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Dispute Settlement Body
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MINUTES OF MEETING

Held in the Centre William Rappard
on 22 April 1998

Chairman: Mr. Kamel Morjane (Tunisia)

Subjects discussed: Page

Prior to the adoption of the agenda, the Chairman recalled that the International Monetary Fund (IMF) had expressed an interest in attending the meeting of the DSB at which the Appellate Body and the Panel Reports on "Argentina - Measures Affecting Imports of Footwear, Textiles, Apparel and Other Items" would be considered for adoption. Pursuant to the WTO-IMF Agreement and paragraph 4(a) of the General Council's Decision on the Agreements between the WTO and the IMF and the World Bank (WT/L/194), the Director-General had proposed that the DSB invite a member of the IMF's staff to attend the discussions on the above-mentioned matter at the present meeting. Following consultations with the United States and Argentina and having received no objections, he had informed Members on 30 March 1998 of the IMF's interest and of the proposal that the DSB invite a member of the IMF's staff to attend the present meeting. He had also made a proposal on how to handle this issue. He proposed to invite a member of the IMF's staff to attend discussions under item 2 of the agenda.

The DSB so agreed.

1. Surveillance of implementation of recommendations adopted by the DSB
   - Canada - Certain measures concerning periodicals: Status report by Canada (WT/DS31/9/Add.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 the establishment of the reasonable period of time pursuant to paragraph 3 and shall remain on the DSB's agenda until the issue is resolved". He drew attention to document WT/DS31/9/Add.1 which contained Canada's second status report regarding its progress in the implementation of the DSB's recommendations.

The representative of Canada said that her Government was pleased to submit its second status report on this matter. Due to the short period of time that had elapsed since the previous report there were few developments to report to the DSB. She stressed that progress towards achieving compliance with the DSB's recommendations was being made. As outlined in the report, the proposed legislative policy to change the Excise Tax Act was currently being drafted and would be discussed in the Canadian Cabinet in the near future. At the same time, other substantive changes, including changes to the Customs Tariff and to the postal subsidy would also be discussed. She reiterated Canada's intention to meet its WTO obligations with respect to this matter.

The representative of the United States said that as stated at the DSB meeting on 25 March, the United States wished to receive information concerning details of domestic process under way in Canada to bring the three measures into compliance with the DSB's recommendations. Her country continued to seek information on a timetable, even a notional one, as to when Canada expected the various steps for reforming its 80 per cent excise tax on split-run periodicals to be completed. Information on the procedures Canada intended to follow in order to modify its postal rates that had been subject of the Reports was also required. In this regard, the United States wished to have some information on the intermediate steps under way. Her delegation also wished to know what progress had been made by Canada towards implementation since the adoption of the Reports and what could be expected in terms of process and substance in the remaining months.

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

2. Argentina - Measures affecting imports of footwear, textiles, apparel and other items
- Report of the Appellate Body (WT/DS56/AB/R and Corr.1)
and Report of the Panel (WT/DS56/R)

The Chairman drew attention to the communication from the Appellate Body contained in document WT/DS56/10 transmitting the Appellate Body Report in "Argentina - Measures Affecting Imports of Footwear, Textiles, Apparel and Other Items", which had been circulated in document WT/DS56/AB/R and Corr.1 in accordance with Article 17.5 of the DSU. He reminded delegations that in accordance with the Decision on Procedures for the Circulation and Derestriction of WTO documents contained in WT/L/160/Rev.1, the Appellate Body Report and the Panel Report had been circulated as unrestricted documents. He recalled that pursuant to Article 17.14 of the DSU "An Appellate Body report shall be adopted by the DSB and unconditionally accepted by the parties to the dispute unless the DSB decides by consensus not to adopt the Appellate Body report within 30 days following its circulation to the Members. This adoption procedure is without prejudice to the right of Members to express their views on an Appellate Body report".

The representative of the United States said that her country had requested the adoption of the Panel and the Appellate Body Reports on this matter. The United States had pursued this dispute focusing on two market access problems with regard to Argentina's trade regime. The Panel and the Appellate Body had found that these measures were inconsistent with Argentina's GATT obligations. In this case, Argentina had argued that even if the statistical tax were inconsistent with Article VIII of GATT 1994, the IMF had authorized this tax. Both the Panel and the Appellate Body had rejected this defence. They had found that Argentina had simply not shown evidence that demonstrated that the IMF had approved this tax. They had also noted that the various elements concerning the relationship between the IMF and the WTO referred to by Argentina did not alter legal rights and obligations under the WTO Agreement.

The United States urged Argentina to implement the Panel's recommendations promptly. There was no need for these measures except to protect Argentina's textile, apparel and footwear industries. Argentina had made a commitment in the Uruguay Round that it would provide market access through a 35 per cent *ad valorem* binding on its industrial imports. As the Panel and the Appellate Body demonstrated, Argentina had simply not implemented that commitment. It had never provided the market access promised in the Uruguay Round. These measures had damaged the exporters of the United States, Latin America and other trading partners of Argentina and, most of all, the credibility of the WTO. The United States noted that Argentina had repeatedly modified its duties and statistical tax by rapid administrative action. There appeared to be no administrative reasons why it could not finally bring its measures into conformity with its WTO obligations without delay. The United States was ready to consult with Argentina on the substance and timing of implementation.

The representative of Argentina wished to express his delegation's views on certain aspects of the Reports, in accordance with Articles 16.3 and 17.4 of the DSU. These aspects were too important to be confined to a bilateral dispute and concerned the functioning of the dispute settlement system. He thanked the members of the Panel who through their findings and their cautious use of procedural economy had contributed to the clarification of the scope of the obligations under the GATT 1994, other related agreements and the DSU. He also thanked the members of the Appellate Body who had modified certain findings of the Panel by limiting their scope. If these findings had been maintained they would have resulted in legally binding obligations and commitments which had not been envisaged during the Uruguay Round negotiations nor covered by the disciplines of GATT 1947. At a later stage, he would discuss the important legal principles reaffirmed in both Reports as well as the points which had not been explicitly acknowledged in this dispute since they could affect the rights of Members.

With regard to the Panel's findings related to footwear, Argentina was satisfied with the conclusion of the Panel in paragraph 6.15 of its Report in which the Panel had decided not to review the WTO compatibility of the specific duties on footwear imposed prior to its establishment. The Panel's legal reasoning based on precedents set in the *Gasoline* Case[1] and the *Shirts and Blouses from India* Case[2] had reaffirmed that the purpose of panels and the Appellate Body was not to legislate or clarify the provisions of agreements which fell outside a dispute but to address the arguments presented with regard to the case at issue. A panel should discuss only those aspects which were useful to resolve the case. In order to deal with a dispute, it is necessary to have a *litis* about measures currently in force and which had not been dealt with under the WTO Dispute Settlement Mechanism (except the cases involving the implementation of the DSB's recommendations under Article 21.5 of the DSU). Otherwise, the dispute settlement mechanism would be subject to additional pressure by parties in cases in which it would be requested to determine the scope of an obligation in the absence of a concrete dispute or to obtain a second ruling on the same matter beyond the time-frames envisaged in the DSU. In this case, the Panel had concurred with Argentina's position on this point. It was possible that in the future similar problems would be considered in the dispute settlement mechanism.

With respect to the right retained by Members to apply specific duties on imported products regardless of whether they appear in their national schedules, the Appellate Body had made a legally substantiated interpretation of the obligations under Article II of GATT 1994, which was in line with Argentina's position. He thanked the Appellate Body for paragraph 87(a) of its Report which had modified the Panel's findings contained in paragraphs 6.31 and 6.32 of the Report. The Appellate Body had concluded that "... the application of a type of duty different from the type provided for in a Member's Schedule is inconsistent with Article II:1(b), first sentence, of the GATT 1994 to the extent that it results in ordinary customs duties being levied in excess of those provided for in that Member's Schedule". The Appellate Body had ruled that there was an obligation to respect the value of the concession but there was no commitment by Members with regard to the type of the duty: i.e, specific, *ad valorem* or a combination of the two. This argument had been developed by the Appellate Body in paragraph 47 of its Report which stated that "Once a tariff concession is agreed and bound in a Member's Schedule, a reduction in its value by the imposition of duties in excess of the bound tariff rate would upset the balance of concessions among Members."

Various types of duties existed that could be applied individually or in combination with each other. They might be contained in the Schedule in full or only partially. Members violated their obligation under Article II of GATT 1994 only to the extent that this resulted in ordinary customs duties being levied in excess of those provided in the Schedule. Any other interpretation of Article II of GATT 1994 would amount to giving this provision an *ultra vires* scope which was inconsistent with the interpretation of the Agreement made by the Appellate Body in accordance with the general rules of treaty interpretation set out in the *Vienna Convention*.

For the sake of precision and in response to the arguments of the parties to the dispute and third parties, the Appellate Body had given detailed examples of cases in which customs duties of a different type from those contained in the Schedule had been levied and were consistent with Article II of GATT 1994. Thus, paragraph 54 of the Appellate Body Report states that "... It is possible ... for a Member to design a legislative 'ceiling' or 'cap' on the level of duty applied which would ensure that even if the type of duty applied differs from the type provided for in that Member's schedule, the *ad valorem* equivalents of the duties actually applied would not exceed the *ad valorem* duties provided for in the Member's Schedule." The Appellate Body's findings which had modified the Panel's findings had indicated what was in line with the GATT 1994 and had pointed out what

[1]WT/DS2.
[2]WT/DS33.

would be in violation with the WTO rules. This conclusion was crystal-clear in its scope and provided Members with precise guidelines for the future.

With regard to the question of cross-obligations and consultations with the IMF, Argentina had argued before the Appellate Body that the statistical tax was the result of its negotiations with the IMF that had led to the conclusion of a legally binding agreement which had created and continued to create an obligation to the IMF. Argentina had asserted that the United States by its acquiesence and its membership in the IMF, had contributed to create Argentina's obligation to the IMF. In other words, the complainant, which in the WTO had claimed that the statistical tax was inconsistent with Article VIII of GATT 1994 and had obtained favourable conclusions of the Panel and the Appellate Body in that respect, had contributed to create in 1995 Argentina's obligation to the IMF.

Before addressing the substantive legal issue, he noted that in the past Argentina had agreed with the United States' position on the general subject of coherence. Thus, when the General Council had considered the Director-General's report on the Implementation of the Agreements between the WTO and IMF and the World Bank in December 1997,[3] Argentina had supported the statement made by the United States to the effect that "coherence" meant that the WTO and the IMF had to pursue mutually supportive policies and had to avoid giving governments inconsistent advice. The most recent legal interpretation of "coherence" would place a developing country like Argentina in a difficult situation. From the legal point of view, this problem was of interest to the DSB in three respects: (i) the value of acquiescence as a form of conduct by one country which generated expectations in another, and which, as a source of rights and obligations, should be viewed in the light of the rules of interpretation of treaties under public international law in accordance with Article 3.2 of the DSU; (ii) the existence of binding cross and conflicting obligations; (iii) the importance of consulting the IMF under Articles 11 and 13 of the DSU. In Argentina's view the question of acquiescence was not a mere question of doctrine or a circumstantial argument but a question of law which his country had hoped to be recognized by the Appellate Body. Unfortunately it had not done so.

In his delegation's view the conduct of the United States which had not opposed Argentina's statistical tax in the IMF could be interpreted as having created an obligation which the US could not ignore in the WTO. However, Argentina had hoped that the Appellate Body would address this question of law which had not been resolved and which was inconsistent with the objectives of the WTO/IMF Agreement and its specific provisions. All Members had contributed to the drafting of that Agreement, which was an integral part of their rights and obligations.

The Appellate Body had analyzed the Panel's arguments with respect to the existence of cross-conditionalities and conflicts between Argentina's commitments to the IMF and its obligations under the WTO Agreement. It had pointed out in paragraph 68 of its Report, that "... the Panel offers some explanation as to why it did not address Argentina's arguments", thereby confirming that the Panel had not examined Argentina's arguments. This affirmation by the Appellate Body seemed to confirm Argentina's argument that there was no "objective assessment of the matter" in accordance with Article 11 of the DSU. Without carrying out this examination, the Panel had arrived at the conclusion contained in paragraph 5.3 of its Report, which had been upheld by the Appellate Body in paragraph 87(c) of its Report.

Thus, on the basis of paragraph 5.3 of the Panel Report, the Appellate Body had commented on the arguments and legal value of the provisions adduced by Argentina and had stated in paragraph 69 of its Report that "implicit in the above statement is the Panel's belief that Argentina had not successfully shown that it was required under an agreement with the IMF to impose the statistical tax." This assertion, which was at the centre of the discussions on cross and conflicting obligations

[3]WT/GC/M/25.

and conflicts, had confirmed that although Argentina had not successfully shown that it had been required by the IMF to impose the statistical tax, at least it had raised elements which had led the Panel to consider that there could be a presumption of the existence of such a legal obligation. However, this presumption was not of sufficient significance for the Panel to transfer the burden of proof and request the United States to refute the existence of the alleged obligation. This had been confirmed by the Appellate Body when it asserted that "...the Panel does not appear to have been convinced that Argentina had a legally binding Agreement". The Agreement between Argentina and the IMF might have diminished or relieved Argentina of its GATT/WTO obligations. However, what was needed was a determination of the legal nature of the Agreement and the extent to which it was binding. As a result of this uncertainty on the legal nature of the commitment Argentina continued to question why the Panel had not considered the US request, supported by Argentina, to consult with the IMF. If the consultation had proved the United States to be right, there would have been no appeal on this issue. If, on the contrary, it had proved Argentina to be right, it would have successfully shown that there was a cross-obligation which was in contradiction with the Declaration on Coherence.[4] The failure to consult with the IMF had led the Appellate Body to assert, in paragraph 69 of its Report that "it does not appear possible to determine the precise legal nature of this Memorandum on Economic Policy, nor the extent to which commitments undertaken by Argentina in this Memorandum constitute legally binding obligations." If the Appellate Body could not determine such matters who could do so in a WTO dispute? If, Argentina had lodged an appeal on the grounds that there was a cross-obligation and the answer was that it had not been possible to determine the legal nature of that obligation because in the previous procedural stage (i.e. during the Panel proceedings) the proper means to clarify this point had not been used, it could only be concluded that there was a lacuna in the DSU or that due process had not been properly observed with respect to one party to the dispute. This would seem to be confirmed in the Appellate Body's analysis which had led to its conclusion in paragraph 87(d) that the Panel had not violated Article 11 of the DSU by not consulting the IMF.

As mentioned in paragraph 83 of the Appellate Body Report, the United States, supported by Argentina, had requested the Panel to consult with the IMF. The Appellate Body had stressed the discretionary nature of the Panel's right to seek information from experts as provided for in Article 13 of the DSU.

While Argentina did not question the discretionary nature of Article 13 of the DSU it was clear that in such a dispute if a panel had acted in accordance with the approved procedures in an organization that sought to promote "coherence" with a similar organization, to refrain from consultations was not promoting coherence but rather depriving itself of objective elements in reaching a determination. Even if the consultation did not fall within Article XV of the GATT 1994 and was not of a jurisdictional nature, it would have led to a more accurate assessment according to Article 11 of the DSU. This had been confirmed by the Appellate Body in paragraph 86 of its Report in which it had observed that the Panel did not violate Article 11 of the DSU by not consulting the IMF, but had affirmed, at the same time, that "it might perhaps have been useful for the Panel to have consulted with the IMF on the legal character of the relationship or arrangement between Argentina and the IMF in this case". Argentina agreed with this assertion and was pleased with the Appellate Body's recognition, although it regretted that this had not influenced its findings.

Finally, he drew attention to the obligation under Article 21.3 of the DSU that the DSB be informed within 30 days after the date of adoption of the Reports of the parties' intentions in respect of implementation of the DSB's recommendations. He proposed that following a practice which had precedents in the DSB, rather than making a statement at a DSB meeting, Argentina would inform the

[4]Declaration on the Contribution of the World Trade Organization to Achieving Greater Coherence in Global Economic Policymaking, in the Results of the Uruguay Round - The Legal Text, GATT Secretariat (1994), p.442.

DSB of its intentions in respect of implementation of the DSB's recommendations no later than 22 May 1998 in a note to the DSB Chairman for circulation to all Members. He reaffirmed Argentina's commitment to the dispute settlement system.

The representative of the United States responded to Argentina's statement concerning its interpretation of the Panel and the Appellate Body Reports by drawing attention to the conclusions of the Panel Report contained in paragraph 7.1 which had been upheld by the Appellate Body. Paragraph 7.1(a) stated that "the minimum specific duties imposed by Argentina on textiles and apparel are inconsistent with the requirements of Article II of GATT". Furthermore, in paragraph 7.1(b) the Panel Report stated that "the statistical tax of three per cent *ad valorem* imposed by Argentina on imports is inconsistent with the requirements of Article VIII of GATT". The United States would work with Argentina bilaterally on the proposed procedure with the intention to confirming that the rights and obligations of both parties would be preserved as if a meeting had been held under Article 21.3 of the DSU.

The representative of Argentina believed that the comments made by the United States reflected its own perception of the Panel Report. Argentina was ready to work with the United States in such a way as to guarantee that the rights and obligations of the parties to the dispute were preserved as if a meeting of the DSB had been held pursuant to Article 21.3 of the DSU in accordance with the precedent set in the DSB.

The representative of the European Communities said that the Communities were generally satisfied with the Appellate Body Report since it had taken on board most of the legal points made by the Communities in their third-party submission.

First, the Appellate Body had upheld the Panel's conclusions that Argentina's system of specific duties had resulted in an infringement of its obligations under Article II of GATT 1994 for all the tariff categories covered by the regime. Furthermore, the Appellate Body had rightly considered that the very nature of the minimum specific duties meant that transactions below a certain price level would always lead to a breach of Article II of GATT 1994 for all the tariff categories and that there was therefore no need to demonstrate that the regime breached Article II for each and every import transaction.

Second, the Appellate Body had supported the Communities' view that the application of a type of duty different from the type provided for in a Member's Schedule was consistent with Article II:1 (b) of GATT 1994 provided that it resulted in no duties being levied above the binding. The Appellate Body had observed that there was no obligation under Article II to impose only the kind of duty mentioned in the Schedule. The Appellate Body then had implicitly recognized that a change in the type of duty did not constitute *per se* a reduction in the value of the tariff concessions. It had dismissed the Panel's arguments that the GATT practice had clearly established that a change in the type of duty was contrary to Article II on the grounds that no panel report had already dealt with the specific issue at hand, that Working Party reports had not resulted in the Contracting Parties making recommendations pursuant to Article XXIII of GATT 1994, and that unadopted panels had no legal status in the WTO system.

Third, the Appellate Body had upheld the implicit findings of the Panel that Argentina had failed to demonstrate that it had a legally binding commitment under the IMF to impose a three per cent statistical tax and that such action could supersede Argentina's obligations under Article VIII of GATT 1994. The Appellate Body had observed that Argentina had not shown an irreconcilable conflict between the provisions of the Memorandum of Understanding with the IMF and the provisions of Article VIII of the GATT 1994. The Appellate Body had also rightly recalled that there was nothing in the agreements and declarations concluded between the IMF and the WTO that could justify a conclusion that a Member's commitment to the IMF should prevail over its obligations under

Article VIII of the GATT 1994. Fourth, the Communities noted the Appellate Body's assessment that Panels retained a large margin of manoeuvre, pursuant to Article 11 of the DSU, with regard to the possibility to admit evidence submitted late in the procedure; i.e., a few days before the second substantive meeting of the Panel with the parties.

The DSB took note of the statements and adopted the Appellate Body Report in WT/DS56/AB/R and Corr.1 and the Panel Report in WT/DS56/R as modified by the Appellate Body Report.

The representative of the IMF, speaking as an observer, thanked the DSB for the opportunity to speak on this matter. This case, which was the subject of the Appellate Body Report before the DSB at the present meeting, raised two general issues for the IMF. First, as shown by the record, an IMF-supported programme had been cited as justification for a measure alleged to be in violation of GATT. This issue raised factual questions that the IMF was uniquely placed to answer. In addition, the WTO and the IMF had a special relationship, given the history of the IMF/GATT relations, the cooperation between the two institutions in recent years, and the IMF/WTO cooperation agreement. Given this special relationship, the IMF's interest in matters relating to its conditionality and the panel's right to seek information from experts under Article 13 of the DSU, he wished to record the IMF's strong interest in being consulted by panels in such cases. Second, the international trade community should be assured that it was the IMF's general policy not to advocate measures that would be inconsistent with a Member's WTO obligations.

The representative of India said that he was aware that the DSB had already adopted the Reports of the Appellate Body and the Panel on this matter. He noted the statements made by Argentina, the United States and the European Communities. It would take some time for India to grasp the full importance of these statements. He had asked for the floor, after the statement made by the IMF in its capacity as an observer, in order to state that his delegation had taken a careful note of the comments made by the IMF. In his delegation's view, these comments raised certain systemic issues. His delegation, like many other delegations, had been involved in the negotiations of the Agreement between the WTO and the IMF as well as the General Council's Decision on this Agreement.[5] India did not understand the second portion of paragraph 4 (a) of the Decision to mean that the IMF could make observations of the type that it had made at the present meeting. Therefore, this situation needed to be carefully reflected upon. India reserved its rights to raise this matter in the General Council, if necessary, at an appropriate time in the light of its understanding of paragraph 4(a) of the General Council's Decision. He had no objections if the DSB took note of the IMF's statement.

The DSB took note of the statements.

3. Japan - Measures affecting consumer photographic film and paper
   - Report of the Panel (WT/DS44/R)

The Chairman recalled that at its meeting on 16 October 1996, the DSB had established a panel to examine the complaint by the United States. Subsequently, the Report of the Panel contained in document WT/DS44/R had been circulated on 31 March 1998 and it was now before the DSB for adoption at the request of Japan. In accordance with Article 16.4 of the DSU, the adoption procedure was without prejudice to the right of Members to express their views on the Panel Report.

The representative of Japan said that his Government welcomed the Panel's conclusions that Japan's alleged measures did not nullify or impair benefits accruing to the United States within the meaning of Article XXIII:1(b) of GATT 1994, nor violated Article III:4 of GATT 1994, nor

[5]WT/L/194.

Article X:1 of GATT 1994. This complex case involved non-violation nullification or impairment remedies which traditionally had been treated as exceptional in dispute settlement and had been approached with caution. However, after thorough and objective examination of the arguments of the parties to the dispute, the Panel had reached appropriate conclusions. Although the Panel had not agreed with all arguments made by Japan its findings and conclusions were based on an objective assessment of facts and were largely supported by sound reasoning. In particular, Japan was satisfied with the following findings: (i) The Panel had found that to fall within the terms of Article 6.2 of the DSU, a measure not explicitly described in a panel request must be subsidiary or closely related to a measure specifically identified in the request so as to give adequate indication of the scope of claims; (ii) The Panel had recognized that the non-violation remedy should be approached with caution and should remain an exceptional remedy; (iii) With regard to the issue of whether a measure was reasonably anticipated by the complaining party in the context of non-violation claims the Panel had developed an appropriate guideline: i.e., by showing that certain measures had been introduced prior to the conclusions of the relevant tariff negotiations, the responding party had raised a presumption that the complaining party should have anticipated the measures and it was for the complaining party to rebut that presumption; (iv) The Panel had found that the complaining party had to show a clear correlation between the measures and the adverse effect on the relevant competitive relationship of imports with domestic products and had concluded that the United States had failed to do so. In this regard, the Panel had also found that claims of "combined effects" of the alleged measures had to be approached with caution whereby the complaining party was required to present additional arguments or evidence in support of its claims that all measures had worked in concert to impair competitive market-access conditions for imported film and paper. Japan believed that these findings of the Panel as well as its conclusions not only served to secure a satisfactory solution to this dispute, but also set an important precedent to guide the future operation of the dispute settlement system. His delegation requested that the DSB adopt this Report pursuant to Article 16.4 of the DSU and expected that this Report be fully respected by the United States.

He also wished to express Japan's concerns with regard to two specific points contained in the Panel Report in the light of the exceptional nature of the non-violation remedy. First, with regard to the question of what constituted a "measure" within the meaning of Article XXIII:1(b), the Panel had attached too much importance to the need for adopting a broad definition of the term "measure". The Panel had also found that an action taken by private parties might be deemed governmental if there was sufficient governmental involvement. In the application of this test to the alleged measures at issue the Panel had made an affirmative determination. Although Japan did not disagree with the Panel's view that measures covered by Article XXIII:1(b) "should not be defined in an unduly restrictive manner", it considered that the Panel's approach should be treated with caution in the future cases. If not, a government could be held responsible for actions it did not control and this could result in broadening of the non-violation remedy.

Second, although the Panel had found that the complaining party had to demonstrate clear causal relationship between the measures at issue and the nullification or impairment of benefits, it had also stated that in determining the degree of causation that had to be shown, the issue was "whether [a measure] has made more than a *de minimis* contribution to nullification or impairment". Regardless of the Panel's intention, Japan was concerned that this statement, which might give an impression that the Panel had adopted a less stringent standard for the determination of causation, could be subject to potential abuse in the future cases.

He wished to express his sincere appreciation to the Panel and the Secretariat for their time and efforts. Although this case was not only complex but also controversial and highly publicized, the Panel had examined it and had reached its conclusions in an objective and impartial manner, as shown by the quality of its Report. Japan believed that the work of this Panel had clearly demonstrated the credibility of the dispute settlement mechanism in maintaining Members' rights and obligations under the WTO Agreement.

The representative of the United States said that her country strongly disagreed with the Panel's finding. The United States believed that the Panel had failed to give adequate consideration to evidence of the combined effects of Japan's measures and its responsibility for private sector behaviour in this case. The United States had brought before the Panel a pervasive set of barriers imposed and maintained by Japan through an elaborate combination of non-transparent, formal and informal means. Each time Japan had reduced tariffs in this sector, it had taken deliberate, comprehensive and systematic steps to offset the tariff concessions that it had made. Some measures had directly been targeted at film and paper, others had been applied more broadly. Some seemed blatantly protectionist, others appeared facially neutral and their protection was evident only in their application.

These measures diminished the competitive opportunities for imported photographic materials and each had served to reinforce the protection afforded by the others. Together, they had formed a market structure that was designed to keep imports out. The effects of Japan's efforts to restructure distribution in the photographic sector provided compelling testimony to the power of such measures. Foreign photographic material manufacturers were effectively blocked from reaching retail outlets. While almost one hundred percent of domestic film continued to be distributed through the leading wholesalers not one of leading, nationwide photospecialty wholesalers in Japan carried foreign photographic materials. Less than three percent of all the film sold through wholesale channels was imported.

To be effective players in the Japanese photographic film and paper market, foreign producers had to make a direct assault on a carefully engineered structure that rested on a powerful consensus of government and industry. It was not surprising that virtually every attempt by foreign producers to gain access to the distribution system had resulted in failure, because such attempts involve far more than business tactics. The participation of MITI and other Japanese agencies had been essential to the success of the restructuring plan. It could not -- and did not -- happen by coincidence or by private efforts alone.

A serious market access problem still remained. The United States was monitoring developments in the Japanese photographic materials market to determine whether Japan was living up to the many formal representations it had made to this Panel about the current openness of its market. The United States' monitoring efforts would focus on the availability of foreign brands in the distribution channels in Japan, the number and type of retail stores carrying photographic products and the availability, by volume, of foreign brands in these outlets. The Panel Report had not diminished the United States' determination to achieve access to this market. Nor did adoption of the Panel Report in any way exonerate an economic system that was unfavourable to imports. The world recognized, as did Japan, that it had to stimulate its economy, strengthen its financial system, open its markets, deregulate its economy aggressively and urgently, fundamentally reform its distribution system and eliminate exclusionary business practices that limited not only imports but also competition and economic growth in Japan.

The representative of Japan said that for the sake of the credibility of his country's market, he wished to make some comments with regard to the United States' statement. Japan's market structure and its distribution system had been fully discussed before the Panel in a lengthy manner and had been substantiated by several documents. Therefore, he did not wish to reiterate these arguments. He underlined that it was important to draw attention to the conclusions of the Panel that "... we are not persuaded there is a meaningful nexus between the 1970 Guidelines and this largely pre-existing market structure".[6] The 1970 Guidelines[7] were the key measure that the United States had argued in the context of the non-violation claim under Article XXIII:1(b) of GATT 1994. The Panel had also

[6]WT/DS44/R, paragraph 10.173.
[7]1970 Guidelines for Rationalizing Terms of Trade for Photographic Film.

noted that, as argued by Japan and not contested by the United States, single-brand wholesale distribution was the common market structure. It was a norm which prevailed in every major market in the world including the US market. The United States had responded that its market structure was a result of private not governmental actions. It was unclear why the same economic forces in the United States would not also exist in Japan. The above-mentioned paragraph demonstrated that Japan's market was not different to the US market. He hoped that the DSB members would bear this issue in mind. With regard to the monitoring of the Japan's film market by the United States, he said that Japan's did not violate the GATT provisions. If there was any problem the United States could raise it in the WTO as this was not a bilateral matter.

The representative of the European Communities said that this Panel Report had important systemic implications both in terms of the overall approach to non-violation cases, as well as with regard to its implications for the trade and competition debate in the WTO. The Communities which had participated as a third-party in the Panel's proceedings had an important trade interests in this dispute. These related in particular to concerns about existing difficulties of access to distribution channels in Japan for imported film products. At the present meeting, he did not wish to comment on the specifics of this dispute but rather to draw attention to those systemic issues which, in the Communities' view, merited particular attention within the WTO framework. Since the entry into force of the WTO, this was the first time that a Panel had addressed, in substance, the scope for non-violation remedies. The Communities, which had always advocated a cautious approach to non-violation cases, supported the Panel's cautious approach. The Panel had clearly stressed that non-violation was "an exceptional remedy for which the complaining party bears the burden of providing a detailed justification to back up its allegations" (para. 10.3). The Communities fully endorsed the statement by the Panel that "Members negotiate the rules that they agree to follow and only exceptionally would expect to be challenged for actions not in contravention of those rules" (para. 10.36). In carrying out its non-violation analysis, the Panel had adopted a broad definition of what constituted a government measure, while at the same time setting a clear requirement of causality between measures attributed to the government and the nullification or impairment. In overall terms, the Communities considered that this was a sound legal approach, which had struck the right balance between the exceptional nature of the non-violation remedy and the need to cover different types of government intervention, which upset the competitive relationship between domestic and imported products.

He also wished to share some general considerations with regard to the implications of this ruling for the ongoing discussion in the WTO on the trade and competition interface. A careful reading of the Panel Report showed that the Panel had not ruled on whether as a result of private anti-competitive practices, the competitive relationship between domestic and imported products had been upset. Rather it had focused on whether nullification or impairment could be attributed to measures taken by the government. The Communities considered that such an approach was fully justified under current WTO rules. In their third-party submission to the Panel, the Communities had stressed two points. First, they had noted that the respect of competition rules was not an issue before the Panel. Second, they had stressed that some aspects of this dispute confirmed the interest and need for an international framework of competition rules within the WTO system. He believed therefore that it was appropriate and timely for Members to reflect on the implications of the Panel's ruling with regard to the ongoing work in the WTO on the trade and competition. Regardless of the facts of a particular case, it was clear that anti-competitive practices could have a significant market foreclosure effect and deny the benefits of trade liberalisation. The trade impact of such practices did not depend upon the degree of government intervention. The WTO needed to develop a multilateral approach to tackle anti-competitive practices which was based on commonly agreed rules and closer cooperation among competition authorities. Members should be ready to accept basic disciplines concerning the adoption and enforcement of competition law, and to co-operate with other Members when anti-competitive practices were having a negative impact on market opening objectives. Such an approach would reinforce the multilateral trading system and help to better address differences among

Members concerning the impact of anti-competitive practices on international trade. The Communities hoped therefore that this Panel's ruling would lead to an intensification of discussions on the interaction between trade and competition policy within the framework of the Working Group established for this purpose.

The DSB took note of the statements and adopted the Panel Report contained in WT/DS44/R.

4. European Communities - Regime for the importation, sale and distribution of bananas
   - Statement by Ecuador, Guatemala, Honduras, Mexico, Panama and the United States concerning implementation of the recommendations of the DSB.

The representative of Ecuador,speaking also on behalf of Guatemala, Honduras, Mexico, Panama and the United States recalled that on 14 January 1998, the European Commission had adopted a proposal to modify the EC banana import regime. Since then, the six countries had continued to indicate that this proposal was inconsistent with the Communities' WTO obligations and had requested that the EC Council amend this proposal in order to bring it into line with its obligations under the WTO. He drew attention to the statement by the six countries, dated 5 February 1998, contained in document WT/DSB/COM/4. Unfortunately, in response to the concerns raised therein new arguments had been made to justify the proposed maintenance of the major discriminatory elements of the current regime. At the present meeting, on behalf of the six countries, he wished to make a statement which was available in the room. This statement concerned certain arguments which had been submitted in defence of the Communities' position and explained that these new arguments had not altered the position of the six countries that the Commission's proposal was WTO-inconsistent.

Over the past five years, the Communities had made a series of claims to justify their banana regulations. During two successive GATT panel proceedings,[8] the Communities had attempted to justify their measures by claiming that the Lomé Convention -- non-reciprocal, one-way trade preference programme -- was a free trade area covered under Article XXIV of GATT 1994. Both panels had rejected this claim. During the most recent case[9], the Communities had claimed that they had two separate banana regimes. One for Latin American trade and another for preferential trade under the Lomé Convention. It was therefore not possible to compare their relative treatment. The treatments under these two regimes were not compatible. The Communities had claimed that the Uruguay Round commitments had exempted them from all non-discrimination obligations and that the Lomé waiver had permitted them to discriminate against their trading partners whenever they decided that such discrimination was required by the Lomé Convention. The Panel and the Appellate Body had rejected these claims. However, new claims continued to be made by the Communities in order to justify the recent WTO-inconsistent proposal. These claims did not have any more legal basis than those that had been made in the past and had been rejected.

He drew attention to the following claim: *The Commission's proposal was WTO-consistent because it granted tariff preferences only to the ACP countries which were covered by the Lomé waiver.* The Appellate Body had found that the existing traditional and non-traditional ACP allocations of tariff quotas were inconsistent with Article XIII of GATT 1994 (para. 159-162), and were not covered by the Lomé waiver which applied only to Article I violations (para. 188). The continued attempt to justify discriminatory allocations in favour of ACP suppliers as an Article I violation, rather than an Article XIII violation, not only ran counter to the Appellate Body's conclusions which were based on the premise that Article XIII applied to ACP non-tariff benefits, but was also in contradiction with the wording of this Article. As noted by the Appellate Body, the non-discrimination provisions of Article XIII:5 "... shall apply to any tariff quota" (para. 160). Since the

[8]DS32/R; DS38/R.
[9]WT/DS27.

Communities' current and proposed allocation to ACP suppliers constituted tariff quotas, the obligation under Article XIII explicitly applied. The Commission's proposal also recognized that importing bananas would not be commercially viable with an over quota rate of ECU 765 per tonne. If quota allocations to the ACP suppliers were purely a "tariff benefit", the Appellate Body would not have compared the allocation treatment of ACP suppliers with treatment accorded to Guatemala, Honduras and Mexico (para. 159) in finding a violation of Article XIII (para. 179 -188). Nor would it have needed to consider the application of the waiver to Article XIII violations (para. 179 -188). Moreover, the Appellate Body had confirmed the Panel's conclusions by rejecting the Communities' contention to ignore Article XIII with respect to ACP allocations (para. 191). To this effect, the Appellate Body had confirmed the Panel's finding contained in paragraph 7.82 of its Report. In rejecting the Communities' arguments that the ACP allocations were not subject to Article XIII because they constituted a separate preferential regime, the Panel had stated that " Not to apply Article XIII in such a situation would mean that preferential treatment in addition to the tariff preference was being afforded to those Members" (para. 7.80).

He drew attention to the following claim: *The Communities only needed to settle with the four substantial supplying countries -- Costa Rica, Colombia, Ecuador and Panama -- in order to meet their WTO obligations.* WTO obligations applied to all Members and the EC measures with regard to quota allocations and licensing distribution should be brought into conformity with the WTO Agreement by 1 January 1999. Furthermore, the Communities had a commitment to implement all the recommendations and rulings of the Panel and the Appellate Body. In this regard, as indicated by the Appellate Body in paragraph 161 of its Report, even if an agreement was reached with all Members having a substantial interest, all allocations, including any allocations to Members not having a substantial interest, "...must be subject to the basic principle of non-discrimination" in Article XIII:1. By creating a separate tariff-rate quota for Latin American bananas, which was less favourable, the current proposal discriminated against all Latin American suppliers -- substantial and non-substantial -- in favour of non-substantial ACP suppliers. The non-violation of the principle of non-discrimination regarding tariff-rate quota allocations could only be guaranteed by fully respecting the relevant provisions of Article XIII.

He drew attention to the following claim: *The Communities had the right to keep 2.2 million tonnes in-quota quantity. Expanding it to create a single quota that would encompass the totality of ACP and Latin American quantities would go beyond what was required for implementation of the Panel and the Appellate Body Reports*. As confirmed by the Panel (para. 7.67-7.77) and the Appellate Body (para. 159-162), Article XIII prohibited any tariff quota allocation, irrespective of whether it was notified in the Schedules, unless all Members were similarly restricted, based on a distribution of trade that would have taken place in the absence of restrictions. An in-quota quantity set out in a Schedule was a concession -- a promise not to reduce access -- not a right of the importing country to maintain such treatment if its WTO obligations required it to change the overall market allocation because the existing allocation discriminated in favour of other suppliers. Since the current and proposed tariff quota for Latin American bananas, including the proposed 2.2 million tonnes, discriminated against Latin American suppliers and was different from the tariff quota allocation proposed for ACP suppliers, the current and the proposed market distribution were inconsistent with Article XIII. If the Communities chose to restrict access to their market in accordance with the fundamental non-discrimination requirements of Article XIII -- as interpreted by the Panel and the Appellate Body -- they would be required to establish a single tariff quota within which all suppliers, including the ACP countries could compete.

He drew attention to the following claim: *Imposing a tariff of ECU 300 per tonne on 353,000 tonnes of third-country imports was consistent with the Communities' WTO obligations.* It appeared that the Communities questioned their Uruguay Round commitments to maintain a tariff of ECU 75 per tonne. In 1994, Colombia and Costa Rica, two substantial suppliers had agreed to the imposition of a tariff quota on Latin American bananas which had replaced the previous regimes of

member States that had to a large extent permitted unrestricted access and growth for Latin American bananas. They had also agreed to renounce their GATT rights to challenge other aspects of the banana regime, in particular discriminatory licensing provisions. In exchange they had obtained two major concessions from the Communities; i.e., a bound in-quota tariff of ECU 75 per tonne and small increases in the in-quota quantity subject to further increases resulting from the EC enlargement. In 1995, after the accession to the EC of Austria, Finland and Sweden, the in-quota quantity of 2.2 million tonnes had been increased by 353,000 tonnes, with a tariff rate of ECU 75 per tonne. The current proposal to impose a far more restrictive tariff of ECU 300 on the 353,000 tonnes would make the banana regime for Latin American suppliers even more protectionist and would impose an additional burden on Latin American exports -- raising considerable doubts about its WTO consistency.

He drew attention to the following claim: *The Appellate Body allowed the EC to grant allocations up to ACP "best-ever" quantities.* The Appellate Body Report made it clear that the current "best-ever" allocations for traditional and non-traditional ACP suppliers were not consistent with the Communities' WTO obligations, regardless of what might be required by the Lomé Convention. In the Panel and the Appellate Body Reports, the issue of what was required by the Lomé Convention was only relevant as it related to the waiver of Article I for preferential treatment "required by the Lomé Convention". The Appellate Body made it clear that irrespective of whether certain measures might be "required by" the Lomé Convention, they were still not WTO-consistent unless all terms and conditions of the Lomé waiver were met or satisfied all WTO obligations. The Communities were not required to balance their obligations under the WTO and the Lomé Convention but to ensure that their regime was in full conformity with all WTO provisions (para. 164 - 188). The Appellate Body had found that the Lomé waiver did not waive the Communities' obligations under Article XIII, which applied to all market shares (para. 188). In this regard it had reversed the conclusions of the Panel contained in paragraph 7.110 of its Report. Therefore, the EC quota allocation scheme was not permitted, regardless of what the Lomé Convention might require, unless all aspects of that scheme complied with Article XIII. Both the current EC regime and the new EC proposal violated non-discriminatory requirements of Article XIII. The Appellate Body had explicitly confirmed the Panel's conclusions that all allocations to ACP suppliers were inconsistent with Article XIII, since Latin American non-substantial suppliers had not been given the same treatment (para. 162). As stated at the DSB meeting on 13 February, the major inequalities between the EC proposed allocation treatment for ACP suppliers and Latin American suppliers constituted a violation of Article XIII. There was no WTO-consistent justification for the new banana measures proposed by the Commission. The Governments of Ecuador, Guatemala, Honduras, Mexico, Panama and the United States urged member States to insist on a WTO-consistent regime by 1 January 1999. They remained ready to work with the Communities in an effort to find such a solution to this long-standing dispute.

The representative of Colombia said that her delegation did not intend to comment on the substance of the issue raised by Ecuador but to clarify one point. She referred to Ecuador's assertion that Colombia had renounced its GATT rights in exchange for a number of privileges. She pointed out that Colombia had never renounced its rights but in 1994, in the light of the Uruguay Round negotiations, Colombia had negotiated with the Communities a tariff quota for bananas. In accordance with the negotiating modalities for agricultural products, this was a current access quota equivalent to total m.f.n. imports made in the reference period with an in-quota tariff of ECU 75.

The representative of the European Communities said that he wished to raise two issues. One related to the circulation of statements made at the DSB meetings. The Communities were concerned about such a practice which in their view constituted a precedent. This practice might become the rule and Members could consider that they had a right to circulate their statements as official WTO documents. Such a practice did not seem necessary because statements made at the DSB meetings were part of the record. If such a practice was established, the DSB would be faced with the

proliferation of statements circulated as official WTO documents. In the view of the Communities, this would not improve the functioning of the dispute settlement mechanism but rather would formalize different positions of countries and therefore render the efforts toward achieving mutually acceptable solutions more difficult.

The second point had already been reiterated on a number of occasions. The Communities were concerned that the DSB continued to hear statements on the Commission's proposal. The same arguments were being reiterated repeatedly. He recalled that under the provisions of Article 21 of the DSU, a reasonable period of time of 15 months had been established by the arbitrator in order to enable the Communities to comply with their obligations. The Communities would conform with their WTO obligations within that period of time. To this effect, the process had already been initiated and the Communities believed that any modifications of their banana import regime should be judged at the end of such a process. He noted that legislative changes were under way and only when the final legislation would be known, could interested parties judge this legislation. He wondered whether there were any procedures to avoid a repetition of this exercise.

The representative of Costa Rica expressed his delegation's support for the statement made by Colombia. He regretted the views expressed by the six countries with regard to the motivation of Costa Rica and Colombia.

The DSB took note of the statements.

5. Proposed nominations for the indicative list of governmental and non-governmental panelists (WT/DSB/W/72)

The Chairman drew attention to document WT/DSB/W/72 which contained additional names proposed for inclusion on the indicative list in accordance with Article 8.4 of the DSU. He recalled that this document had been submitted to the DSB for approval at its meeting on 13 February 1998, but its consideration had been postponed until a future meeting. He proposed that the DSB approve the names contained in document WT/DSB/W/72.

The DSB so agreed.

6. United States - The Cuban Liberty and Democratic Solidarity Act
   - Statement by Cuba

The representative of Cuba, speaking under "Other Business", said that on 21 April 1998, a long consultation process under the DSU procedures had been terminated. In other words, the panel established at the request of the European Communities to examine the Helms-Burton Act had lapsed since the Communities had not re-activated the work of this panel within the 12-month period pursuant to Article 12.12 of the DSU. While Cuba was not surprised it was nevertheless concerned that this situation had occurred with regard to the case involving the world's most powerful country. Since the beginning, the United States had attempted to avoid the proceedings of this panel and had linked its economic warfare waged against Cuba for almost 40 years to a policy of bilateral dispute not related to international trade rules.

It was not Cuba but the Communities and their member States that had undertaken to clarify the situation. At the DSB meeting on 16 October 1996 the representative of the Communities had noted that "...the US measures identified in its request for the establishment of a panel were in violation of a number of provisions of the GATT and the GATS. These measures, even if they were not in conflict with WTO rules, nullified or impaired benefits accruing to the Communities under the GATT and to the Communities and its member States under the GATS ... the US measures impeded

the attainment of certain general objectives of the GATT, such as the expansion of production and trade and the right of access to markets."[10]

The measures contained in the Helms-Burton Act and its predecessor, the so-called Torricelli Act, were a result of the United States' motivation to apply international economic sanctions in a unilateral and extraterritorial manner and in this case it was also its desire to internationalize its economic, trade and financial embargo imposed on Cuba. About a year ago, the parties to the dispute had reached an understanding that the Communities would suspend the DSU proceedings provided that the United States amended Title IV of the Helms-Burton Act, which denied visas to foreigners investing in nationalized assets in Cuba, and suspended Title III, which allowed American companies to bring lawsuits against European enterprises trading with Cuba. However, in spite of the concessions made, the Communities had not been satisfied. There seemed to be a fragile understanding that European interest would not be affected as a result of the implementation of the Helms-Burton Act. However, this legislation also contained the provisions that were inconsistent with most basic international rules.

Cuba was affected by these measures which damaged its trade with other Members and was convinced of the illegal nature of the Helms-Burton Act. A number of international fora had rejected this legislation as being in violation with international law and the principles of free trade. It was enough to recall the repeated resolutions of the UN General Assembly adopted by an overwhelming majority, the declarations of the Rio Group, the Association of Caribbean States, the European Union and the Council of the Latin American Economic System. His Government had not participated in this process so as not to provide the United States with any political arguments. It had shown flexibility with respect to its rights as a full Member of the WTO in spite of the negative impact on its national interests. Cuba reserved its rights under the relevant WTO Agreements to revert to this matter, if necessary.

The DSB took note of the statement.

7. Informal note by the Secretariat concerning notifications of mutually agreed solutions
   - Statement by Uruguay

The representative of Uruguay, speaking under "Other Business", thanked the Secretariat for its informal note prepared in response to the request made at the DSB meeting on 13 March 1998[11] ,on the question of notifications of mutually agreed solutions This informal note would enable Uruguay to focus more on this matter which it wished to consider in greater detail. Since the issues of substance were not considered under "Other Business", he requested that this matter be included on the agenda of the next regular meeting of the DSB.

The DSB took note of the statement.

8. India - Patent Protection for Pharmaceutical and Agricultural Chemical Products
   - Reasonable period of time for implementation of the DSB's recommendations

The representative of India, speaking under "Other Business" also on behalf of the United States, recalled that at its meeting on 16 January 1998, the DSB had adopted the Appellate Body Report and the Panel Report as modified by the Appellate Body Report on "India - Patent Protection for Pharmaceutical and Agricultural Chemical Products". At the meeting on 13 February 1998, India had informed the DSB of its intention to meet its WTO obligations with respect to this matter. Subsequently, India and the United States had held several rounds of bilateral consultations with a

[10]WT/DSB/M/24.
[11]Job no. 1772.

view to arriving at a mutually agreed reasonable period of time as provided for in Article 21.3(b) of the DSU, to implement the DSB's recommendations on this matter. At the present meeting, he wished to inform the DSB that as a result of bilateral consultations, India and the United States had agreed, on 21 April 1998, on a reasonable period of time of 15 months for India to implement the DSB's recommendations. India had indicated to the United States that it would introduce necessary legislation to implement the DSB's recommendations as soon as possible with the understanding that the new law would be in place and operational no later than 19 April 1999.

The representative of the United States thanked India for its efforts to bridge the differences on this issue which enabled the parties to the dispute to resolve them.

The DSB took note of the statements.

9. Confidentiality of dispute settlement documents
- Statement by Indonesia

The representative of Indonesia, speaking under "Other Business", said that the interim report of the Panel on "Indonesia - Certain Measures Affecting the Automobile Industry" which was to be strictly confidential had been leaked by an unidentified source or sources to the English language newspaper, The Japan Times, within twenty four hours after it had been sent to the parties to the dispute. The European Report of 1 April had also revealed some information contained in the interim report. Furthermore, on 26 March the United States had issued a press release in which Ms. Ch. Barshefsky of the USTR had announced the Panel's rulings. The leaking of the Panel's interim report was a serious breach of the obligations of confidentiality. While, in general, Indonesia considered that the dispute settlement system worked effectively, it was concerned about the violation of the DSU procedures agreed by the parties to the dispute. In her delegation's view all Members were required to observe the obligation of confidentiality regarding panel proceedings as well as all information and documents considered to be confidential by panels or parties to the dispute. She regretted that this solemn obligation was being disregarded by some Members. Indonesia would not respond in kind, because it respected the integrity of the dispute settlement system. However, the DSB should seriously consider the question of the leaking of panels and the Appellate Body reports. It should establish procedures to sanction those who would not respect this important obligation.

The representative of the United States said that her delegation wished to clarify this matter. The press release referred to by Indonesia had been a response to earlier reports by Japanese newspapers and other sources close to Japan's Ministry of Foreign Affairs. The USTR press release had simply responded to these press reports that had been triggered by the pre-emptive release of the Panel's results in Japan. She emphasized that the United States had not released the interim report of the Panel or its findings.

The representative of the European Communities expressed the Communities' concern regarding the obligation to respect confidentiality in the WTO. Confidentiality was essential for the functioning of the dispute settlement system, in particular with regard to interim reports which were restricted only to the parties to a dispute. Interim reports were subject to amendments and served to facilitate an amicable solution. Therefore, it was important that such reports were kept confidential at that stage. Members were constantly subject to political pressure and requests from the press which were difficult to resist, but it was essential that the principal of confidentiality be maintained.

The representative of India said that Indonesia had raised an important matter. All Members were committed to respect the confidentiality of panel proceedings. Everybody should recognize the problem of the breach of confidentiality. He was aware of few situations in which such a breach of confidentiality had taken place without any involvement of the Geneva-based representatives. Therefore, this matter should be considered collectively and Members could then inform the capitals

of their concerns related to this problem in order to find a collective solution. He therefore supported Indonesia's proposal that this matter be considered at an appropriate time with a view to improving this situation.

The representative of Thailand noted that a breach of confidentiality had taken place in the past on several occasions. He therefore supported the proposal by Indonesia as well as the statements made by the European Communities and India with regard to this matter.

The Chairman said that the matter raised by Indonesia was of great importance and as such required to be taken into consideration at an appropriate time. However, this was not the only area which required Members to preserve confidentiality.

The DSB took note of the statements.

10. Review of the DSU

The Chairman, speaking under "Other Business", recalled that the proposal concerning the review of the DSU which had been made at the DSB meeting on 25 March 1998 had been revised in the light of the discussions and had been faxed to delegations on 2 April 1998. This text had also been made available in the room at the present meeting. He said that in the light of comments made by some Members, an informal meeting of the DSB would be held on 29 April to further discuss procedural aspects of the DSU review.

The DSB took note of the information.