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WORLD TRADE ORGANIZATION

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DISPUTE SETTLEMENT BODY
16 October 1996

MINUTES OF MEETING

Held in the Centre William Rappard
on 16 October 1996

Chairman: Mr. Celso Lafer (Brazil)

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1. European Communities - Measures affecting livestock and meat (hormones)
- Request by Canada for the establishment of a panel (WT/DS48/5)

The Chairman recalled that the DSB had considered this matter at its meeting on 27 September 1996, and had agreed to revert to it at the present meeting. He drew attention to the communication from Canada in WT/DS48/5.

The representative of Canada recalled that at the DSB meeting on 27 September, the European Communities had not agreed to the establishment of a panel to examine this matter. Canada continued to view these measures as unjustified and inconsistent with the Communities' obligations under the WTO. Therefore, for the second time, Canada was requesting the DSB to establish a panel to examine this matter.

The representative of the European Communities said that he had no substantive statement to make and that the Communities would abide by the decision of the DSB at the present meeting.

The representative of Argentina said that his delegation wished to closely follow the work of the panel in this area given the very high share of Argentina in the world meat trade. He recalled the statement made by Argentina at the DSB meeting on 8 May 1996[1] and reiterated that his country attached priority to a rigorous and a constructive application of the disciplines of the Agreement on the Application of Sanitary and Phytosanitary Measures. This should constitute the basis in the search for a solution to this matter.

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

The representatives of Australia, New Zealand, Norway and the United States reserved their third-party rights to participate in the panel proceedings.

2. Japan - Measures affecting consumer photographic film and paper
   - Request by the United States for the establishment of a panel (WT/DS44/2)

The Chairman recalled that the DSB had considered this matter at its meeting on 3 October 1996, and had agreed to revert to it at the present meeting. He drew attention to the communication from the United States contained in WT/DS44/2.

The representative of the United States said that on 13 June 1996, the United States had requested consultations with Japan regarding the latter's specific laws, regulations, and requirements affecting the distribution, offering for sale and internal sale of imported consumer film and paper. Consultations with the aim of resolving this dispute had been held on 11 July 1996. They covered the full range of issues in the US complaint, including which specific measures constituted a violation of Japan's obligations under GATT 1994. However, these discussions had not reached a mutually satisfactory solution. On 3 October 1996, the United States had requested the DSB to establish a panel but Japan had not agreed that the panel be established. His Government was satisfied that its request was on the agenda of the present meeting for the second time which would permit that a panel be established in accordance with Article 6 of the DSU.

The United States was ready to present to the panel evidence of the broad array of measures that Japan had put in place, which were restricting market access in this sector and were in violation of Japan's obligations under GATT 1994. As the United States had previously emphasized these measures included Japan's actions: (i) to consolidate its primary wholesale distribution system for consumer photographic materials under the control of domestic manufacturers; (ii) to impose cumbersome and non-transparent restrictions on alternative channels for marketing film, such as large scale retail stores; and (iii) to stifle the use of premiums and advertising, tools typically used by foreign firms

[1]WT/DSB/M/16.

to attract customers and gain market share. The United States believed that these measures had nullified or impaired benefits accruing to it, within the meaning of Article XXIII:1(a) of GATT 1994 as a result of the failure of Japan to carry out its obligations under Articles III and X of GATT 1994. In addition, by applying these measures Japan had nullified or impaired, within the meaning of Article XXIII:1(b) of GATT 1994, the tariff concessions that it had made on consumer photographic film and paper in successive rounds of tariff negotiations.

The representative of Japan said that since this issue appeared on the agenda of the DSB meeting for the second time, his country no longer objected to the establishment of a panel because of its fundamental position to fully respect the procedures laid down in Article 6.1 of the DSU. Nevertheless, he wished to draw Members' attention to the fact that the US request posed some serious problems regarding the interpretation of Article 6 of the DSU. Article 6.2 of the DSU stipulated that a request for the establishment of a panel "shall identify the specific measures at issue and provide a brief summary of the legal bases of the complaint sufficient to present the problem clearly." As stated at the DSB meeting on 3 October 1996, Japan considered that the United States had not duly identified some of the "specific measures at issue", as required in Article 6.2 of the DSU. For example: (i) reference by the United States to the term "liberalization countermeasures" was generic, and thus too general and ambiguous to be "specific measures"; (ii) attachment A to the US request which listed "distribution measures"contained a measure which the Japanese Government could not identify, namely, the "Administrative Guidance to Promote Rationalization of Distribution System, 1966"; (iii) some other expressions such as: "but not limited to", "other related measures, including guidelines", which appeared in attachment A, as well as "and related measures" at the end of the first paragraph implied that the United States had not yet specified all the measures at issue. If such a request were to be accepted it would mean that in the future the complaining party could raise, during the panel proceedings, any measure it considered to fall within the meaning of the term "related measures". Therefore, Japan believed that pursuant to Article 6.2 of the DSU, the scope of the panel should be limited to the measures specified in the US request, namely, the six laws identified in this request and ten measures contained in the attachment A, thus excluding the "Administrative Guidance to Promote Rationalization of Distribution System, 1966". Under these conditions, Japan would agree to the establishment of a panel with standard terms of reference, in accordance with Article 7 of the DSU.

He added that the United States, in its request for a panel, had not clearly indicated which specific measure had violated which specific obligation under GATT 1994, and on what grounds the United States had asserted the alleged violation. Such a request for the establishment of a panel posed serious problems in light of Article 6.2 of the DSU, which required a complainant to provide a brief summary of the legal basis of the complaint sufficient to present the problem clearly.

The representative of the United States said that his country's request for consultations and for the establishment of a panel had fully met the requirements of Articles 4 and 6 of the DSU. With respect to the request for the establishment of a panel, the DSU required that it "identify the specific measures at issue and provide a brief summary of the legal basis of the complaint". The US request had met this requirement.

It appeared that Japan was trying to divert the DSB's attention from the important substantive issues raised by the United States, a tactic used at the DSB meeting on 3 October 1996, when this case first appeared on the agenda. At that meeting, Japan had tried to divert attention from a serious US request to establish a panel under the DSU by its counter-request for consultations on restrictive business practices under the 1960 Decision.[2] It was a well-established GATT principle written into the DSU in Article 3.10, that parties should accept requests for consultations in good faith, without linking

[2]WT/L/180

complaints and counter-complaints. While his Government regretted Japan's approach with respect to standard terms of reference, it was hopeful that the two parties could work cooperatively in composing the panel.

The representative of Japan said that his country had no intention to divert attention from substantive issues. Japan attached importance to the new dispute settlement procedures which, in its view, was one of the best Uruguay Round Agreements. It had no intention that the results of the Uruguay Round negotiations be weakened in the implementation process. Japan was acting in good faith and had no intention to divert attention from important issues. However, inclusion in the request of non-existing matters could have implications on the credibility of the dispute settlement mechanism. Therefore, the "Administrative Guidance to Promote Rationalization of Distribution System, 1966" should not be part of the terms of reference and Japan could not accept the terms of reference proposed by the United States. If in interpreting the DSU it was not clear whether standard terms of reference would not be limited to the measures referred to by Japan, his country pursuant to Article 7.3 of the DSU, wished the DSB to authorize the Chairman to draw up the terms of reference in consultations with parties to the dispute with a view to eliminating the ambiguous points in the request. If, after such an exercise, ambiguity still remained, Japan would reserve its rights to request the panel to make a ruling on the matter.

The representative of the European Communities said that the Communities had a substantial interest in the Japanese market for consumer photographic film and paper and had therefore followed the developments of this case since the initiation of consultations in June 1996. The United States' complaint centred on problems of structural barriers to the Japanese market and the Japanese distribution system. The Communities shared these concerns and against this background continued to take a strong interest in this matter since the outset. It intended to notify substantial interest in the matter with a view to participating as a third party in the panel proceedings. It looked forward to receiving submissions from both parties in order to obtain a full understanding of their arguments in these proceedings.

The case under the 1960 Decision on Restrictive Business Practices put forward the potential trade effects of restrictive business practices. The Communities also attached a considerable importance to this issue and would like to see it properly and expeditiously dealt with. He noted that the Communities had still not received any reply from Japan to its request to be joined in consultations which the United States had requested with Japan pursuant to the 1960 Decision. He recalled that in August 1996, the United States had accepted the request by the Communities to be joined in those consultations and that Japan had replied to the United States on 3 October 1996. His delegation urged Japan to provide an answer to the Communities' request to be joined in these consultations and noted with some concern the intention of the Japanese Government to make participation in such consultations conditional upon the acceptance by the United States of the Japanese request for consultations on the same matter in the US market. In the Communities' view such a position was inconsistent with current WTO practices and it was appropriate for the Secretariat to confirm this understanding, if necessary, after further analysis of the legal situation which applied under the 1960 Decision, with respect to two points:(i) the possibility of a party to refuse third-party participation in such consultations; (ii) the conditions under which such participation might be refused.

The Chairman pointed out that Article 7.1 of the DSU stipulated that panels shall have standard terms of reference unless the parties to the dispute agree otherwise within 20 days from the establishment of a panel. He recalled that in accordance with Article 7.3 of the DSU in establishing a panel, the DSB may authorize its Chairman to draw up the terms of reference of the panel in consultation with the parties to the dispute. He therefore enquired whether the DSB wished to authorize him to help in drawing up the terms of reference of the panel in consultations with the parties concerned.

The representative of the United States said that Article 7.1 of the DSU stated that standard terms of reference shall apply unless parties agree otherwise within the next 20 days. Article 7.3 of the DSU referred to by Japan was subject to Article 7.1 of the DSU. Therefore, if Japan wished to discuss its concerns with the United States within the next 20 days, it was free to do so, but there was no need for the Chairman to draw up the terms of reference. Under Article 7.1 of the DSU after 20 days standard terms of reference would apply.

The Chairman said that he and the Secretariat would be available to help to draw up the terms of reference of the panel if the parties found it necessary.

The representative of Japan said that in the absence of any precedent in this matter, it was important that the correct procedure was followed. If any ambiguity remained on this issue the panel would be obliged to discuss it.

The DSB took note of the statements and agreed to establish a panel with the terms of reference to be drawn up by the parties to the dispute within 20 days in accordance with Article 7.1 of the DSU.

The representatives of the European Communities and Mexico reserved their third-party rights to participate in the panel.

The representative of Japan, in response to the point raised by the European Communities concerning the interest in participating in consultations requested by the United States with Japan under the 1960 Decision, said that it had been obvious on 3 October 1996, why Japan could not reply to this request. On that day, Japan had said that it would accept the US request for consultations under the 1960 Decision on condition that the United States would accept Japan's request for consultations on the same matter. The reply from the United States had only been received that morning. After careful examination of this reply, Japan would reply to the Communities.

He added that he could not understand why Japan was being criticized for making the same request with regard to the US market. The film market in Japan was a "mirror-image" of the market in the United States. Kodak had seventy per cent of the market share in the United States with the remaining thirty per cent for other producers. In Japan, the share of Fuji was about seventy per cent with thirty per cent for other producers, including European producers. Therefore, Japan was fully entitled to request similar consultations.

The DSB took note of the statement.

3. United States - The Cuban Liberty and Democratic Solidarity Act
   - Request by the European Communities and their member States for the establishment of a panel (WT/DS38/2 and Corr.1)

The Chairman drew attention to the communication from the European Communities and their member States contained in WT/DS38/2 and Corr. 1.

The representative of the European Communities said that the Communities' concern with the US legislation was not its objectives, but the extra-territorial means chosen to achieve those objectives and their adverse effect on the Communities' trade in goods and services. The Communities objected to the United States trying to force other countries to follow its own foreign policy objectives through both the threat and actual imposition of trade sanctions. The principle, that countries should refrain from trying to force their own policies on other Members through measures that were incompatible

with WTO rules, was well-established in the WTO jurisprudence, notably the second tuna panel.[3] The Communities also objected to jurisdiction exerted by the United States over companies registered in the Communities and controlled by the US individuals or companies in such a way as to force such companies to follow the US foreign policy objectives.

Since June 1996, the Communities, acting on its own behalf and that of its member States, had held three rounds of consultations with the United States on the Helms-Burton Act and "related measures". By "related measures" was meant all previously existing anti-Cuba legislations referred to and sometimes reinforced in the Helms-Burton Act. These consultations had been held pursuant to Article XXIII:1 of GATT 1994 and Article XXIII:1 of GATS. The first two rounds had been held in Geneva, and the third one in Washington D.C. These consultations, especially the last round, had clarified the facts and the legal assessment, but had not solved the problem.

The United States had temporarily and partially suspended the right of US citizens under title III of the Helms-Burton Act to bring civil law suits against persons "trafficking" in nationalized properties in Cuba to which the US nationals held a claim. It had also decided not to apply in the year to come the certification provisions for imports of specialty sugar. But these provisions were still in the Act, and were mandatory and could be re-introduced at any moment. Title IV of the Helms-Burton Act, which provided for the exclusion from the United States of persons "trafficking" in nationalized property, was already fully in force and was being applied against the Communities' citizens. Likewise, the economic embargo provisions were fully operational and in use. These provisions applied against the Communities' ships trading with Cuba as well as goods from Cuba, even if such goods had been transformed into different products of the Communities' origin.

This state of affairs was unacceptable. The Communities believed that the US measures identified in its request for the establishment of a panel were in violation of a number of provisions of GATT and GATS. These measures, even if they were not in conflict with WTO rules, nullified or impaired benefits accruing to the Communities under GATT and to the Communities and its member States under GATS. Finally, the Communities believed that the US measures impeded the attainment of certain general objectives of GATT, such as the expansion of production and trade and the right of access to markets. Consequently, the Communities requested the establishment of a panel to rule on the issues identified in the request for the establishment of a panel. Should the United States be unwilling to accept the establishment of a panel at the present meeting, the Communities would request that the matter be put on the agenda of the next regular meeting of the DSB scheduled for 20 November 1996. The Communities requested the panel to have standard terms of reference or such terms as might be agreed between the parties to the dispute under Article 7 of the DSU.

The representative of the United States said that on 3 October 1996, the European Communities, acting for itself and its Member States, had requested the establishment of a panel on the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996, commonly referred to as the Helms-Burton Act. The Communities had requested that the panel also examine what it referred to as "related measures". These measures governed the United States' economic relations with Cuba. The US President had signed the Libertad Act into law on 12 March 1996, in the aftermath of the unjustified shooting down of two unarmed US civilian aircraft by the Cuban Government. That attack, which was in blatant violation of international law, had resulted in the deaths of three US citizens and one permanent resident. This had required a strong response by the United States.

Cuba's jet attack had been the latest in a serious of actions taken by the Cuban Government over the past 35 years that had directly affected the US interests. The Libertad Act, together with

[3]DS29/R.

the Cuban Democracy Act of 1992, the Food Security Act of 1985, and the Cuban trade embargo dating from the 1960s, reflected the abiding US foreign policy and security concerns with regard to Cuba pursued by eight US Presidents. The Libertad Act was designed to promote a swift transition to democracy in Cuba, a goal shared by the Communities and its member States. Given the foreign policy and security concerns underpinning decades of US relations with Cuba, and in the light of the common interests shared with its European friends with regard to Cuba, the United States was surprised and concerned to find its tactical and foreign policy differences over Cuba raised before a multilateral trade forum. The Communities' request had cited six different measures, only two of which were really new. President Clinton had suspended the operation of one of those provisions, which reflected in part a desire by the United States to work in partnership with other Governments on encouraging a transition to democracy in Cuba. Indeed, the President had appointed a special envoy to explore with the European and other Governments joint initiatives to promote the transition to democracy in Cuba. Through this bilateral channel, the United States had proposed a number of initiatives, including a set of principles for companies doing business in Cuba, channelling assistance through independent non-governmental organizations, provision of national media to Cuban citizens, and outreach to those in Cuba working to foster reform.

The only other new provision cited by the Communities in its request for a panel governed the entry into the United States of corporate officials whose companies "trafficked" in confiscated US property in Cuba. This provision had yet to be applied to European firms. Even if it were, the trade and investment effects would be negligible. The inclusion of a number of pre-existing measures in the Communities' request suggested that there was in fact very little new for the Communities to complain about on trade grounds in the Libertad Act. This underlined that the United States' dispute with the Communities was not fundamentally a trade matter. Indeed, the Communities had not suggested that the US policy with regard to Cuba generally, or the Libertad Act in particular, was motivated by trade protectionism. In this regard, the United States would invite the Communities and its member States to reflect on the fact that certain measures included in its request for the establishment of a panel had not only been in force for some years, or decades, but had been expressly justified by the United States under the GATT 1947 as measures taken in pursuit of essential US security interests.

In the light of this history, and given the minimal trade and investment effects of the Libertad Act on overall European interests, the United States asked the Communities to reconsider whether to press their grievances over the US policy with regard to Cuba before the WTO. This organization had been established to manage trade relations between Member governments -- not diplomatic or security relations that might have incidental trade or investment effects. The Communities and its member States might wish to consider whether the WTO was well equipped to address, let alone resolve, the type of disagreement they had brought to the DSB. In particular, it was worth thinking very concretely what the Communities and its member States would expect to achieve by invoking the dispute settlement proceedings in the WTO and what such proceedings might put at risk. The United States found it difficult to see any desirable result for this body, the United States, or other Members through the course of action that the Communities and its member States had proposed. By injecting this disagreement regarding Cuba with the United States over foreign and security policy into the WTO, the Communities had taken this organization into unexplored territory. For that reason, the United States would not join a consensus to establish a panel at the present meeting. He suggested that before embarking on such a course of action, the parties concerned should step back and take the necessary time to consider another path.

The representative of Australia said that her country wished to register strong concerns at the US measures, which it considered to be unreasonable in regard to the trade implications for third countries. There was concern with respect to the possible effects such provisions could have on Australia's commercial interests and its WTO rights. Australia would continue to monitor the situation

closely for the implications of the US legislation on its trade and economic interests, including its WTO rights, and would continue to examine options for future actions to safeguard its interests.

The representative of Bolivia, speaking on behalf of members of the Rio Group[4], reiterated the Declaration made by the members of the Rio Group on 23 May 1995, as well as the 1995 Quito Presidential Declaration. The Group had condemned any imposition of sanctions or trade restrictions as provided for in the Cuban Liberty and Democratic Solidarity Act. The Group had rejected the adoption of this legislation which violated principles and rules of international law, the United Nations Charter, infringed WTO principles and was contrary to the spirit of cooperation and friendship which should characterize relations between the countries of the hemisphere. The Group was concerned at the scope of the Act which disregarded the fundamental principle of the sovereignty of states since it implied extra-territorial application of domestic law. It urged the United States to consider the negative effects of the implementation of the Cuban Liberty and Democratic Solidarity Act.

The representative of Canada noted the statements made at the present meeting and said that like other Members, her country continued to have concerns with the Helms-Burton Act which Canada had already raised on a number of occasions with the United States both in the WTO and in other fora.

The representative of Cuba said that he did not intend to reply to the political statement made by the United States. Such a reply would be provided by Cuba in other fora, in particular in the UN General Assembly in the context of the United States' blockade against Cuba. The issue raised by the Communities was very important and it had implications beyond the bilateral relations between the United States and Cuba. It had become a subject of world-wide interest related to the preservation of basic principles of the multilateral trading system, the implementation of the Uruguay Round Agreements, and the rejection of the unilateral and extra-territorial practices in international trade. Cuba had analyzed the arguments presented by the Communities in WT/DS38/2 and considered that this document constituted a good legal basis for the DSB to conduct its work in an impartial manner ensuring the primacy of the law and compliance with the WTO rules. Cuba fully supported and endorsed the Communities' initiative. At the present meeting, his delegation did not intend to analyze the Helms-Burton Act and other US legislations which were incompatible with the WTO principles and objectives or violated important Articles of GATT 1994 and other Uruguay Round agreements, thereby impairing the rights of Cuba and other Members. He referred to previous statements made by Cuba on this matter at the meetings of the General Council[5] and the Council for Trade in Goods[6].

The representative of Mexico said that this matter was of interest to Mexico not only because this legislation had directly affected Mexican enterprises but also because it had implications for the multilateral trading system. Mexico noted the statements by the Communities and the United States, and reserved its rights under the WTO with regard to this matter.

The representative of India said that his country had strong concerns with respect to the US legislation, in particular, with the notion of extra-territoriality implied therein. This could have serious implications for the health of a strong, rule-based multilateral trading system.

The representative of Switzerland said that his country had already expressed its concerns that the Helms-Burton Act tended to extend the US jurisdiction to the territory of other sovereign states.

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[4]Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, Mexico, Panama, Paraguay, Peru, Trinidad and Tobago, Uruguay and Venezuela.

[5]WT/GC/M/11.

[6]G/C/M/9.

This could conflict, in some cases, with the international obligations of the United States. It created insecurity for foreign investors and hampered the investment climate in general. Furthermore, it could also create trade restrictions. Switzerland reiterated that it reserved its rights under the WTO on this matter.

The DSB took note of the statements and agreed to revert to this matter at its next regular meeting to be held on 20 November 1996.

4. Proposed nominations for the indicative list of governmental and non-governmental panelists (WT/DSB/W/40)

The Chairman drew attention to document WT/DSB/W/40 containing additional names proposed by Members 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.

5. Adoption of the 1996 Annual Report of the DSB (WT/DSB/W/37)

The Chairman said that in pursuance of the Reporting Procedures for the Singapore Ministerial Conference contained in WT/L/145, a draft text of the 1996 Annual Report of the DSB (hereinafter referred to as "The Annual Report") contained in WT/DSB/W/37 was submitted for adoption. This report covered the work of the DSB since the previous overview of WTO activities held in December 1995. He proposed that following its adoption, the Secretariat be authorized to update the Annual Report under its own responsibility in order to include actions taken by the DSB at its meeting on 3 October and at the present meeting. The updated Annual Report would then be circulated on 28 October and submitted to the General Council at its meeting on 7 November. He also proposed that any actions taken by the DSB at meetings after 16 October, be included by the Secretariat under its own responsibility in the Annual Report to be submitted to the Ministerial Conference in December 1996.

Finally, he invited Members to agree to a proposal that an annex be attached to the Annual Report which would contain an overview of the state of play of WTO disputes, prepared under the responsibility of the Secretariat. However, if delegations had any questions or problems with this proposed attachment they were invited to consult directly with the Secretariat. If there were any objections, the annex would be removed from the Annual Report before its submission to the General Council on 7 November 1996. This proposal had resulted from interest expressed by a number of delegations in having this type of information in the report for the Ministerial Conference. The annex would provide the state of play of WTO disputes in a comprehensive way to complement the Annual Report which included information on a meeting-by-meeting basis.

He informed Members that he had received a few factual corrections from delegations with regard to the Annual Report which would be incorporated in the text by the Secretariat and some comments of a drafting nature with regard to Section 12 entitled "Summary conclusions" which did not affect the substance of the section. In the light of these comments he had prepared a text indicating the proposed deletions and additions to this section, which was circulated to Members at the present meeting. He then drew attention to those suggestions.

The representative of Canada said that her country fully subscribed with the procedures outlined by the Chairman, but wished to make some general comments. Her delegation had reviewed the Annual Report and had appreciated the effort put into its preparation especially with regard to the factual part.

However, in her delegation's view the format of the factual part of the Annual Report was not particularly informative or useful for the purpose of most readers and therefore welcomed the proposal for an annex concerning the state of play of WTO disputes. This might serve better the purposes of the factual part of the Annual Report and her delegation would appreciate an early circulation of this annex.

With regard to Section 12 entitled "Summary conclusions" of this report, Canada recognized that there had been no corresponding section in the 1995 Annual Report of the DSB and therefore welcomed this initiative. This was a particularly useful section and Canada encouraged maintaining and perhaps even elaborating it in the future. Although not proposing any drafting changes, it wished to register one comment with regard to the penultimate paragraph of Section 12 of the Annual Report. The report recognized that working practices had been developed to solve problems in a pragmatic manner, but Canada wished to point out that to date, the experience of Members with the system had revealed a number of issues that required further reflection. As these issues had not impeded the functioning of the dispute settlement system there was no need to consider them in the immediate future but Members should keep them in mind, to be dealt with fully at the appropriate time.

The representative of the United States noted the comments presented by the Chairman. With regard to the "Summary conclusions" he suggested the following: (i) the overlap between the fourth and fifth paragraph should be eliminated; and (ii) in the second paragraph the text after the first comma in the fourth sentence should be deleted as it understated the degree with which the Appellate Body has modified panel's findings. His delegation also wished to suggest that the reference concerning transparency should reflect the progress made in the area of documentation as a result of the implementation of the General Council's Decision of 18 July 1996, on derestriction of documents. His delegation would submit further comments to the Secretariat.

The representative of the European Communities said that his delegations shared some of the general observations made by other Members concerning the readability and attractiveness to readers of the Annual Report. However, it was important that the Annual Report be approved as expeditiously as possible. The Communities welcomed the suggestion of the addition of an annex containing the state of play of WTO disputes and would welcome an early opportunity to see such an annex. He suggested that further thought be given to a periodic update of the state of play of WTO disputes for the information of the DSB members. In the penultimate paragraph of Section 12, the Communities would prefer the deletion of the word "however" from the sentence: "In most cases, however, working practices have been developed".

The Chairman thanked the Communities for the support not only to include the state of play of the WTO disputes as an annex but for the suggestion to circulate periodically the update of such a document to Members.

The representative of India said that he had already indicated to the Secretariat two comments which should be reflected in the Annual Report. At the present meeting he wished to draw attention to two important points. First on page 4 of the Annual Report under item 6 there was a footnote referring to document WT/DSB/W/35. As he had indicated at the outset of the meeting he would make a statement on this matter under "Other Business". He therefore proposed two options either the footnote be removed or following his statement under "Other Business" it be appropriately elaborated to reflect his statement.

With regard to the "Summary conclusions", he drew attention to the third last paragraph, and in particular to the sentences: "The DSB has moved beyond the GATT dispute settlement procedures through the progressive development in the DSU of past practices" and "It therefore provides Members with both the possibility of reaching mutually satisfactory solutions to that dispute and with the certainty

of a legal solution to such a dispute when necessary". He was unclear whether the "it" in the second sentence referred to the DSU or the DSB. He thought it should be clarified to mean the DSU.

The representative of Korea supported the proposals made by the previous speakers suggesting addition of some valid points or amendments. He said that since the DSB was a semi-judiciary body of the WTO, in most cases it was dealing with proceedings which frequently involved automaticity. Therefore given the particular character of this body, the summary conclusions should avoid any subjective, political or economic interpretation or any assessment of its work. Summary conclusions which were neutral and factual as well as descriptive would be preferable for this Annual Report. With respect to full evaluation of the DSB's functions and its work he proposed that it be done in 1998 for the next Ministerial Conference.

He proposed that in paragraph 3 of the "Summary conclusions" the sentence "there are a number of comments that may be made in the light of the DSB experience" be replaced by "the following conclusions, *inter alia*, may be drawn". Furthermore, in this paragraph he found the reference to the Unites States as unnecessary. He also believed that the distinction between developing and developed countries was inappropriate.

With respect to the last sentence of the fifth paragraph, namely: "To date, the DSB has received six notifications reporting that the mutually agreed solution was found and the Chairman of the DSB has encouraged Members to make full use of this provision" he thought that the emphasis should be placed on the fulfilment of obligations by Members as provided for in Article 3.6 of the DSU. Therefore, he suggested that the above-mentioned sentence read as follows: "the DSB Chairman has urged the Members to fulfil their obligations under this provision." In the next paragraph, the first sentence was not necessary. In the sentence "among its functions the DSB administered the indicative list of governmental and non-governmental panelists", it was necessary to indicate how many panelists were governmental and non-governmental.

With regard to the third last paragraph in view of his delegation's position regarding quasi-judicial nature of the DSB he questioned the appropriateness of the words "spirit of pragmatism" and "greater cooperation". In the penultimate paragraph he thought that it would be useful to identify the problems that had arisen in the overall operation of the system. With respect to the last paragraph he believed that the language should be neutral and suggested the deletion of the word "successful".

The Chairman said that the DSB was more than a quasi-judicial body, having special functions of the General Council. It was a rule-oriented and diplomatic body. He believed that the word "pragmatism" reflected a two-track possibility available under the DSU. Through consultations it offered a possibility of negotiated solution that should be consistent with the covered agreements. A legal track was possible in the absence of agreement. He interpreted pragmatism to mean these two distinct possibilities which demonstrated the flexibility of the DSU and the DSB. It was hard to measure success of the DSB in quantitative terms since it was not the aim of the DSB to establish many panels.

The representative of Norway stated that his delegations shared some of the comments regarding readability of the factual part of the Annual Report. His delegation supported the idea that an annex be attached to the Annual Report. With regard to the "Summary conclusions", his delegation thought that this section would contribute to the value of the report and make it easier for Ministers in Singapore to draw some conclusions. Norway had already submitted some comments and welcomed informal consultations which would be held on this subject. It supported the comments regarding pragmatism. It thought that dispute settlement in the WTO was much more than pure litigation since the DSU had expanded and added to the scope for mutually satisfactory settlements as compared with GATT 1947.

The representative of Hong Kong said that his delegation supported this draft Annual Report together with the proposals made by delegations to improve the text. With regard to the paragraph of the "Summary conclusions" which referred to the mutually agreed solutions provided for under Article 3.6 of the DSU, he said that Article 3.5 of the DSU which stated that mutually agreed solutions should be consistent with the WTO Agreement should also be reflected in report. Additional factual comments by his delegation would be shortly submitted to the Secretariat.

The Chairman proposed that the DSB adopt the Annual Report in WT/DSB/W/37 on the understanding that the Secretariat would update the Annual Report under its own responsibility and incorporate drafting suggestions in a new text which would be circulated to Members together with an annex on the state of play of WTO disputes. Following its circulation, Members could make their comments to the Secretariat. If necessary, the Chairman would hold consultations on this document.

The DSB took note of the statements and adopted the Annual Report contained in WT/DSB/W/37[7] on the understanding that drafting amendments proposed by Members with regard to the "Summary conclusions" be included in the text and circulated together with an annex as proposed by the Chairman. If necessary, informal consultations would be held on this matter. The DSB authorized the Secretariat to update the Annual Report under its own responsibility.

6. Portugal - Patent protection under the Industrial Property Act (WT/DS37/2)
   - Statement by the United States

The representative of the United States, speaking under "Other Business, said that his country was pleased to inform the DSB that the United States and Portugal had resolved their dispute on the interpretation and implementation of the obligations under Articles 33 and 70.2 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). The TRIPS Agreement obliged Members to provide a term of protection consistent with Article 33 to all patents in force, and to all patents granted on applications that were pending, on the date of entry into force of the TRIPS Agreement to that Member.

In keeping with these obligations, Portugal had issued a Decree in August 1996, clarifying that all patents in force, and all patents granted on applications that were pending on 1 January 1996, would receive a term of protection that was the longer of 15 years from grant -- Portugal's previous term--and 20 years from the date of application.

The United States and Portugal had jointly notified the settlement of this matter to the DSB in writing on 3 October 1996. The document circulated to Members on 8 October 1996, as WT/DS37/2 had incorrectly identified the notification as coming only from the United States. The Secretariat had assured the United States that this error would be corrected[8]. The United States was pleased that the WTO dispute settlement procedures had made it possible to achieve an amicable and speedy solution in this case.

The DSB took note of the statement.

[7]Following its adoption, the Annual Report was circulated in WT/DSB/8 and Corr.1 and Add.1.

[8]WT/DS37/2/ Corr.1.

7. Mutually agreed solutions
- Statement by India

The representative of India, speaking under "Other Business", thanked the Chairman and the Secretariat for preparing the document WT/DSB/W/35, dated 7 August 1996, on notification of mutually agreed solutions under Article 3.6 of the DSU. He recalled that the Secretariat had prepared this very carefully worded paper in response to India's request made at the DSB meeting on 24 April 1996. However, he had some concerns regarding the approach of this paper, but did not think that it was appropriate to raise them at the present meeting in view of the preparatory work for the Ministerial Conference. His own thoughts on this subject were evolving and he was still in the process of examining this matter and discussing the subject with colleagues. He therefore only wished to register his concerns about some of the elements in this paper without going into details on the understanding that after 7 November 1996, he would make a detailed statement explaining his point of view on this document. He therefore reserved India's position on this document to make a detailed statement on this subject at a later date.

The DSB took note of the statement.

8. United States - Import prohibition of certain shrimp and shrimp products (WT/DS58/1)
- Statement by Thailand, on behalf of India, Malaysia and Pakistan

The representative of Thailand, speaking under "Other Business", on behalf of India, Malaysia and Pakistan, informed the DSB that on 8 October 1996, the above-mentioned countries had submitted a joint communication (WT/DS58/1) requesting consultations with the United States pursuant to Article 4 of the DSU and Article XXII:1 of GATT 1994, regarding the ban imposed by the United States with regard to the importation of shrimp and shrimp products from these countries under Section 609 of the US Public Law 101-162, and the relevant regulations. Section 609 of the US Public Law 101-162 provided for the prohibition of shrimp or shrimp products which had been harvested with commercial fishing technology which could adversely affect certain endangered species of sea turtles.

On 30 April 1996, the US Department of State had certified 36 nations which met the requirements set in Section 609 of the US Public Law 101-162 and could continue to export shrimp to the United States. Shrimp from other nations including India, Malaysia, Pakistan and Thailand had been embargoed effective 1 May 1996, except for 8 nations that had been announced as countries only harvesting shrimp using manual means and thus did not adversely affect sea turtles. As a result, shrimp and shrimp products could not be imported into the United States in the absence of declaration or proof that such shrimp and shrimp products had been harvested in a manner which did not adversely affect sea turtles.

Therefore, Thailand considered that the United States had failed to carry out its obligations and commitments under several provisions of the WTO Agreement, including but not limited to Article I, XI and XIII of GATT 1994, and that such failure was not justified by any provision of the WTO Agreement including the exceptions laid dawn in Article XX of the GATT 1994. It also considered that these measures nullified or impaired benefits accruing to the respective countries directly or indirectly under the WTO Agreement. It looked forward to receiving a prompt response from the United States with respect to setting a venue and date for consultations which, it believed, would result in a mutually satisfactory solution to this matter.

The DSB took note of the statement.