Safeguard measures on imports of footwear

(a) Statement by the United States

48. The representative of the United States, speaking under "Other Business", drew attention to recent reports indicating that Argentina intended to maintain its protection on footwear, in spite of the clear findings of the Panel and the Appellate Body Reports adopted by the DSB. The United States continued to believe that under the circumstances, Argentina simply had to allow the footwear safeguard to expire in its entirety on 24 February 2000, as originally scheduled. However, the United States understood from some press reports that on 24 February, Argentina intended to release a decree that would call for a "provisional" safeguard measure on athletic footwear imports not originating in MERCOSUR. These Reports indicated that the measure would include both a high duty and a restrictive tariff-rate quota of 2.5 million pairs of shoes per year. The United States further understood that imports of non-MERCOSUR athletic footwear above 2.5 million pairs would be subject to an exorbitant, double duty that would in effect preclude further imports. She asked Argentina to confirm whether its intention was to do so. It would be preferable to have the Argentine decree at the present meeting, but since these reports gave the United States great cause for alarm, it had decided to raise its concerns in the DSB. It was apparent that such a measure would violate the fundamental requirements of the Safeguards Agreement. In the first instance, Argentina had not met the procedural requirements to impose a provisional measure under Article 6 of the Safeguards Agreement. Moreover, Article 7.5 specifically provided that no safeguard measure could be re-applied to a product for at least two years after the non-application of the measure. In other words, Argentina was legally barred from immediately re-applying a safeguard measure on footwear imports. In view of the clear legal constraints, she asked whether Argentina could clarify how such an action could be WTO-consistent.

49. The representative of Argentina said it was his country's intention to adjust its safeguard measure in conformity with the DSB's recommendations. To that end, his authorities had amended the report on determination of serious injury on the basis of the conclusions contained in the Panel and the Appellate Body Reports. Furthermore, in order to help clarify the courses of action as from 25 February, consultations had been held with the EC. Further meetings had been scheduled in the course of the week of 28 February 2000 with the EC as well as with Members having a substantial interest as exporters and other Members who had so requested. With regard to the question raised by the United States, Argentina did not plan to adopt a new safeguard measure under Articles 6 and 7.5 of the Agreement on Safeguards.

50. The representative of the European Communities said that the EC as a plaintiff in this case was interested in the question of implementation. As indicated by Argentina, consultations had been held on this matter and would continue to be held. He was not aware of any decree, but the EC had a major interest in closely watching the implementation.

51. The representative of Indonesia said that his delegation noted the concerns and questions raised by the United States as well as Argentina's responses. Indonesia wished that Argentina brought its measure into conformity with its WTO obligations as soon as possible. Indonesia, as a third party in this dispute, wished to participate in the consultations to be held on the question of implementation.

52. The DSB took note of the statements.

8. Appointment of Appellate Body members

(a) Statement by the Chairman

53. The Chairman, speaking under "Other Business", said that he wished to make an announcement concerning the selection process for the Appellate Body members. He noted that a paper containing the curricula vitae of all candidates which had been submitted by the deadline of 17 February 2000 had been circulated as Job No. 902 and Add.1 and Add.2. The Selection Committee would organize interviews as soon as possible. The interview process would start on 28 February 2000. Delegations wishing to contact the candidates might enquire through the Missions of the respective candidates on their availability. He said that a list with the addresses of the candidates as provided by the respective Missions in Geneva was being distributed in the room. Two candidates (from Bulgaria and Egypt) were resident in Geneva. The Secretariat would inform Missions by fax when the other candidates would be in Geneva, in case Members wished to contact them directly. He was in a position to inform Members that Mr. Ganesan, the candidate from India, would be available in Geneva from Friday, 25 February to Tuesday 29 February. Over the next three weeks, the Selection Committee would be interviewing the candidates. He wished to inform delegations that some of the members of the Selection Committee would be available to meet Members upon request if they wished to provide their views on the candidates. It was his intention to finalize the matter by the end of March, as originally foreseen so that the Selection Committee could come up with a proposal to the DSB by the end of March. He would be working very closely with the incoming Chairman of the DSB and together with him he would take the leadership of the process.

54. The representative of Thailand wished to inform delegations that Thailand's candidate would be available in Geneva from 6 to 9 March 2000.

55. The DSB took note of the statements.

9. Election of Chairperson of the Dispute Settlement Body[1]

56. The Chairman said that under this agenda item, he wished to make two points. First, he wished to thank all the DSB members for their cooperation during his short term of office. Second, he was glad that his successor was one of most distinguished and respectful persons, Mr. Stuart Harbinson (Hong Kong, China) who was well-known for his knowledge of all matters and on many occasions he had consulted with him. There was an interesting year ahead of Mr. S. Harbinson as Chairman of the DSB. There were some pending issues which had not been solved due to a limited amount of time. One issue related to the question of sequencing between Articles 21 and 22 of the DSU. Another issue related to India's proposal concerning a term for appointment of Appellate Body members. He recalled that the DSB had agreed to carry out consultations and to revert to this matter at a later stage. He regretted that, thus far, it had not been possible to hold such consultations. He was confident that his successor would take up this matter in due course.

57. He then recalled that at its meeting on 7 and 8 February 2000, the General Council had taken note of the consensus on a slate of names for chairpersons to a number of WTO bodies including the Dispute Settlement Body. On the basis of the understanding reached by the General Council, he proposed that the Dispute Settlement Body elect by acclamation Mr. Stuart Harbinson (Hong Kong, China) as Chairman of the body.

58. The DSB so agreed.

[1] For practical purposes this item was taken up at the end of the meeting.

59. Mr. S. Harbinson said that he would approach his task with due humility. He would do his utmost to justify confidence shown by Members in him. More importantly, at this juncture, he wished to say that he believed that the membership owned the great debt of gratitude to Amb. K. Bryn for a number of reasons. One had to admire his flexibility and courage in taking over from Amb. Akao on short notice, which showed his great dedication to the organization. He had managed the DSB in a highly efficient and objective manner and set new standards in that respect.

60. The representatives of the European Communities, United States, India, Thailand, speaking also on behalf of the ASEAN countries, and the representatives of Japan and Costa Rica, speaking also on behalf of Latin American and Caribbean countries, thanked the outgoing Chairman Amb. Bryn and welcomed the incoming Chairman of the DSB Mr. S. Harbinson.

61. The DSB took note of the statements.