WORLD TRADE ORGANIZATION

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Dispute Settlement Body
5 April 2001

MINUTES OF MEETING

Held in the Centre William Rappard
on 5 April 2001

Chairman: Mr. R. Farrell (New Zealand)

Prior to the adoption of the agenda, Turkey requested that the following matter be included under item 1 of the agenda: "Turkey – Restrictions on Imports of Textiles and Clothing Products: Status Report by Turkey".

The DSB so agreed.

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) India – Quantitative restrictions on imports of agricultural, textile and industrial products: Status report by India
(d) Turkey – Restrictions on imports of textiles and clothing products: Status report by Turkey

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 four sub-items to which he had just referred 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.17)

2. The Chairman drew attention to document WT/DS27/51/Add.17 which contained the status report by the European Communities on its progress in implementation of the DSB's recommendations concerning its banana import regime.

3. The representative of the European Communities said that the EC was in the process of preparation for the implementation of the distribution system in accordance with the EC Council Regulation No. 216/2001. As indicated on several occasions, the EC was trying to square a circle in order to bring its banana import regime into conformity with all its international obligations. As had already been indicated at the 12 March DSB meeting, the new regime would now be put in place by 1 July 2001 instead of 1 April 2001. This would enable the EC to examine all aspects concerning the operation of this system. Lengthy preparatory work would be carried out with operators and customs administrations. Time would be needed to examine the requirements of all operators. Customs officials would also need time to become familiar with the regulation. The EC remained open to discussions with interested parties in order to ensure that the new system operated smoothly and respected the characteristics of the banana market. At the 12 March DSB meeting several delegations had raised concerns about the new system. He believed that the new system could only be evaluated once it had been put in place.

4. The representative of Colombia noted that, once again, the status report submitted by the EC referred to the fact that the EC was in the process of clarifying technical and administrative issues necessary for implementation of its new banana regime. On several occasions, he had already expressed concerns about the shortcomings of the EC's reports and about the negative consequences of the EC's banana regime for Colombia's economy. He underlined that Colombia attached importance to continued efforts aimed at finding an agreement on a regime which would take into account the interests of all the parties concerned. For its part, Colombia would continue to pursue its efforts to reconcile different positions.

5. The representative of Ecuador recalled that, under Article 21.6 of the DSU, Members had to provide the DSB with status reports in writing on progress in implementation of the DSB's recommendations. He noted that the report submitted by the EC at the present meeting was very brief and did not contain any new information. In Ecuador's view, the report did not comply with the provisions of Article 21.6 of the DSU since it only indicated that the EC Commission was in the process of preparing the regulation for implementation of the new regime. Further details concerning this regulation were required, including confirmation on the date of entry into force of the new regime. Ecuador had provided the Commission with a number of comments in order to facilitate the

entry into force of a regime that would end the current illegalities. Ecuador hoped that the EC would take into account these comments and would ensure that a new regime was WTO-compatible.

6. The representative of Panama said that, like Ecuador, his country also believed that the EC's status report did not meet the expectations of the parties concerned. In the past, the EC had indicated that its intention was to comply with its obligations and that it would put into place a first-come, first-served (FCFS) system. As Panama had already indicated the regime proposed by the EC would not comply with its obligations. His country continued to hope that the EC would take into account the views expressed by the parties involved and would propose a different system. The EC had indicated that it had held consultations with interested parties on this new system. Panama was an interested party but had not been consulted. It therefore sought clarification as to how the EC defined an interested party in this dispute and wished to have more information on the bilateral consultations. Panama urged the EC to take into account the views of the parties to the dispute and not to pursue the approach it had taken thus far. Furthermore, the EC should consider the proposal put forward by the Caribbean countries which could serve as a basis for negotiations in order to reach a solution that would end this dispute in a satisfactory manner to all.

7. The representative of Guatemala noted that the EC was not making progress in order to comply with the DSB's recommendations. Guatemala was disappointed that, every month, the same information continued to be provided to the DSB and believed that the EC was violating the DSU provisions. This sense of frustration was being further aggravated by recent events in this area. All the EC had done was to confirm that it would soon put into place a new banana import regime which Guatemala believed was illegal. His country would use any legal means available to it under the WTO Agreement to ensure that its rights were respected. Guatemala hoped that its efforts would be successful. The EC should demonstrate willingness but thus far this had not been the case. The first step in this direction would be to stop submitting reports which did not contain any information on progress. Guatemala urged the EC to bring its banana import regime into conformity with the WTO Agreements.

8. The representative of Nicaragua said that his country was concerned about some administrative problems related to the operation of the FCFS system since there were too many unknown elements. Nicaragua welcomed the willingness of the EC to keep the door open for consultations and supported the statements made by Colombia, Ecuador, Guatemala and Panama.

9. The representative of Honduras said that his country was still awaiting a change in the EC's approach with regard to access to its market for Latin American bananas. In Honduras' view the status report submitted by the EC at the present meeting did not meet the objective set out in Article 21.6 of the DSU. The report referred to some regulatory and technical work for the preparation and implementation of the tariff quotas described in Regulation 216/2001. As had already been stated, the information on the new regime contained in this Regulation gave rise to serious concerns since the proposed regime would violate WTO rules and would have an irreversible impact on the banana production in Honduras and on world trade in bananas. It was discouraging that no breathing space previously announced by the EC in the preparations for the introduction of its new regime could be foreseen. He recalled that time was needed to carry out consultations and negotiations with a view to developing a suitable approach with regard to modifications of the regime. The EC had stated that this new system had been discussed with the parties concerned. However, no such consultations had been held with Honduras, which was a party to the dispute and had an interest in this new regime.

10. The representative of Costa Rica said that his country hoped that before implementing its new regime, the EC would abide by WTO rules and consult with all the other interested countries.

11. The representative of Saint Lucia reiterated the statement made by her country at the 12 March DSB meeting and noted with regret that the EC was proceeding with the implementation of the FCFS system. As indicated previously, Saint Lucia did not consider the FCFS system to be a satisfactory solution and believed that that system would be disastrous for the industry. Saint Lucia continued to firmly reject and abhor the use of trade sanctions against the EC as it believed that this poisoned the atmosphere for constructive negotiations. Saint Lucia hoped that the ongoing discussions on the allocation of licences on the basis of past trade would be fruitful and would pave the way to a positive compromise. This was the only feasible means of ensuring that the legitimate rights and interests of suppliers, in particular the most vulnerable, were safeguarded.

12. The representative of the European Communities said that his delegation noted the statements made at the present meeting in which delegations reiterated their views. The EC firmly believed that both the FCFS and the tariff-only system were WTO-compatible. However, at the same time, the EC wished to ensure that the application of the system was fair, balanced and non-discriminatory and was working hard towards reaching this objective. The new system should enter into force on 1 July 2001, which implied that by 1 May 2001, at the latest, the modalities regarding the operation of the system would have to be made public. Some time was still left to consider the views of different operators and countries and he hoped that this time would be used to the full advantage.

13. 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.13)

14. The Chairman drew attention to document WT/DS76/11/Add.13 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.

15. The representative of Japan said that, at the 12 March 2001 meeting, his delegation had informed the DSB that Japan had completed technical discussions with the United States on its new quarantine measures with regard to apples and other fruits. Japan was currently in the process of undertaking the necessary domestic procedures such as amending relevant domestic Ministry Ordinances in an effort to implement the DSB's recommendations. Japan hoped to be shortly in a position to formally notify the DSB of a mutually satisfactory solution in this case.

16. The representative of the United States said that as technical discussions between the parties had now been concluded, Japan should act expeditiously to complete the remaining administrative steps necessary for implementation. The United States looked forward to indications from Japan as to when this would take place.

17. The representative of Australia said that his delegation noted the latest status report submitted by Japan and wished to register Australia's continued interest in this matter.

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

(c) India – Quantitative restrictions on imports of agricultural, textile and industrial products: Status report by India (WT/DS90/16/Add.7)

19. The Chairman drew attention to document WT/DS90/16/Add.7 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.

20. The representative of India said that, as stated in its status report, in accordance with paragraph 2(b) of India's mutual agreement with the United States on a reasonable period of time for implementation, on 1 April 2000 India had removed the quantitative restrictions on imports in respect of 714 items at eight digit level. India had also notified the United States of the remaining 715 items for which the reasonable period of time had expired on 1 April 2001. Furthermore, with effect from 1 April 2001 India had removed the quantitative restrictions on imports concerning the remaining 715 items. To this effect, Notification No. 2 (RE-2001)/1997-2002 issued by the Director-General of Foreign Trade of India on 31 March 2001 under the Export and Import Policy was widely available. Thus, India had implemented the DSB's rulings and recommendations within the reasonable period of time mutually agreed between India and the United States pursuant to Article 21.3(b) of the DSU. He underlined that this was India's final status report on progress in the implementation of the DSB's recommendations in this case.

21. The representative of the United States said that India and the United States had negotiated an agreement with respect to a reasonable period of time for implementation in this case. Pursuant to that agreement by 1 April 2000, India had removed most of the quantitative restrictions covered by the Panel and the Appellate Body reports. India had also agreed to eliminate the remainder by 1 April 2001. Therefore, the United States was pleased to hear the announcement of the Commerce Minister over the weekend that, as from 1 April 2001, India's new EXIM policy had freed the remaining 715 items. Removing these quantitative restrictions on schedule was a very important step for India and its trading partners. The United States was currently reviewing the details of the new EXIM policy, and might have some specific questions to ask India in the next few days. For example, with regard to items such as wheat, rice, maize and other grains which would remain subject to state trading requirements. The United States would monitor state trading agencies in order to ensure that they made purchases and sales solely in accordance with commercial considerations and complied with the DSB's rulings and recommendations. The United States wished to reiterate its congratulations to India on the efforts it had undertaken to achieve this truly historic result. The United States looked forward to working together with India on this and other matters.

22. The representative of the European Communities said that the EC welcomed with satisfaction India's announcement on its implementation of the DSB's rulings and recommendations in this case. The EC wished to be kept informed of any further clarifications to be made by the parties to the dispute.

23. The Chairman noted that the dispute had been resolved but the dialogue between the parties would continue.

24. The DSB took note of the statements.

(d) Turkey - Restrictions on imports of textiles and clothing products : Status report by Turkey

25. The Chairman recalled that this item had been included on the agenda at the request of Turkey.

26. The representative of Turkey said that his delegation welcomed the opportunity given by the Chairman to include this item on the agenda of the present meeting. Following the 20 March 2001 DSB meeting, his country had entered into consultations with India. Contacts between the parties to the dispute were ongoing and Turkey hoped that it would be possible to find a mutually agreed solution.

27. The representative of India said that his delegation welcomed Turkey's action to rectify the oversight not to include this item on the agenda. As stated by Turkey, following the expiry of the reasonable period of time on 19 February 2001, at its 20 March 2001 meeting, the DSB had taken

note of the agreement reached between the parties on 8 March 2001 to hold consultations within the next 30 days to discuss compliance by Turkey with the DSB's recommendations and to preserve India's rights under Articles 21 and 22 of the DSU during and beyond the consultation period. These consultations were underway. However, pursuant to Article 21.6 of the DSU, India expected that this item would continue to appear on the DSB's agenda.

28. The representative of Turkey confirmed that the item would continue to appear on the DSB's agenda.

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

2. European Communities – Anti-dumping duties on imports of cotton-type bed linen from India

(a) Implementation of the recommendations of the DSB

30. The Chairman recalled that in accordance with the DSU provisions, the DSB was required to keep under surveillance the implementation of recommendations and rulings of the DSB in order to ensure effective resolution of disputes to the benefit of all Members. In this respect, Article 21.3 of the DSU provided that the Member concerned shall inform the DSB, within 30 days after the date of adoption of the panel or Appellate Body report, of its intentions in respect of implementation of the recommendations and rulings of the DSB. He recalled that at its meeting on 12 March 2001, the DSB had adopted the Appellate Body Report in the case on "European Communities – Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India" and the Panel Report pertaining to the same matter, as modified by the Appellate Body Report. He invited the European Communities to inform the DSB of its intentions in respect of implementation of the DSB's recommendations.

31. The representative of the European Communities said that, at the 12 March 2001 DSB meeting, the EC had indicated its intention to comply fully and promptly with the DSB's rulings and recommendations in this case. For practical and legal reasons, the implementation would require the following steps: (i) to revise the dumping calculations and to re-examine the EC's injury fundings; (ii) to disclose the results to interested parties in order to provide them with the opportunity to comment and to decide on undertakings; and (iii) to pass the legal act in order to amend Council Regulation (EC) No. 2398 (1997) imposing definitive anti-dumping duties on imports of bed-linen from India. The EC expected that the process would be completed within a reasonable period of time and wished to enter into discussions with India on the exact timing for implementation of the DSB's recommendations.

32. The representative of India said that his delegation welcomed the statement made by the EC on its intentions to implement the DSB's rulings and recommendations. Since the determination of injury and calculation of dumping were critically flawed, the underlying anti-dumping investigation and the EC's regulation imposing anti-dumping duties on bed-linen from India were fundamentally inconsistent with the basic principles of the Anti-Dumping Agreement. In light of this, India expected the EC to revoke immediately its anti-dumping duties currently in force and to implement the DSB's rulings and recommendations. India also expected the EC to refund anti-dumping duties already collected as part of its commitment to implement the DSB's rulings and recommendations. India believed that the EC could complete its actions necessary to comply with the DSB's recommendations within a very short period of time. India was ready to enter into discussions with the EC on a reasonable period of time for implementation.

33. The representative of Egypt said that her country, which had participated as a third party in this dispute, had noted the statement by the EC on its intentions in respect of implementation of the

DSB's rulings and recommendations. Egypt would follow carefully the EC's efforts aimed at compliance with the DSB's recommendations.

34. The DSB took note of the statements and of the information provided by the EC regarding its intentions in respect of implementation of the DSB's recommendations.

3. European Communities – Measures affecting asbestos and asbestos-containing products

(a) Report of the Appellate Body (WT/DS135/AB/R) and Report of the Panel (WT/DS135/R and Add.1)

35. The Chairman drew attention to the communication from the Appellate Body contained in document WT/DS135/11 transmitting the Appellate Body Report on "European Communities – Measures Affecting Asbestos and Asbestos-Containing Products", which had been circulated in document WT/DS135/AB/R in accordance with Article 17.5 of the DSU. In accordance with the Decision on Procedures for the Circulation and Derestriction of WTO Documents contained in document WT/L/160/Rev.1, both Reports 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".

36. The representative of the European Communities said that the EC welcomed the Panel's and the Appellate Body's confirmation of the WTO-consistency of the French ban on asbestos. The two Reports left no doubt that it was up to Members' discretion to regulate and, where appropriate, to ban the use of asbestos on their respective territories. Thus, the Appellate Body had confirmed what the EC had always considered to be a foregone conclusion. At the present meeting, he did not intend to discuss each of the issues addressed during the proceedings of this case. He said that the EC agreed with the Panel's and the Appellate Body's analysis on the majority of these issues, while reserving its position on some interpretations. He then highlighted some general aspects of the Reports. First, when assessing the scope of a domestic regulatory measure and its effects on imported goods, it was essential that the assessment parameters were established objectively not arbitrarily. In this respect, the EC had considered that the comparisons between asbestos and other products with different characteristics were artificial and irrelevant. Second, there was no doubt that the protection of life and health was a priority value which should take precedence over all other considerations. The Appellate Body had merely corroborated this view when stating in its Report that the measure at issue pursued a "value" that was "both vital and important in the highest degree". The EC's position was that Members, which were sovereign entities, were free to determine their level of health protection. Therefore, France and the EC had made a legitimate choice to adopt the measures that could ensure the elimination of the genuine risk they faced. Health protection was recognized as a higher and overriding value in the WTO Agreements and the EC reaffirmed the validity of this basic principle by supporting the adoption of the Panel and the Appellate Body Reports.

37. The representative of Canada said that his country was satisfied with certain aspects of the Panel and the Appellate Body Reports, but it was disappointed with others in several respects. Canada was encouraged, *inter alia*, by the Appellate Body's analysis of what constituted a technical regulation under the TBT Agreement. The Panel had originally ruled that a general ban was not a technical regulation, thus removing a whole range of technical regulations from the scope of application of the TBT Agreement. The Appellate Body's reversal of this decision was an important victory for the multilateral trading system. All general bans would henceforth be subject to the rules and disciplines of the TBT Agreement and this should help to clarify the legal environment governing technical regulations. Although the Appellate Body had found that the Decree banning asbestos in

France was subject to the rules and disciplines of the TBT Agreement, Canada was disappointed by the decision not to examine its claims under that Agreement. The Appellate Body had enough factual findings, uncontested facts and legal arguments before it to complete the legal analysis of this case under the different provisions of the TBT Agreement. Moreover, Canada did not agree with the argument that a further reason not to examine its claims under the TBT Agreement was that "the meaning of the different obligations in the TBT Agreement has not previously been the subject of any interpretation or application by either panels or the Appellate Body" (paragraph 81 of the AB Report). On several occasions in other proceedings, including in the case on "Canada – Periodicals" (WT/DS31), "Australia – Salmon" (WT/DS18) and "United States – Shrimp" (WT/DS58), the Appellate Body had completed the panel's legal analysis in order to contribute to a rapid settlement of the disputes in question pursuant to Article 3.3 of the DSU. If the Appellate Body had carried out the legal analysis of the TBT Agreement on a substantive basis, a decision in this regard would have better contributed to ensuring the security and predictability of the multilateral trading system, as enshrined in Article 3.1 of the DSU.

38. With regard to the analysis under the GATT 1994, Canada would have preferred that the Appellate Body confirmed the Panel's decision on the likeness of chrysotile asbestos and its substitutes. Canada hoped that the introduction of the concept of different risks between products for the determination of their likeness would not limit Members' legitimate recourse to risk management in the development of their national regulations. As had been pointed out on previous occasions, Canada did not question Members' right to adopt regulations in the public interest or to establish appropriate levels of protection, in particular for reasons of public health. Article XX of the GATT 1994 allowed Members to take such considerations into account. In view of the Appellate Body's decision to reverse the Panel's findings with respect to the violation of Article III:4 of the GATT 1994 and in light of the principle of judicial economy, Canada had doubts as to whether the Appellate Body should have ruled on the issue of Article XX(b), when no violation of any GATT 1994 Articles had been found. The pressure brought to bear on the multilateral trading system over the past few years to give increasing weight to non-trade concerns was understandable and Canada shared these concerns. However, such concerns should fall within Members' competence. Notwithstanding these few reservations, Canada accepted the decisions of the Panel and the Appellate Body and joined in the consensus for the adoption of the Reports.

39. The representative of Brazil said that her country, which had participated as a third party in this case, welcomed the Appellate Body's conclusion with regard to the TBT Agreement. The Appellate Body was correct in reversing the Panel's finding on the definition of a technical regulation. The division of the French Decree into two parts, for the sake of excluding the prohibition of asbestos from the definition of a technical regulation, seemed unjustifiable. Thus, the Appellate Body had rightly determined that the French measure should be considered as an integrated whole since the prohibitive and permissive elements that were part of it depended upon each other. Brazil also welcomed the Appellate Body's conclusion that a technical regulation did not need to apply to "identifiable products". As stated by the Appellate Body, although it was common to identify the products contained in a measure, in some cases there could be valid reasons to formulate a technical regulation in a way that products were not expressly identified by name or could be made identifiable through the characteristic that were the subject of the regulation. Brazil supported the Appellate Body's conclusion regarding the classification of a ban as a technical regulation. The Appellate Body had rightly concluded that although the measure was formulated negatively, i.e. products containing asbestos are prohibited, it effectively prescribed or imposed certain objective features, qualities or characteristics on all products and, for this reason, the measure should be considered a technical regulation.

40. The representative of the United States said that his country was pleased that both the Panel and the Appellate Body had rejected Canada's challenge to France's measures concerning asbestos. These Reports, and in particular the Appellate Body Report, had properly reinforced the view that the

WTO Agreements supported Members' ability to protect human health and safety at the level of protection they deemed appropriate. Although the Panel had reached the correct result in upholding the French asbestos measure, the Appellate Body had appropriately corrected the Panel's legal reasoning with respect to "like products". In the view of the United States, the Appellate Body was correct in finding that the evidence of health risks associated with a product could be pertinent in determining whether two products were like under Article III:4 of the GATT 1994. The United States also welcomed the Appellate Body's clarification regarding the application of the TBT Agreement to regulations applying to products generally, and not just to regulations that named or identified specific products. The Panel's finding on the contrary could have severely and improperly limited the scope of the TBT Agreement. Finally, he noted that although the Appellate Body had properly decided not to complete the TBT Agreement analysis, France's asbestos measures were not inconsistent with the TBT Agreement.

41. The representative of Japan said that although his country had not participated in the proceedings of this case, it recognized the efforts made by the Panel and the Appellate Body. With regard to the concept of "like products" under Article III:4 of the GATT 1994, Japan recognized that the Appellate Body had tried to meet society's needs by introducing the concept of "health risks" in the traditional criteria of likeness. Thus, the Appellate Body's view was similar to Japan's position that not only the effect but also the objective of the relevant measure had to be taken into account when deciding on this matter. This position had been asserted by Japan in the context of the case on "Japan – Alcoholic Beverages" (WT/DS8, WT/DS10, WT/DS11). Japan welcomed the Appellate Body's decision but, at the same time, it was concerned about a possible abuse of that interpretation. Japan believed that the Appellate Body's strict two-step approach with respect to Article III:2 of the GATT 1994 could prompt Members wishing to introduce domestic regulations for the purpose of environmental protection to choose measures subject to Article III:4 instead of internal tax subject to Article III:2. Japan hoped that this would not be the case and that the relationship between the interpretation of "like products" in Article III of the GATT 1994, and that of an "arbitrary or unjustifiable discrimination" as well as "disguised restriction on international trade" in the chapeau of Article XX of the GATT 1994, would be further elaborated and clarified in the near future.

42. The representative of Mexico said that since his country had not participated in the proceedings of this case, it did not wish to comment on the substance. Mexico wished to express its satisfaction regarding the outcome of the proceedings which had been conducted in a language other than English. He expected that this would not be an isolated case and that the three official languages of the WTO could be equally useful for resolving disputes.

43. The representative of Switzerland said that her country noted with satisfaction the Panel and the Appellate Body Reports, in particular the part dealing with the question as to whether asbestos containing products and similar materials not containing asbestos were "like products" under Article III:4 of the GATT 1994. In this respect, Switzerland supported the Appellate Body's interpretation that such products were not like products because this intervention had taken into account legitimate concerns. The findings of the Panel and the Appellate Body on the applicability of Article XX(b) of the GATT 1994 were also valuable, in particular the Appellate Body's finding that governments could adopt a measure on the basis of a qualified and respected scientific opinion which diverged from the majority scientific opinion. This important finding confirmed the precautionary principle since it recognized that governments could adopt a measure even when there was no unanimity among scientists.

44. The representative of Hong Kong, China noted that this was the first time that the Appellate Body had dealt with the TBT Agreement. Overall, his delegation was content with the guidance provided by the Appellate Body in paragraphs 67 to 70 of its Report. However, it believed that there was room for further clarification with regard to the Appellate Body's statement contained in paragraph 71 of the Report that "if this measure consisted only of a prohibition on asbestos fibers, it

might not constitute a technical regulation". The reason given by the Appellate Body was that the prohibition on these fibers did not in itself prescribe or impose any characteristics on asbestos fibers, but simply banned them in their natural state. Therefore, a determination as to whether a prohibition could be deemed to be a technical regulation would depend on how the instrument giving effect to the prohibition was drafted. For example, a ban on tobacco might not be considered as a technical regulation while a ban on products containing nicotine for smoking purposes could probably be considered as such. This could lead to some confusion and Hong Kong, China looked forward to future opportunities to clarify this matter. He noted that the important question of the relation between the TBT Agreement and the GATT 1994, in particular Article XX, had not been addressed by the Appellate Body. He believed that this critical point should be considered in the future.

45. With regard to the definition of "like products" under Article III:4 of the GATT 1994, he noted the Appellate Body's views in respect of the following points. First, the product scope of Article III:4, although broader than the first sentence of Article III:2, was not broader than the combined product scope of the two sentences of Article III:2 of the GATT 1994 (paragraph 99 of the AB Report). Second, evidence relating to health risks associated with a product might be pertinent in an examination of likeness under Article III:4 (paragraph 113 of the AB Report). While it appeared that the Appellate Body had suggested to focus in the examination of likeness on the effect of such health risks on the competitive relationship in the marketplace, Hong Kong, China had doubts as to the propriety of such an interpretation and was concerned about the effect that such an interpretation could have on the balance between Articles III and XX of the GATT 1994. The burden of proof fell normally on the parties to a dispute for the examination pursuant to Articles III and XX respectively. Thus the Appellate Body's interpretation in this case could limit the examination to Article III, and could make the proof of the WTO-inconsistency of health risks related trade measures more difficult.

46. He noted that the Appellate Body had adopted additional procedure with regard to *amicus* briefs. Although it had not accepted any *amicus* briefs, the reasons for rejecting the applications, as stated in the Appellate Body Report, were that the applications had not been filed in a timely manner or had not complied sufficiently with the requirements of the additional procedure. Hong Kong, China wished to register its strong disagreement with the Appellate Body's decision to solicit *amicus* briefs. There was no provision in the DSU that explicitly provided for the Appellate Body to solicit, receive or consider *amicus* briefs, and the Appellate Body should not have relied on Rule 16(1) of its Working Procedures to adopt the additional procedure. As stated repeatedly by a vast majority of Members, and especially at the General Council's meeting in November 2000, the question of *amicus* briefs submissions was a substantive and systemic issue which could affect Members' rights and obligations, and should only be decided by Members. Therefore, the Appellate Body's decisions should not prejudice the outcome of Members' deliberations on this substantive issue.

47. The representative of India said that although his country had not participated in the proceedings of this case, it wished to highlight some concerns about the manner in which the Appellate Body had dealt with and interpreted the term "like products" under Article III:4 of the GATT 1994. He noted that, for the first time, a member of the Appellate Body Division had rendered a separate opinion (paragraphs 149-154 of the AB Report) and had expressed an extreme view which was only a "small and modest step" that the other members of the division were "unable to take" on the subject matter. He further noted that the Appellate Body had rightly recognized that Article III:1 of the GATT 1994 contained a general and overarching principle or obligation, i.e. the need to ensure equality of competitive conditions. This principle should provide guidance with respect to the interpretation of Article III:4 (paragraphs 93 and 98 of the AB Report). Accordingly, the Appellate Body had stated that the "determination of "likeness" in Article III:4 was fundamentally a determination about the nature and extent of a competitive relationship between and among products" (paragraph 99 of the AB Report). Furthermore, the Appellate Body had found that the scope of "like products" in Article III:4 was broader than the term "like products" used in the first sentence of Article III:2, but not broader than the combined product scope of both sentences of Article III:2

(paragraph 99 of the AB Report). In doing so, the Appellate Body had exceeded the limits set by the GATT and the general criteria laid down by the GATT Working Party in the Border Tax Adjustments case (1970) when analysing the term "like products". Noting that this term had been referred to sixteen times in the GATT provisions, the Working Party had laid down four criteria: (i) the properties, nature and quality of the products; (ii) the end-uses of the products; (iii) consumers' tastes and habits in respect of the products; and (iv) the tariff classification of the products. These criteria had also been followed by the panel and the Appellate Body in the case on "Japan – Alcoholic Beverages". India was concerned that the Appellate Body had chosen to interpret the term "like products" in Article III:4 of the GATT 1994 in a broad fashion, while interpreting the same expression in Article III:2 narrowly. India was not convinced by the Appellate Body's reasoning in paragraph 94 of its Report regarding the textual difference between Articles III:4 and III:2. The absence of a separate sentence that figures in Article III:2 could not be justified to pursue the Appellate Body's line of reasoning in this case. India was inclined to agree with the Panel's finding in paragraph 8.130 of the Panel Report that introducing a risk criteria into the analysis of likeness within the meaning of Article III of the GATT 1994 would largely nullify the effect of Article XX(b). For this reason, it was difficult to agree with the Appellate Body's reasoning on this issue. India fully supported the views expressed by Hong Kong, China with regard to the adoption by the Appellate Body of the additional procedure to solicit *amicus* briefs.

48. The representative of the Philippines said that his delegation noted the Panel's determination, as confirmed by the Appellate Body, that Article XXIII:1(b) of the GATT 1994 applied to measures which fell within the scope of the application of other provisions of the GATT 1994, which included Article XX, and possibly Article XXI. In the Philippines' view that determination could have far-reaching implications.

49. The Chairman noted that it was the intention of the Chairman of the General Council to hold an informal meeting to discuss the question of *amicus* briefs at a more general level.

50. The DSB took note of the statements and adopted the Appellate Body Report in WT/DS135/AB/R and the Panel Report in WT/DS135/R and Add.1, as modified by the Appellate Body Report.

4. Thailand – Anti-dumping duties on angles, shapes and sections of iron or non-alloy steel and H-beams from Poland

(a) Report of the Appellate Body (WT/DS122/AB/R) and Report of the Panel (WT/DS122/R)

51. The Chairman drew attention to the communication from the Appellate Body contained in document WT/DS122/6 transmitting the Appellate Body Report on "Thailand – Anti-Dumping Duties on Angles, Shapes and Sections of Iron or Non-Alloy Steel and H-Beams from Poland", which had been circulated in document WT/DS122/AB/R in accordance with Article 17.5 of the DSU. In accordance with the Decision on Procedures for the Circulation and Derestriction of WTO Documents contained in document WT/L/160/Rev.1, both Reports 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".

52. The representative of Poland said that his country welcomed the Reports before the DSB at the present meeting and appreciated the efforts of the Panel and the Appellate Body to help the parties to resolve this dispute. The issues and rulings pertaining to this case were both case-specific and systemic. Poland welcomed the rulings of the Panel and the Appellate Body that its panel request was

sufficient to meet the requirements of Article 6.2 of the DSU. Poland fully agreed with this ruling and interpretation but, at the same time, recognized that problems could arise in cases in which the minimum requirements of Article 6.2 of the DSU were met. In the case at hand, by raising the argument that Poland's panel request did not meet the requirements of Article 6.2 of the DSU, Thailand had sought to abuse its procedural right and had used litigation tactics in order to prolong the dispute and to preserve its measures. Poland also noted with satisfaction the rulings of the Panel and the Appellate Body on the interpretation of Article 3.4 of the Anti-Dumping Agreement and its conceptual linkage with Article 17.6(i). These rulings would be of great significance with regard to future investigations and injury determinations since it would make it more difficult for Members seeking to shield their markets from competition to pick factors indicative of material injury without taking into account other factors indicating the opposite. Poland had been confronted with such a situation and had strenuously objected to it in the course of these dispute settlement proceedings. In view of the significance of the issues involved in this case with regard to proper application by Members of the Anti-Dumping Agreement, Poland welcomed with satisfaction the recommendations of the Panel and Appellate Body that Thailand should bring its anti-dumping measure found to be inconsistent with the Anti-Dumping Agreement into conformity with that Agreement. In Poland's view, in order to comply with these recommendations, Thailand should promptly revoke its measure found to be imposed in a WTO-inconsistent manner.

53. The representative of Thailand said that his country welcomed the Appellate Body's reversal of the Panel's finding that compliance with Article 3 of the Anti-Dumping Agreement had to be assessed solely on the basis of the non-confidential record. The Appellate Body had found that the Panel had misapplied the standard of review, and had ignored a large portion of the record in concluding that Thailand had acted inconsistently with Article 3 of the Anti-Dumping Agreement in its determination of injury. With regard to the Panel's interpretation of Article 3.4 of the Anti-Dumping Agreement, Thailand noted with disappointment the Appellate Body's conclusion that the Panel had not erred in its application of the standard of review under Article 17.6(ii) of the Anti-Dumping Agreement. The Appellate Body had been less than convincing in its dismissal of Thailand's arguments that the Panel had not referred to or relied upon the standard of review under Article 17.6(ii) or customary rules of interpretation of public international law, and that it had not determined whether Thailand's measure rested upon a permissible interpretation of Article 3.4. Thailand was also concerned about the Appellate Body's application of the "standard of clarity" under Article 6.2 of the DSU with regard to Poland's panel request. The standard applied in this case fell short of that set by the Appellate Body in the case on "Korea – Dairy Safeguard" (WT/DS98). In particular, the arguments contained in paragraphs 90 to 93 of the AB Report were in contradiction with the standard applied in the above-mentioned case. The application of that standard would have ensured the dismissal of the case since the request had been improperly submitted to the Panel. He further noted that the Appellate Body Report had also raised serious concerns regarding the systemic issue of the Appellate Body's consistent interpretation of WTO provisions. He questioned how security and predictability, which were the very *raison d'être* of the dispute settlement system, could be ensured if different standards were applied in different cases with regard to the same legal situation. Thailand urged delegations to seriously reflect on this important issue.

54. Another systemic issue raised in this case concerned *amicus* briefs and a possible breach of confidentiality obligations under the DSU. Thailand urged Members to examine the relevant facts in this regard, as contained in Section IV of the Appellate Body Report. Thailand was currently reviewing the Reports in order to inform the DSB of its intentions in respect of implementation of the DSB recommendations pursuant to Article 21.3 of the DSU. However, Thailand did not share Poland's view that the measure in question should be revoked.

55. The representative of the Philippines said that although his country had not participated as a third party in this dispute, it wished to comment on the issue raised by Thailand which had systemic implications, i.e. the issue of *amicus* briefs and a possible breach of confidentiality obligations under

the DSU in this regard. In other WTO bodies, in particular at the General Council meeting in November 2000, the Philippines had stated that it attached great importance to this issue. After reviewing the facts and the Appellate Body's ruling in relation to Section IV of the AB Report, the Philippines considered that the series of coincidences described therein had led to the conclusion that the Consuming Industries Trade Action Coalition (CITAC) submission could not have been facilitated without access to Thailand's submission. This situation faced by Thailand also affected other Members and would not have arisen if *amicus* briefs were expressly and definitively not allowed to be considered by the Appellate Body. He believed that the probability of breach of the confidentiality requirement under Articles 17.10 and 18.2 of the DSU would be enhanced if *amicus* briefs were allowed to be considered by the Appellate Body. Therefore, such potential breaches would be substantially diminished if *amicus* briefs were not allowed to be accepted in the future.

56. The representative of India said that although his country was neither a party nor a third party in this dispute, it wished to make some comments on the Reports before the DSB. India appreciated the Appellate Body's ruling that it was mandatory for the anti-dumping investigating authority to evaluate each of the 15 factors listed in Article 3.4 of the Anti-Dumping Agreement in order to establish injury to the importing Member's domestic industry (paragraphs 125 and 127 of the AB Report). India welcomed the fact that the Appellate Body had confirmed not only the Panel's findings in this case, but also those pertaining to the Mexico – HFCS case (DS132) and the EC – Bedlinen case (DS141). India also welcomed the Appellate Body's ruling that injury determination under Article 3.1 of the Anti-Dumping Agreement should be based on the totality of evidence, including confidential information that had not been made available to the interested parties (paragraph 107 of the AB Report). Furthermore, India appreciated the Appellate Body's finding that a panel in its examination as to whether the establishment of facts by the investigating authority was proper and whether the evaluation of those facts was unbiased and objective under Article 17.6(i), should examine all the facts and information made available to the investigating authority. In this respect, panels should not confine themselves to the examination of facts disclosed to the interested parties at the time of final determination (paragraphs 115 to 119 of the AB Report). India supported the Philippines' statement on the question of *amicus* briefs and believed that this case had brought into focus the conflict that could arise between the confidentiality requirement and the possibility of accepting *amicus* briefs by panels or the Appellate Body.

57. The representative of Mexico said that although his country had not participated in the proceedings of this case, it wished to reiterate its position regarding the question of *amicus* briefs. He noted that this matter was currently under consideration in another WTO body and therefore discussions thereon would be facilitated if panels and the Appellate Body proceeded cautiously and did not accept such submissions.

58. The representative of Hong Kong, China said that, under item 3 of the agenda of the present meeting he had already stated his delegation's position on the question of *amicus* briefs. With regard to the case in question, his delegation considered that the Appellate Body's rulings constituted, in general, faithful interpretations of the relevant provisions of the Anti-Dumping Agreement. Hong Kong, China noted with great interest the Appellate Body's interpretation and rulings on Article 17.6 of the Anti-Dumping Agreement regarding the standard of review. His delegation did not have a position on that interpretation and wished to further examine it.

59. The representative of the United States said that he wished to respond to previous statements which had drawn a connection between the question of confidentiality and *amicus* submissions. As his country's position on *amicus* submissions was well-known, he did not wish to repeat it at the present meeting. In the view of the United States, the Appellate Body had correctly found that it had the authority to accept *amicus* submissions although it had no requirement to accept any particular submission. The United States did not see any reason for concluding that there was a connection between the question of confidentiality and *amicus* submissions. In the Appellate Body proceedings

in this dispute, *amicus* submissions had brought to light the breach of confidentiality, not the other way around. Therefore, it was not appropriate to assume that some benefits could be gained from not accepting *amicus* briefs.

60. The DSB took note of the statements and adopted the Appellate Body Report in WT/DS122/AB/R and the Panel Report in WT/DS122/R, as modified by the Appellate Body Report.

5. Appointment of Appellate Body members

(a) Statement by the Chairman (WT/DSB/23)

61. The Chairman recalled that on 12 March 2001 he had indicated that the terms of office of the three of the current members of the Appellate Body would expire in early December 2001 and that it was very important to work out quite early on a constructive and appropriate time-frame for the selection process. He noted that his statement had been circulated on 13 March 2001 in document WT/DSB/23. At the present meeting, he wished to recall the time-frame for the selection process as outlined in that document. First, an invitation to forward nominations to the Director-General should be submitted from 17 April 2001 with the deadline for nominations closing on 15 June 2001. Second, the Selection Committees' work could start on 22 June 2001. Third, a possible decision by the DSB on the appointees could be taken on approximately 27 July 2001. He hoped that it would be possible to arrive at an agreed time-frame for the selection process. One could envisage some elements of flexibility but without prejudice to the smooth appointment and transition process, bearing in mind the very substantial amount of work and the holiday break after July. He then invited delegations to provide their views on the above-mentioned time-frame.

62. The representative of the United States said that his country welcomed a discussion on this issue. The United States had a strong systemic interest in ensuring the highest possible quality Appellate Body. The three Appellate Body members whose terms would expire in December 2001 had brought to the Appellate Body very valuable skills and expertise, and had more than justified the trust placed in them by Members when they had selected them. It was very important that they be replaced with equally good candidates. In order to find the highest caliber candidates, a good sized pool of strong and well-qualified candidates to choose from would be needed. It was therefore necessary to leave the time for nominations open for a long enough period to allow Members the time to nominate persons with sufficient qualifications. The United States appreciated the Chairman's proposal and hoped that the nomination process could be completed by 15 June. The United States also understood the desire to complete the appointment process by the end of July. He recalled that in the previous selection process, the deadline for nominations had been extended due to insufficient time. It had been difficult to obtain that extension and it would be better to avoid a similar situation. Therefore, in considering the proposed time-frame, the United States wondered if it would not be possible to provide flexibility in case some Members needed more time to complete their nomination process. At the same time, in order to get enough good candidates nominated, Members would have to focus early on this question and start their own domestic processes in time. The United States looked forward to working with the Chairman and other Members toward a successful appointment process.

63. The representative of Australia said that his delegation believed that some flexibility in the beginning of the process could be built into the time-frame proposed by the Chairman. In his view, the time-frame proposed by the Chairman was very ambitious but he understood that there was the need to conclude the process by the summer break. However, it would put a lot of pressure on possible candidates both to make themselves known to governments to go through their own process and to make themselves available on relatively short notice. As suggested by the United States, some flexibility in the beginning of the process could be envisaged to help to increase the pool of available candidates.

64. The representative of Japan said that his country considered that there was some merit in setting a deadline for nominations of candidates, but believed that such a deadline should not be observed too strictly. This was of particular importance in case it would be difficult to meet all the requirements set out in the DSU provisions such as the one contained in Article 17.3 of the DSU, which specified that the Appellate Body membership shall be broadly representative of the WTO Membership. Members should try to do their best in order to promote their domestic processes to seek qualified candidates by the deadline proposed by the Chairman. However, as suggested by the United States some degree of flexibility would be required.

65. The representative of Venezuela said that, as pointed out by previous speakers, there was a need for some flexibility with regard to the deadline specified by the Chairman. However, not too much time should be allowed in order to avoid an overlap with the preparatory process for the Ministerial Conference. He underlined that it was important to select the best persons with the best qualifications and the necessary legal expertise. Thus all those elements would have to be assessed in a proper manner.

66. The representative of the European Communities said that the EC supported the deadline proposed by the Chairman and believed that efforts should be made in order to complete the selection process before the summer break. If, as stated by a number of delegations, some flexibility were to be introduced, there should be no incentive to relax the proposed timetable and one should avoid sending a signal that all the time available would be used.

67. The representative of India said that his delegation could go along with any decision to be made on this issue. However, he wished to underline two points in this regard. First, he was concerned about the approach proposed by some delegations to set a deadline and to indicate that some flexibility could be envisaged. It would be appropriate to set a longer time-frame and to try to adhere to it in order not to create any confusion. He noted that Japan had stated that if no proper regional balance were achieved, more candidates would be needed and thus the deadline would have to be extended. He believed that this could create the impression that the nominated candidates were not highly qualified. In order to avoid such a situation a longer time-frame should be envisaged without any indication regarding flexibility. Second, the Chairman had envisaged the decision by July 2001 for Appellate Body members to begin by December 2001. This meant that Appellate Body members would have to wait three or four months in order to start. In the past, new members had been given only a few days or weeks or, at the maximum, one month before taking over their jobs. He believed that a waiting period of three or four months could have some implications for prospective members of the Appellate Body. He suggested that this aspect should be carefully considered.

68. The representative of Chile said that his delegation supported the statement made by India. In order to complete their domestic processes governments would require some time. If a four-month deadline were to be set, governments would wait until the last minute to make a decision. There was a need to have a deadline but there should be no indication that such a deadline could be extended and countries should adhere to it. If by the end of the deadline no proper regional balance was achieved, one could consider the extension of the deadline. He believed that the right way forward would be to leave to the Chairman's discretion as to whether or not there should be any flexibility.

69. The Chairman said that his intention of making the statement at the 12 March 2001 DSB meeting was to convey to governments interested in making nominations to, at least, start thinking about it. He believed that it was possible to be flexible on the dates in terms of the nominations but not on the deadline though this matter could be brought back to the DSB if there was a good reason to review the deadline. At the same time, he was conscious that if the Selection Committee, which had to work hard on this process, did not have the whole of July to do that work that could create some serious difficulty. July would be a very critical period for the Selection Committee. As to when the

DSB would make the appointment, he was aware that the end of July might not be totally realistic but hoped to be able to reach a decision in the DSB on the basis of recommendations from the Selection Committee sometime soon after the northern summer break. He therefore wished to propose that more flexibility be shown on the date not on the deadline though that could be reviewed formally by the DSB for good reasons and one could only indicate when the DSB might address the decision. He then proposed the following: (i) nominations for the Appellate Body should be submitted to the Director General from 17 April 2001 with the deadline for nominations closing on 29 June 2001; (ii) the Selection Committee's work is expected to commence from 2 July 2001; and (iii) the decision by the DSB on the appointees would ideally be made soon after the northern summer break.

70. The DSB took note of the statements and agreed to the time-frame proposed by the Chairman.

71. The Chairman further stated that he would circulate the points that he had just made so that this information could be forwarded to governments.[1] He hoped that all governments considering nominations for the Appellate Body would in practice recognize that these positions on the Appellate Body were in reality extremely close to full-time positions. This point was registered by the Secretariat in terms of the existing members who through the year 2000 had worked somewhere between 104 and 117 per cent, full-time plus. He said that he had held a first meeting with the Appellate Body members about 10 days ago and he had had a clear indication, even from the new Appellate Body members, that in practice they had found it extremely difficult to add other duties to their work. They might be able to do some things but they had to work a good deal of time in Geneva and in their own places of residence. A number of the Appellate Body members had stated that while they thought they would be able to proceed with other work they had actually had to substitute other people for their work. This point had been made by the previous DSB Chairman in the earlier selection process. He was not connecting this matter with the other question to be discussed informally. He only wished to convey this message to delegations to pass on to governments.

72. The DSB took note of the statement.

6. Philippines – Measures affecting trade and investment in the motor vehicle sector

(a) Statement by the Philippines

73. The representative of the Philippines, speaking under "Other Business", recalled that at its 17 November 2000 meeting, the DSB had established a panel to examine the Philippines measures affecting trade and investment in the motor vehicle sector. At that meeting after the panel had been established, the United States had proposed to suspend further proceedings and not to proceed with the composition of the panel. However, recently, the United States had decided to move forward with the composition process. He drew attention to the minutes of the 17 November DSB meeting and pointed out that the record did not contain the Chairman's announcement inviting delegations to reserve their third-party rights within the next 10 days. He had verified this with the Secretariat who had confirmed that such an announcement had indeed been made by the Chairman. It had not been reflected in the minutes of the meeting since it was a routine announcement, but had been recorded on tape. The Philippines believed that since the proceedings of the Panel had been suspended at that meeting, it was possible that some Members who had wished to become third parties had not done so within the 10-day period after the establishment of a panel. It was necessary to ensure that the rights of Members be preserved. Therefore, in light of the recent discussion on the practice with regard to the reservations of third-party rights, the Philippines wished to ask if Members had no objection to its proposal that the Chairman announce at the present meeting that delegations could still reserve their third-party rights to participate in the Panel's proceedings within the next 10 days.

[1] WT/DSB/24

74. The representative of the United States said that his delegation had also verified with the Secretariat that, at the 17 November DSB meeting, the Chairman had made his announcement inviting Members to reserve their third-party rights within the next 10 days. With respect to the question raised by the Philippines, the United States believed that since the announcement had been made there was no reason to re-open the discussion on this matter. He recalled that the issue of the reservation of third-party rights had been discussed in previous DSB meetings. However, since no amendment to the DSU was required, he was ready to consult with his authorities and would get back to the Philippines on this matter.

75. The representative of Hong Kong, China said that, at previous DSB meetings, his delegation had already stated its position that the 10-day requirement was not more than a practice, which was not binding and could not affect Members' rights. Hong Kong, China noted the proposal made by the Philippines but believed that it was not necessary for the DSB to agree to another 10-day period.

76. The representative of Mexico said that, as stated in previous DSB meetings, in his delegation's view, the reservation of third-party rights within a 10-day period after the establishment of a panel was not an obligation provided for in the DSU or something to be decided by the DSB. Therefore, no decision by the DSB was necessary to extend such period for 10 more days.

77. The representative of the Philippines said that his delegation noted the response made by the United States and the statements made by Mexico and Hong Kong, China.

78. The representative of the United States said that the parties to the dispute were currently in the process of selecting panelists. Therefore, in order to facilitate the composition process it would be necessary to know who had reserved the rights to participate as a third party in the panel's proceedings since, in accordance with the DSU provisions, nationals of third parties could not serve on panels.

79. The Chairman proposed that, subject to a decision to be made by the parties to the dispute, the DSB could acquiesce in this particular case to a 10-day period for reservations of third-party interest starting from 5 April 2001.

80. The representative of the European Communities said that since this matter was being discussed under "Other Business", it would not be appropriate to take a decision and to set a precedent. Furthermore, he did not have any instructions and had not consulted with the EC member States on this matter. He underlined that he was not concerned about the issue at hand but believed that since the question of a 10-day period for notification of third-party interest had already been discussed on another occasion it would not be appropriate to decide thereon at the present meeting. This situation could be dealt with in a different way. For example, the parties to the dispute could circulate a written communication with regard to the procedure in this case.

81. The representative of Hong Kong, China said that his delegation had a problem with the Chairman's proposal. He recalled that at the 12 March 2001 DSB meeting when the question of timing of notification of third-party interest in panel proceedings had been discussed, the Chairman had stated that in future cases he would invite Members to reserve their third-party rights within the next 10 days. He believed that, at the present meeting, the Chairman could proceed in the same way.

82. The representative of the Philippines said that his delegation noted the concerns raised by the EC and would agree with any ruling or announcement to be made by the Chairman. Since in any case it was unlikely to compose the panel within the next 10 days, an announcement could be made at the present meeting that the parties to the dispute would wait for the next 10 days before proceeding with the composition of the panel in order to ensure that the nationals of those countries who wished to become third parties were not included in the selection process.

83. The representative of the United States said that his delegation noted the suggestion made by the Philippines. However, it was unrealistic to assume that the panel would not be composed within the next 10 days. Furthermore, he was not authorized to commit his delegation not to compose the panel within the next 10 days. It would be preferable to know at this point, right away, if any Member still wished to become a third party in this case.

84. The Chairman said that the comment made by the EC was correct but if there had been some instant acquiescence at the present meeting that would have been another matter. He, therefore, considered that the only course of action that the DSB could take at the present meeting was to take note of the statements made.

85. The DSB took note of the statements.