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Chairman: Mr. Wade Armstrong (New Zealand)

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Prior to the adoption of the agenda, the item entitled: "Argentina - Measures Affecting Imports of Footwear, Textiles, Apparel and Other Items - Panel Report (WT/DS56/R)" was removed from the proposed agenda since on 21 January 1998, Argentina had notified the DSB of its decision to appeal the report (WT/DS56/8).

1. Japan - Taxes on alcoholic beverages
   - Mutually satisfactory solutions to the dispute between Japan and other parties to the dispute

The Chairman said that this item was on the agenda of the present meeting at the request of Japan. He added that details concerning the mutually agreed solutions reached by Japan with the United States, Canada and the European Communities with regard to the implementation of the DSB's recommendations on this matter had been circulated in three separate documents.[1]

The representative of Japan said that, as notified to the DSB on 9 and 14 January 1998, his country and the other parties to the dispute had reached in December 1997 mutually satisfactory solutions regarding the implementation by Japan of the DSB's recommendations. On the basis of these solutions, Japan would adopt certain measures in accordance with the necessary domestic legislative procedures. These measures would include: (i) the revision of the current liquor tax system, which had been amended in March 1997; and (ii) tariff reductions and eliminations on the applied rate basis, as outlined in detail in the text of the exchange of letters contained in annexes to the joint notifications.

In particular, Japan would accelerate the liquor tax rate adjustments for whiskies/brandy and shochu A by five months to be completed by 1 May 1998, and for shochu B by one year to be completed by 1 October 2000. In addition, with effect from 1 April 1998, reduced tariff rates would be applied on brandy, bourbon whisky, rye whisky, other whisky, rum and tafia, gin and geneva, vodka, liqueurs and cordials, as compensation for a longer period of implementation. These tariffs would then be eliminated on 1 April 2002. For this purpose, Japan would submit draft laws to the Diet convened this month, which would amend the Liquor Tax Law, the Customs Tariff Law and the Temporary Tariff Measures Law. His Government would do its utmost to obtain approval by the Diet. He noted that the solutions reached by the parties in this case had demonstrated that the dispute settlement mechanism had functioned effectively in securing a "positive solution to a dispute". He expressed his Government's appreciation to the parties involved in this matter for their efforts in resolving this dispute.

The representative of the United States said that her delegation was pleased that Japan and the United States had reached an agreement in December 1997 on a final resolution of this long-standing issue. The settlement reflected a very satisfactory result by combining the acceleration of Japan's implementation of the DSB's recommendations with tariff reductions on the products concerned. The tax changes and tariff reductions should result in substantially improved market access for imported distilled spirits in Japan. However, in order to implement this agreement legislative changes by Japan would be required. The United States looked forward to Japan's enactment of the necessary legislation and would continue to follow this matter closely.

In the exchange of letters, the United States had noted that it was jointly understood that the acceptance by the United States of Japan's proposal to settle this dispute could not in any way be interpreted as prejudging the position of the United States with regard to the definition of *de minimis* differentials in taxation of products, or the reasonable period of time for implementation. In

[1]Joint notifications are contained in documents: WT/DS8/19-WT/DS10/19-WT/DS11/17; WT/DS8/20-WT/DS10/20-WT/DS11/18; WT/DS8/17/Add.1-WT/DS10/17/Add.1-WT/DS11/15/Add.1.

particular, this arrangement was without prejudice to the question of whether the tax rates differential between brown and white spirits that would remain as of 1 October 2000 was a *de minimis* differential or would constitute a *de minimis* differential in any other market or under any other factual circumstances.

The representative of Canada said that his country was pleased that Japan and Canada had reached a mutually agreed solution on this matter. It was unfortunate that Japan had not been able to implement the DSB's recommendations within the established reasonable period of time. However, a positive solution had been secured to this dispute which was the aim of the dispute settlement mechanism as stipulated in Article 3 of the DSU. Canada looked forward to Japan's effective implementation of the agreement.

The representative of the European Communities said that the key-point was that this dispute had been settled by agreement amongst the parties. The Communities had first moved into this direction and therefore welcomed the fact that other parties to this dispute had also been able to reach mutually agreed solutions on this matter. He noted that the Communities had also benefited from the most recent arrangements which had been notified to the DSB.

The representative of Mexico welcomed the fact that the parties to the dispute had reached mutually agreed solutions on this matter. However, in Japan's statement no reference had been made with regard to tequila. It was of particular interest to Mexico that tequila be treated in the same way as other alcoholic beverages. At this stage, he was not in a position to know whether or not Mexico's concern was well-founded. His delegation would be in contact with Japan's delegation in an attempt to clarify this matter.

The representative of Japan noted that consultations on the subject raised by Mexico had never been requested. He reiterated that in this case mutually agreed solutions had been reached with all of the parties to the dispute. With regard to Canada's statement concerning its regret regarding Japan's implementation of the DSB's recommendations, he believed, as stated by the European Communities, that it was important that mutually agreed solutions had been found in this case. Another important aspect was flexibility with regard to the settlement of disputes. In his view, these were two key-elements in the DSU. The narrowing of tax differences between domestic and imported spirits would be implemented over a period of time longer than 15 months. However, through other measures such as tariff reductions on imported liquors, Japan would more than compensate for this tax differential so that any adverse effects would be fully offset.

The DSB took note of the statements.

2. Australia - Subsidies provided to producers and exporters of automotive leather
   - Request for the establishment of a panel by the United States
   (WT/DS106/2)

The Chairman drew attention to the communication from the United States in document WT/DS106/2 which contained its request for the establishment of a panel pursuant to Article 4 of the Agreement on Subsidies and Countervailing Measures (SCM).

The representative of the United States said that her country had tried to resolve this matter for a certain period of time without resort to the panel proceedings. After its original request for consultations in 1996, the United States had reached an agreement with Australia in November 1996. However, Australia had immediately provided new compensatory subsidies to its automotive leather

industry. Since then, bilateral attempts to resolve this matter had failed. Thus, the United States had requested new consultations which had not resulted in a mutually satisfactory resolution of the dispute.

At the present meeting, the United States requested an immediate establishment of a panel to examine Australia's subsidies provided to its producers and exporters of automotive leather. The subsidies provided to Howe Leather company included a loan of A$ 25 million on preferential and non-commercial terms and grants amounting potentially to another A$ 30 million. The United States considered that these measures had violated Australia's obligations under Article 3 of the SCM Agreement. Her country believed that in the light of their terms and the circumstances under which they had been provided these subsidies constituted subsidies conditioned on export performance within the meaning of Article 3.1(a) and footnote 4 of the SCM Agreement. The United States believed that these subsidies were inconsistent with Article 3.2 of the SCM Agreement. Therefore, her delegation requested an immediate establishment of a panel to examine this matter in light of the SCM Agreement.

The representative of Australia expressed his Government's disappointment with regard to the United States' action to request the establishment of a panel on the specific assistance package provided by Australia to the Howe Leather company. His country considered that the issue of assistance to the company had been settled to the mutual satisfaction of both parties when Australia had implemented a package of measures, described as new subsidies by the United States in its statement, which it had considered met the United States' position. The impact on the United States' industry was insignificant. It was difficult to understand the trade interests that would justify the need for the United States to pursue this case in the WTO.

In Australia's view, the US request for the establishment of a panel (WT/DS106/2) raised certain problems. His country believed that this request was inadequate. He noted that Article 4 of the SCM Agreement required that the request for consultations should include a statement of available evidence with regard to the nature of the subsidy in question. The US request for consultations (WT/DS106/1) had not contained such a statement beyond simple assertion that the measures were inconsistent. Similarly, the US request for a panel (WT/DS106/2) had not contained any explanation of the basis for the United States' view, beyond simple assertions. Article 4 of the SCM Agreement required the complaining party to identify the nature of the subsidy in question. The United States' request for a panel appeared to be broader in scope than its request for consultations. However, Australia accepted the US request on the understanding that the panel's examination and its terms of reference would be based on the measures that had been discussed during the consultations pursuant to WT/DS106/1, namely, the subsidies provided to Howe Leather.

The representative of the United States said that the US request for consultations, dated 10 November 1997, had met the requisite standards of Article 4.2 of the SCM Agreement. She noted that Article 4.2 related solely to requests for consultations not to requests for the establishment of a panel.

The DSB took note of the statements and agreed to establish a panel in accordance with the accelerated procedures pursuant to Article 4.4 of the SCM Agreement with standard terms of reference.

3. Ireland - Measures affecting the grant of copyright and neighbouring rights

- Request for the establishment of a panel by the United States (WT/DS82/2)

4. European Communities - Measures affecting the grant of copyright and neighbouring rights

- Request for the establishment of a panel by the United States (WT/DS115/2)

The Chairman proposed that the DSB take up the above-mentioned items together since they pertained to the same matter.

The representative of the United States said that her country requested that the DSB establish a single panel to examine both complaints by the United States against Ireland and the European Communities regarding the legal regime in Ireland for the protection of copyright and neighbouring rights. The grounds for these requests had been specified in documents WT/DS82/2 and WT/DS115/2. Consultations had been held with Ireland and the Communities on this matter but had failed to produce a mutually satisfactory solution to this dispute.

With effect from 1 January 1996, developed-country Members had been required to comply with their obligations under the TRIPS Agreement. Both Ireland and the Communities were more than two years behind in implementing these obligations. Due to the lack of adequate and effective intellectual property protection in Ireland, US copyright owners had suffered significant economic losses. The United States appreciated that efforts were underway to bring the legal regime in Ireland into compliance with the TRIPS Agreement. However, it remained concerned about the current timetable for the completion of this project. In the view of the United States, this timetable did not reflect the importance of expeditious compliance with the TRIPS Agreement. Members could not implement their WTO obligations at their own pace. It was critical that all Members comply fully with their obligations under the TRIPS Agreement. In the view of the overriding importance of this issue, the United States requested that the DSB establish a panel to examine these matters. She noted that the establishment of a single panel would be without prejudice to the rights that the United States would enjoy if two separate panels had been established.

The representative of the European Communities noted that the two items were under consideration together. In the Communities' view this was an appropriate way of proceeding because the two requests had been identical in terms of substance. This procedure was also appropriate from the Communities' standpoint as it corresponded to the internal organization of the Communities and their member States regarding the subject matter under the review, namely the TRIPS Agreement. His delegation was not in a position to accept the US request for the establishment of a single panel at the present meeting. The Communities required more time in order to discuss some procedural questions with the United States and to consider questions to be submitted to the panel. As indicated by the United States, efforts were underway to seek a solution and given that all parties agreed that legislative changes were necessary, the Communities did not consider it usual to request the panel to give a ruling on timing of such changes.

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

5. Korea - Definitive safeguard measure on certain dairy products

- Request for the establishment of a panel by the European Communities (WT/DS98/4)

The Chairman drew attention to the communication from the European Communities contained in WT/DS98/4.

The representative of the European Communities said that since this request had been made, bilateral consultations had been held with Korea. The Communities believed that these consultations might lead to a mutually agreeable settlement. Therefore, his delegation did not wish to discuss this matter in detail at the present meeting and requested that the DSB revert to this matter at its next meeting.

The representative of Korea expressed his delegation's regret that the European Communities had chosen to postpone rather than to withdraw its request for the establishment of a panel. Although Korea believed that its safeguard measure on imports of certain dairy products was in conformity with its obligations under the WTO Agreement, it had made sincere efforts to seek an amicable and mutually satisfactory solution to this matter in consultations with the Communities in accordance with Article 3.6 of the DSU. As a result of the recent intensive consultations, a solution had been worked out. On the basis of this solution, the Communities had agreed to withdraw their request for the establishment of a panel at the present meeting. His delegation hoped that the Communities would soon be able to withdraw their request for the establishment of a panel with regard to this matter.

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

6. Proposed nominations for the indicative list of governmental and non-governmental panelists (WT/DSB/W/69/Rev.1)

The Chairman drew attention to document WT/DSB/W/69/Rev.1 which contained additional names proposed for inclusion on the indicative list in accordance with Article 8.4 of the DSU. He proposed that the DSB approve the names contained therein.

The DSB so agreed.

7. European Communities - Regime for the importation, sale and distribution of bananas

- Statement by Guatemala regarding implementation of the DSB's recommendations

The representative of Guatemala, speaking under "Other Business", said that her country as a party to this dispute wished to draw attention to the European Commission's proposal regarding the Communities' banana import regime that would serve as a basis for implementing the DSB's recommendations. Guatemala had always respected the dispute settlement procedures and had devoted a significant part of its resources in order to obtain increased access opportunities denied to it for a considerable period of time. In this case, her country's confidence in the dispute settlement system had not been shaken since the Panel and the Appellate Body had condemned the system of discrimination and preferences not compatible with the WTO. The Commission's proposal would not bring the European Communities' regime into conformity with the WTO Agreement, as required under the new rules with regard to implementation of recommendations. Although Guatemala had not yet completed its evaluation of all the implications of the proposed regime, at this stage, it wished to inform the DSB that the provisions contained in the proposal would establish a regime that would be more discriminatory and restrictive than the current one.

The proposal had ignored the findings with regard to the distribution of quotas by allocating separate quotas according to the country of origin and had infringed the principle of non-discriminatory distribution of quotas. The quota allocated to Latin American countries would restrict their market access and prevent growth, while ACP suppliers would receive a generous quota above their historical levels of exports. Furthermore, the tariff levels contained in the proposal were discriminatory. With regard to import licensing, the proposed new system relied on the Banana

Management Committee which had broad powers, and could result in a system that replicated the one already condemned by the Panel and the Appellate Body.

Guatemala would closely follow developments with regard to this proposal. It considered that member States had means to modify this proposal substantially and hoped that they would analyse it thoroughly and, at the appropriate time, would make the required changes. Her country had brought this matter to the GATT and then to the WTO not once but three times and now should not be obliged to invoke the review provisions provided under the DSU. Guatemala was confident that member States would implement the DSB's recommendations because it was in their interest as well as in the interest of other Members to preserve the credibility of the dispute settlement system. If not, the future of the WTO would be seriously affected.

The representative of Mexico said that his delegation had not yet received the proposal with regard to the modification of the European Communities' banana import regime. Therefore, it had been unable to evaluate this proposal and could not determine whether it was in line with the DSB's recommendations. Mexico was concerned because, on the basis of informal sources, it understood that the proposed regime would not abide by the DSB's recommendations. At the time when arbitration had been requested to determine a reasonable period of time for implementation, the Communities had given the impression that they would abide by the recommendations of the Panel and the Appellate Body. His delegation hoped that the Communities would implement these recommendations in conformity with their WTO obligations and not by creating new provisions which might not be compatible with the WTO Agreement. He hoped that at the present meeting or in the near future, the Communities would demonstrate that the concerns expressed by some delegations with regard to this matter were not founded.

The representative of Honduras said that although his delegation had not yet received any official communication from the European Communities, his Government had begun its evaluation of the European Commission's proposal to modify the Communities' banana import regime. Honduras was concerned with regard to certain elements of that proposal including those elements that had not taken due account of the Panel's rulings. The most obvious inconsistency concerned the distribution of the quota. The reports had ruled out separate quotas. The Commission's proposal had not taken this into account. On the contrary, in breach of Article XIII of GATT 1994, it had proposed a highly restrictive quota for Latin American countries which would prevent growth for Honduras. A separate quota that would be allocated to the ACP suppliers did not correspond to their historical trade levels. Honduras had repeatedly stated before the panel that each tonne "illegally" allocated to the ACP producers constituted a tonne taken away from Honduran producers.

Honduras was also concerned about the reforms envisaged by the Commission with regard to the administration of licences. The proposal provided for the extension of powers of the Banana Management Committee and had not included the parameters under which the system should be administered. The Committee's powers would be so broad that it could take measures that were inconsistent with, and condemned by the Panel. In other words, it would be able to perpetuate aspects of the administration of the licensing system that had been found inconsistent with the WTO Agreement. The possible results would not meet the expectations of developing countries, which believed that the WTO system protected them against a discriminatory treatment of their exports. Upon its accession to the WTO, Honduras had believed that the system would not allow a developed Member to harm the rights of a developing country. In the next months his Government would have to apply to the DSB for the restoration of its rights. Honduras would not have participated in this difficult, complex and protracted dispute if the illegalities which had been challenged would be replaced by new illegalities. It was prepared to avail itself of any procedure or mechanism provided for in the DSU to ensure that the Communities' banana import regime was entirely compatible with the WTO Agreement by 1 January 1999.

The representative of the United States expressed her delegation's support for the comments made by the previous speakers concerning the proposal adopted on 14 January 1998 by the European Commission concerning the Communities' banana import regime. The United States was disappointed that the Commission had once again proposed, as in the current system, to establish distinct and separate regimes for two groups of developing countries: i.e., one quota for the ACP countries and a highly restrictive quota for Latin American countries. The United States had analysed this dual quota system in the light of the Appellate Body and the Panel reports as well as the terms of Article XIII of GATT 1994. The Appellate Body had made it clear that such discrimination was a violation of Article XIII of GATT 1994 which was not covered by the Lomé Waiver. In the light of this ruling, it was remarkable that in introducing this proposal the Communities had stated that it was WTO compatible, quite simply it was not.

At the same time, under this proposal, the important question of how the Communities intended to administer these quotas had not been specified. The majority of the DSB's recommendations were against the Communities' import licensing system. Given the unfortunate history of this issue, the United States would have hoped that the Communities' internal procedures for fleshing out these crucial details would be sufficient to ensure that the resulting proposal was WTO consistent. Any licensing system that continued, in a different form, the discrimination found by the Panel and the Appellate Body against the Latin American and US banana distribution companies, was not WTO consistent. Her country wished to resolve this dispute and urged the Communities and their member States to reconsider this proposal and eliminate the discriminatory elements. The Communities' insistence on WTO inconsistent alternatives could only prolong them through further proceedings under the DSU.

The representative of Panama said that his country welcomed the news that the European Commission had recommended specific action to modify the Communities banana regime and that the Commission had stated that this reform would be undertaken in such a way as to comply with all the recommendations of the Panel and the Appellate Body. His country had not yet received an official notification regarding the content of the proposal. The initial reports received from informal sources provided some grounds for hope that the Commission would comply at the end of the process with the explicit obligations which it had assumed and for which it had been granted a reasonable period of time. The same sources suggested caution both with regard to the content as well as to the fact that they had been provided by third parties. Accordingly, his delegation did not wish to make a statement on the substance of the proposal, beyond saying that Panama shared the concerns expressed by the previous speakers. He reiterated that Panama expected that the modification of the Communities' banana import regime would be in conformity with all the recommendations of the Panel and the Appellate Body. Given the paucity of information made publicly available on the current proposal, his country hoped to receive shortly an official communication from the Communities. Meanwhile, Panama would continue to weigh the situation and assess possible avenues.

The representative of Ecuador wished to associate his delegation with the concerns expressed by the previous speakers with regard to the proposed banana import regime for the European Communities. Ecuador had paid attention to the efforts undertaken by the European Commission in order to comply with the recommendations and conclusions of the Panel reports and the Appellate Body report adopted by the DSB on 25 September 1997. Ecuador considered that the new regime contained in the Commission's proposal could not and must not diverge from the basic WTO principles, in particular the principle of non-discrimination, and should not ignore the DSB's recommendations, nor worsen the already restrictive and discriminatory regime under Regulation 404/93. He reiterated that Ecuador was ready to cooperate with the Communities to work out a satisfactory solution that would be entirely compatible with the WTO rules for trade in goods and services and would meet the interests of the parties directly involved in this lengthy dispute. On 14 January 1998, the Commission adopted a proposal aimed at regulating banana imports into the Communities. This proposal should rectify those aspects which remained in violation with the multilateral rules and principles with regard to market access and import licensing and violated the

provisions of the Lomé waiver. In view of the inadequate information made available by the Communities, this was Ecuador's initial reaction. This lack of information should be remedied immediately for the sake of transparency.

The representative of the European Communities acknowledged that under the DSU provisions Members had the right to raise the issue of implementation at any time, however, for the convenience of his delegation and other delegations, it would have been preferable if this matter had been placed on the agenda rather than raised under "Other Business". He thanked the previous speakers for recognizing, which was implicit in their statements, that the Commission had acted with a considerable speed in making a new proposal. The Communities were on schedule as they had indicated to their partners during the bilateral discussions and arbitration, and had kept their promises as far as time was concerned. At the present meeting, he only had two comments. Since this matter was being considered under "Other Business" he did not wish to enter into substance. First, what had been announced was a set of proposals from the European Commission to the Council of Ministers to be discussed in the European Parliament. This was not a final set of decisions. Members were free to take their own view regarding the conformity of this proposal with the WTO rules. The Communities did not expect to be characterized as acting in violation with the WTO Agreement at this early stage in their legislative process when no final decisions had yet been taken.

Second, while the DSB had a role in monitoring the implementation phase, following the adoption of the reports and the agreement on the reasonable period of time, the centre of gravity regarding the implementation had now shifted to the Communities' authorities in Brussels. Discussions and decisions concerning a new regime would be taken there. Therefore, if delegations had comments which they wished to bring to the attention of his authorities, they should address them to the Communities' authorities in Brussels. In accordance with the DSU provisions he would present, in due course, a status report to the DSB on the progress in implementation. His delegation was also ready to receive any views or written representations. Since many delegations had stated that they had not been formally given information of the full content of the proposal, an information meeting would be held to this effect. This meeting would be held as soon as possible, but he had been asked to wait until the finalization of the process in Brussels. He ensured all delegations that the Communities had carefully examined the Panel reports and the Appellate Body report and believed that the proposal was consistent with the DSB's recommendations. The Communities were working in good faith and to the best of their abilities therefore it was premature to consider that this proposal was inconsistent with the WTO Agreement without having received any explanation from the Communities.

The Chairman drew attention to Article 21.6 of the DSU concerning the surveillance of the implementation of adopted recommendations or rulings. This Article included a number of elements and stated, *inter alia*, that the issue of the implementation of recommendations or rulings might be raised in the DSB by any Member at any time following their adoption. Furthermore, it stated that, "Unless the DSB decides otherwise, the issue of implementation of the recommendations or rulings shall be placed on the agenda of the DSB meeting after six months following the date of the establishment of the reasonable period of time pursuant to paragraph 3 and shall remain on the DSB's agenda until the issue is resolved." He recalled that the establishment of the reasonable period of time in this case had been undertaken by the arbitrator in document WT/DS27/15 which had been circulated on 7 January 1998. Therefore the six-month period would begin on 7 January. Furthermore, at least 10 days prior to such a meeting, the Member concerned shall provide the DSB with the status report in writing of its progress in the implementation of the recommendations or rulings. It was therefore expected to have a status report on the implementation of the DSB's recommendations six months after the date of establishment of the reasonable period of time, and under Article 21.6 of the DSU it was possible for the issue of implementation to be raised in the DSB by any Member at any time. This was an important issue and he did not seek to inhibit the rights of delegations but he wished to draw attention to rule 25 of the Rules of Procedure concerning matters

under "Other Business" since this raised the question of the ability of delegations to be able to contribute to discussions on such an important issue.

The representative of Norway said that in his delegation's view, substantive matters of this importance should be placed on the agenda as regular items and should not be raised under "Other Business". This would enable delegations not directly involved in the matter to be prepared in order to be able to contribute to a discussion. At the present meeting the discussion had only taken place amongst the parties to the dispute.

The DSB took note of the statements.

8. Confidentiality of documents in dispute settlement procedures

- Statement by the European Communities

The representative of the European Communities expressed his delegation's concern about the breach of confidentiality regarding the Panel on European Communities - Measures affecting importation of certain poultry products.[2] A private law firm, based in Brussels, advising the Government of Brazil had sent a document to some of the main importers of poultry meat into the Communities. This document contained highly sensitive business data which had been submitted by the Communities to the Panel, at its request, after the end of its second substantive meeting. This information had been submitted to the panel on the understanding that the principles of confidentiality would be respected with regard to such documents and in the Panel's deliberations as provided for in Article 18.2 of the DSU. In the Communities' view, the provisions of Article 18.2 of the DSU, the first and the second sentence thereof, forbade a party to a dispute from disclosing statements or written submissions or any other document submitted during the procedures. This principle was also reflected in Appendix 3 to the DSU and in the working procedures which had been adopted in specific panels. The Communities wished to place on the record their concerns that the strict conditions of confidentiality required under Article 18.2 of the DSU be in future fully respected by all parties. The Communities believed that mutual confidence was essential with regard to the dispute settlement procedures.

The representative of Brazil said that he had no intention of addressing this issue and that he had been informed at very short notice that the European Communities would raise this matter. However, since some substantive points had been indicated, he was compelled to make comments with regard to this matter. Brazil was fully aware of the confidentiality provisions under the DSU. He recalled that on another occasion, his delegation had raised under "Other Business" an important systemic concern, namely that a party had provided information directly to a panel without being invited to do so, thereby violating the provisions of Article 13 of the DSU. In this particular case, the document, as indicated by the European Communities, had been presented after the second substantive meeting of the Panel and without any opportunity for comments. He did not wish to enter into the substance of this document but this was a Catch-22 situation. He believed that this matter should be considered during the review of the DSU, namely how could a delegation or a party comment on business data provided after the proceedings of a panel if it had not participated directly in the trade of a specific product. For the sake of clarity and transparency, as well as for the sake of substantive information to the Panel it had been necessary to consult with those directly involved in trade. The information which had been submitted was not confidential but contained calculations and data. The Government of Brazil which was not a trader, had no means to confirm the veracity of the data presented therein. He regretted having given details about something that might be characterized

[2]WT/DS69.

as confidential, but since the Communities had raised the issue of breaching confidentiality of the Panel procedures, he had been compelled to make such comments.

The DSB took note of the statements.