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on 24 July 2001

Chairman: Mr. R. Farrell (New Zealand)

Prior to the adoption of the agenda, the item concerning the adoption of the Panel Report on "United States – Import Prohibition of Certain Shrimp and Shrimp Products – Recourse to Article 21.5 of the DSU by Malaysia" was removed from the agenda following Malaysia's decision to appeal the Panel Report. Also the item concerning the adoption of the Panel Report on "Mexico – Anti-Dumping Investigation of High Fructose Corn Syrup (HFCS) from the United States – Recourse to Article 21.5 of the DSU" was removed from the agenda following Mexico's decision to appeal the Panel Report.

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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

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 two 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.20)

2. The Chairman drew attention to document WT/DS27/51/Add.20 which contained the status report by the European Communities 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, as had been indicated at the 20 June DSB meeting, the EC had already started its preparations for the implementation of the second phase of the Understandings reached with the United States and Ecuador, which should begin on 1 January 2002. The EC was working on the Regulation necessary for transferring 100,000 tonnes of bananas from quota C to B and for reserving quota C for bananas from ACP countries. However, it was clear that such a modification could be effective only if and when the EC obtained the relevant waivers. Some difficulties still existed on this issue. While the EC recognized that the Council for Trade in Goods was the competent forum to discuss waiver requests, it urged the parties to discuss their concerns with the EC in the course of the examination procedure under Article IX of the WTO Agreement. The EC was ready to hold consultations with those parties who still had some problems.

4. The representative of Colombia underlined the importance of the notification of the Understandings reached by the EC with the United States and Ecuador and said that surveillance exercised by the DSB was one of the cornerstones of the multilateral trading system. Colombia noted that the EC established a link between Article XIII of GATT 1994 and the modification of the Council Regulation No. 216/2001. It further noted that in the EC's view there was a clear sequence whereby the Article XIII waiver was essential in order to modify the banana import regime, and thus it would

proceed to the next stage from January 2002. However, exemptions from fundamental provisions of GATT 1994 could not be granted without regulations on bananas. Furthermore, the systemic interests of some countries, and the trade interests of others, like Colombia, would have to be taken into account. These countries wished to know the conditions for access to the EC's market. Colombia hoped that a joint effort taking into account the legitimate interests might lead to the full implementation of the banana import regime. The terms of the waiver and its conditional application could provide alternatives aimed at resolving this thorny issue.

5. The representative of Belize wished to register his country's continuing interest in this matter.

6. The representative of the United States said that his country was pleased to announce that, in accordance with the Understanding reached with the EC on 1 July 2001, the United States had suspended the retaliatory duties on EC's imports resulting from the banana dispute. Although the Understanding did not constitute a mutually agreed solution under Article 3.6 of the DSU, it did provide a hopeful means by which the dispute could be resolved. The second phase of the Understanding was scheduled to be implemented by January 2002, subject to the adoption of a waiver from Article XIII of GATT 1994. The United States looked forward to the prospect of resolution to this long-standing dispute. However, it was concerned that there appeared to have been a significant departure from licensing allocations provided for in phase I of the Understanding as a result of a recent action by one member State of the EC to provide extra licenses to an EC company. The United States hoped to consult soon with the EC to ensure faithful implementation of the Understanding. The EC's status report also reconfirmed that the EC needed only an Article XIII waiver, not an Article I waiver, to implement the Understanding. The United States urged the EC to put the Article XIII waiver forward separately. Also, given the general support in the WTO for an Article I waiver, his country was confident that if the EC drafted that waiver in an appropriately narrow and transparent way, the waiver's approval could be assured.

7. The representative of Honduras said that the status report presented by the EC demonstrated that the points of agreement reached in the Understandings were not being duly implemented. In the view of Honduras, the Understandings marked however a significant advance in this area, and their proper follow-up and implementation would prove decisive in resolving the dispute. Although Honduras was not party to the Understandings, it wished to underline that crucial aspects of the dispute had unfortunately not been discussed in the negotiations that had led to those Understandings. The importance of these omitted aspects was such that they would have to be addressed at the time of the examination of the EC's request for a waiver. Only proper handling of these matters could bring a permanent solution in order to settle this long-standing case. However, the requested examination could not be initiated without a full description of the exemptions from Articles I and XIII of GATT 1994, which would have to be examined jointly, as requested by the EC. Not only the Understandings in respect of waivers but also transparency and good faith required a full description of these exemptions. Far from meeting this requirement, the request for a waiver had made references to other documents, and it was not clear where the measures in question would be specified. He said that there was a need to substantiate the request for the waiver, which would enhance the credibility of the WTO. Any delay in this regard would not be detrimental to countries who would benefit from waivers, since they already enjoyed the preferential treatment that the requested waivers sought to legalize.

8. The representative of Costa Rica said that the Understandings signed by the EC with the United States and Ecuador constituted important steps in a positive direction. Costa Rica supported the statement made by Colombia and urged the EC to take into account the concerns of all the parties involved in this dispute, including Costa Rica, which was the second largest supplier of bananas to the EC's market.

9. The representative of Ecuador said that in the status report the EC had referred to the discussions held with some countries to obtain an exemption from Article XIII of GATT 1994 in order to secure an appropriate tariff level for bananas from ACP countries. The EC should continue working in this direction. Ecuador was not sure whether the waiver had to be obtained prior to a transfer of the additional volume of 100,000 tonnes of bananas from quota C to B. He noted that Ecuador had notified the DSB of the Understanding reached with the EC in document WT/DS27/60. While this Understanding might contribute to a comprehensive solution, the provisions of Article 3.6 of the DSU were not applicable thereto.

10. The representative of Panama expressed concern that at this early stage of implementation one member State of the EC was already violating the terms of the Understandings. He noted that the Understandings did not constitute an agreed solution to the banana dispute. Panama was still waiting for clarification as to how the EC would ensure that this member State complied with the Understandings. Panama would continue to follow closely any developments in relation to this case. In the EC's view, exemption from Article XIII was a precondition to transferring 100,000 tonnes of bananas from quota C to B. Like the United States, Panama also believed that the EC only needed an exemption from Article XIII and supported the examination of that request. Furthermore, the EC should indicate, in an appropriate and transparent manner, what preferences it wished to grant, and where an Article I exemption was required. In Panama's view there was no link between the transfer of 100,000 tonnes of bananas and Article XIII, given the preferences under the Cotonou Agreement. The lack of good faith towards Latin American producers would not resolve this dispute.

11. The representative of Guatemala said that, as indicated on previous occasions, her country considered that the elements contained in the Understandings would enable the parties to find a solution to the banana dispute. Guatemala would follow closely any action taken by the EC in this regard. Her country urged the EC to take into account the procedural arguments made by some countries in order to fully comply with the Understandings as well as to take into account procedural objections with regard to exemptions from the obligations related to Articles I and XIII of GATT 1994.

12. The representative of Mexico wished to register his country's interest in this matter and reiterated that Mexico's preference was to have a tariff-only system with tariffs set at an adequate level in order to provide access for bananas from Latin American countries, and in particular from Mexico.

13. The representative of Saint Lucia said that her country viewed the outcome in this case as an end result of separate accords – the EC and the United States, and the EC and Ecuador agreements – which had been circulated together with the consequent Commission regulations implementing these accords and which had taken effect on 1 July 2001. St. Lucia had not been party to either set of negotiations or to the accords. Nevertheless, it supported the outcome as enshrined in the relevant Commission Regulation of 7 May 2001 laying down the new rules for applying Council Regulation EC 404/93 and implementing the two agreements with Ecuador and the United States. Saint Lucia was well aware of the difficulties which the EC had encountered in negotiating an acceptable reform of the banana regime because of the conflicting interests of several of the parties. It therefore accepted and supported the accords and the implementing regulations because they signalled an end to this long and damaging dispute which would bring a measure of predictability and stability to the marketing of bananas. She noted that Saint Lucia had always given pre-eminence to the adoption of an equitable arrangement which safeguarded the legitimate trading interests of all suppliers and preserved market access on a viable basis. Although it did not negotiate the solution, Saint Lucia accepted it as a reasonable settlement and hoped that all Members would facilitate the adoption of the necessary waivers to facilitate its implementation. The time had now come to consider the matter closed and to move on. Saint Lucia welcomed the US action to remove sanctions and looked forward to the removal of this item from the DSB agenda.

14. The representative of the European Communities said that many of the arguments made at the present meeting had been part of an exchange at previous meetings, including the most recent meeting of the Council for Trade in Goods when procedural issues related to the waiver had been discussed. The EC required a waiver in order to modify the relevant regulations. If not, the implementing legislation would be WTO-incompatible. Since it was up to the party requesting a waiver to formulate its request, the EC had requested a waiver from Articles I and XIII and had asked that both waiver requests be considered together. It had also put forward very detailed notifications of its waiver requests. At the meeting of the Council for Trade in Goods, four countries had stated that they could not start the examination of the waiver requests. However, most Members had supported the EC's view that once a waiver request with sufficient description was put on the table, then the examination should start. The EC hoped that it would soon be possible to resolve some procedural objections raised by a number of countries, in particular by four Central American countries. The EC hoped that further consultations would bring a positive outcome. He noted the statements made by the United States and Panama concerning implementation of licencing in the first phase of the Agreement which had started on 1 July 2001. However, he was not in a position to respond to this point at the present meeting, but assured delegations that the statements made at the present meeting would be conveyed to his authorities. The EC hoped that a solution would be found to some procedural problems in the near future and that the matter would be removed from the DSB agenda.

15. The representative of Honduras said that his country had no objections with regard to the examination of the EC's request for a waiver from Article XIII, but had procedural objections to the request for an Article I waiver. Honduras wished to participate in the consultations to be held by the EC. However, these consultations would have to be negotiating in nature since no satisfactory solution had yet been found to some of the problems concerning the banana dispute.

16. The representative of Ecuador said that his country wished to participate in the consultations to be held by the EC on this matter.

17. 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.16)

18. The Chairman drew attention to document WT/DS76/11/Add.16 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.

19. The representative of Japan said that in addition to the information contained in the status report, he wished to report that his country was carrying out the necessary domestic procedures in order to put the new quarantine methodologies into implementation. Japan had already completed a series of meetings to explain the contents of the new methodologies to domestic producers. Currently, Japan was in the process of fixing the date for a formal public hearing, which was normally held one or two months after the completion of the explanatory meetings. After the public hearing, Japan would proceed to amending the relevant Ministry Ordinances. Japan hoped that it would shortly be in a position to notify the DSB of a mutually satisfactory solution.

20. The representative of United States said that his country had noted that Japan's procedures for implementation were moving forward. The United States, once again, urged Japan to complete these steps as rapidly as possible to finally end the dispute. The United States expected to hear shortly Japan's announcement of its schedule for the remaining procedures.

21. The representative of Australia said that his delegation had noted Japan's latest status report and wished to register Australia's continuing interest in this matter.

22. The representative of European Communities said that, once again, his delegation wished to express concern about the continuing delay to notify a mutually satisfactory solution. The EC noted with disappointment that Japan had not yet completed the implementation of the DSB's rulings and recommendations. Although the EC respected Japan's wish to prevent the introduction of a codling moth, it considered that the DSB's recommendations in this case should be strictly followed. In particular, the EC was concerned that Japan had yet to provide guidance on the date by which it would complete its administrative process in order to put into place the new methodology following the 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.

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

2. 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)

24. The Chairman recalled that the DSB considered this matter at its meeting on 20 June 2001 and had agreed to revert to it. He drew attention to the communication from India contained in document WT/DS206/2.

25. The representative of India said that at the 20 June DSB meeting, his country had requested the establishment of a panel to examine this matter. However, the United States had objected to it. Therefore, at the present meeting, India was requesting a panel for the second time. He noted that the panel request contained in document WT/DS206/2 set out India's claims and the US measures at issue. Since India had already made a statement on this matter at the 20 June DSB meeting, he only wished to reiterate India's request for the establishment of a panel.

26. The representative of United States expressed her country's regret that India had chosen to request the establishment of a 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. She then reiterated the US comment made at the 20 June DSB meeting. India challenged the practice of the Department of Commerce in applying total facts available, both as such and as applied. However, India's request for consultations did not refer to any such Department of Commerce practice, and the United States and India had not consulted on the issue. Moreover, neither section 1677m(d) or 1677m(e) mandated any particular action by the Department of Commerce. In the view of the United States, this alleged practice did not constitute a measure and was, therefore, not properly a subject for panel review. The United States would defend itself vigorously before the panel.

27. 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.

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

3. European Communities – Trade description of sardines

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

29. The Chairman recalled that the DSB had considered this matter at its meeting on 20 June 2001 and agreed to revert to it. He drew attention to the communication from Peru contained in document WT/DS231/6.

30. The representative of Peru said that since no acceptable proposal to resolve this dispute had been put forward his country was requesting a panel in order to examine the common marketing standards for preserved sardines laid down in Council Regulation (EEC) No. 2136/89 of 21 June 1989. As indicated previously, this EC Regulation not only violated the WTO provisions but had also led to a decline in production, causing serious prejudice to Peruvian exports and had affected employment among Peru's coastal population. Peru stood ready to continue searching for a solution to this dispute. However, as long as there was no proposal in line with the provisions of the relevant agreements, Peru would pursue the panel process. Accordingly, Peru was requesting the establishment of a panel to examine this matter.

31. The representative of the European Communities said that the EC was disappointed that Peru had decided to request the establishment of the panel before engaging in a genuine discussion on how to solve this dispute. The EC reiterated that, in spite of Peru's urgency in establishing the panel, it was open and willing to explore solutions and hoped that dialogue between the parties could be shortly reinitiated.

32. 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.

33. The representatives of Canada, Chile, Colombia, Ecuador, United States and Venezuela reserved their third-party rights to participate in the Panel's proceedings.

4. 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)

34. The Chairman recalled that the DSB considered this matter at its meeting on 20 June 2001 and had agreed to revert to it. He drew attention to the communication from Brazil contained in document WT/DS219/2.

35. The representative of Brazil said that this item was on the agenda for the second time and therefore he only wished to reiterate Brazil's request for the establishment of a panel to examine the matter.

36. The representative of the European Communities said that the EC believed that the correct procedures had been followed in this case and did not understand why Brazil wished to engage in needless WTO litigation. He underlined that all necessary process requirements had been strictly followed. All parties concerned, including the Brazilian exporter, had been heard and all arguments submitted had been fully taken into consideration. The EC was confident that its findings, evaluations and determinations were proper, unbiased, objective, transparent and in conformity with the WTO Agreement. Under the circumstances, the EC failed to see the points made by Brazil. In light of Brazil's insistence in requesting a panel, the EC had no other option but to defend its legitimate interests before the panel.

37. 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.

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

5. United States – Continued Dumping and Subsidy Offset Act of 2000

(a) Request for the establishment of a panel by Australia, Brazil, Chile, the European Communities, India, Indonesia, Japan, Korea and Thailand (WT/DS217/5)

39. The Chairman drew attention to the joint communication from Australia, Brazil, Chile, European Communities, India, Indonesia, Japan, Korea and Thailand contained in document WT/DS217/5.

40. The representative of Japan said that since its introduction in the US Congress, the Bill in question had been a source of great concern for many Members, in particular for those who had been subject to US anti-dumping measures. The Act required the US Customs Service to distribute the collected anti-dumping and countervailing duties to the domestic producers who were petitioners or interested parties in support of their petitions. The "qualifying expenditures", for which the distribution had been made, included those with respect to manufacturing facilities, equipment, research and development, personnel training, acquisition of technology, health care and pension benefits, acquisition of inputs, and working capital. The distribution provided an additional remedy to domestic producers who had already been protected by anti-dumping or countervailing duties, and constituted a specific action against dumping and subsidization which had not been contemplated under the GATT 1994, the Anti-Dumping Agreement or the SCM Agreement. This distribution in Japan's view amounted to improper provision of an incentive for domestic producers to file or support petitions for anti-dumping or countervailing duty measures, thereby distorting the application of the standing requirements provided for in the Anti-Dumping Agreement and the SCM Agreement. Furthermore, the Act made it more difficult for exporters to secure a suspension agreement with the Department of Commerce, since the affected domestic producers would have a vested interest in opposing such undertakings in favor of the collection of the anti-dumping or countervailing duties. This was not a reasonable and impartial administration of US laws and regulations implementing the provisions of the Anti-Dumping Agreement and the SCM Agreement regarding standing determinations and undertakings. For these reasons, Japan considered that the Act as such was not in conformity with US obligations under the GATT 1994, the Anti-Dumping Agreement or the SCM Agreement.

41. Even within the United States, there were dissenting views regarding the consistency of the Act with the WTO Agreements. The House and the Senate had passed the Act within an exceptionally short period of time, hardly enough for exhausting proper discussion on the draft. This was because the Bill of this Act was attached to the Agricultural Appropriation Bill that had to be passed by US Congress. When the US President had signed the Agricultural Appropriation Bill into law, it had stated on 28 October 2000 that " … this Bill will provide select US industries with a subsidy above and beyond the protection level needed to counteract foreign subsidies, … I call on the Congress to override this provision, or amend it to be acceptable, before they adjourn". The nine complaining Members, including Japan, had engaged in dialogue and consultations with the United States towards a mutually acceptable solution. However, much to their disappointment, on 26 June 2001, the United States had taken one step further towards implementing the Act by publishing the proposed implementing regulations for the Byrd Amendment. Japan considered that the Act violated a number of provisions of the WTO Agreement and remained to be a cause of much concern among Members. Japan was therefore requesting that a panel be established in order to examine and confirm that the Act was not consistent with the WTO Agreement.

42. The representative of the European Communities said that the EC was concerned by the Byrd Amendment, and believed that the joint action taken by some Members demonstrated that these concerns were shared by both developed and developing countries. This joint action was a clear indication of the important systemic concerns that this Act raised among Members. It was clear that under WTO rules, the United States was not allowed to offset dumping and subsidization by redistributing duties to the petitioners. By doing so, the United States not only offered double protection to its industry but also provided clear incentive for its domestic industry to file cases against companies exporting to the United States. This law, therefore, had the potential of deeply affecting all the exports to the United States, regardless of origin. This was in fact "a United States - rest of the world problem". This law should be condemned as soon as possible to avoid prejudice to all trade partners of the United States. By filing the first request for establishment of a panel at the present meeting, the nine co-complainants wanted to send a very clear signal to the United States of the need to repeal legislation that was contrary the letter and the spirit of WTO law.

43. The representative of Korea said that his country supported the statements made by other complaining parties and wished to be associated with those statements. Previous speakers had identified the measure at issue and had provided the legal basis of the complaint in clear terms and, thus, he did not wish to reiterate the same comments on this subject. Korea wished to raise some general concerns over the measure and its harmful effect on the international trade system. Korea had consistently argued that the anti-dumping and countervailing measures should be applied with utmost care in view of the instant chilling effect they had on normal trade activities. In that sense, the US Continued Dumping and Subsidy Offset Act of 2000 was a source of deep concern for Korea. Such a measure would lead to proliferation of petition for anti-dumping and countervailing measures, the accompanying chilling effect of these petitions and the disruption of the multilateral trading order. It was out of such a concern that nine Members were requesting the establishment of a panel. Korea also recalled that two more Members were now consulting with the United States on the same matter. It hoped that the United States would amend its law to bring it into line with the WTO Agreement. Otherwise, the DSB would have to render an appropriate ruling so that the security and predictability of the multilateral trading system would be spared unwelcome disruptions.

44. The representative of Australia said that his country had previously registered its concerns regarding the WTO-consistency of the so-called Byrd Amendment. Australia was particularly concerned that this law might provide financial inducement to a greater number of producers to bring forward and support anti-dumping petitions. Australia was concerned that if left unchallenged, this Amendment could result in a proliferation of such incentive-based legislation globally for anti-dumping practitioners. For that reason, Australia had decided to join with the large number of co-complainants requesting a panel on this issue. It believed that it was important that the law at issue be subjected to thorough examination through the dispute settlement process to determine its standing under the WTO Agreements, and the GATT 1994 – a view clearly shared by a significant proportion of both developed and developing-country Members within the WTO system.

45. The representative of Chile said that his country did not have much to add to what had been stated by previous speakers and fully supported their statements. Chile had a direct and systemic trade interest in this case. Since part of its exports were affected by anti-dumping and other measures currently under investigation by both the US Department of Commerce and USITC, Chile considered the Byrd Amendment to be an additional trade remedy on top of anti-dumping duties, which was obviously not provided for in either Article VI of GATT 1994 or the Anti-Dumping Agreement. Moreover, it served as a perverse incentive to North American industry to pursue anti-dumping cases, most of which, in Chile's view, were unjustified. From a systemic point of view, the Amendment was yet another example of how some Members interpreted and applied anti-dumping rules in such a way that they became trade barriers. Therefore, Chile and eight other Members had come together to request the panel, *inter alia*, to confirm that the Byrd Amendment was incompatible with the WTO

and should therefore be repealed, as the US authorities had admitted and as it had been recalled by Japan.

46. The representative of Indonesia said that his country was concerned about the new US legislation of the Byrd Amendment, and its consistency with the WTO rules. This amendment provided a greater incentive for domestic producers and their affiliated trade unions to file new anti-dumping and countervailing duty petitions that they might not have done in the past because there was no incentive to take such action. This Amendment directed the customs office to distribute anti-dumping and countervailing duties to qualified, injured petitioner companies and labour unions. Beneficiaries could use the funds to pay for many business costs incurred by petitioners after an anti-dumping or countervailing duty order was issued. In Indonesia's view, this Amendment violated US obligations under the WTO, namely, the Anti-Dumping Agreement and the SCM Agreement. Indonesia strongly believed that by subsidizing petitioners, the United States had created a new, unauthorized remedy for unfair trading practices that went beyond the remedy of offsetting legitimate duties stated in the WTO. Indonesia had decided to join other countries in requesting the establishment of a panel. The request by a number of Members was a clear indication of the systemic issue that would adversely affect the interest of other Members**.**

47. The representative of India said that, like other complainants, his country was also concerned about the Byrd Amendment. This joint action was indeed a clear indication of the important systemic concerns that this legislation raised among both the developing and developed Members. WTO rules did not permit Members to offset dumping and subsidization by redistributing duties to the petitioners. This would be an illegal response to dumping and subsidization. The United States had done precisely this by enacting this Amendment. This law, not only offered double protection to the United States' industry, but also provided a clear incentive to the domestic industry to file and support anti-dumping and countervailing duty cases against exporters to the United States. Thus by creating a strong incentive, this Act distorted the standing requirements in the Anti-Dumping and the SCM Agreements. Further, it undermined the provisions on price undertaking in the Anti-Dumping Agreement. Another panel had ruled recently that price undertaking could be a constructive remedy under Special and Differential (S&D) provisions of the Anti-Dumping Agreement. The US law thus adversely affected these S&D provisions. Therefore, the US law had the potential of substantially affecting exports, especially from developing countries, to the United States. Since the consultations held in February 2000 had failed to resolve the dispute, India joined other complainants in seeking the establishment of a panel. Even at this late stage, India urged the United States to take into account its concerns and to repeal this WTO-inconsistent law immediately.

48. The representative of Thailand said that his country joined the eight other Members in requesting a panel because it believed that the Continued Dumping and Subsidy Offset Act of 2000 was inconsistent with the US obligations under the WTO Agreement. The Act mandated the US authorities to distribute anti-dumping and countervailing duties to the petitioners or interested parties who supported the petition. This constituted a specific action that was not contemplated under the GATT and the relevant covered agreements. It was contrary to their objects and purposes, since the Act provided strong incentives to the domestic industry to file or support petitions for anti-dumping or countervailing actions, and to oppose any attempt by the exporters to secure an undertaking with the authorities. The fact that at least nine Members from different regions had the same view with regard to this US legislation, and that more Members may join them in the near future in requesting a panel, should send a clear message to the US Government that this legislation was a source of concern and that the only way to address this concern was to repeal the Act as soon as possible.

49. The representative of Brazil said that his country had taken a decision to request together with other co-complainants the establishment of a panel to examine the Continued Dumping and Subsidy Offset Act of 2000 since, as indicated by previous speakers, it believed this legislation was fundamentally flawed in terms of compatability with the WTO Agreements. The allocation of anti-

dumping duties to the petitioners according to the provisions of the Byrd Amendment could not be justified under WTO rules, as it went against the letter of the Agreements and the spirit that had guided the drafters. Brazil believed that this was a very important subject brought before the DSB in view of its serious systemic implications and the real threat of losses to exporters to the US market. Unfortunately, since consultations on this issue had not resulted in a resolution of the problem, Brazil with the other co-complainants had been forced to take action in order to safeguard their WTO rights.

50. The representative of the United States said that in her country's view, the Byrd Amendment was fully consistent with US international obligations under the WTO. The Byrd Amendment in no way altered how the United States made anti-dumping or countervailing duty determinations, or assessed the amount of duties on dumped or subsidized imports. The WTO Agreements did not address what a country might do with anti-dumping and countervailing duties after these had been collected. The United States intended to vigorously defend this measure before a panel, should one be established in the future. The United States could not agree to the establishment a panel at the present meeting.

51. The representative of Mexico recalled that his country and Canada had also requested and had held consultations with the United States on this matter. However, these consultations had failed to settle the dispute. His country would therefore closely monitor actions taken in relation to the present request and, in the near future, would avail itself of its rights under the DSU provisions.

52. The representative of Canada said that, like other Members seeking the establishment of a panel, his country had long been concerned about the WTO-consistency of the Byrd Amendment. Indeed, Canada and Mexico had held consultations with the United States on this matter on 29 June 2001. However, these consultations had failed to resolve the dispute. Given the timing of this panel request, Canada was unfortunately not in a position to join with the other complainants. However, it would be shortly requesting the establishment of a panel. Canada expected that, in accordance with Article 9 of the DSU, all complaints would be examined by a single panel.

53. The representative of Norway said that his country shared the concern raised by the nine complainants with regard to the WTO-consistency of the US legislation.

54. The representative of Hong Kong, China said that his delegations had followed closely the developments of the US Continued Dumping and Subsidy Offset Act of 2000. It was its understanding that this Act, when implemented, would allow revenues collected from anti-dumping and countervailing duties to be distributed to either the petitioners for these duties in question, or to interested parties in support of the petition for specified "qualifying" expenditures. Hong Kong, China shared the concerns of other Members that this Act would provide a strong incentive for the US domestic producers to lodge anti-dumping and countervailing duty petitions. The consequential rise in such petitions would be likely to result in additional impediments to inflows of competitive imports into the US markets, thereby further tilting the playing field in favour of domestic producers. This was highly undesirable in view of the growing use of anti-dumping actions worldwide. Hong Kong, China was also worried that this Act might set off global "copycat" legislation. It was possible, that some Members might be encouraged to introduce similar legislation, which could trigger off an alarming worldwide proliferation of anti-dumping and countervailing duties. Such proliferation would represent a retrograde step in global trade liberalization and go against the WTO's spirit of upholding non-discriminatory conditions of competition in globalized markets. Hong Kong, China therefore registered a strong systemic interest in the case.

55. The representative of Argentina said that his country shared the concerns expressed by previous speakers and wished to register Argentina's strong systemic interest in this case.

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

6. United States – Section 129(c)(1) of the Uruguay Round Agreements Act

(a) Request for the establishment of a panel by Canada (WT/DS221/4)

57. The Chairman drew attention to the communication from Canada contained in document WT/DS221/4.

58. The representative of Canada said that on 17 January 2001, Canada had requested consultations with the United States regarding Section 129(c)(1) of the Uruguay Round Agreements Act (URAA) and the Statement of Administrative Action accompanying the URAA. These consultations had been held on 1 March 2001, but had failed to settle the dispute. Therefore, Canada was requesting that a panel be established to examine this matter. Section 129(c)(1) of the URAA applied in cases in which the DSB ruled that a US anti-dumping or countervailing duty determination was inconsistent with the obligations of the United States under the WTO and the USTR directed either the International Trade Commission or the Department of Commerce to make a new determination. The new anti-dumping or countervailing duty determination would only apply to entries of imports made after the date on which USTR directed the US Department of Commerce to amend or revoke the original anti-dumping or countervailing duty determination. The US Statement of Administrative Action confirmed that if the implementation of an adverse DSB ruling resulted in revocation of an anti-dumping or countervailing duty determination, entries of imports prior to the date fixed for compliance would remain subject to potential duty liability, notwithstanding the revocation of the original determination. In Canada's view, Section 129(c)(1) was inconsistent with US obligations under the WTO. Consequently, and in accordance with the relevant DSU provisions, the GATT 1994, the SCM Agreement and the Agreement on Implementation of Article VI of the GATT 1994, Canada was requesting the establishment of a panel to consider this matter.

59. The representative of United States said that this case continued the troubling trend of Canada filing panel requests over legal provisions that had never been applied. The previous example of this trend had been the so-called export restraints case, where Canada had burdened the dispute settlement process with another theoretical dispute. The United States had never applied Section 129(c)(1), and was unaware of any anti-dumping or countervailing duty orders on Canadian products that would implicate the provision. From a systemic viewpoint, this increasing tendency to bring theoretical disputes should be of concern to other Members. The dispute settlement system was already overburdened with disputes. Moreover, judging from the panel request, it appeared that Canada intended to raise arguments that would apply a higher level of WTO obligations to countries with retrospective duty assessment systems than to countries with prospective duty assessment systems. It also appeared that Canada was seeking retroactive application of WTO decisions. Neither outcome would be appropriate under WTO rules. For these reasons, the United States urged Canada to reconsider its decision to request a panel in this matter. In any event, the United States was not prepared to consent to the establishment of a panel at the present meeting.

60. The representative of Canada wished to respond to two points made by the United States. First, with respect to retroractivity and second with respect to whether the challenge was hypothetical. With regard to retroactivity, this case was not about seeking retroactive relief. It was about the continued imposition of duty liability and assessment of duties by the United States pursuant to an anti-dumping or countervailing duty determination, notwithstanding an adverse DSB ruling and subsequent determination by the relevant US administrative authority ammending or revoking that original determination. In other words, the United States would continue to impose duty liability and assess duties in situations in which the elements needed for the United States to make a finding of injurious subsidization or dumping were no longer present. This was contrary to the US obligations under Article VI of GATT 1994, the Anti-Dumping Agreement and the SCM Agreement. With regard to the second point, this case was neither hypothetical nor premature. Canada believed that Section 129(c)(1) of URAA represented a failure on the part of the United States to implement fully

its WTO obligations. Futhermore, Section 129(c)(1) adversely affected Canada and its industry. The United States was currently conducting two large anti-dumping and countervailing duty investigations on soft wood lumber imports from Canada.

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

7. United States – Section 110(5) of the US Copyright Act

(a) Proposed modification of the reasonable period of time under Article 21.3 of the DSU (WT/DS160/14)

62. The Chairman drew attention to the communication from the United States contained in document WT/DS160/14.

63. The representative of the United States said that the reasonable period of time for the United States to comply with the DSB's recommendation in this case would expire on 27 July 2001. The United States had been working actively with the EC to resolve this dispute, and had begun negotiations on compensation. To facilitate these negotiations, the United States and the EC had jointly requested arbitration pursuant to Article 25 to determine the level of nullification and impairment of benefits to the EC as a result of Section 110(5)(B) of the US Copyright Act. In accordance with Article 3.7 of the DSU, the aim of the dispute settlement process was to secure a positive and mutually acceptable solution. In order to help fulfil this objective and continue constructive dialogue with the EC, the United States was requesting that the DSB extend the reasonable period of time for the United States to implement the DSB's recommendations and rulings in this case until the end of the current session of the US Congress or 31 December 2001, whichever is earlier.

64. The representative of the European Communities recalled that on 23 October 2000, the EC had requested that the reasonable period of time for implementation be determined through binding arbitration under Article 21.3(c) of the DSU. The arbitrator had determined that the United States had to implement the DSB's recommendations and rulings by 27 July 2001. In line with the arbitrator's award, the EC considered that the United States was able to carry out the necessary legislative amendments in a fairly short period of time. The EC considered that the US request for an extension of the reasonable period of time was not based on any characteristic of the US internal legal order that would affect the "shortest period possible to implement the DSB recommendations and rulings", which was the relevant factor under Article 21.3(c) of the DSU. However, the United States had proposed that the DSB extend the reasonable period of time beyond what was strictly necessary for implementation. The EC viewed this request in the light of the procedural agreement reached with the United States in order to facilitate constructive negotiations on compensation. In view of the procedural agreement reached by the United States and the EC, and of the US commitments embodied in that agreement, the EC was not opposing the US request.

65. The representative of Australia said that the proposed modification of the reasonable period of time in this case raised a number of systemic issues, including in the context of the DSU review. While his country would not oppose an extension negotiated between the parties to the dispute, the interests of third parties in prompt implementation must also be taken into account. Australia had participated as a third party in the dispute and had a strong interest in prompt implementation by the United States. Until the United States brought its law into conformity with the TRIPS Agreement, Australian musicians and composers would continue to be deprived of their right to royalties for the commercial use of their works in the United States. Australia would be interested in receiving, in due course, information on the procedural agreement reached by the United States and the EC.

66. The DSB took note of the statements and agreed to the United States' proposal contained in document WT/DS160/14.

8. United States – Anti-Dumping Act of 1916

(a) Proposed modification of the reasonable period of time under Article 21.3 of the DSU (WT/DS136/13- WT/DS162/16)

67. The Chairman drew attention to the communication from the United States contained in document WT/DS136/13 – WT/DS162/16.

68. The representative of the United States recalled that the reasonable period of time for the United States to comply with the WTO ruling on the US Anti-Dumping Act of 1916 would expire on 26 July 2001. The United States was proposing that this time be extended until the end of the current session of the US Congress or 31 December 2001, whichever is earlier. The US Administration had proposed legislation to the US Congress to repeal the 1916 Act and would be working with the Congress to secure its enactment. The additional time that the United States was requesting now was needed for their legislative process. It was the US understanding that the EC and Japan did not object to this extension, with the understanding that in the event of any future recourse to the procedures of Article 22 of the DSU with respect to this dispute – "expiry of the reasonable period of time" – referred to in the DSU shall, for the purposes of such recourse, be the date approved by the DSB at the present meeting, instead of 26 July 2001. In view of the fact that all parties to this dispute sought a satisfactory resolution that would be facilitated by an extension of time, the United States was requesting that the DSB approve the proposed extension at this time.

69. The representative of the European Communities recalled that on 19 December 2000, the EC, Japan and the United States had requested that the reasonable period of time be determined through binding arbitration under Article 21.3(c) of the DSU. The arbitrator had determined that the United States had to implement the DSB's recommendations and rulings by 26 July 2001. It was clear that the United States should have already repealed its 1916 Act so as to fully implement the DSB's rulings. In line with the arbitrator's award, the EC considered that the United States was able to carry out the necessary legislative proceedings in a fairly short period of time. The EC was therefore disappointed by the US request to further extend the reasonable period of time. However, the US Administration had communicated to the EC the text of the Bill that it had formally proposed to Congress to revoke the 1916 Act. The EC noted with satisfaction that this Bill provided for the termination of the cases pending before US Courts. Moreover, the United States had committed itself to have the Bill formally introduced in Congress as soon as possible and to have it adopted by the end of the current session of Congress. The EC welcomed this first step toward full compliance of the DSB's ruling. It was the EC's understanding that the United States would need an extension of the reasonable period of time so as to allow the US Congress to adopt the proposed Bill and for the US President to sign it into law. In order to facilitate the US compliance with the DSB's rulings, and in light of the first steps and of the commitments just taken by the United States toward this objective, the EC was not opposing the US request.

70. The representative of Japan confirmed that his country and the United States had reached agreement on the extension of the reasonable period of time for the United States to implement the DSB's recommendations. Japan acknowledged that the US Administration had already issued a proposal to both the Speaker of the House and the President of the Senate, along with a draft Bill to repeal the 1916 Act. In view of the fact that the proposal and the draft Bill specifically addressed the repeal of the Act and the effect of the repeal were applicable to all actions pending on the date of enactment of the repeal Act, and to all actions filed after the date of enactment, Japan had decided to agree to the extension of the reasonable period of time on the understanding that the United States

would act in good faith towards realizing the repeal as proposed. Japan agreed that the period of extension should be in accordance with the US request.

71. The representative of Mexico said that his country had participated as a third party in this case and, therefore, wished to be informed of the proposed US legislation as well as of the agreement reached by the United States with the EC and Japan.

72. The representative of India said that his country was sensitive and sympathetic to the request made by the United States, and noted with satisfaction that the EC and Japan had agreed to the extension of the time-period for implementation. He underlined that India wished that similar flexibility also be demonstrated in cases involving developing countries, if necessary.

73. The representative of the Philippines said that the decision by the DSB to extend the reasonable period of time for implementation in this case should not be considered as a precedent that if a reasonable period of time determined by the arbitrator was extended pursuant to the agreement by the parties, the party making the request had to obtain the consent of the DSB.

74. The DSB took note of the statements and agreed to the United States' proposal contained in document WT/DS136/13 – WT/DS162/16.

9. Turkey – Restrictions on imports of textile and clothing products

(a) Statement by Hong Kong, China

75. The representative of Hong Kong, China, speaking under "Other Business", noted with satisfaction that India and Turkey had reached a mutually satisfactory solution regarding implementation by Turkey of the DSB's rulings in the case on "Turkey - Restrictions on Imports of Textile and Clothing Products" (WT/DS34). Hong Kong, China also appreciated the prompt notification of such an agreement. His delegation had followed the case closely as a third party during the panel and the Appellate Body proceedings because it was also subjected to the discriminatory quantitative restrictions imposed by Turkey on textile and clothing imports. To implement the DSB's rulings fully and faithfully, Hong Kong, China considered it axiomatic that Turkey should bring its textile and clothing regime into conformity with the GATT 1994 and the Agreement on Textiles and Clothing, and should remove, as soon as possible, the quantitative restrictions on the textile and clothing products in respect of imports from all Members. In this regard, Hong Kong, China wished to be informed of Turkey's implementation plan.

76. The representative of Turkey said that his delegation had noted the statement made by Hong Kong, China, which would be conveyed to his authorities.

77. The DSB took note of the statements.

10. Canada – Term of patent protection

(a) Statement by Canada

78. The representative of Canada, speaking under "Other Business", said that his country had complied fully with the DSB's recommendations and rulings in the case on "Canada - Term of Patent Protection". On 28 February 2001 an arbitrator had determined that Canada had until 12 August 2001 to complete its implementation process. Canada had met that deadline. On 12 July 2001, Bill S-17 had come into force. This legislation brought Canada's Patent Act into conformity with its obligations under the TRIPS Agreement. Specifically, as of 12 July 2001, non-expired patents with terms of less than 20 years, counted from the date of filing in Canada, were automatically extended to the minimum

20-year standard as required under the TRIPS Agreement. Canada had also taken advantage of this legislative process to remove the now redundant Subsections 55.2(2) and (3) from the Patent Act. Those two subsections had become obsolete on 7 October 2000, when Canada had repealed the Stockpiling Regulations in order to fulfil its earlier commitment to implement the DSB's rulings in the case on " Canada - Patent Protection of Pharmaceutical Products". Canada was ready to provide a copy of the implementing measures upon request.

79. The representative of the United States said that her country was pleased that Canada had enacted the legislation to amend its Patent Act with the stated intent of bringing the law into conformity with its obligations under the TRIPS Agreement. The United States would closely review the legislation.

80. The DSB took note of the statements.

11. Amendment to Rule 5(2) of the Working Procedures for Appellate Review

(a) Statement by the Chairman

81. The Chairman, speaking under "Other Business", drew attention to the fax that he had sent to Heads of Delegations on 13 July 2001. This fax contained the text of a memorandum dated 10 Ju1y 2001, from the Chairman of the Appellate Body to the Director-General concerning an amendment of Rule 5(2) of the Working Procedures for Appellate Review. As indicated in that fax, Members wishing to express their views on the amendment set out in the memorandum from the Chairman of the Appellate Body, were invited to do so, in writing, by 31 July 2001. He would subsequently communicate these views to the Appellate Body.

82. The DSB took note of the statement.