WORLD TRADE ORGANIZATION

RESTRICTED

WT/DSB/M/89
23 October 2000

(00-4375)

Dispute Settlement Body
26 September 2000

MINUTES OF MEETING

Held in the Centre William Rappard
on 26 September 2000

Chairman: Mr. S. Harbinson (Hong Kong, China)

Prior to the adoption of the agenda, the item concerning the Panel Report on "United States – Definitive Safeguard Measures on Imports of Wheat Gluten from the European Communities" was withdrawn from the agenda, following the US decision to appeal the Panel Report.

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
(b) Japan – Measures affecting agricultural products: Status report by Japan
(c) Canada – Measures affecting the importation of milk and the exportation of dairy products: Status report by Canada
(d) India – Quantitative restrictions on imports of agricultural, textile and industrial products: Status report by India
(e) Turkey – Restrictions on imports of textile and clothing products: Status report by Turkey
(f) Korea – Definitive safeguard measure on imports of certain dairy products: Status report by Korea

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 six 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.11)

2. The Chairman drew attention to document WT/DS27/51/Add.11 which contained the status report by the European Communities on its progress in the implementation of the DSB's recommendations concerning the banana import regime.

3. The representative of the European Communities said that, in the past few months the EC had been actively engaged in an effort to find an acceptable solution to the banana problem. To this end, the EC had held intensive consultations with the parties involved in the dispute. He informed the DSB that, in the week of 2 October 2000, the EC Commission would discuss and decide on a proposal regarding the banana import regime. Subsequently, a solution which could satisfy all parties concerned would be submitted to the EC Council of Ministers for consideration. He said that this was a complex issue which required a discussion at the level of the EC constituencies. Nevertheless, the EC was moving forward in a more decisive way in an effort to come up with a WTO-compatible solution which would also take into account the various concerns expressed. The matter was complicated, but the EC was close to finding a solution. He hoped that his comments, in addition to the circulated status report, would help to build some confidence among the parties involved.

4. The representative of Ecuador said that, for a considerable period of time at each DSB meeting, delegations had heard the EC's reports on its lack of action regarding the illegal, unfair and discriminatory banana import regime, which continued to injure the economies of some developing countries. The EC's lack of action caused poverty, generated unemployment and eliminated initiatives undertaken by those countries whose aim was to overcome their state of underdevelopment. In its status report, the EC had refered to its evaluation of a distribution system for import licences based on a mechanism that combined, a "first come, first served" method with a "simultaneous examination" method. Ecuador had shown great flexibility in regard to this matter, but that flexibility had not been reciprocated. Nevertheless, Ecuador remained flexible. It was Ecuador's understanding that the import licence distribution system would combine the "first come, first served" method with the "simultaneous examination", but that it would not include the so-called "boat race". In addition, the system should be applied only for a very short transitional period with the commitment that, by the end of such a period, a tariff-only system would be put in place. However, any transitional period should be much shorter than the one proposed by the EC. Furthermore, the commitment to be undertaken in this regard by the EC should guarantee that the implementation of a tariff-only system

would be specified in advance, and the required level of tariff preferences to be applied for the importation of ACP bananas would also be indicated.

5. The fact that Ecuador could accept a short transitional period for import licence distribution did not imply that it agreed with other elements of the EC's proposal. Certain elements of the proposal were unacceptable and remained illegal. The EC had also to modify the distribution of tariff-rate quotas during a transitional period. The EC member States had a problem in this area, but the decision-making process kept them trapped in a reality that did not reflect the current situation. In the banana case, which was yet another case in the area of trade in agricultural products, the EC sought to maintain inefficiencies and was doing it at the expense of some countries who wished to overcome their underdevelopment.

6. It was Ecuador's understanding that the majority of the EC member States favoured a free trade system, while a minority preferred to maintain the current restrictions. Ecuador realized that a solution to this problem would only be possible once a tariff-only system was adopted. Such a system seemed to be the only WTO-compatible solution and would have to be applied as soon as possible in order to terminate the injury caused by the current regime. He noted that the panel which had considered Ecuador's recourse to Article 21.5 of the DSU, had recommended two possible WTO-consistent solutions to modify the banana import regime. The first option was to apply a tariff-only system, which was the simplest and the most transparent solution without a complicated mechanism for distribution of import licences. Second, the Panel had suggested that a tariff-rate quota system could be devised. He noted that for several years the EC had tried to come up with such a system, but had failed to do so.

7. At this stage, the parties were not yet close to finding an acceptable solution. Therefore, it was time for the EC to explore the first option suggested by the Panel. Ecuador was ready to participate in any negotiations to be undertaken in this regard. That option was also preferred by the majority of the EC member States. Ecuador did not know what the banana-exporting countries would do if no progress was made and the EC maintained its illegal regime. He questioned whether, through its lack of compliance, the EC mocked the dispute settlement system. He also questioned whether the lack of compliance in this case implied that the system was being exhausted and had reached its limits while the rights of the injured countries had been extinguished. Ecuador believed that this was not the case, and therefore a new banana IV dispute should not come as a surprise. A new legal action would have to be taken because of the lack of compliance and due to further illegalities following the expiry of the Lomé waiver on 29 February 2000. This situation had resulted in discrimination and violation of Article I of GATT 1994. A new panel would have to examine the illegal distribution of tariff-rate quotas currently applied by the EC. He noted that the EC did not observe the binding commitments contained in its Schedule because it had not included, as required, the additional quantities of banana imports as a result of the accession of new member States into the EC and an increase in the domestic demand. Furthermore, a new legal action would seek a just reparation of the injury caused by the EC since the inception of its banana regime. The EC's non-compliance and its violation of the WTO rules caused serious injury to Ecuador. The EC and its member States were responsible for the current situation and should therefore provide full reparation for the injury caused.

8. The general principles of international law in relation to states responsibilities required countries not only to terminate any violation of international law – in this case the WTO Agreements – but also to provide full reparation of injury, including monetary compensation of damage caused by wrongful acts. A careful reading of Article 3.2 of the DSU in conjunction with Article 31.3 of the Vienna Convention on the Law of Treaties confirmed that the general principles of international law on state responsibilities were applicable in this case. The responsibility of the EC did not cease because it had recognized that a violation existed. The EC had to terminate the violation which was the cause of injury and had to repair that injury. Articles 19 and 22 of the DSU did not exclude the general principle of international law on reparation of injury caused by a violation of international

law. Article 19 dealt with the primary responsibility to remove the violation while Article 22 referred to the suspension of concessions and compensation. Ecuador considered that the EC had not complied with the DSB's recommendations and thus it had not terminated the violation of international law and had the responsibility to provide full reparation of injury. Different views existed as to how pertinent it was to seek a ruling of a panel or the Appellate Body on the right for compensation of injuries caused. He noted that it might be appropriate to initiate a new legal action in order to determine whether Ecuador had the right to compensation.

9. The representative of Honduras reiterated his country's concern that as long as the EC avoided complying with the ruling in the banana case, Honduras' trade interest continued to suffer negative consequences. It was even more discouraging to witness that the EC, instead of trying to comply adequately with the WTO rules, was considering illegal solutions which would only escalate the dispute. The EC intended to introduce a system of three tariff quotas designed to reduce, to a greater extent, market access for Latin American countries, while granting the APC countries duty-free access through the first two quotas and an excessive preference of € 275 per tonne through the third quota. The proposed system not only constituted a violation of Article I of GATT 1994 since there was no exemption concerning the free access for ACP countries, but as a result of the separate quota reserved for those suppliers by means of a prohibitive tariff, it also violated Article XIII of GATT 1994.

10. With regard to the administration of import licences, the EC's proposal provided for a "first come, first served" system, which had been described as a system of "simultaneous examination" combined with prior distribution of licences. As a result of this system, all ACP bananas would, in effect, automatically receive a licence because – as their access was greater than their production - it would not be necessary to ship bananas in excess of this volume, nor would ACP bananas need to be sold to third markets. Latin American bananas, on the other hand, would be practically eliminated from the EC market for the reason that they represented a greater marketing risk. It was clear that this system, which discriminated on the basis of the origin of the product, tipping the competitive balance in favour of ACP bananas and benefiting the EC and ACP service suppliers, would be in violation of GATT 1994 and the Agreement on Services.

11. The submission of a proposal which was incompatible and which would lead to a fresh complaint, was another delaying tactic which would damage the dispute settlement system. In August 2000, Latin American countries had met in Panama and had expressed their deep dissatisfaction with the system proposed by the EC because of its inconsistency with the WTO rules and the serious distortions it would cause to the international banana market. His country, which was a developing country, was concerned that the system proposed by the EC would continue to cause socio-economic problems for its economy. In this context, the EC status report was devoid of all substance because it made no reference to concrete measures for resolving the dispute. Honduras urged the EC to put an end to a confrontation which would only lead to further legal action. It was within the EC's power to adopt a WTO-consistent banana regime.

12. The representative of Guatemala expressed her delegation's regret that the EC's status report did not provide the required information on the steps being taken towards implementation of the recommendations of the Panel and the Appellate Body. The report presented at the present meeting, constituted yet another element in the EC's policy of discrimination and avoidance of compliance with the ruling in the banana case. In the past week, the EC had made public the outline of how a "first come, first served" system would work in practice. This had provoked adverse reactions and would only prolong the banana dispute. The EC also demonstrated that it was far from understanding the need for a solution that was consistent with international trade rules. The spirit of conciliation of the WTO required that such a solution be implemented as soon as possible, because the reasonable period for compliance in the banana case had expired almost 20 months ago.

13. The EC was aware that the whole world was waiting for it to act in this matter and that the case constituted an important test, both for the rules of international trade in a general sense and, in particular, for the dispute settlement system. As Guatemala's economy – and the international banana market – continued to suffer serious damage as a result of the EC's failure to comply, her country urged the EC to bring its banana import regime into line with the WTO rules as soon as possible. It would be easy to do so since there were already proposals that could lead to a solution which took into account the interests of all the parties involved. Only then would it be worth the EC presenting a status report on its compliance which would satisfy the injured parties.

14. The representative of Panama said that his delegation wished to be associated with the statements made by Honduras and Guatemala. Panama was concerned that the solution to which the EC had referred in its statement was the same as that proposed by the EC in July 2000 or even prior to that date. In the view of all Latin American banana-producing countries, that solution was contrary to the EC's WTO obligations. In August 2000, Latin American producers had met in Panama and had agreed to a statement reflecting their views on this matter. A copy of that statement could be made available to delegations upon request.

15. In its status report, the EC had stated that if the solution proposed was not accepted, it would consider another solution. However, it had already been indicated that such a solution would also be incompatible with the EC's WTO obligations. He reiterated that the solution proposed by the EC would not solve the problem, it would not result in the elimination of the retaliatory measures and would be WTO-inconsistent. Panama therefore urged the EC to comply with its obligations and to consider seriously the solution proposed by Latin American countries as well as by many developing countries which benefitted from the EC's banana regime. He recalled that Panama supported the Caribbean proposal and showed a considerable amount of flexibility with regard to this matter. He hoped that similar flexibility would be demonstrated by the EC to enable the parties to put an end to prolonged discussions in DSB meetings.

16. The representative of the United States said that his delegation appreciated the comments made by the EC in addition to its status report, but considered that nothing new had taken place since the 27 July DSB meeting. Therefore, the points made by the United States at that meeting would also apply at the present meeting. In particular, the United States did not know why the EC had not already analysed the "first come, first served" system since that option had already been proposed many months ago. In fact in 1999, the United States had provided the EC with some criteria for such a system. As a result, there had been nothing new in the EC's status report and the United States hoped that the situation would be different at the next regular DSB meeting.

17. The representative of Mexico said that his delegation considered that the situation remained unchanged. Some Members continued to await a solution to the banana problem. In Mexico's view, it was not so much important that there was an agreement among all the interested parties, but that a new banana regime to be put in place was consistent with the EC's WTO obligations. As his delegation had stated on many occasions, the simplest solution would be to establish a tariff-only system with adequate market access for bananas.

18. The representative of Saint Lucia said that her country appreciated the EC's willingness to steer a course in spite of the imposed sanctions, which in the long run would protect the interest of all. However, Saint Lucia noted with concern the EC's proposal to examine the feasibility of the proposed tariff-rate quotas on a "first come, first served" basis. As stated on previous occasions, the proposal to provide access to the EC's market on a "first come, first served" basis would disadvantage all but the largest operators with major shipping fleets and diverse markets. The alternative of moving directly to a flat tariff would similarly be disastrous for her country. Saint Lucia was aware of the difficulties encountered by the EC in negotiating an acceptable reform of the regime. The importance of the definitive solution which protected the interests of all was critical for Saint Lucia, the economy of

which was dependent on this industry for over half of its export income and one-third of its employment. The industry was crucial to the Caribbean countries. References had been made to the general principles of international law. Fundamental general principles of international law were out of justice and her country sought and asked all parties, in deciding on who was truly vulnerable in this dispute and in coming up with a solution that could be acceptable to all, to turn down the rhetoric and return to the table to seek a solution acceptable to all, and which would provide a transition for the most vulnerable in the new WTO era. Saint Lucia hoped that all would continue to work towards a solution that protected the interests of all parties.

19. The representative of the European Communities said that the comments made at the present meeting would be reported to his authorities. Both the EC Commission and the EC Council of Ministers had to take a definitive stand on how the matter could be moved forward. The EC considered that in a transitional period a system on a "first come, first served" basis could be put in place. However, this would only be done after intensive consultations with the EC's partners. It was incorrect to state that nothing had changed in the past few months. The EC had undertaken considerable efforts in order to try "to square a circle". He noted the comments made by some delegations with regard to a short transitional period for a system based on tariffs only. He assured that both a fair and a WTO-compatible approach for the management of the proposed tariff-rate quotas would be matched with a transitional period which would be reasonable. A tariff-only system was an important element in the proposal. He assured that there were no delaying tactics on the part of the EC, but a genuine wish to resolve this long-standing dispute. The EC's priority was to come up with a solution which would take into account its obligations and which was WTO-compatible. It was his understanding that the assessment of compatibility was not always the same and could differ because of different interests involved. The EC's priority was to have a WTO-compatible solution. However, not only a legal solution had to be put on the table but, if possible, such a solution should take into account the different interests expressed. If it was easy to do this, the EC would have come forward much earlier with a solution. He assured Members that the EC would make all possible efforts to come up with a quick and fair solution.

20. 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.7)

21. The Chairman drew attention to document WT/DS76/11/Add.7 which contained the status report by Japan on its progress in the implementation of the DSB's recommendations with regard to its measures affecting agricultural products.

22. The representative of Japan said that as described in the status report, his country continued to hold consultations with the United States in a constructive and friendly manner. There remained certain technical issues to be sorted out and Japan expected that, although the parties had not as yet concluded those consultations, they would reach a mutually satisfactory solution in the very near future. Japan would notify the DSB when it reached an agreement with the United States.

23. The representative of the United States confirmed that his country had been continuing to work with Japan on the few technical issues remaining, and intended to finish this work in the near future.

24. The representative of the European Communities said that the EC, which was a third party to this dispute, regretted that in the 18 months since the adoption of the Appellate Body Report on 19 March 1999, the parties had not come to an agreement. He was nonetheless encouraged by the statements made by Japan. He also wished to recall that while the varietal testing had been eliminated

with regard to fruit imports from the United States, it was still applied to products from the EC. As the reasonable period of time for implementation had gone by, the EC believed that Japan should, without delay, consider the immediate, *erga omnes*, extension of phytosanitary measures that currently applied to US imports.

25. The representative of Australia said that his delegation noted Japan's status report, and reiterated his country's expectation that any new measures would be implemented consistently with paragraphs 5 and 7 of Article 3 of the DSU.

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

(c) Canada – Measures affecting the importation of milk and the exportation of dairy products: Status report by Canada (WT/DS103/12/Add.2 – WT/DS113/12/Add.2)

27. The Chairman drew attention to document WT/DS103/12/Add.2 – WT/DS113/12/Add.2 which contained the status report by Canada on its progress in the implementation of the DSB's recommendations with regard to its measures affecting the importation of milk and the exportation of dairy products.

28. The representative of Canada welcomed the opportunity to provide his country's third status report on its implementation of the rulings and recommendations in this dispute. Since the outset of this implementation process, Canada had consistently stated its intention to implement fully the DSB's recommendation and rulings. At the present meeting, Canada wished to affirm that commitment once again. He recalled that on 22 December 1999, Canada had entered into an agreement with the United States and New Zealand under Article 21.3(b) of the DSU on the reasonable period of time for implementation. The terms of the agreement provided for a staged implementation process, with a view to concluding that process on 31 December 2000. Canada continued to meet all of the terms of the implementation agreement. His country looked forward to providing the United States and New Zealand with further information on the progress of implementation at their next round of consultations scheduled for 2 October 2000. Canada would also continue to provide status reports to the DSB in the future, pursuant to Article 21.6 of the DSU.

29. The representative of New Zealand thanked Canada for its third status report on the implementation of the rulings in the case at hand. At the 27 July DSB meeting, New Zealand had noted the progress that Canada had made to that date in implementing the rulings. However, it also noted that, in order to bring itself into full compliance with the rulings, Canada had to ensure that its subsidized exports of dairy products remained within its scheduled reduction commitment levels in the current dairy season, which had commenced on 1 August 2000, and thereafter. Accordingly, this remained the fundamental issue for New Zealand.

30. During its consultations with New Zealand and the United States held on 22 and 23 June 2000, Canada had provided details of a number of new provincial export schemes that it intended to have in place by 1 August 2000. As Canada had mentioned, a further consultation scheduled for 2 October 2000 would provide an opportunity to clarify further Canada's actions and intentions with regard to these proposed schemes. However, at the present stage and based on the information that had been made available to date, New Zealand remained concerned that the new schemes - which had been designed by Canada to replace the scheme found by the Panel and Appellate Body to be inconsistent with Canada's obligations - would continue to provide export subsidies to Canadian exporters inconsistent with Canada's WTO obligations. In New Zealand's view, the introduction of such schemes could not constitute compliance by Canada with the DSB's recommendations and rulings. New Zealand looked forward to exploring this issue further at the

consultation scheduled for 2 October. In the meantime, New Zealand reserved its WTO rights in that regard.

31. The representative of the United States expressed its appreciation to Canada for the openness and candour with which its authorities had approached the consultations on implementation with the United States and New Zealand. He regretted that the message and information which had been tasked with delivering was disheartening to those expecting Canada to bring its dairy export programme into compliance with its export subsidy reduction commitments. Based on the information provided thus far, there appeared to be largely bad news regarding developments in Canada's dairy sector. Although Canada had moved to eliminate a substantial element of the export subsidy programme that caused it to breach its export subsidy commitments in 1997 and 1998, Canada's Provinces had now introduced new mechanisms that would continue to supply milk for export below market price. From the US perspective, the newly instituted measures shared all the critical elements which made the former special class system an export subsidy. The attendant distortions to dairy trade associated with the new measures could be expected to be no less significant.

32. Furthermore, Canada contended that the new measures were exempt from any WTO constraints on the quantity of dairy products exported with the benefit of low priced milk. Thus, Canada apparently would make no effort to restrain the volume of such dairy exports either during the remainder of the implementation period or thereafter. The severity of the anticipated trade distortion would be aggravated by the fact that, unlike the old subsidies that largely exported production surpluses, the new measures required that producers first fulfill their export contracts. This meant that the focus of the measures had shifted fully to expanding Canada's export sales. These developments required that the United States closely follow Canada's implementation and compliance with the DSB recommendations and it continued to express grave concern regarding the various provincial programmes that were now established throughout most of Canada. The United States would discuss in detail the elements of those new measures in consultations which had been scheduled with Canada and New Zealand for 2 October 2000.

33. The representative of Canada said that his delegation was surprised at the tone of the statements made by New Zealand and the United States. He said that the United States and New Zealand had had considerable opportunity to examine the proposals for Canada's new export mechanisms, and should recognize that these new mechanisms would represent a dramatic change in the manner in which export trade in dairy products was conducted in Canada. These new mechanisms reflected basic deregulation of the dairy export sector, and were based on the primacy of private contracts between producers and exporters.

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

(d) India – Quantitative restrictions on imports of agricultural, textile and industrial products: Status report by India (WT/DS90/16/Add.1)

35. The Chairman drew attention to document WT/DS90/16/Add.1 which contained the status report by India on its progress in the implementation of the DSB's recommendations with regard to its quantitative restrictions on imports of agricultural, textile and industrial products.

36. The representative of India said that since his country's status report was clear and positive, he would only make a brief statement. India was committed to removing restrictions maintained for balance-of-payments purposes in two tranches in a balanced fashion. On 1 April 2000, India had removed 50 per cent of the residual quota restrictions, and the reasonable period of time for the remaining restrictions would expire by April 2001. Thus, India was on course in implementing its commitments.

37. The representative of the United States thanked India for its status report. The United States looked forward to further reports on India's implementation of the second phase of their agreement, as the due date of 1 April 2001 came closer.

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

(e) Turkey – Restrictions on imports of textile and clothing products: Status report by Turkey (WT/DS34/12/Add.1)

39. The Chairman drew attention to document WT/DS34/12/Add.1 which contained the status report by Turkey on its progress in the implementation of the DSB's recommendations with regard to its restrictions on imports of textile and clothing products.

40. The representative of Turkey said that since the views of his delegation had already been submitted and were contained in the status report, he did not wish to repeat them at the present meeting. The relevant Turkish authorities continued to pursue their efforts. On the one hand, Turkey was in contact with India and, on the other, it was holding consultations with the EC. He pointed out that Turkey's custom union was a fact that could not be ignored. Turkey was working with the intention of finding the most appropriate solution.

41. The representative of India noted with concern that, in its second status report, Turkey had again referred to its consultations with the EC and had continued to imply that the implementation of the DSB's rulings and recommendations would prejudice the rights and obligations of the members of the customs union. In this context, India pointed out that the Appellate Body, in its Report, had clearly stated that Turkey was not, in fact, required to apply quantitative restrictions on imports of textiles and clothing products from India in order to form a customs union with the EC. Thus, India's expectation was that in this specific matter of implementation of the DSB's recommendations and rulings on the restrictions applied by Turkey against imports from India of textiles and clothing products, Turkey would fully comply with its WTO obligations within the time-frame specified in their mutual agreement of 7 January 2000 for the reasonable period of time under Article 21.3(b) of the DSU. His country appreciated the reconfirmation of Turkey's readiness to meet with India to reach a successful fulfilment by Turkey of its obligations arising from the DSB's recommendations and rulings. He added that his country believed that the parties had already reached agreement on 7 January 2000 and consultations between India and Turkey should only to focus on the manner in which Turkey proposed to comply with its obligations. At the 27 July DSB meeting, India had indicated its readiness to meet with Turkey on this basis. At the present meeting, India wished to reiterate its readiness to respond positively to any initiative that Turkey might take to organize a consultation with India regarding the manner in which it proposed to comply with the DSB's rulings and recommendations.

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

(f) Korea – Definitive safeguard measure on imports of certain dairy products: Status report by Korea (W/DS98/12)

43. The Chairman drew attention to document WT/DS98/12 which contained the status report by Korea on its progress in the implementation of the DSB's recommendations with regard to its definitive safeguard measure on imports of certain dairy products.

44. The representative of Korea said that, on 12 January 2000, the DSB had adopted the Panel and Appellate Body Reports on "Korea - Definitive Safeguard Measure on Imports of Certain Dairy

Products" (WT/DS98), which had recommended that Korea bring its safeguard measure found to be inconsistent with the Safeguards Agreement into conformity with its obligations. In accordance with Article 21.3 of the DSU, Korea and the EC had agreed on 21 March 2000 that a reasonable period of time in this case would expire on 20 May 2000. At the present meeting, Korea wished to inform the DSB that through its administrative procedures it had effectively lifted the safeguard measure on imports of dairy products, effective from 20 May 2000. Korea considered that, by lifting the safeguard measure in question, it had completed in full the implementation of the DSB's recommendations and rulings.

45. The representative of the European Communities said that his delegation wished to thank and congratulate Korea for the very prompt way in which it had dealt with this matter.

46. The DSB took note of the statements.

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

(a) Statement by the United States concerning implementation of the recommendations and rulings of the DSB

47. The Chairman pointed out that this item was on the agenda of the present meeting at the request of the United States.

48. The representative of the United States noted that the reasonable period of time in the case at hand had expired on 22 September 2000. Accordingly, the United States had placed this item on the agenda in order to seek information from Mexico on the status of its implementation.

49. The representative of Mexico said that it was his delegation's understanding that the United States had included this item on the agenda in accordance with the second sentence of Article 21.6 of the DSU, since the six-month period stipulated in that Article for Mexico to present its status report on its progress in implementation had not yet expired. At the present meeting, he wished to inform the DSB that, on 20 September 2000, before the end of the reasonable period of time, Mexico had published in the Diario Oficial de la Federación the revised final resolution of the anti-dumping investigation, based on the recommendations and rulings of the DSB.[1] With this resolution, which had already been notified to the Committee on Anti-Dumping Practices, Mexico had fully complied with the DSB's recommendations and rulings, thereby observing its international commitments.

50. The representative of the United States said that his country would be carefully examining Mexico's resolution in order to evaluate whether it conformed to the DSB's recommendations and rulings. The United States reserved all its rights with respect to this matter.

51. The DSB took note of the statements.

[1] The title in Spanish of the final resolution reads as follows: "Resolución final que revisa, con base en la conclusión y recomendación del Grupo Especial del Organo de Solución de Diferencias de la Organización Mundial del Comercio, la resolución final de la investigación antidumping sobre las importaciones de jarabe de maíz de alta fructosa, mercancía clasificada en las fracciones arancelarias 1702.40.99 y 1702.60.01 de la Tarifa de la Ley del Impuesto general de Importación, originaria de los Estados Unidos de América, independientemente del país de procedencia."

3. United States – Section 211 Omnibus Appropriations Act of 1998

(a) Request for the establishment of a panel by the European Communities and their member States (WT/DS176/2)

52. The Chairman recalled that the DSB had considered this matter at its meeting on 27 July 2000 and had agreed to revert to it. He wished to draw attention to the communication from the European Communities contained in document WT/DS176/2.

53. The representative of the European Communities recalled that when the EC had first presented this panel request on 27 July 2000, the United States had stated that Section 211 of the Omnibus Appropriations Act was outside the scope of WTO rules. However, the EC still considered that, by introducing further conditions for granting the protection of trademarks or tradenames, Section 211 clearly violated the relevant provisions of the TRIPS Agreement. In addition, because it applied only to some "designated nationals", Section 211 was in breach of both the MFN clause and the national treatment provision of the TRIPS Agreement. Therefore, the EC wished to maintain its request for the establishment of a panel.

54. The representative of the United States recognized this was the second time that the panel request appeared on the DSB's agenda. The United States considered that the EC's panel request claimed that Section 211 was inconsistent with several provisions of the TRIPS Agreement, and that it found these inconsistencies "notably" with respect to several articles of TRIPS and the Paris Convention. Article 6.2 of the DSU required that the panel request provided a brief summary of the legal basis of the complaint sufficient to present the problem clearly. Accordingly, the EC panel request failed to meet the requirements of Article 6.2 of the DSU. He said that Section 211 reflected a long-standing policy against giving extraterritorial effect to foreign confiscatory decrees that purported to affect property located in the United States. This policy was not unique to the United States. It addressed the fundamental question of who was and who was not the owner of confiscated trademarks, tradenames, and commercial names - an issue not directly addressed by either the TRIPS Agreement or the Paris Convention. Consequently, any inquiry into the identity of the true owner of the right and an inquiry into whether he or she had expressly consented to the use of that right by a third party were legitimate under the TRIPS Agreement. As this was a policy that did not depend on the nationality of the claimant, no national treatment or MFN issues were involved.

55. The representative of Cuba said that at the 27 July DSB meeting, his delegation had supported the EC's request the establishment of a panel to examine US Section 211 Omnibus Appropriations Act of 1998. At the present meeting, Cuba wished to reaffirm that support and was glad that the panel would be established at the present meeting. Like the EC, his country considered that US Section 211 Omnibus Appropriations Act violated various fundamental principles of the TRIPS Agreement and of the WTO system. Cuba also considered that the provisions of Section 211 affected current practices with respect to trademarks, commercial names and enforcement, which were covered by the Paris Convention for the Protection of Industrial Property of 1967. His country hoped that the conclusions and final decisions of the panel would restore the rights that were currently being injured, and that the injured parties that had not yet exercised their rights would not be obliged to have recourse to the DSU provisions.

56. 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.

57. Japan and Nicaragua reserved their third-party rights to participate in the Panel's proceedings.

4. Argentina – Definitive anti-dumping measures on carton-board imports from Germany and definitive anti-dumping measures on imports of ceramic floor tiles from Italy

(a) Request for the establishment of a panel by the European Communities (WT/DS189/2)

58. The Chairman drew attention to the communication from the European Communities contained in document WT/DS189/2.

59. The representative of the European Communities said that his delegation was concerned about Argentina's use of its anti-dumping measures. He said that this concern was more general and related to the implementation of a whole range of trade policy instruments by Argentina in connection with the recent footwear safeguards case and countervailing duties on imports of wheat gluten and olive oil. The EC considered that the anti-dumping duties on imports of carton-board from Germany and on imports of ceramic floor tiles from Italy had been imposed on the basis of investigations conducted in violation of Argentina's WTO obligations. Among those put forward in the request for the establishment of a panel, two major violations were particularly serious.

60. First, the Argentine investigating authorities had refused, without providing any justification, to take into consideration the information presented by the EC exporters. Such information had been submitted in an appropriate form and in a timely fashion. This appeared to be contrary to Article 6.8 of the Anti-Dumping Agreement and to paragraphs 3, 5, 6 and 7 of Annex II of the same Agreement. The second major violation was the failure by Argentina's investigating authority to disclose the essential facts on which its final decision to impose the measures at issue were based. In particular, it appeared that Argentina's authorities had misinterpreted Article 6.9 of the Anti-Dumping Agreement by considering that this provision simply required that exporters had access to the file. The EC considered that such an interpretation resulted in exporters' rights of defence being unacceptably curtailed. The EC was open to pursue its endeavours to find an amicable solution which would not prejudice the interests of its exporters. Such a solution would, however, mean the repeal of the challenged anti-dumping measures and their elimination in accordance with Argentina's national legislation.

61. The representative of Argentina shared the EC's assessment as reflected in the second paragraph of its request, namely, that the consultations held made it possible to have a better understanding of the respective positions. Thus, in accordance with its right under Article 6.1 of the DSU, Argentina could not agree to the establishment of a panel at the present meeting. His country hoped that the additional time would enable the parties to find a mutually satisfactory solution to this dispute.

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

5. United States – Definitive safeguard measures on imports of circular welded carbon quality line pipe from Korea

(a) Request for the establishment of a panel by Korea (WT/DS202/4)

63. The Chairman drew attention to the communication from Korea contained in document WT/DS202/4.

64. The representative of Korea said that his country was requesting the establishment of a panel to examine US definitive safeguard measures on imports of circular welded carbon quality pipe. The safeguard measures had been imposed under the Proclamation by the US President on 18 February 2000, and had been effective since 1 March 2000. According to the Proclamation, the

measures would be applied for three years and one day. By imposing the safeguard measures, the United States had increased customs duty on imports of line pipe, which amounted to 19 per cent in the first year, 15 and 11 per cent in the second and third years, respectively. Each year, the first 9,000 short tons of imports from each country would be excluded from the increase in duty.

65. Korea considered that the US safeguard measures had not been introduced in accordance with the Safeguards Agreement and the GATT 1994, and thus violated its WTO obligations. For example, in applying the measures, the United States had not properly considered the conditions contained in Article 2 of the Safeguards Agreement and Article XIX of GATT 1994. It had also failed to satisfy the required findings of Article 4 in the determination of serious injury or threat thereof, and further, had not adequately demonstrated causation of serious injury by reason of increased imports. Korea also believed that the measures violated Articles 5 and 7 of the Safeguards Agreement because the United States had not justified that the measures had been imposed only to the extent necessary and for such period of time as was necessary to prevent or remedy the injury, as required in those Articles. Since Korea's main legal claims were contained in document WT/DS202/4 which had already been circulated to Members, Korea did not wish to go into further detail regarding its legal claims. Pursuant to Article 4 of the DSU, Korea and the United States had held consultations on 28 July in an effort to reach a mutually satisfactory solution, but unfortunately had failed to do so. Korea therefore requested that a panel be established to examine this matter with the standard terms of reference as set out in Article 7 of the DSU.

66. The representative of the United States welcomed the statement made by Korea. He noted that the consultations held on 28 July 2000 were productive, and that the United States was not prepared to accept the establishment of a panel at the present meeting. The United States was prepared to continue to work in an effort to resolving the matter.

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

6. United States – Anti-Dumping Act of 1916

(a) Report of the Appellate Body and Report of the Panel

68. The Chairman drew attention to the communication from the Appellate Body contained in document WT/DS136/7-WT/DS162/10 transmitting the Appellate Body Report on "United States – Anti-Dumping Act of 1916" which had been circulated in document WT/DS136/AB/R – WT/DS162/AB/R, in accordance with Article 17.5 of the DSU. He recalled that in accordance with the Decision on Procedures for the Circulation and Derestriction of WTO Documents contained in WT/L/160/Rev.1, the Panel and the Appellate Body Reports in this case had been circulated as unrestricted documents. He recalled that Article 17.14 of the DSU required that: "An Appellate Body report shall be adopted by the DSB and unconditionally accepted by the parties to the dispute unless the DSB decides by consensus not to adopt the Appellate Body report within 30 days following its circulation to Members. This adoption procedure is without prejudice to the right of Members to express their views on an Appellate Body report."

69. He drew attention to the communication from Mexico circulated on 26 July 2000 in document WT/DS162/8, which explained its concerns on the way in which the Panel Report on the dispute raised by Japan had been handled. In responding to that communication, he wished to remind Members that panel reports needed to respond to the requirements of Articles 15, 16 and 17 of the DSU. He proposed that translation and other logistical problems dealing with the issuance of such reports be discussed in the Committee on Budget, Finance and Administration in the context of the proposed allocation of the Secretariat resources to deal with dispute settlement cases. In the matter at hand, the case to which Mexico had referred in its communication involved a dispute which had faced

exceptional problems and which had been dealt with through an exceptional solution of a practical nature. Having clarified this point, he thanked Members, and in particular Mexico, for their willingness to cooperate with the DSB by enabling it to proceed to the adoption of both the Appellate Body and Panel Reports at the present meeting, on the understanding that such adoption would not prejudice the requirements of the DSU concerning the contents of a panel report.

70. The representative of the European Communities said that his delegation welcomed the Appellate Body's ruling which had confirmed the Panel's finding that the Anti-Dumping Act of 1916 was inconsistent with the GATT 1994, the Anti-Dumping Agreement and the WTO Agreement. The Appellate Body had confirmed that a legislation as such could be challenged on the basis of the Anti-Dumping Agreement. This was a very positive clarification that would prevent Members from maintaining or using their WTO-incompatible domestic legislation addressing dumping as a deterrent to international trade. The Appellate Body had confirmed that the 1916 Act was inconsistent with the Anti-Dumping Agreement because, among other reasons, it provided for civil as well as criminal proceedings and penalties that went beyond the responses to dumping authorized by the WTO rules. The Appellate Body had clearly ruled that, under the GATT and the Anti-Dumping Agreement, Members could adopt only duties against dumping. This was a very constructive clarification that would help to avoid circumvention of limitations on imposition of duties by resorting to even more trade-distortive measures. The EC would closely monitor US implementation and expected that the United States would fully comply with the ruling of the Panel and the Appellate Body in the shortest period of time. The EC expected that the implementation of the DSB's recommendations would also cover the ongoing judicial cases brought against European companies on the basis of the 1916 Act before US courts. The EC urged the United States to get its Congress to repeal the 1916 Act in a way which would ensure that pending cases were no longer pursued.

71. The representative of Japan said that, like the EC, his country welcomed the Appellate Body Report which upheld the Panel's finding that the US Anti-Dumping Act of 1916 was inconsistent with Article VI of GATT 1994 and the provisions of the Anti-Dumping Agreement. In Japan's view, the Panel and the Appellate Body had properly made its findings and conclusions for the most part. Therefore, Japan fully supported the adoption of the Reports. It was now up to the United States to implement the rulings and the recommendations of the Panel and the Appellate Body in a prompt and faithful manner. Japan supported the comments made by the Chairman with regard to the practical solution in this exceptional case and thanked Mexico for its understanding.

72. The representative of the United States wished to associate his delegation with the views expressed by Japan with regard to the Chairman's statement in relation to Mexico's concerns. The United States continued to believe that the Panel and the Appellate Body should not have assessed its 1916 law under the Anti-Dumping Agreement, because it was more akin to an antitrust law than an anti-dumping law. Therefore, the United States did not join in a consensus to adopt the Appellate Body Report, but recognized that, in the absence of a consensus to reject it, the Report would be adopted at the present meeting.

73. The representative of Mexico thanked the Chairman for drawing attention to document WT/DS162/8 which contained his country's concerns with regard to the way the Panel Report pertaining to the complaint by Japan had been handled. With regard to the complaint by the EC on the same matter, he recalled that Mexico had participated as a third party in the proceedings of the Panel and the Appellate Body and considered that the results were satisfactory. Both the Panel and the Appellate Body had found that the Act of 1916 was an anti-dumping law and that it was therefore covered by the relevant provisions of the WTO. Consequently, they had found that the Act of 1916 violated the GATT 1994 and the Anti-Dumping Agreement: (i) by applying a different criterion of injury from that stipulated in Article VI of GATT 1994, in violation of paragraph 1 of that Article; (ii) by providing for the imposition of payment of treble damages, fines or imprisonment instead of anti-dumping duties, in violation of Article VI:2 of GATT 1994; (iii) by omitting the procedural

requirements contained in the Anti-Dumping Agreement, violating Articles 1, 4 and 5.5 of the Agreement; and (iv) that the violation of Article VI of GATT 1994 also implied a violation of Article XVI:4 of the WTO Agreement.

74. Mexico also noted that the Appellate Body's findings had significant systemic implications. First of all, the Appellate Body had clarified the dual interpretation of the distinction between mandatory and non-mandatory legislation. Second, but no less important, the Appellate Body had recognized, in paragraph 73 of its report, that Article 17.4 of the Anti-Dumping Agreement referred to the question of timing, since it established a balance between the interests of the complaining Member and the possibility for the responding Member to conduct a harassment-free investigation. In other words, Article 17.4 of the Anti-Dumping Agreement contained provisions that regulated when recourse could be sought to the dispute settlement mechanism.

75. The representative of Hong Kong, China said that his delegation welcomed the Appellate Body's conclusion to reject a narrow and, in fact, wrong interpretation of Article 17.4 of the Anti-Dumping Agreement, which suggested that Members could not bring a claim of inconsistency with the Anti-Dumping Agreement against legislation as such independently from a claim of inconsistency of one of the three anti-dumping measures specified in Article 17.4. His delegation noted with satisfaction the Appellate Body's clarifications concerning its findings in the Guatemala - Cement case (WT/DS60) referred to in paragraphs 71-75 of the Appellate Body Report. In particular, Hong Kong, China shared the Appellate Body's interpretation that Article 17.4 of the Anti-Dumping Agreement did not preclude a review of anti-dumping legislation as such before a panel. In order to support its ruling, the Appellate Body had made numerous references to the GATT and WTO case law as well as to Articles 17 and 18 of the Anti-Dumping Agreement. Hong Kong, China was reassured that Members could never circumvent their WTO obligations under Article 18.4 of the Anti-Dumping Agreement, which required that each Member shall bring its legislation into conformity with the provisions of the Anti-Dumping Agreement. His delegation had noted carefully the Appellate Body's elaboration on the question of mandatory and discretionary legislations. Hong Kong, China was examining the relevant arguments and interpretations in light of the GATT and WTO case law. His delegation wished to reserve its position on this matter.

76. He noted that the Appellate Body had held that Article VI of GATT 1994 was applicable to any "specific action against dumping". Since the civil and criminal proceedings and penalties provided for in the 1916 Act were "specific action against dumping", the Appellate Body had found that Article VI of GATT 1994 applied to the 1916 Act. Given the relationship between Article VI of GATT 1994 and the Anti-Dumping Agreement, the applicability of GATT Article VI to the 1916 Act also implied the applicability of the Anti-Dumping Agreement to the 1916 Act. The Appellate Body had gone further to state that, proof of a requisite intent to destroy, injure, or prevent the establishment of a US industry constituted an additional requirement for the imposition of the civil and criminal penalties set out in the 1916 Act. This would not transform the 1916 Act into a statute which did not provide for "specific action against dumping", and thus, would not remove the 1916 Act from the scope of application of Article VI of GATT 1994. Hong, Kong, China welcomed this clear-cut interpretation by the Appellate Body on the scope of application of Article VI of GATT 1994 and the Anti-Dumping Agreement. This should help forestall similar attempts to circumvent the rules and disciplines provided for in Article VI of GATT 1994 and the Anti-Dumping Agreement when measures were introduced to counteract dumping. Hong Kong, China welcomed the Reports and fully supported their adoption.

77. The representative of India said that his country, which had a systemic interest in the dispute at hand, had participated in the proceedings of the Panel and the Appellate Body as a third party. India noted with satisfaction that both the Panel and the Appellate Body had found that the Anti-Dumping Act of 1916 was an anti-dumping law and thus was subject to the disciplines of Article VI of GATT 1994 and the Anti-Dumping Agreement. Since the Act had been found to be not in

conformity with the above-mentioned provisions, India hoped that the United States would bring its measure into conformity with its WTO obligations. India supported the adoption of the Reports. His country also shared Mexico's concerns contained in WT/ DS162/8 and thanked the Chairman for his statement in this regard. India hoped that, as pointed out by the Chairman, this would be an exceptional and one-time solution to a very difficult situation and that the Chairman's statement would be fully reflected in the DSB minutes.

78. The representative of Australia said that it was clear that the Secretariat's translation resources were inadequate, given the greatly increased volume of dispute settlement documents being generated each year. He noted that the advanced circulation of the findings and conclusions sections of the Panel Report was a pragmatic response to what was clearly a major problem of delays in a translation of full panel reports. Nonetheless, as Mexico had correctly pointed out, that practice could be considered to be contrary to certain provisions of the DSU. As mentioned by the Chairman, the level of translation resources available to the Secretariat was ultimately a decision for Members and, in this context, it would be helpful if the Secretariat could provide a background paper setting out the nature and extent of the problem as it currently existed, including expected delays for full panel reports currently awaiting translation.

79. The Chairman recalled that in the context of the informal consultations on the problems of translation, the Secretariat had provided certain information with regard to the burden of translation. He proposed to discuss this matter further with Australia after the meeting. He added that it was his understanding that the debate on this issue was now moving to the more general level of the resources of the organization as a whole.

80. The representative of Australia said that his country's request was for a current update of the situation.

81. The Chairman noted Australia's request.

82. The DSB took note of the statements and adopted the Appellate Body Report in WT/DS136/AB/R-WT/DS162/AB/R and the Panel Reports in WT/DS136/R and WT/DS162/R, as upheld by the Appellate Body Report.

7. Proposed nominations for the indicative list of governmental and non-governmental panelists

83. The Chairman drew attention to document WT/DSB/W/142 which contained additional names proposed for inclusion on the indicative list in accordance with Article 8.4 of the DSU. He proposed that the DSB approve the names contained in document WT/DSB/W/142.

84. The DSB so agreed.