WORLD TRADE ORGANIZATION

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Dispute Settlement Body
20 June 2001

MINUTES OF MEETING

Held in the Centre William Rappard
on 20 June 2001

Chairman: Mr. R. Farrell (New Zealand)

Subjects discussed: Page

1. Surveillance of implementation of recommendations adopted by the DSB

(a) European Communities – Regime for the importation, sale and distribution of bananas: Status report by the European Communities

(b) Japan – Measures affecting agricultural products: Status report by Japan

(c) Turkey – Restrictions on imports of textile 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 three 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.19)

2. The Chairman drew attention to document WT/DS27/51/Add.19 which contained the status report by the EC on its progress in the implementation of the DSB's recommendations concerning its banana import regime.

3. The representative of the European Communities said that at the 16 May DSB meeting, the EC had provided details of the solution that had been found to settle the banana dispute. Since then, the EC had faithfully implemented the first phase of the interim regime, covering the second half of 2001. He noted that, for the sake of transparency, the EC had circulated the full text of the management regulation. He confirmed that import certificates had started to be distributed to operators on the basis of requests made. The EC had also started to prepare for the second phase of the interim regime, which would start on 1 January 2002. In this regard, the EC was certain that Members would support its waiver request, to be submitted shortly, for the implementation of this phase.

4. The representative of Colombia said that, as indicated in the status report, the new banana regime would not be implemented in a comprehensive way and in order for the regulation of the second phase of the new system to be effective, various stages in the decision-making process would still have to be completed. Furthermore, it would be unacceptable if the initial premise was that the regime was designed in such a way so as to relieve the EC of some of its WTO obligations. Second, the new system was viewed by Colombia's exporters as less harmful than the first-come, first-served system. Notwithstanding those factual circumstances relating to the conditions that would govern the access for bananas to the EC's market, he wished to reiterate the statement made by Colombia at the 16 May DSB meeting with regard to country quotas. He noted that under the Uruguay Round Agreement, the EC was bound to meet its obligations concerning its quotas allocated to Colombia and to other countries. In this sense, his country welcomed the decisions recently adopted by the EC in order to meet its commitments and hoped that the EC would come up with similar proposals with regard to its obligations towards Colombia.

5. The representative of the United States said that his country was following closely the steps being taken by the EC in relation to this case. The United States looked forward to the prospect of a resolution to this long-standing dispute. His country would continue to consult with the EC and other interested parties as the EC proceeded with implementing its regulations in accordance with the Understandings.

6. The representative of Honduras said that the EC's status report referred solely to the interim regime for tariff quotas and their administration, as outlined in Commission Regulation (EC) No. 896/2001. The EC had not taken into account his country's desire that the negotiation should include rules to guarantee access for its bananas. Honduras believed that the Understanding between the EC and the United States, if properly implemented, could contribute towards the settlement of the banana dispute. However, his country was concerned about the implementation of the Understanding and wished to ensure that its rights were properly protected. The issue of waivers was of the utmost importance for the proper implementation of the Understanding. Honduras would closely follow developments in this area. His country would only be sure that the rights of producing countries were adequately protected, if waivers were properly requested and approved. The scope of waivers should be as limited as possible and should not contain any ambiguities which could lead to different interpretations. Furthermore, no other documents should be incorporated by reference in such requests. He pointed out that it was inappropriate to begin examination on the basis of the current request submitted by the EC. In this sense, in light of the Understanding between the United States and the EC, Honduras wished to reiterate its procedural reservations with regard to the request for a waiver. The EC should amend its waiver request currently under discussion in order to adapt it to the current situation. Honduras requested that its views be taken into consideration in order to end the banana dispute in a fair and technically sound way that would respect its rights.

7. The representative of Guatemala said that her delegation had noted the statement made by the EC concerning the measures taken in an effort to implement the EC/US Understanding. The manner in which that Understanding was to be implemented would constitute a determining factor in preserving Guatemala's rights and in putting an end to this dispute. Guatemala would follow closely any action to be taken by the EC aimed at complying with the terms of the Understanding. Guatemala considered that waivers referred to in the Understanding were of crucial importance because the conditions governing such waivers would determine access for bananas to the EC market. The Understanding contained the right elements for settling the dispute, but in order to defend its rights, Guatemala would monitor closely its implementation. Her delegation considered that this matter should remain on the DSB's agenda until the end of the negotiations on waivers.

8. The representative of Ecuador said that his country would monitor closely the implementation of the Understanding reached between the EC and Ecuador, which provided that a new banana regime based on tariffs would become effective in 2006. Ecuador would also monitor closely a transitional regime to be put in place in the meantime.

9. The representative of Costa Rica said that in his country's view the information contained in the status report represented a positive step forward towards a resolution of this dispute. As previously indicated, any solution should contain elements leading to improvements in comparison to the previous arrangements. At this stage, not all elements of the new regime were known and Costa Rica still had some concerns about this regime. He noted that the EC had stated that a waiver was a prerequisite for the implementation of the second phase of the regime. He underlined that such a waiver should be viewed in its proper context, namely, as one of the conditions contained in the bilateral Understanding. Like Colombia, Costa Rica continued to have concerns about the way in which the EC had sought to resolve this dispute. In particular, Costa Rica was concerned that the EC had sought to maintain tariff quotas and favoured some of the parties while no solution had yet been found with other interested parties. Further information should be provided.

10. The representative of Panama said that his country shared the views expressed by Costa Rica concerning the waiver and the fact that a solution had not been found with all the parties concerned. The EC had an obligation to implement the DSB's recommendations, but thus far an agreement had only been reached with two countries. Discussions were required with other interested parties. A lot had to be done before one could consider that the EC had implemented the DSB's recommendations. Panama would monitor closely any future developments and in order to terminate this dispute successfully, the EC had to take into account the interests of the parties with whom it had not reached agreement. The bilateral Understandings did not cover all the aspects of its banana import regime and Panama urged the EC to take into account other aspects. Once this was done, it would be possible to remove this item from the DSB's agenda.

11. The representative of Saint Lucia, speaking also on behalf of Belize, Dominica, Jamaica, St. Vincent and the Grenadines and Surinam, thanked the delegation of the EC for its comprehensive and informative status report. The countries in question welcomed the level of progress achieved in recent months, culminating in the settlement of this long and damaging dispute. She noted that arriving at the solution had been a complex process demanding that concessions be made. In order to secure viable market access, the countries in question also had to pay a price. Nonetheless, they recognized the political will which was evident. The fundamental aim of the dispute settlement mechanism was to secure a positive solution, preferably one which was acceptable to the parties. In these circumstances, one which preserved the access rights of banana supplying countries, including the most vulnerable. To have opted for a different course – as would have been the case if the first come, first served system, as previously discussed, had been adopted – would have left supplying countries exposed to being played off one against the other by the dominant multinational corporations, entailing complete loss of security of access. None of the parties would have truly gained anything.

12. The countries in question had very real and worrying concerns regarding the final regulation, scheduled to cover the period up to 2006. The span was too brief to facilitate the level of adaptation required of their economies and domestic industries to an open market. The tariff-only system was not a viable option. Further, they were concerned and disappointed that the access for ACP bananas was to be reduced when the second phase of the regime was introduced. The countries in question had had a long-standing export trade with the EC market and it seemed particularly unfortunate and, indeed, unfair that their secure exports should be reduced by 100,000 tonnes during the second phase as ACP exports had exceeded the proposed reduction level in previous years. With respect to licensing, the countries in question would be particularly vigilant since it was the licensing system which would buttress security of access for them, making it a reality. It was the manner in which this was operated which would, in practical terms, decide whether or not the proposed settlement enabled them to continue marketing their bananas on a viable and predictable basis; alternatively, whether the EC market, on which they had relied for so many years would be lost in the near future.

13. The representative of Belize, speaking also on behalf of Suriname, said that while the countries in question welcomed the fact that a solution to the long-standing dispute was close, the details of the Understanding might have an impact on some countries. While they accepted that the first phase of the EC's implementation had now been completed, the details of the second phase were of paramount importance to the ACP countries. The countries in question supported the second phase plan to designate a separate quota for the ACP countries, however, they were deeply concerned by some other suggested implementation details. In reality, since the implementation of EC's Regulation 404/93, banana production in some ACP countries, including Belize and Suriname, had been severely restricted by that regime. Progressive and efficient ACP producers had to resort to purchasing licenses to deliver their full production. This placed an unfair economic burden on growers in some ACP countries, including Belize and Suriname. For the ACP countries, the second phase implementation of the EC banana regime would have to result in a viable and fair return to producers. This was the letter and the spirit of the Lomé and Cotonou Agreements, the foundation on which their

market access and their place in this dispute rested. Accommodation had to be made for the ACP countries to begin marketing their produce through specific designation of a new category of "operators". This had to be clearly defined in the proposed EC Regulation and should be included in the waiver request put forward by the EC for the second phase of implementation of an "ACP quota". Without this, banana producers in Belize and Suriname could only remain in the market at the mercy of transnational companies, some of which appeared to have more interest in the trading of unused licenses, than in the long-term viability of their banana industry and national economies. He underlined that it had to be kept in mind that this was only a transitional regime. It thus should offer the options that would translate into increased development in the ACP countries, not increased poverty. Belize and Suriname were prepared to face the challenge of the proposed transitional period, however, they had to be given a fair chance to do so. The countries in question called on all the parties to this dispute, in particular the EC and the United States, to give them the opportunity to engage appropriately.

14. The representative of Mexico said that his country would closely follow any developments related to the transitional regime and reiterated that a tariff-only system was Mexico's preferred option with a tariff set at an appropriate level.

15. The representative of Mauritius wished to associate her country with the statements made by Saint Lucia and Belize who had spoken on behalf of several other countries.

16. The representative of the European Communities said that his delegation had noted carefully the statements made at the present meeting and wished to assure delegations that it would continue to listen carefully to their views. Difficult negotiations were ahead concerning the waiver requested by the EC. In this regard, he noted that no delegation had spoken against the principle of the granting of such a waiver. With regard to the implementation of the second phase of the regime, the EC envisaged a transfer of 100,000 tonnes of bananas from quota C to quota B. This implied a modification in the Regulation, and since quota C would be reserved for ACP countries it also implied a need for a waiver, which was a precondition for the adoption of the change in the Regulation. This matter was under discussion and negotiations would be undertaken in this regard. The EC was currently in the process of preparing a notification under Article 3.6 of the DSU and hoped to be able to complete this shortly.

17. The representative of Cuba said that her delegation supported the statement made by Saint Lucia on behalf of other small economies and urged that a satisfactory solution be found with all the parties, especially developing countries.

18. 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.15)

19. The Chairman drew attention to document WT/DS76/11/Add.15 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.

20. The representative of Japan said that in addition to the information contained in the status report submitted at the present meeting, he wished to inform the DSB that his country was carrying out the necessary domestic procedures in order to implement the new quarantine methodologies. In this regard, various meetings were being held to explain the content of the new methodologies to the domestic producers of the fruits concerned, with a view to concluding these steps by the end of June 2001. Once that process was completed, a formal public hearing would be held and then the

relevant Ministry Ordinances would be amended. He hoped that Japan would shortly be in a position to formally notify the DSB of a mutually satisfactory solution.

21. The representative of the United States thanked the delegation of Japan for its status report and for the additional information provided at the present meeting. As the Untied States had previously stated, since technical discussions were now over, Japan should undertake the administrative steps necessary to put its plans into place. He noted that, to some extent, Japan had referred to this issue at the present meeting. The United States urged Japan to complete these steps as rapidly as possible in order to end this dispute. His country hoped that the parties to the dispute would be in a position to notify the DSB of a mutually satisfactory solution in the near future after Japan had taken prompt action to complete the implementation process.

22. The representative of Australia said that his delegation had noted the status report submitted by Japan and the supplementary information which had just been provided. Australia wished to register its continued interest in this regard.

23. The representative of the European Communities said that the EC continued to have concerns about the delay in the notification of a mutually satisfactory solution in this case. Although the EC respected Japan's wish to prevent the introduction of a codling moth, it considered that the DSB's recommendations should be strictly followed. In particular, the EC was concerned that Japan still had to provide guidelines concerning the date by which it would complete its administrative process in order to put into place the new methodology following completion of technical consultations. The EC urged Japan to proceed as rapidly as possible in applying the new quarantine methodology in full conformity with the DSB's recommendations.

24. The representative of Japan said that he had noted the statements made by some delegations at the present meeting, and would convey them to his authorities.

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

(c) Turkey – Restrictions on imports of textile and clothing products: Status Report by Turkey (WT/DS34/12/Add.8)

26. The Chairman drew attention to document WT/DS34/12/Add.8 which contained the status report by Turkey on its progress in the implementation of the DSB's recommendations with regard to its restrictions on imports of textiles and clothing products.

27. The representative of Turkey said that, as stated in the status report, the discussions between the capitals in the respective countries continued. It was his understanding that these discussions were positive. Turkey hoped to be in a position to come to a mutually satisfactory arrangement in the very near future.

28. The representative of India said that, as indicated by Turkey, the parties were working towards developing mutually acceptable compensation in accordance with Article 22 of the DSU, as a temporary measure, pending compliance by Turkey of the DSB's recommendations. He underlined that even after the expiry of the reasonable period of time for implementation in this case (19 February 2001), India had continued to work with Turkey with regard to its implementation. This reflected the fact that India attached importance to full compliance with the DSB's recommendations. India hoped that the appropriate compensation could be worked out expeditiously and that Turkey would meet its obligations as soon as possible.

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

2. United States – Safeguard measures on imports of fresh, chilled or frozen lamb meat from New Zealand and Australia

(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 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 16 May 2001, the DSB had adopted the Appellate Body Report on "Safeguard Measures on Imports of Fresh, Chilled or Frozen Lamb Meat from New Zealand and Australia" and the Panel Report on the same matter, as modified by the Appellate Body Report. He noted that the 30-day period in this case had expired on 15 June and on 14 June, pursuant to the agreement between the parties to the dispute, the United States had informed the DSB in writing of its intentions in respect of implementation in document WT/DS177/11 - WT/DS178/12.

31. The representative of the United States said that, as indicated by the Chairman, on 14 June his country had informed the DSB in writing of its intentions with respect to the implementation of the DSB's recommendations and rulings in this case. The United States had requested that this item be placed on the agenda to confirm its intention to implement the DSB's recommendations in a manner that respected its WTO obligations and that it needed a reasonable period of time in which to do so. His delegation was ready to discuss the matter with New Zealand and Australia, in accordance with Article 21.3(b) of the DSU.

32. The representative of New Zealand welcomed the undertaking by the United States to comply with the DSB's recommendations in a manner that respected its WTO obligations. He noted that the United States had requested a reasonable period of time for implementation. The removal of the safeguard measure was the only route by which the United States could faithfully implement the DSB's recommendations in this case, and this should be done as soon as possible. New Zealand recalled the comprehensive nature of the DSB's recommendations in this case and, as had been pointed out upon the adoption of the Reports, the safeguard measure imposed by the United States had failed to satisfy not just one, but four of the essential elements that had to be demonstrated prior to the imposition of a safeguard measure. The restrictions on lamb exports from New Zealand and Australia, which had been in place for almost two years, had no legal basis under the WTO rules, yet they were still in place. He drew attention to Article 21.1 of the DSU which stated that prompt compliance was essential to ensure effective resolution of disputes to the benefit of all Members. His country was concerned that the United States had not indicated its intentions to remove the trade restrictive measures immediately, but had requested a reasonable period of time for implementation. New Zealand did not understand why the United States appeared to be contemplating the need for any additional time-period. Nevertheless, New Zealand welcomed the US advice that it was ready to discuss this mater with the complainants and noted that, in order to respect the time-frames contained in the DSU, discussions on the reasonable period of time had to be initiated without delay. New Zealand, therefore, requested an early proposal from the Untied States and advice of arrangements for such discussions. New Zealand stood ready to respond to such a proposal immediately.

33. The representative of Australia welcomed the United States' commitment to implement the DSB's recommendations and rulings in this case. Australia did, however, regret that the United States had found itself unable to comply immediately, particularly in view of the length of time that had

already elapsed since the illegal safeguard measure had been introduced. He recalled that the DSU provided for the Member concerned to have a reasonable period of time for implementation only where it was impracticable to comply immediately with the DSB's recommendations and rulings. The governing principle in those situations, as developed through arbitration awards, was that the reasonable period of time should be the shortest period possible within the legal system of a Member. Australia called on the United States not to delay implementation, but to do so at the earliest possible time. Australia, once again, wished to refer to the comprehensive nature of the rulings against the US actions in this case and the fundamental inconsistencies found in the US approach in imposing the safeguard measure on lamb meat. Australia reiterated its view that implementation of the DSB's rulings could, therefore, only be achieved by the removal of the safeguard measure. His country welcomed the United States' readiness, as stated in its notification, to discuss this matter with Australia and New Zealand in accordance with Article 21.3(b) of the DSU, which provided for the parties to the dispute to determine a reasonable period of time through mutual agreement. Australia looked forward to such discussions at the earliest possible time in accordance with the overall objective of resolving this dispute promptly. On a separate matter, but still relevant to the dispute, Australia noted that the United States was yet to notify to the Committee on Safeguards the results of the mid-term review of the lamb meat safeguard measure as required by the Agreement on Safeguards. While this was a separate process, Australia hoped that the United States would take this opportunity "to kill two birds with one stone".

34. The representative of the European Communities said that the US safeguard measure had been clearly condemned by both the Panel and the Appellate Body. The safeguard instrument was an extraordinary remedy against fair trade which could only be used when strict conditions were respected. In this case, the immediate compliance prescribed by the DSU required an immediate withdrawal of the WTO-incompatible measure. The United States had the legal ability to immediately withdraw the safeguard measure which had no legal basis and it should do so.

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

3. Egypt – Definitive anti-dumping measures on steel rebar from Turkey

(a) Request for the establishment of a panel by Turkey (WT/DS211/2 and Corr.1)

36. The Chairman recalled that the DSB had considered this matter at its meeting on 16 May 2001 and had agreed to revert to it. He drew attention to the communication from Turkey contained in documents WT/DS211/2 and Corr.1.

37. The representative of Turkey said that his country wished to reiterate its request for the establishment of panel to examine this matter.

38. The representative of Egypt noted that Turkey's request was on the DSB's agenda for the second time. She said that during the consultations with Turkey in Cairo, Ankara and Istanbul, her country had stressed the fact that the measures in question were consistent with provisions of GATT 1994 and of the Anti-Dumping Agreement. At the present meeting, Egypt wished to reaffirm that its investigation and the measures in question were in conformity with the above-mentioned provisions as well as with its obligations under the GATT 1994 and the WTO Agreement.

39. The representative of Turkey said that his delegation had noted the statement made by Egypt but it was up to the panel to rule in this case.

40. The DSB took note of the statements and agreed to establish a panel in accordance with the provisions of Article 6 of the DSU with standard terms of reference.

41. The representatives of the EC, Chile, Japan and the United States reserved their third-party rights to participate in the Panel's proceedings.

4. Peru – Taxes on cigarettes

(a) Request for the establishment of a panel by Chile (WT/DS227/2)

42. The Chairman recalled that the DSB had considered this matter at its meeting on 16 May 2001 and had agreed to revert to it. He then drew attention to the communication from Chile contained in document WT/DS227/2.

43. The representative of Chile said that since the 16 May DSB meeting his country had been unable to make progress with Peru or to bring their positions closer together with a view to reaching a mutually satisfactory settlement to this dispute. While Chile would continue to make efforts in order to find a solution, it wished to request for the second time, the establishment of a panel to determine, among other things, that the differential treatment applied to cigarettes in Peru was WTO-inconsistent as it discriminated against imported goods, including those from Chile. His country was, therefore, requesting the establishment of a panel with standard terms of reference.

44. The representative of Peru said that at the 16 May DSB meeting, his delegation had stated that the competent Peruvian authorities had noted the concerns expressed by Chile about the current tax treatment of cigarettes in Peru. In this regard, he wished to point out that the consultation held on 20 April 2001 was very important since it had initiated a very positive exchange of information on the aspects of Supreme Decree No. 158-99-EF that were a cause of concern to Chile. Taking into account the positive spirit which characterized the consultation, it would have been desirable to continue the discussion in a bilateral setting, with a view to reaching a mutually satisfactory solution. Peru, therefore, regretted Chile's decision to proceed with its request for the establishment of a panel. As the competent authorities of Peru had explained in the course of the consultations, Decree 158-99-EF was not discriminatory, nor did it seek to protect the domestic industry. He reiterated that Peru was willing to continue to seek a mutually satisfactory solution. Nevertheless, since Chile had decided to pursue its request for the establishment of a panel, Peru would defend the legislation within the DSU framework.

45. The DSB took note of the statements and agreed to establish a panel in accordance with the provisions of Article 6 of the DSU with standard terms of reference.

5. United States – Anti-dumping and countervailing measures on steel plate from India

(a) Request for the establishment of a panel by India (WT/DS206/2)

46. The Chairman drew attention to the communication from India contained in document WT/DS206/2.

47. The representative of India said that his country was requesting the establishment of a panel to examine the US measures which had resulted in the imposition of anti-dumping duties on imports of cut-to-length carbon quality steel plate from India. These anti-dumping duties had closed effectively the US market to the sole Indian producer of cut-to-length plate, i.e. the Steel Authority of India (SAIL). He drew attention to India's panel request and said that at the core of many of the claims and measures contained therein was the the US Department of Commerce application and practice of applying "total facts available". This practice was not found in the Anti-Dumping Agreement, rather it was developed by the US Department of Commerce. It meant that if the US Department of Commerce found that a substantial portion of the information provided by the company being investigated was not useable in its view, then all of the company's data would be

rejected and it would seek information from other sources. It was not clear what happened to the information provided by the respondent that was found to be verifiable, timely submitted and that which could be used without undue difficulty. It was rejected by the US Department of Commerce, which then used instead alternative, adverse sources of information to calculate the dumping margins, including the information submitted by the petitioning domestic industry.

48. He noted that the result in the investigation of cut-to-length plate, as in other investigations involving other Members in which the US Department of Commerce had applied this practice, was a dramatic and artificial inflation of the anti-dumping margins. For example, the US Department of Commerce had rejected SAIL's entire US sales database even though it had verified those data and had found that they were complete and submitted in a timely fashion. Instead it had applied "total facts available" because it had claimed that other information relating to SAIL's home market sales was not verifiable, timely submitted or otherwise useable without undue difficulty. As a result, a dumping margin of 72.49 per cent had been imposed. He drew attention to the first sentence of paragraph 3 of Annex II to the Anti-dumping Agreement, which stated that all information should be used if it was verifiable, submitted in a timely fashion and would not cause undue difficulties in the investigation. He noted that SAIL's US sales data fell clearly within the criteria established in Annex II, paragraph 3. Had the US Department of Commerce used such data as well as other verifiable, submitted in a timely fashion and easily useable information it had received from SAIL, the result would have significantly lowered SAIL's margins from 72.49 per cent to a mere fraction of this figure.

49. India would demonstrate that the US statutes implementing the "facts available" provisions of the Anti-Dumping Agreement had been interpreted by the US Department of Commerce and the US Court of International Trade in a manner which constituted a *per se* violation of various provisions of the Anti-Dumping Agreement. The US Department of Commerce had utterly ignored the obligation to take into account India's developing-country status in deciding whether to accept SAIL's submitted information, or in exploring other constructive remedies before imposing final anti-dumping duties, in violation of Article 15 of the Anti-Dumping Agreement. It was time to ensure that the promise extended by Article 15 was fulfilled. Many developing countries were concerned about the state of implementation of Article 15 of the Anti-Dumping Agreement. This Article provided that special regard had to be given by developed-country Members to the special situation of developing-country Members when considering application of anti-dumping measures. However, in practice and in law, major users of anti-dumping measures did not distinguish between developed and developing countries in their application of such measures. The initiation of anti-dumping proceedings might lead the importers to switch sources of supply in favour of suppliers not targeted for anti-dumping action, thus resulting in financial and practical difficulties for the concerned exporters. Those difficulties were exacerbated in the case of developing-country exporters and overall the initiation of anti-dumping proceedings disproportionately burdened them whether or not the final determination was affirmative. India was thus requesting a panel to examine this matter and looked forward to eliminating both the application and the existence of the protectionist practice that had unfairly denied India's access to the US market.

50. The representative of the United States said that his country regretted that India had chosen to request the establishment of panel. As a substantive matter, the United States believed that India's assertions were devoid of merit and should a panel be established, it would so find. It was clear from India's panel request that it had declined to limit its dispute to the issue of the application by the US Department of Commerce of facts available. As India was aware this issue was the subject of ongoing private litigation in the US Courts. Therefore, it would be prudent for India to await the judicial outcome of that litigation in order to determine what actual effect it had on India's view of the proper application of the facts available. If India chose not to await the outcome of the judicial proceedings, the United States wished to make one comment regarding the panel request. India challenged the practice of the US Department of Commerce in applying "total facts available" both as

such and as applied. India's request for consultations did not refer to any such Department of Commerce practice and the parties to the dispute had not consulted on the issue. Neither section 1677 m (d) nor 1677 m (e) of the Untied States Tariff Act of 1930 mandated any particular action by the US Department of Commerce. From the US point of view, this alleged practice did not constitute a measure and was, therefore, not properly a subject for panel review. Thus, the United States could not agree to the establishment of a panel at the present meeting and urged India to reconsider its approach to the matter.

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

6. European Communities – Trade description of sardines

(a) Request for the establishment of a panel by Peru (WT/DS231/6)

52. The Chairman drew attention to the communication from Peru contained in document WT/DS231.

53. The representative of Peru said that his country was requesting the establishment of a panel to examine the common marketing standards for preserved sardines as stipulated in Council Regulation (EEC) No. 2136/89 of 21 June 1989. He recalled that, on 20 March 2001, Peru had formally requested consultations with the EC with a view to settling this dispute. These consultations had been held on 31 May 2001 and, although a useful exchange of views had taken place, no mutually satisfactory solution had been found. Peru considered that the above-mentioned Regulation constituted an unnecessary obstacle to international trade and was discriminatory since Article 2 thereof stipulated that only preserved sardines that were prepared exclusively "from fish of the species *Sardina pilchardus* Walbaum" might be marketed as preserved sardines. This Regulation had no justification under the WTO rules and violated, *inter alia*, Articles 2 and 12 of the Agreement on Technical Barriers to Trade and Articles I.1, III.4 and XI.1 of the GATT 1994. He stressed that Peruvian preserved sardines prepared from *Sardinops sagax sagax* had legally entered the German market under the description "Pacific Sardines" until June 1999. They had satisfied the criteria relating to safety, origin and quality established in the Community Regulation and had therefore proved very popular on the German market. However, their entry had been subsequently prohibited by the application of Council Regulation (EEC) No. 2136/89, thereby causing injury to Peruvian exporters and affecting their legitimate expectations under the WTO Agreement. It had also contributed to a significant decline in the activities of sardine processing plants and a rise in unemployment, coupled with the corresponding adverse social effects, in many towns dependent upon this industry. Peru was surprised that, in spite of recent statements by the EC Trade Commissioner reaffirming the EC's commitment to ensuring that the interests and needs of developing countries were a core component of the multilateral trading system and were fully incorporated in the context of a fresh round of trade negotiations, the EC was implementing the provision which was not only in a breach of WTO commitments, but was also severely detrimental to Peru's fishing industry, which was one of the key sectors of its economy and a major source of employment. Accordingly, Peru was requesting the establishment of a panel with standard terms of reference.

54. The representative of the European Communities said that, in the consultations held with Peru on 31 May 2001 as well as in other fora, the EC had expressed its readiness to seek a solution in order to meet Peru's concerns. The EC was in the process of collecting all the necessary information concerning this matter in order to respond to the questions asked by Peru. However, the EC was disappointed about Peru's hasty decision to request the establishment of a panel and hoped that the parties would continue to seek a solution. Therefore, the EC was opposing the establishment of a panel at the present meeting and hoped that this delay would enable the parties to find a mutually agreed solution.

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

7. European Communities – Anti-dumping duties on malleable cast iron tube or pipe fittings from Brazil

(a) Request for the establishment of a panel by Brazil (WT/DS219/2)

56. The Chairman drew attention to the communication from Brazil contained in document WT/DS219/2.

57. The representative of Brazil said that on 21 December 2000 his country had requested consultations with the EC on the latter's anti-dumping measures in respect of imports of malleable cast iron tube or pipe fittings originating in Brazil, including the initiation of the anti-dumping investigation carried out by the EC. He recalled that the investigation in question had led to the imposition and collection of definitive and provisional anti-dumping duties on malleable cast iron tube or pipe fittings from Brazil and the imposition and collection of provisional and definitive duties. These consultations had been held in Geneva on 7 February 2001, but had not resulted in a mutually agreed solution. Thus Brazil had no alternative but to request the establishment of a panel to examine this matter. The EC had started the investigation by publishing a notice of initiation on 29 May 1999 in the Official Journal of the European Communities and provisional anti-dumping duties had been imposed by way of Commission Regulation (EC) No. 449/2000, dated 28 February 2000. The imposition of definitive anti-dumping duties and the collection of provisional duties had been effected by way of Council Regulation (EC) No. 1784/2000, dated 11 August 2000. In Brazil's view the EC had acted and was acting in a manner inconsistent with its obligations under the GATT 1994 and the Anti-Dumping Agreement. Thus, the benefits accruing to Brazil either directly or indirectly under the Anti-Dumping Agreement and the GATT 1994 had been nullified or impaired by the EC and/or the achievement of objectives of the Anti-Dumping Agreement and the GATT 1994 were being impeded by the EC. The EC's actions including, but not limited to, the initiation of the investigation and the imposition and collection of provisional and definitive anti-dumping duties had significantly impacted upon Brazil's exports of malleable cast iron tube or pipe fittings to the EC. Brazil believed that the EC's actions; i.e. initiation of the investigation and the imposition and collection of provisional and definitive anti-dumping duties were inconsistent with several previsions of the Anti-Dumping Agreement and of the GATT 1994 and involved not only substantive questions but also procedural ones. Brazil was thus requesting the establishment of a panel to examine this matter.

58. The representative of the European Communities said that the EC believed that all correct procedures had been followed in this case and did not understand why Brazil wished to engage in needless litigation. The EC was confident that its findings, evaluations and determinations were proper, unbiased, objective, transparent and in conformity with the WTO Agreement. He noted that all due process requirements had been strictly observed and the parties concerned, including the Brazilian exporter, had been heard while all arguments submitted had been fully taken into consideration. Furthermore, the possibility of alternative solutions, in accordance with the relevant EC legislation had been raised on several occasions. Under these circumstances, the EC was not in a position to agree to the establishment of the panel requested by Brazil.

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

8. Remuneration of Appellate Body members

60. The Chairman said that he had taken over this subject from his predecessor as Chairman of the DSB and had continued the discussion on this matter with Members. He expressed appreciation for the Secretariat's factual contribution to the discussion. He said that he had engaged in a variety of informal consultations, including with the entire DSB membership and other groups who had

expressed particular interest in the subject. His sense was that there was no consensus on the subject of remuneration of Appellate Body members and, therefore, he had placed this item on the agenda of the present meeting. While no delegation was obliged to make a statement on this matter, any delegation wishing to express its views could do so at the present meeting.

61. The representative of Malaysia expressed his delegation's appreciation to the Chairman for holding informal consultations. In Malaysia's view the proposal to move from a part-time to a full-time system had long-term systemic implications. Therefore, as had been indicated in the informal consultations, his country was not ready to join in a consensus on this matter. Malaysia believed that this was not a matter of urgency and that no further action should be taken on the proposal at this stage.

62. The representative of Canada said that his delegation noted the Chairman's statement that there was no consensus on this matter but nevertheless wished to make a statement at the present meeting. He thanked both the Chairman and the Secretariat for the consultations and the documentation provided to Members thus far. Canada had been an active participant in these consultations and continued to attach great importance to this issue. His country was prepared to keep an open mind on the proposed conversion of Appellate Body members from part-time to full-time status. However, at this stage, it was not convinced that a case had been made in support of such a fundamental change. He questioned whether it was true that the current remuneration arrangements for Appellate Body members had failed to attract and retain the best possible candidate. Canada was by no means persuaded that this was the case, but would welcome further consideration of this key issue. Moreover, while some might consider budgetary considerations to be of secondary importance in this exercise, they did remain crucial for Canada. In this regard, Canada believed that the Secretariat's simulation could benefit from further elaboration, particularly when it came to the average age of Appellate Body members at retirement. The simulation currently assumed that Appellate Body members would continue to be of a certain age. However, it was quite possible that in the future there could be younger Appellate Body members. In Canada's view, this possibility could have a significant impact on the projected cost of the Secretariat's proposal and should be reflected in the simulation. Overall, Canada believed that the underlying rationale for the proposed conversion as well as the broader implications of some of its elements, such as the Geneva-based residency requirement, on the fundamental character of the dispute settlement system merited further consideration and discussion by Members. Canada looked forward to participating in this process.

63. The representative of Japan said that his country shared the view that it had become necessary for Members to seriously consider how to overcome the current problem faced by Appellate Body members, namely, their heavy workload. This problem had to be examined both from the point of view of the smooth overall functioning of the dispute settlement system, and from the point of view of efficient budgetary management. As pointed out in the paper prepared by the Secretariat, the current situation of the overburden of work for each member of the Appellate Body was not foreseen by the drafters of the DSU at the outset, and it had to be rectified within a reasonable period of time. Conversion of Appellate Body members' remuneration to full-time basis, as proposed by the Secretariat, was one of the options. However, Japan believed that the proposed changes to the system might have substantive impact on the available choice of future Appellate Body members. Japan believed that there was a need for further discussions on the implications of the proposal on the overall functioning of the dispute settlement mechanism, as well as on future budget expenses. It might be useful to have views from actual and future Appellate Body members. As it would not be easy to come back to the old system once a decision to transform the current remuneration arrangement was taken, it would be wiser to spend more time to study the issue. Japan also believed that its proposal to increase the actual number of Appellate Body members instead of modifying the current remuneration was another option to overcome the current problem. Japan, therefore, wished to request Members to consider the usefulness of this proposal and was ready to actively participate in any discussions on this matter.

64. The representative of the European Communities said that the Appellate Body was an element of paramount importance for the satisfactory functioning of the dispute settlement mechanism. It was therefore Members' responsibility to ensure that the Appellate Body was in a position to carry out its tasks under optimal conditions. The EC, for its part, had always been ready to actively take part in a debate on the definition of such optimal conditions. In this context, the EC had noted with interest all the information provided by the Secretariat on the cost-neutrality of moving towards a full-time status for Appellate Body members. The EC had a "préjugé favorable" on this proposal, and despite the current difficulties, it remained ready to participate in further discussions, if necessary.

65. The representative of India said that his country had already expressed its views on this matter in the course on the informal consultations. India wished to be associated with the views expressed by Malaysia and Japan and believed that no hasty decision should be taken on this matter.

66. The representative of Hong Kong, China thanked the Chairman for conducting informal consultations on this matter. Hong Kong, China had an open mind on this proposal and was ready to participate actively, if necessary. His delegation believed that the question of cost should not be a major consideration and noted that the paper prepared by the Secretariat adopted a conservative approach in the simulation. However, like Canada, Hong Kong, China believed that the scenario might change if younger Appellate Body members were to be appointed in the future. Therefore, further information from the Secretariat would be required to demonstrate the sustainability of the proposal. If Members wished to further consider the proposal it would be useful to have the Secretariat's assessment as to what extent this proposal would reduce the problem of the current workload, ensuring availability and allowing Appellate Body members to work more efficiently. Hong Kong, China was ready to participate in any consultations to be held on this matter.

67. The representative of Chile said that his delegation regretted that no consensus had been reached on this matter. He noted that Malaysia had stated that the proposal had long-term implications. Chile believed that there was going to be an increase in the use of the dispute settlement system, including the services of the Appellate Body. Currently, the Appellate Body reports were being issued after 90 days not 60 days as prescribed in the DSU. Therefore, long-term implications were clear: if nothing was going to be done now, the situation would become worse and the weakest and poorest countries, which benefited from the rules, would lose. Although budgetary implications were important, one should not approach this issue from such a narrow prospective. Given the increasing recourse to the dispute settlement system, greater cost would be involved. Therefore, there was a need to reallocate resources or to increase contributions. However, it was not appropriate to approach this matter exclusively from the budgetary point of view. There were also other options such as to increase the number of Appellate Body members, but this had other consequences and implications. Perhaps both options, namely, to move to a full-time system and to increase the number of Appellate Body members, would have to be taken into consideration. However, the matter had to be resolved and thus there was a need to continue discussions. Chile wished to join previous speakers requesting the Chairman to leave the matter open and to carry out consultations.

68. The representative of Brazil said that his delegation noted the Chairman's statement that there was no consensus on this matter. While agreeing with those delegations who had cautioned against hasty decisions, Brazil believed that this matter should be kept under regular review. For its part, Brazil would continue to consider all the implications of the proposal as well as other alternatives for improving or modifying the status of Appellate Body members taking into account not only the budgetary implications, but especially looking at the possible impact on the optimal functioning of the Appellate Body.

69. The representative of the United States said that his country remained open to discussions of any proposals that would strengthen and improve the functioning of the Appellate Body. At the same time, the United States did not think that it was necessary to reach a decision on this issue before the

three new Appellate Body members were to be selected. The United States believed that Japan, Canada and other Members had raised some very valid concerns about the best means to ease the Appellate Body's heavy workload, and the impact of any major changes to the structure of the Appellate Body as well as the budget implications. The United States also shared the concerns raised about the justification for providing pension benefits to Appellate Body members who were serving only four year or, at most eight, year terms. A long term pension benefit for full-time Appellate Body members would not seem warranted. As the United States continued to consider all options, it recognized that some options such as increasing the number of AB members would require an amendment of the DSU. The United States did not believe that that should prevent serious consideration of such options.

70. The Chairman said that his conclusion that there was no consensus on this matter had been confirmed by the statements made at the present meeting. He proposed that the DSB might potentially revert to this matter at a later date.

71. The DSB took note of the statements and agreed to potentially revert to this matter at a later date.

9. Proposed nomination for the indicative list of governmental and non-governmental panelists (WT/DSB/W/165)

72. The Chairman drew attention to document WT/DSB/W/165 which contained an additional name proposed for inclusion on the indicative list in accordance with Article 8.4 of the DSU. He proposed that the DSB approve the name contained in document WT/DSB/W/165.

73. The DSB so agreed.

10. Statement by the Chairman concerning a DSB meeting in November 2001

74. The Chairman, speaking under "Other Business", drew Members' attention to the fact that there was a regular meeting of the DSB scheduled for 13 November 2001. Since this date coincided with the dates of the Fourth Ministerial Conference in Doha, he proposed that the meeting scheduled for 13 November be cancelled and that, if necessary, a special meeting of the DSB be held after the Fourth Ministerial Conference, if there were any matters which could not await the regular meeting scheduled for 18 December 2001.

75. The DSB so agreed.

11. Deadline for submission of candidates for Appellate Body members

76. The Chairman, speaking under "Other Business", recalled that the deadline for submission of candidates for Appellate Body members had been set by the DSB as closing on 29 June 2001. He said that nominations should be addressed to the Director-General and should reach his office by 5 p.m. on 29 June 2001.

77. The DSB took note of this information.

12. Statement by the Deputy Director-General concerning Article 5 of the DSU

78. The Deputy Director-General, Mr. A. Stoler, speaking under "Other Business", said that the purpose of the DSU was to provide avenues for the settlement of disputes among Members. He noted that to date, nearly all disputes involving provisions of covered agreements had been settled through recourse to panel proceedings. Article 5 of the DSU provided for the use of good offices, conciliation

and mediation, but this provision had not been used since the inception of the WTO. Because the Director-General was of the view that Members should be afforded every opportunity to settle their disputes through negotiations wherever possible, the Director-General wished to call Members' attention to the fact that he was ready and willing to assist them by making Article 5 operational. Article 5.6 of the DSU provided that the Director-General might offer his services in regard to good offices, conciliation and mediation in his ex officio capacity; that was, within the powers inherent in his office. In order to facilitate the use of good offices, conciliation and mediation, the Director-General planned to issue a note to Members in the near future. The note would explain the background of this provision of the DSU, and would provide some specific procedures for Members to use in requesting his assistance. This note and the procedures were intended to help Members resolve their differences and would in no way limit their rights under the WTO Agreement. The purpose of the forthcoming note would be to make operational the Director General's specific role envisioned in Article 5.6 of the DSU. These specific procedures would not in any way limit the Director-General's availability to assist Members more generally whenever they requested his help. He said that the Director-General looked forward to working with delegations and hoped that the note would be useful to Members who might wish to avail themselves of the provisions of Article 5 of the DSU.

79. The DSB took note of the statement.