WORLD TRADE ORGANIZATION

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Dispute Settlement Body
8 March 2002

MINUTES OF MEETING

Held in the Centre William Rappard
on 8 March 2002

Chairman: Mr. Carlos Pérez del Castillo (Uruguay)

Subjects discussed: Page

1. Surveillance of implementation of recommendations adopted by the DSB

(a) United States – Section 110(5) of the US Copyright Act: Status report by the United States

(b) United States – Anti-Dumping Act of 1916: Status report by the United States

(c) Argentina – Measures affecting the export of bovine hides and the import of finished leather: Agreement between the EC and Argentina concerning procedures under Articles 21 and 22 of the DSU

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 three sub-items to which he had just referred be considered separately.

(a) United States – Section 110(5) of the US Copyright Act: Status report by the United States (WT/DS160/18/Add.2)

2. The Chairman drew attention to document WT/DS160/18/Add.2 which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning Section 110(5) of the US Copyright Act.

3. The representative of the United States said that on 25 February 2002, in accordance with Article 21.6 of the DSU, her country had provided an additional status report pertaining to this dispute. As noted in the report, the United States had been engaged in discussions with the EC in an effort to find a positive and mutually acceptable solution to this dispute. In light of those discussions, the parties to the dispute had jointly requested that the arbitration proceedings in this case be suspended in order to facilitate efforts to reach a positive resolution.

4. The representative of the European Communities said that the EC and its member States noted that the United States had not made progress towards compliance with its obligations under the TRIPS Agreement. This was confirmed by the most recent status report submitted by the United States. The EC was engaged in constructive discussions with the United States, but this was without prejudice to continuous efforts to ensure compliance with WTO obligations.

5. The representative of Australia said that at previous DSB meetings, his country had registered its concern about the delay in the US implementation of the DSB's recommendations and rulings in this dispute, and the apparent discriminatory nature of the proposed compensation arrangements that, as Australia understood, had been agreed between the United States and the EC. Australia wished to take this opportunity to raise its concerns once again and to register its expectation that any compensation arrangement reached in this case would be applied on a non-discriminatory basis.

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

(b) United States – Anti-Dumping Act of 1916: Status report by the United States (WT/DS136/14/Add.2 – WT/DS162/17/Add.2)

7. The Chairman drew attention to document WT/DS136/14/Add.2 – WT/DS162/17/Add.2 which contained the status report by the United States on progress in the implementation of the DSB's recommendations in the case concerning the US Anti-Dumping Act of 1916.

8. The representative of the United States said that on 18 February 2002, in accordance with Article 21.6 of the DSU, her country had provided an additional status report in this dispute. As noted in that report, on 20 December 2001 the proposed legislation H.R. 3557 had been introduced in the US Congress, which would repeal the 1916 Act and provide that no judgments pursuant to actions under such Act shall be entered on or after 26 September 2000, that are inconsistent with the legislation. The United States was continuing to work with the EC to find a mutually satisfactory solution to this dispute.

9. The representative of the European Communities said that it was clear that compliance would only be achieved in this case once the law had effectively been repealed and pending cases

terminated. The United States had taken a first step towards compliance by introducing in the US Congress a law to repeal the 1916 Act and to terminate judicial cases. As a consequence of this legislative proposal, judicial cases brought under the Act thus far had been suspended. In view of these circumstances, the EC had agreed to request the Arbitrator to suspend its work. The EC expected that the proposal introduced in the US Congress would be adopted before the agreed date for the reactivation of the arbitration proceedings and that the Judge in charge of the Iowa case involving two European companies would not decide to resume proceedings.

10. The representative of Japan said that his delegation had noted the status report by the United States. As stated at the 1 February DSB meeting, Japan's ultimate goal was to secure prompt compliance by the United States. In light of the fact that the United States had shown a willingness to complete its implementation of the DSB's recommendations and rulings as soon as possible, Japan had requested the Arbitrator to suspend the arbitration proceedings. The communication from the Arbitrator suspending the proceeding had been circulated in document WT/DS162/21. However, the arbitration proceedings might be reactivated at the request of either party after 30 June 2002, if no substantial progress had been made in repealing the 1916 Act thereby resolving this dispute. Therefore, Japan again urged the United States to comply with the DSB's recommendations and rulings as promptly as possible. Since at the present meeting the United States had not referred to Japan's participation in the consultations on this matter, he underlined that Japan also wished to consult with the United States in order to find a mutually acceptable solution.

11. The representative of Mexico said that his country had participated as a third party in this dispute and hoped that any solution found in this case would be applied on an MFN basis.

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

(c) Argentina – Measures affecting the export of bovine hides and the import of finished leather: Agreement between the EC and Argentina concerning procedures under Articles 21 and 22 of the DSU (WT/DS155/12)

13. The Chairman drew attention to document WT/DS155/12 which contained the text of the agreement between the EC and Argentina concerning procedures under Articles 21 and 22 of the DSU.

14. The representative of Argentina said that pursuant to Article 21.6 of the DSU, his country wished to inform the DSB of the procedural agreement reached with the EC concerning the implementation of the DSB's recommendations in the case under consideration. He noted that the reasonable period of time for compliance in this case had expired on 28 February 2002. The procedural agreement, contained in document WT/DS155/12, outlined the measures taken by Argentina to comply with the DSB's recommendations and rulings regarding the customs procedures applicable to the export of bovine hides, and the changes to the regulations governing the system of levies in respect of the value-added tax. The operative portion of the agreement between Argentina and the EC provided that: "In view of the concrete action undertaken by Argentina during the reasonable period of time in this dispute, and in the light of the exceptional difficulties that Argentina is currently facing, the EC and Argentina have agreed on the following procedures in the follow-up to this dispute: (i) the EC and Argentina would pursue their discussions on compliance by Argentina with the DSB's recommendations and rulings. The DSB will be kept informed of the achievements made in the implementation; and (ii) if at any time after the expiry of the reasonable period of time the EC decided to make a request for authorization to suspend concessions or other obligations under the DSU, Argentina will not assert that the EC was precluded from obtaining the DSB's authorization because the EC's request has been made outside the 30 day time-period specified in the first sentence of Article 22.6 of the DSU However, the EC's resort to the DSU for the purposes of suspension of concessions or other obligations may take place only after completion of proceedings under

Article 21.5 of the DSU." Finally, he expressed Argentina's appreciation of the EC's positive consideration regarding this matter.

15. The representative of the European Communities said that the EC and Argentina had circulated the text of their procedural agreement reached in the case under consideration. He said that the procedural agreement under consideration was a result of two factors. First, during the implementation period which had ended on 28 February 2002, Argentina had taken major steps towards meeting its international obligations. Second, the exceptional seriousness of the economic crisis facing Argentina had prompted the EC to make this gesture towards the Member with whom it had close ties. At the present meeting, the EC wished the DSB to take note of this agreement.

16. The representative of Japan said that his country did not have a specific position with regard to the case under consideration. However, Japan had a systemic interest in the bilateral agreement between the EC and Argentina as that agreement concerned sequencing procedures under Articles 21 and 22 of the DSU. In Japan's view, the fact that the two parties had to seek such an agreement confirmed, once again, the generally shared view that the current DSU provisions should be improved, especially with regard to the sequence between Articles 21 and 22 of the DSU. Japan believed that the ambiguity of the current DSU provisions should be clarified in the context of the DSU negotiations.

17. The DSB took note of the statements and of the agreement between the EC and Argentina concerning procedures under Articles 21 and 22 of the DSU contained in document WT/DS155/12.

2. Canada – Export credits and loan guarantees for regional aircraft

(a) Implementation of the recommendations of the DSB

18. 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 of its intentions in respect of implementation of the recommendations and rulings of the DSB. He recalled that at its meeting on 19 February 2002, the DSB had adopted the Panel Report in the case on "Canada – Export Credits and Loan Guarantees for Regional Aircraft".

19. The representative of Canada said that his country was considering its options on how best to proceed with respect to this matter. Substantive bilateral negotiations with Brazil had continued in parallel with the WTO process, and the parties were scheduled to meet again in approximately one month's time. Canada hoped that this meeting would produce additional progress towards achieving a mutually satisfactory solution to this dispute.

20. The representative of Brazil said that his delegation had noted the statement made by Canada at the present meeting. He said that Brazil would follow Canada's implementation with great interest and a thorough evaluation of Canada's actions would be undertaken by the competent Brazilian authorities. As stated by Brazil upon the adoption of the Panel Report, this dispute had gone on for too long. Thus, Brazil hoped that current bilateral discussions would end this dispute. Brazil looked forward to continuing with those discussions and to achieving an adequate solution to this case.

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

3. Mexico – Measures affecting telecommunications services

(a) Request for the establishment of a panel by the United States (WT/DS204/3)

22. The Chairman drew attention to the communication from the United States contained in document WT/DS204/3.

23. The representative of the United States said that her country was requesting the establishment of a panel to examine Mexico's measures affecting basic telecommunications services. The US panel request addressed Mexico's failure to implement its GATS commitments for cross-border telecommunications services. Over the past few years, the United States and Mexico had worked together to resolve concerns raised by the United States in its initial request for consultations filed in August 2000. The United States welcomed the steps taken by Mexico to address many of these concerns relating to its domestic market, in particular the reductions in domestic interconnection rates. However, the United States remained discouraged that Mexico had made no effort to address important trade barriers in its international telecommunications market. For instance, the current "interconnection" rate that all Mexican carriers had to charge their foreign counterparts for connecting their calls to Mexico was 13.5 US cents per minute. This rate exceeded the cost of providing this service by over 200 per cent even though Mexico had committed itself under the WTO Reference Paper to ensure that its dominant phone company provided "interconnection" at rates that were "basadas en costos", or "based on cost". Moreover, Mexican measures granted Mexico's dominant phone company the exclusive authority to negotiate this cross-border "interconnection" rate. Such measures empowered Mexico's dominant phone company to set monopoly rates even though Mexico had an obligation under the WTO Reference Paper to maintain measures to prevent this company from engaging in anti-competitive practices. Mexico's measures also discriminated against foreign suppliers by preventing them from sending calls into and out of Mexico over leased lines. However, Mexico had committed itself under the GATS to permit the supply of basic telecom services over leased lines on a national treatment basis and committed under the GATS Telecom Annex to ensure that foreign basic telecom service suppliers had access to and use of leased lines to provide scheduled services. The US discussions with Mexico over the past few years on basic telecom issues had resulted in good progress in removing anti-competitive barriers in Mexico's domestic market. By contrast, despite repeated efforts to move Mexico's cross-border telecom regime in the same direction, the United States had been unable to make headway. As a result, the United States was compelled to conclude that progress could now only be achieved by moving forward with its panel request. The United States remained open to further discussions with Mexico and hoped that both sides would continue their efforts to resolve this matter on a mutually agreeable basis.

24. The representative of Mexico said that his country had been at the forefront of efforts to liberalize the telecommunications sector in Latin America and Europe. Wide-ranging structural reforms had been pursued for over a decade, beginning with the privatization of Telmex, the enactment of the Federal Telecommunications Act, the establishment of the regulatory authority and specialized regulations, and the undertaking of Specific Commitments. These changes had ushered in remarkable growth in the telecommunications sector in Mexico in recent years. The share of GDP accounted for by the telecommunications sector had moved from 1 per cent to 3 per cent in 10 years. It grew four times faster than the rest of the economy and in the last two years its rate of average annual growth was 22.7 per cent, while investment levels had virtually trebled in comparison with the levels recorded before the liberalization process had begun. These figures demonstrated Mexico's firm commitment to liberalizing the telecommunications sector, pursuant to its international obligations. Since the first request for consultations on basic telecommunications, dated 17 August 2000, Mexico had sought to address the concerns of the United States, attempting to propose a rapid settlement, including for those issues not covered under Mexico's WTO commitments. Mexico was, therefore, surprised that the United States had decided to reactivate a case which had been shelved for over a year, and to submit at the present meeting the request for the establishment of a panel. As indicated in Article 3.2 of the DSU, the dispute settlement system "is a

central element in providing security and predictability in the multilateral trading system". This system was not, and had not been intended to be, a mechanism that Members could use to help their firms negotiate better terms for a particular trade transaction, by obliging other Members to adopt measures for which no undertakings had been made. The US request was obscure in several respects, and there were several substantive and procedural violations in respect of its content. The United States was once again attempting to invent infringements of disciplines that had not been incorporated into the WTO framework, as well as violations of commitments which Mexico had never entered into. Mexico was still examining the US request in order to fully assess its scope and implications. At the present meeting, Mexico was not in a position to agree to the establishment of a panel to examine this matter.

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

4. Argentina – Definitive anti-dumping duties on poultry from Brazil

(a) Request for the establishment of a panel by Brazil (WT/DS241/3)

26. The Chairman drew attention to the communication from Brazil contained in document WT/DS241/3.

27. The representative of Brazil recalled that on 7 December 2001 Brazil had requested consultations with Argentina concerning the definitive anti-dumping measures on imports of poultry from Brazil, imposed by Argentina pursuant to Resolution No. 574 of 21 July 2000. Consultations on this matter had been held in Geneva on 10 December 2001. Although these consultations had enabled the parties to have a better understanding of the case, no mutually agreed solution had been found. Brazil considered that the these anti-dumping measures were inconsistent with several provisions of the Anti-Dumping Agreement and, as a result, nullified and impaired the benefits accruing to Brazil under that Agreement. More specifically and as detailed in Brazil's panel request, Argentina was in violation of Articles 1, 2, 3, 4, 5, 6, 9 and 12 of the Anti-Dumping Agreement, Annex II of the same Agreement and Article VI of the GATT 1994. These violations related to the application of the domestic industry to take initiation of an investigation, to the initiation of the investigation, to the investigation itself, to the final affirmative determination of dumping, injury and causal relationship and to the imposition and collection of anti dumping duties. The WTO-inconsistent anti-dumping measures imposed by Argentina had now been in force for almost 20 months. These measures had significantly impacted upon Brazil's exports of poultry to Argentina. Therefore, Brazil had no further alternative than to request the establishment of a panel to examine this matter, with standard terms of reference.

28. The representative of Argentina said that the action taken by his country was in conformity with Article VI of GATT 1994 and the Anti-Dumping Agreement, as explained by his delegation during the consultations held in Geneva on 7 November 2001 as well as on other occasions. Taking into account the background of this case, his country could not accept the establishment of a panel at the present meeting. Argentina was ready to explore other options as an alternative to the panel procedure.

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

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

(a) Report of the Appellate Body (WT/DS202/AB/R) and Report of the Panel (WT/DS202/R)

30. The Chairman drew attention to the communication from the Appellate Body contained in document WT/DS202/12 transmitting the Appellate Body Report in the case on "United States –

Definitive Safeguard Measures on Imports of Circular Welded Carbon Quality Line Pipe from Korea", which had been circulated in document WT/DS202/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".

31. The representative of Korea welcomed both the Panel and the Appellate Body's findings and rulings that the US safeguard measure on line pipe was not consistent with various provisions of the Safeguard Agreement. Korea fully supported the adoption of the Reports of the Panel and of the Appellate Body in this regard. Korea also looked forward to prompt compliance by the United States, specifically by way of eliminating the existing safeguard measures on line pipe. At the present meeting, Korea wished to make some additional comments on the Panel and the Appellate Body Reports. First, the Panel and the Appellate Body had, once again, confirmed Korea's view that a safeguard was a derogation from Members' obligations under the WTO Agreements allowed only in an emergency situation and only when used according to strict observance of substantive and procedural rules stipulated in the GATT 1994 and the Safeguards Agreement. With respect to the nature of the safeguard, previous panels and the Appellate Body had consistently held that the Safeguards Agreement had to be read strictly in light of its object and purpose and the safeguard measures could only be imposed in extraordinary circumstances when a country was faced with an emergency situation regarding immediate relief from an unforeseen increase in imports (Argentina-Footwear, AB Report in paragraphs 93 through 95 and 131. Korea-Dairy, AB Report in paragraphs 86-89). The Appellate Body had confirmed it again in "the Introductory Remark" when it had stated in paragraph 80 of its Report that: "It is useful [to recall] that safeguard measures are extraordinary remedies to be taken only in emergency situations. Furthermore, they were remedies that were imposed in the form of import restrictions in the absence of any allegation of an unfair trade practice. In this, safeguard measures differ from, for example, anti-dumping duties and countervailing duties to counter subsidies, which were both measures taken in response to unfair trade practices."

32. Second, the Appellate Body had appropriately found that the remedy had to be commensurate with the serious injury caused by the imports alone, and should not be designed to remedy the injury caused by other factors. In this regard, the Appellate Body had stated in paragraph 260 of its Report that "the phrase 'only to the extent necessary to prevent or remedy serious injury and to facilitate adjustment' in Article 5.1, first sentence, had to be read as requiring that safeguard measures may be applied only to the extent that they address serious injury attributed to increased imports". This finding, together with Appellate Body's findings on the non-attribution language of the second sentence of Article 4.2(b), provided clear signals that the safeguard measures should be limited to address the serious injury caused by increased imports alone.

33. Third, the Appellate Body had correctly reversed the Panel's ruling on "parallelism" and had then found that the exclusion of Canada and Mexico, as NAFTA member countries, from the US safeguard measure was inconsistent with the WTO Agreement. In addition, the Appellate Body had provided guidance to deal with possible MFN violations under Article 2.2 of the Safeguards Agreement when it had clearly suggested that the exclusion of NAFTA countries from safeguard measures should be subject to Article 2.2 once the "parallelism" problem had been overcome (paragraph 198 of the AB Report).

34. Finally, the Panel had found that the US measure on line pipe was a tariff rate quota (TRQ), which was thus subject to Article XIII of the GATT 1994. The United States had not appealed this point. This decision that the US measure, which was a 19 per cent duty on imports with exemption of

the first 9,000 tonnes from all exporting countries, was a TRQ was an important precedent for future disputes in this area.

35. The representative of the United States expressed her country's regret that the Appellate Body had affirmed the ultimate conclusion of the Panel that the US safeguard measure on imports of line pipe was inconsistent with the Safeguards Agreement. Nevertheless, the United States recognized that the Appellate Body Report would be adopted at the present meeting and wished to respond quickly to this ruling, just as it expected its trading partners to respond promptly to rulings that affected them. However, the United States wished to offer the following comments on the reasoning in the Appellate Body Report. The United States recognized that Members had different views on some of the issues under consideration in the dispute at hand, such as the ability of a Member to exclude free trade agreement partners from safeguard measures. However, whether a Member concurred with or disagreed with the substantive result of the Report, all Members should be disturbed by the analytical approach adopted by the Appellate Body. There were many instances in which the Appellate Body Report had disregarded the language of the covered agreements and applied standards of its own devising to evaluate the claims against the United States. The Appellate Body had made factual findings, which were supposed to be the exclusive province of panels. The Report had not specified the basis for concluding that the US action was inconsistent with WTO rules, leaving the United States with several questions about exactly how to implement the recommendations of the Appellate Body Report. The greatest concern of the United States was the Appellate Body's growing habit of creating its own rules. The WTO Agreement was an agreement among sovereign states, which had undertaken certain commitments in exchange for other countries undertaking equivalent commitments. The text of the WTO Agreement recorded those commitments. Customary international rules for the interpretation of treaties, which were to be used for the interpretation of the WTO Agreement, specified that the interpretation of a treaty should be based on the text of the agreement, using the ordinary meaning of the terms in light of their context and object and purpose. Under Article 1.2 of the DSU, the DSB could not, through the adoption of a panel or Appellate Body report, add to or diminish the rights and obligations provided in the WTO Agreement. When the Appellate Body deviated from the treaty text to create its own standards it contravened principles on which the WTO had been founded. The Appellate Body could not create new obligations and rights, nor could it nullify those established in the covered agreements. To countenance such deviations, the Appellate Body would usurp the exclusive role of the sovereign states that had created the WTO to decide what obligations would apply among themselves. WTO Members placed a great deal of trust in the members of the Appellate Body to assist them in deciding whether particular actions were consistent with their WTO obligations. That trust should not be eroded and all Members should be concerned about these developments. An Appellate Body that followed its mandate would help parties resolve their disputes in accordance with the commitments that they had actually undertaken. An Appellate Body that followed its mandate would also help claimants by ensuring that a finding in their favour, if any, would command respect and gain the voluntary compliance of the responding party.

36. The representative of the European Communities said that the EC welcomed the Reports of the Panel and the Appellate Body in this case as they had confirmed, in line with previous reports, that safeguard measures were exceptional remedies which could only be applied when very strict conditions were met. In particular, for the first time, the Appellate Body had ruled on the substance of Article 5.1 of the Safeguards Agreement, making clear that safeguard measures could not be used beyond the extent necessary to prevent or remedy the injury caused by increased imports. In this connection, the EC welcomed the fact that the Appellate Body had emphasized that a failure to ensure that the injury caused by other factors had not been attributed to increased imports amounted to a prima facie case of disproportionate safeguard measures. Of course there were more findings, but he did not wish to refer to them at the present meeting. The EC hoped that the United States would proceed rapidly to eliminate the illegal safeguard action. Moreover, the EC noted with concern that under the Presidential Proclamation of 5 March 2002, the United States had adopted new safeguard measures on certain steel products which repeated violations of WTO commitments similar to those

condemned by this and prior Appellate Body reports. He noted that the United States had found increased imports although import trends did not show a sudden, recent, sharp and significant increase, as required by the Appellate Body Report in the case on Argentina-Footwear. In addition, in breach of the obligation that had just been underlined, the United States appeared to use safeguard measures to cure the injurious effect of non-import factors. Indeed, once again the United States had failed to asses the nature and extent of the injurious effect of internal factors, as separated and distinguished from the injury caused by imports. As a consequence, there was a prima facie case of disproportionate safeguard measures.

37. The representative of Mexico said that her country had participated as a third party in the proceedings of this case due to its trade and systemic interests. At the present meeting, Mexico wished to comment on two points. First, the Appellate Body, in reversing the Panel's findings on the exclusion of Mexico and Canada from the application of the safeguard measure, had decided once again to reserve judgment on the question of whether Article XXIV of GATT 1994 allowed the exclusion of imports originating from a member of a free-trade area. In Mexico's view, the Panel was correct, in the sense that the United States was entitled to invoke Article XXIV of GATT 1994 as a defence against Korea's claims. Nonetheless, Mexico welcomed the Appellate Body's finding with respect to the conditions for invoking Article XXIV of GATT 1994. Mexico hoped that further challenges to the legitimacy of free-trade areas would be avoided, as this had nothing to do with specific safeguard measures like those at issue in this case. Second, she wished to draw attention to the fact that, without Mexico's express authorization, the Panel had attached as an integral part of its Report the oral statement by Mexico as well as the responses submitted during the proceedings. In Mexico's view, this was not only in violation of Article 18.2 of the DSU, it had also rendered irrelevant the new undertaking by parties and third parties to submit executive summaries, which facilitated inclusion in the descriptive part of the Report. Mexico would continue to ensure that due attention was paid to its rights under the international agreements to which it was a party.

38. The representative of Canada said that, as a third party in this dispute, his country welcomed the opportunity to comment briefly on the Appellate Body Report. Canada was disappointed that the Appellate Body did not believe it was necessary to make a determination on the GATT Article XXIV issue in this case. This issue had been argued extensively by the parties, and there was ample scope for the Appellate Body to make a finding on this point. Canada believed that the Panel was correct in its finding that the United States was entitled to rely on Article XXIV as a defence to Korea's claims. It was important to note, however, that the Appellate Body in no way prejudged the issue of whether Article 2.2 of the Agreement on Safeguards permitted a Member to exclude imports originating in member States of a free-trade area from the scope of a safeguard measure. Canada remained firmly of the view that Article XXIV was a valid basis on which a party to a free-trade area might exclude its free-trade partners from the application of a safeguard measure.

39. The representative of Hong Kong, China said that while his delegation was not a user of safeguard measures, it maintained a long-standing systemic interest on trade remedies such as safeguards. Hong Kong, China noted that the number of safeguard cases had been on the rise continuously since 1995 when the Safeguards Agreement had come into effect. To guard against any possible abuses, it was important to ensure that relevant rules on safeguards were strictly followed. Against this background, Hong Kong, China welcomed the rulings of the Appellate Body in the case under consideration and wished to make a few observations. First, the Appellate Body had reaffirmed the need to ensure "parallelism" between the investigation and the application of a safeguard measure. In paragraph 176 of its Report, the Appellate Body had pointed out that the US International Trade Commission (ITC) considered imports from all sources, including imports from Canada and Mexico, in its investigation. Nevertheless, exports from Canada and Mexico had been excluded from the safeguard measure at issue. The Appellate Body had, therefore, concluded that there was a gap between imports covered under the investigation performed by the USITC and imports falling within the scope of the measure. Hong Kong, China welcomed the Appellate Body's reconfirmation of this legal point. Second, he noted that in paragraph 217 of its Report, the Appellate Body had considered

that Article 4.2(b) of the Safeguards Agreement required the concerned authorities to establish explicitly, through a reasoned and adequate explanation, that injury caused by factors other than increased imports was not attributed to increased imports. Such an explanation had to be clear and unambiguous, and should not merely imply or suggest an explanation. Hong Kong, China welcomed this ruling which helped clarify the requirements imposed on safeguard authorities during the investigation stage.

40. The representative of Japan said that his country had participated as a third party in this case and generally supported the conclusions of the Appellate Body Report. Japan expected the United States to take necessary actions to secure the consistency of the application of the safeguard measure concerned with the DSB's recommendations and rulings. The Appellate Body Report had rightly pointed out that safeguard measures were extraordinary remedies. Japan shared the Appellate Body's view that safeguard measures were temporary and exceptional, and could only be taken in cases of emergency and in strict compliance with the relevant provisions. Therefore, Japan wished to express its concern about the US safeguard measures repeatedly found to be inconsistent with the relevant WTO Agreements.

41. The representative of Chile said that his delegation wished to refer to the issue of parallelism or exclusion of imports from members of free-trade agreements. Chile was still in the process of examining the Reports and wished to reserve its rights to revert to this issue at a later stage.

42. The representative of Australia said that his country welcomed the adoption of the Appellate Body Report in the case under consideration. Australia was satisfied that many of its concerns had been addressed. This was not the first time that Australia had cause to raise concerns about the WTO-consistency of US safeguards legislation and its application. The line pipe ruling was the third successive case of a US safeguard action being found to be inconsistent with the WTO provisions. Despite these clear and unequivocal rulings, Australia had not seen any evidence that the United States had taken any action to correct the inconsistencies in the application of its safeguard laws. This problem was magnified and exacerbated by the recent decision taken by the United States to impose safeguard measures on a wide range of steel products. This recent decision raised the same concerns about the United States' approach to its obligations under the Safeguards Agreement and the GATT 1994. From the examination of the US measure on steel, it was difficult, to say the least, to see how the United States met its WTO obligations in this instance. Australia urged the United States to take immediate action to correct the deficiencies in its safeguards law and its application.

43. The DSB took note of the statements, and adopted the Appellate Body Report in WT/DS202/AB/R and the Panel Report in WT/DS202/R, as modified by the Appellate Body Report.

6. Proposed nominations for the indicative list of governmental and non-governmental panelists (WT/DSB/W/187)

44. The Chairman drew attention to document WT/DSB/W/187 which contained additional names proposed for inclusion on the indicative list of governmental and non-governmental panelists, in accordance with Article 8.4 of the DSU. He proposed that the DSB approve the names contained in document WT/DSB/W/187.

45. The DSB so agreed.