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DISPUTE SETTLEMENT BODY
31 MAY 1995

MINUTES OF MEETING

Held in the Centre William Rappard
on 31 May 1995

Chairman: Mr. Donald Kenyon (Australia)

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1. United States - Standards for reformulated and conventional gasoline
- Request by Brazil for the establishment of a panel (WT/DS4/2)

The Chairman recalled that at its 10 April meeting the Dispute Settlement Body (DSB) had established a panel in accordance with the request by Venezuela contained in document WT/DS2/2. At that meeting Brazil had indicated its intention to enter into consultations with the United States

concerning this subject.[1] The request for consultations by Brazil had been circulated in document WT/DS4/1 on 12 April 1995. Subsequently Brazil had requested the establishment of a panel in WT/DS4/2. He had been informed that pursuant to Article 9 of the DSU in respect to multiple complainants all parties had agreed that for practical reasons this matter be examined by the same Panel already established at the request of Venezuela on 10 April 1995. Parties had also agreed that the date of the constitution of the panel specified in document WT/DS2/3, namely 28 April 1995, would remain unchanged. Due to the additional task given to the initial panel he proposed that the terms of reference agreed on 28 April 1995 and contained in document WT/DS2/3 could read as follows: *"To examine, in the light of the relevant provisions of the covered agreements cited by Venezuela in document WT/DS2/2 and by Brazil in document WT/DS4/2, the matters referred to the DSB by Venezuela and Brazil in those documents and to make such findings as will assist the DSB in making the recommendations or in giving the rulings provided for in those agreements."* Finally, he recalled that Article 9.2 of the DSU required in this context, that " the rights which the parties to the dispute would have enjoyed had separate panels examined the complaints are in no way impaired."

The representative of Brazil said that as indicated by the Chairman, Brazil had informed the DSB at its meeting on 10 April 1995 of its intention to enter into consultations with the United States concerning the standards for reformulated and conventional gasoline adopted by the US Environmental Protection Agency (EPA) in 1993. Brazil believed that the above-mentioned "Gasoline Regulation" was inconsistent with the United States' obligations under the GATT 1994 and the Agreement on Technical Barriers to Trade (TBT). Consultations held on 1 May 1995 had failed to produce a satisfactory solution to this matter. Brazil was therefore requesting the establishment of a panel in accordance with Article XXIII:2 of the GATT 1994, Article 14 of the TBT Agreement and Articles 4 and 6 of the DSU.

The settlement of this dispute was important in many ways. This was, as all knew, one of the first cases presented to the dispute settlement mechanism which had been agreed under the Uruguay Round and designed to establish a rule-oriented multilateral trading system. Two basic principles were involved in this dispute: (i) the m.f.n clause contained in Article I of the General Agreement; and (ii) the national treatment obligation contained in Article III of the General Agreement and in Article 2 of the TBT Agreement. Therefore, this procedure would have a bearing not only on the Members directly affected by the "Gasoline Regulation" but on all those who were committed to the maintenance and strengthening of the multilateral trading system. His Government was aware that this dispute might also have domestic environmental implications in the United States. Therefore, he wished to make it clear that his Government did not question the environmental objectives or merits of the "Gasoline Regulation" but the conformity of the instruments used by the United States to achieve those objectives with the WTO Agreement. In Brazil's view such instruments should always comply with the international obligations and should not adversely affect trade with WTO Members. Brazil believed that the "Gasoline Regulation" established less-favourable conditions to imported fuels than to gasoline produced in the United States. The application of the "Gasoline Regulation" had had an adverse effect on exports of such product from Brazil, therefore, nullifying and impairing its rights under the WTO Agreement. According to the United States' statistics, since the enforcement of the "Gasoline Regulation" exports of Brazilian gasoline to the United States had declined from some five hundred barrels, valued at almost US$8 million dollars in the first two months of 1994, to zero in the same months of 1995. Brazil was therefore seeking to redress this situation through the multilateral mechanism in accordance with the WTO rules.

The representative of the United States confirmed that consultations with Brazil on the above-mentioned subject had failed to settle this dispute and that under the circumstances the United States

[1]WT/DSB/M/3.

concurred with Brazil's request for the establishment of a panel. He also confirmed that the United States had no objection to the reformulation of the terms of reference as read out by the Chairman.

The representatives of Canada, the European Communities and Norway said that they wished to reserve their third-party rights in this dispute.

The representative of Venezuela confirmed that his country agreed to the terms of reference read out by the Chairman and that the date for the constitution of a panel - 28 April 1995 - would be maintained. He said that arguments concerning this dispute had already been put forward on many occasions by Venezuela and therefore he did not wish to reiterate them at the present meeting.

The Dispute Settlement Body took note of the statements and agreed with the request by Brazil for the establishment of a panel, and that as provided for in Article 9.2 of the DSU in respect of multiple complainants, the Panel established on 10 April 1995 to examine the complaints by Venezuela should also examine the complaints by Brazil referred to the Dispute Settlement Body in document WT/DS4/2, and agreed to the terms of reference read out by the Chairman.

2. United States' auto and autoparts issues: US unilateral measures
   - Statement by Japan

The Chairman said that this item was on the Agenda at the request of delegation of Japan and invited the representative of that delegation to introduce this item.

The representative of Japan[2] said that the United States continued to insist on the expansion and renewal of the parts purchasing plan by the Japanese automobile manufacturers, and on setting a target for the number of foreign vehicle dealers. This was the reason for the impasse in the bilateral negotiations. Japan could never agree to a numerical targets approach or government intervention in private business activities. Japan brought this case to the WTO following the unilateral measures announced by the United States. Although the newly established WTO was already laden with different matters, there was no choice but to bring this case to it since this case impinged on basic principles of international trade embodied in the WTO Agreement. Japan had full confidence in the WTO where trade disputes could be handled in an impartial and de-politicized manner.

With regard to the legal arguments Japan believed that the withholding of liquidation which was announced on 16 May 1995, combined with the announcement of the proposed imposition of 100 per cent duties was discriminatory and therefore violated Article I of GATT 1994. The imposition of 100 per cent duties by the United States, if implemented, would also violate Article I. This imposition exceeded United States' bound tariff rate on automobiles of 2.5 per cent, and if implemented, would therefore violate Article II. The withholding of liquidation in this case also functioned as a *de facto* restriction on trade, and was in violation of Article XI. Since this restriction applied only to Japan, it was discriminatory and thus violated Article XIII. The affirmative determination made on 10 May under Section 301, the current withholding of liquidation and the proposed imposition of tariffs also violated Article 23 of the Dispute Settlement Understanding (DSU), which specifically prohibited such unilateral actions. In addition, the withholding of liquidation in this case was nullifying and impairing of the benefit accruing to Japan from the 2.5 per cent bound tariff rate on automobiles under Article XXIII:1(b). There had been reasonable expectations that the US tariffs on automobiles would be set at 2.5 per cent. The withholding of liquidation and the threat of 100 per cent tariffs undermined these expectations and disrupted the competitive relationships in luxury car markets. Japan believed

[2]The full statement by Japan was circulated in WT/DSB/COM/1.

that this was a "case of urgency". The two Members should start consultations as soon as possible, before the situation worsened with the implementation of additional retaliatory measures. The current WTO violations should be redressed immediately. If this situation could not be resolved quickly, the dealer networks handling Japanese luxury cars would be adversely affected and be forced to fire employees and face bankruptcy. Many might not survive. Without prompt action, the United States' actions would bring about unrecoverable damage. If the WTO could not quickly resolve this dispute involving clear violation of rules, its credibility would be endangered.

The amount of the unilateral punitive tariff measure had been based on the alleged unfairness of the Japanese market, but no basis had been provided for its alleged US$ 5.9 billion damages. The United States had an obligation to explain and justify these figures to Japan and to the parties affected by the measures. This lack of transparency could never be overlooked. Japan believed this case should be considered as a "case of urgency". The request for urgency ought to be pursued and Japan reserved all rights to this effect. Even in a normal case, the consultations had to begin within 30 days after the receipt of the request for consultation, i.e., not later than 15 June 1995. Japan also believed that the consultations should be held in Geneva.

It was encouraging that the United States had not asked for numerical targets in its statement made in the Council for Trade in Goods on 29 May. In the past, however, the senior US official had made similar comments, but then the same official had said that requesting a future number of dealers handling foreign automobiles was not a numerical target. Japan hoped that this time the statement by the United States was not the rhetoric heard several times in the past. Japan requested the United States to clarify its policy change and its decision to stop requesting the expansion and renewal of parts purchasing plans, and a target for the number of foreign vehicle dealers. This policy change would make it easier for Japan and the United States to reach a conclusion on this matter. Although the United States claimed that the unilateral measures had not yet been implemented, the withholding of tariff liquidation had already been implemented as of 20 May 1995, and it had been announced with just a four-day notice before its actual implementation. The United States should have known that it took about two weeks, on the average, for ocean shipments to arrive from Japan, and this announcement would therefore affect shipments already underway. Japanese automobile companies had been forced to change the destination of automobiles already on board, and to stop shipments of cars which were about to be shipped. So far, this damage alone had amounted to ¥ 9.2 billion (approximately US$ 108 million). Moreover, the companies also had to decide to stop the production of luxury automobiles for export to the US market worth ¥ 8.1 billion (approximately US$ 93 million).

The representative of the United States[3] said that his Government had accepted Japan's request for consultations, although their time and place still had to be agreed upon. The United States had proposed to meet on 20 June 1995 so as not to interfere with the G7 meeting in Halifax. If Japan would reject this date an alternative date would be proposed for consideration. The United States strongly disagreed that the issue raised was a case of urgency and other Members should also consider this issue keeping in mind the implications for the future. Although the 1979 Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance (BISD26S/210), GATT dispute settlement customary practice and the April 1989 rules (BISD36S/61) included special time-frames in cases of urgency, no panel report had been issued under these procedures. Japan's request did not meet the traditional concept of urgency as set out in the DSU and the April 1989 rules since the latter stated that cases of urgency included perishable goods on route, and the DSU simply noted that cases of urgency might include those relating to perishable goods. Perishable goods were not the subject matter of Japan's request. Indeed, Japan's arguments indicated that urgent procedures should not be applied in this case. As the United States had noted in the Council for Trade in Goods, Japan's request was based on actions

[3]The full statement by the United States was circulated in WT/DSB/COM/2.

that had not yet been taken. The US had not imposed increased tariffs on imports of certain cars from Japan and it had not determined that Japan had violated its obligations under the WTO Agreement. It was certainly possible to reach a mutually acceptable solution on these issues that underlay the actions by Japan and the United States. Invocation of the urgency provisions would drastically shorten the time for consultations and the complaining party could request establishment of a panel if consultations were to fail to settle the dispute within 30 days after receipt of the request for consultations.[4] Such a panel would have to issue its report within three months.[5]

The DSU clearly indicated that mutually agreed solutions were to be preferred. The tight time-frame of the urgency procedures certainly diminished the likelihood that the parties would reach a mutually agreed solution prior to the issuance of a report. Japan had argued that considering "the possible consequences for the world trading system", this matter was urgent. Assuming that this dispute involved unusual systemic issues, this should be the type of case in which the parties should have the time and opportunity to present their respective cases to a panel and the Appellate Body for careful consideration rather than a process that required: (i) multiple submissions and meetings with the parties to the dispute; (ii) consideration of the arguments and drafting a report by the panel; (iii) submitting that report for interim review and comment; (iv) possible additional meetings and revisions and (v) circulation of a final report to take place within a 90 day period. The GATT experience with expedited consideration of a dispute under the 1966 procedures[6] had not been a positive one. The panels and the parties to disputes which followed these procedures had had difficulties meeting the deadlines and producing a report that inspired the confidence and necessary support to achieve implementation of panel recommendations. The DSU procedures in cases of urgency were even more complex than the 1966 procedures and the need for confidence in the new dispute settlement system was even more vital. Japan had also argued that this case was urgent because it had an adverse effect on its industries. This was not an unusual condition in the context of a request for consultations or the establishment of a panel. Japan argued that the magnitude of the proposed measure distinguished it from other disputes. This, however, should not be a criterion in determining whether a matter was urgent. Putting a dollar (or yen) value on disputes as a means to determine whether the matter was urgent, could inherently discriminate against smaller industries and economies. Acceptance of the Japanese arguments as to what constituted an urgent matter would mean that any dispute of any economic or systemic importance could be subject to the extremely tight time-frames provided for consideration of these cases. This would likely overwhelm the WTO dispute settlement system. The new accepted rules on dispute settlement procedures had for the first time established deadlines for completing procedures. Whether "standard" time-frames, particularly at the end of the process, would prove workable had still to be determined. This was not the time to impose the stringent time constraints of an "urgent" case.

The representative of Canada said that this dispute sent a strong message that there was an unfinished trade agenda and that negotiations to provide real improvements in market access opportunities for real competition within domestic markets needed to be engaged without delay. Members had worked hard to construct a rules-based system and an improved dispute settlement system. Threats and counter-threats and worse still, implementation of punitive trade measures which were inconsistent with the WTO rules were putting at risk the system on which Members had worked so hard to construct. Parties to the dispute were urged to avoid measures inconsistent with the WTO rules. If this issue could not be resolved through consultations, the parties should fully comply with and use the WTO rules and its dispute settlement system.

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[4]DSU Article 4:8.

[5]DSU Article 12:8.

[6]Procedures under Article XXIII - Decision of 5 April 1966 (BISD14S/18).

The representative of Hong Kong said that although Hong Kong did not have a direct trade interest in this dispute, it had a considerable interest in helping to ensure that their overall commercial relations remained fundamentally sound since the United States and Japan were very important trading partners of Hong Kong. Traditionally, Hong Kong had been a strong supporter of the rules-based multilateral trading system, and therefore had a very close interest in this matter. The origins of this dispute were complex and deep. Both sides seemed to harbour a sense of injustice. If a bilateral solution could not be found quickly both sides should follow the appropriate WTO procedures. At the meeting of the Council for Trade in Goods on 29 May, the United States had committed itself to use the WTO to settle matters which were within its scope. This had been a reassuring and welcome statement which had also implied that in the view of the United States there were aspects of this dispute which fell outside the scope of the WTO. These aspects needed to be identified so that Members could have a more complete picture of the dispute. The action taken by the United States under Section 301 of its domestic legislation was designed to address those aspects of the case apparently falling outside the scope of the WTO. However the proposed redress, i.e., raising tariffs, seemed to affect the balance of rights and obligations of Members under the WTO. This seemed inconsistent with the WTO and one wondered why such an approach had been chosen. By all accounts trade had already been significantly affected by the United States' decision to withhold liquidation of duties on imports of certain Japanese cars as of 20 May. The question was whether action which had such a direct effect on trade should have been taken before any consideration thereof in the WTO. If the United States was not yet in a position to deal with questions like these in the multilateral forum, the dispute should be subject to bilateral consultations. It was vitally important for the credibility of the new organisation that the rules set out in the DSU were adhered to.

The representative of the European Communities, reiterating points made at the meeting of Council for Trade in Goods on 29 May[7] said that this issue was appropriate to be dealt with in the DSB. Since the DSB and the General Council had the same membership, a decision could be taken jointly with the agreement of the Chairman of the General Council that this issue should not be taken up again in the General Council unless, of course, new elements came up before the beginning of the afternoon. This issue should be dealt with in a dispassionate and objective manner and in such a way that it did not evolve into a trade war. A solution should be found on a friendly basis as soon as possible. Such a bilateral solution had to be fully transparent and non-discriminatory. The Japanese market was still governed by certain practices, rules and regulations, and multiple provisions which made access to that market difficult. Although progress had been made in the area of deregulation, the matter should be taken even further. The methods adopted by the United States had to be disapproved without any reservation. Announcing measures unilaterally taken was against the Understanding on dispute settlement regardless of the trade effects which were already evident. No Member should be both judge and party to any dispute and decide for itself that it had suffered a prejudice, and the amount representing the injury suffered. No Member was authorized to take measures to compensate for any of this alleged injury or prejudice. It was for that reason that this matter should be dealt with rapidly.[8]

The representative of Brazil noted that the dispute between Japan and the United States had attracted enormous attention in international public opinion. It was bringing to the forefront tensions deriving from economic globalization of an international system in a framework of undefined polarities. In such a system, a choice had to be made between following a path that would reinforce a logic of convergence, i.e. increased trade relations, constructive and progressive integration of different parts of the world, or cope with a logic of fragmentation, i.e., protectionism, unrestricted escalation of trade sanctions, and managed trade flows. Trading partners involved in this dispute would have to take their

[7]See G/C/M/3,

[8]See also related statement at the General Council meeting on 31 May, item 10 (WT/GC/M/4).

responsibilities and, with the WTO's assistance, take the right decisions regarding at least three aspects. First, the establishment of the WTO had been a clear option for trade disputes to be solved in a "rule-oriented" multilateral framework. The text and spirit of the Uruguay Round results had made it clear that unilateral sanctions did not have a place in a system of international cooperation and all Members should act accordingly. In the best GATT tradition, an appeal for conciliation between the parties involved would be presented and, failing conciliation, the issue should be brought to the WTO. Second, transparency was a cornerstone principle of the multilateral trading system. Any solution to the dispute, including a bilaterally negotiated one, should be made crystal clear to the international community to ensure that solutions incompatible with the multilateral rules that might affect third parties were not arrived at. Third, the small import penetration in the automotive sector in Japan, despite the relevant arguments by Japan concerning its market opening in terms of traditional trade policy instruments, was calling for Members' attention and might suggest that a renewed international discussion might have to be initiated on market access and competitive opportunities.

The representative of Turkey said that his country's main concern was the proper functioning of the multilateral trading system. Threats of unilateral measures by the United States undermined the credibility of the WTO. On the other hand, Japan had been requested to pursue its commitment to domestic deregulation on different occasions in GATT and WTO. To achieve such a target the rules of the multilateral trading system had to be observed and an expeditious resolution of this conflict had to be sought in the framework of WTO rules.

The representative of Switzerland noted that the matters inscribed under items 2 and 3 of the Agenda had already been considered by the Council for Trade in Goods. At that time his delegation had not taken the floor in order to avoid repeating the same arguments in several different fora. Without underestimating the rôle which could be played by the different WTO bodies in the conciliation process, his country would express its views in the DSB only. Like other Members, Switzerland wished that this dispute be resolved satisfactorily. While it welcomed the fact that the parties had expressed the intention to have recourse to the WTO dispute settlement mechanism, it was however concerned that the dispute involved major trading partners and was related to one of the most sensitive sectors from the view point of the multilateral legal system. His country hoped that this dispute could be resolved through bilateral consultations provided for in the WTO mechanism. If consultations failed the parties should invoke the DSU. Therefore, the United States and Japan should find a solution as rapidly as possible within the framework of the new WTO provisions. Such a solution should exclude any form of bilateral agreement contrary to the WTO provisions, or an agreement which would be detrimental to interests of a third party. Switzerland supported all efforts aimed at finding a rapid solution to this dispute in the light of the WTO provisions. Otherwise the credibility and functioning of the new WTO would be seriously endangered.

The representative of Norway said that it was in the interest of all Members that this dispute be resolved in a manner which sustained the integrity of the WTO dispute settlement mechanism. The United States and Japan -- two of the major world trading partners -- had a specific responsibility in the international trading system and its dispute settlement mechanism. This dispute should be treated under the new and strengthened WTO dispute settlement system which was well equipped to deal with virtually all trade disputes. It was important to make use of all the means available under the WTO dispute settlement mechanism, including the good offices of the Director-General and his mediation. Unilateral measures would not be compatible with the DSU rules and procedures. However, the United States and Japan had a responsibility for finding bilateral amicable solutions based on non-discrimination and transparency. Norway supported the statement made by the Director-General earlier this month that what was now at stake was not the functioning of the WTO, but the credibility of the engagements freely entered into by the two parties.

The representative of Australia noted that Japan and the United States were major trading partners of Australia and his country was interested in the smooth development of trade between the two. Australia had a strong commercial trade interest in the Japanese car market, in particular in the automobile sector imports as well as in coal, steel, iron-ore and other minerals used as inputs by the Japanese auto industry. Japan had been a leading market for these exports from Australia. His country had therefore a strong commercial interest in a non-discriminatory trade liberalization in Japan's automobile sector and wished to encourage a faster pace of trade liberalization in this sector in a way that would lead to genuine trade expansion rather than trade diversion. This trade liberalization also needed to be worked out strictly in accordance with the m.f.n. principle. Unilateral trade sanctions which were not in conformity with the WTO Agreement, including its dispute settlement rules, could not be supported. Trade disputes should be resolved within the agreed WTO rules. This was central to the credibility and viability of the multilateral trading system, especially for disputes involving such major trading partners as the United States and Japan. Australia supported Japan's request for consultations concerning the US announcement of 16 May foreshadowing possible imposition of unilateral tariff increases on 28 June against a range of Japanese motor vehicles. Since the United States had agreed to consult, his country hoped that both parties would come to agreement on the time and place of the consultations, and that this matter would be resolved as quickly as possible.

The representative of India recalled that in his statement made at the meeting of the Council for Trade in Goods on 29 May he had pointed out that this dispute was important not only because two major trading entities were involved but also because of the serious implications it had for the multilateral trading system. Like Hong Kong, India had always been concerned with any form of unilateralism and the damage that such unilateral action might cause to the multilateral trading system. Major trading nations should not resort to unilateral trade measures but should rather use multilaterally agreed provisions and procedures available under the WTO Agreement. Japan had requested consultations with the United States pursuant to Article 4 of the DSU and the United States had responded to this request. As a preliminary assessment Articles I and II of GATT 1994 and Article 23 of the DSU were relevant. These Articles were the most fundamental provisions of the WTO Agreements and they should not be violated in any manner. In particular, Article 23:2(a) specified that "Members shall not make a determination to the effect that a violation has occurred, that benefits have been nullified or impaired … except through recourse to the dispute settlement in accordance with the rules and procedures" of the DSU. The United States had clearly stated that such a determination had not taken place. Any other allegation probably arose from misinformation by the press, but the situation had been clarified by the United States. Japan and the United States were confident of reaching a bilateral solution during the consultation process, and both delegations wanted to depoliticize the issue and to hold consultations in a professional and calm manner. Therefore, both countries should meaningfully engage themselves in these consultations and try to find a mutually satisfactory solution fully consistent with both the letter and spirit of the WTO Agreements.

The representative of Indonesia, speaking on behalf of ASEAN countries, reiterated the views expressed in the Council for Trade in Goods on 29 May. The dispute was important and had attracted international attention because it involved two major economic powers. ASEAN's interest in this case lay primarily in the need to ensure that the fundamental principles of multilateralism were preserved. ASEAN attached great importance to the WTO's objectives of resolving disputes through multilateral framework. However, it was hoped that both parties would initially be able to find a mutually agreed solution through bilateral consultations. Failing that, both parties should bring the dispute to the WTO for a solution. Recourse to unilateral actions to achieve trade policy objectives was clearly in violation of the WTO Agreement. At the same time, the ASEAN Members shared the United States' concerns over the market access in Japan. Therefore ASEAN welcomed the political will on the part of both governments to resolve this issue.

The representative of Pakistan said that this issue impinged on the functioning and credibility of the multilateral trading system. Two of the largest trading nations and one of the largest sectors of international trade were involved and drew world's attention. The WTO dispute settlement mechanism had been at the very heart of the multilateral trading system. Its strengthening had been hailed as perhaps the single most significant outcome of the Uruguay Round and was painfully and painstakingly achieved through long years of discussions and negotiations. The main feature of the strengthened dispute settlement mechanism had been the commitment by Members to seek resolution of disputes through recourse to the DSU. Recourse to any unilateral action would thus run counter to the letter and spirit of the DSU. Both Members involved in the issue should do everything possible to abide by their commitment and to seek resolution to their problems within the WTO framework by using the rules and procedures of the multilateral trading system.

The Chairman said that although no formal decisions had to be taken on this matter at the present meeting, he believed that it was highly satisfactory that Japan and the United States were bringing this dispute to the WTO. During the Uruguay Round negotiations Members had carefully worked on and designed a new dispute settlement system that would be fair, effective and impartial. The system was now capable of effectively handling the most difficult and politically sensitive disputes between WTO Members. Most speakers had drawn attention to the very important trade and systemic issues which would need to be dealt with in relation to this dispute. With regard to the process, Japan had requested Article XXII consultations with the United States in Geneva, which had been customary for consultations at an early date. It was expected that the definitive response from the United States would be fully in accordance with both the spirit and the letter of the DSU. Indications given by the United States were encouraging.

The Dispute Settlement Body took note of the statements.

3. Japan's automotive barriers and restrictive practices
   - Statement by the United States

The Chairman said that this item was on the Agenda of the present meeting at the request of the United States and invited the representative of that delegation to introduce this item.

The representative of the United States said that his country believed that the Dispute Settlement Body (DSB) was the appropriate forum to discuss both the United States' complaint against Japan and Japan's complaint against the United States. The European Communities and other Members had already emphasized this point speaking under the previous item of the Agenda. If Japan and other Members were prepared to concentrate discussion of this issue and like-issues in the DSB they would find the United States to be cooperative. At the meeting of the Council for Trade in Goods on 29 May the United States had indicated its intention to bring a dispute settlement action against Japan because of the conditions which prevailed in Japan's market where policies and practices had barred effective market access for the products under discussion for a very long time. It was not understandable why the US producers of these products could be globally competitive and enjoy large sales in other markets while being unable to enter into Japan's market. The United States believed that anti-competitive actions and barriers to market entry had adversely affected US efforts to sell new autos, auto-parts and parts for the after market in Japan's market. In bilateral negotiations with Japan and through upcoming WTO dispute settlement action the United States would be asking Japan to adopt pro-competitive policies and to deregulate its market. It would be seeking access for all competitive foreign firms into Japan's market, not a guaranteed market share for the United States. The United States was seeking market opportunities for competitive products from it and from any other country and was asking Japan to ensure that its market operated in a transparent and genuinely competitive manner. The effects of Japan's practices were clear. Its market did not reflect market forces that had been present for years in other markets. At the present meeting under the previous Agenda item this observation was not made only

by the United States, but also by many other delegations that had commented on the closed nature of Japan's market. The United States would be elaborating on these practices after finalizing its consultations with Japan.

The representative of Japan said that his delegation had listened to various statements by countries concerned with Japan's market situation. However Japan would have opportunities to talk about its market situation at a later stage. At the present meeting he only wished to present limited data concerning the product under discussion. The number of automobiles imported from abroad had increased by nearly 42 per cent in the first four months from January to April 1995 compared with the corresponding period of 1994. For example, the number of Chrysler's Cherokee's imported into Japan had increased ten times between 1992 and 1994, whereas the total automobile market in Japan had been diminished by 8 per cent for the corresponding period. Chrysler had responded to the Japanese consumers' taste by introducing the right-hand-drive model.

The representative of Canada said that his country had a major interest in this issue and believed that action was required to provide real improvement in access to Japan's markets, including for automobiles and automotive parts. While Canada acknowledged and welcomed efforts announced by Japan to liberalize and deregulate its markets - the subject of considerable debate and examination during Japan's recent trade policy review - the fact remained that serious market barriers and discriminatory restrictions continued to exist. In Canada's view the status quo was clearly unacceptable. Should this issue be resolved through negotiations Canada would be seeking assurances from the parties that the results were fully consistent with the WTO rules, transparent and on an m.f.n. basis, not only in the language of the agreement of the parties but also in its implementation. If the issue could not be resolved bilaterally, Canada would urge the parties to comply with, and use the WTO dispute settlement system.

The representative of Korea, referring to Agenda items 2 and 3, said that Korea had consistently opposed the use of unilateral punitive trade measures. It believed that such action ran against the very "raison-d'être" of the multilateral trading system. Korea's concerns about unilateralism in trade policy was especially acute at present given that the strengthened dispute settlement system of the WTO was barely in place. At the same time, however, Korea understood that the existence of a prolonged imbalance in bilateral trade and the frustration arising therefrom did not provide a sustainable basis for sound trade relations. Apart from its legal justification, such an imbalance posed tremendous political and real economic problems to the governments concerned and risked endangering the concept of fairness under the existing multilateral trading system. It was the responsibility of the Member concerned to explore viable remedies, and to address this problem by any possible means. Members should work together to prevent the credibility of the WTO from being held hostage by this highly politicized dispute and should act quickly in delivering a clear and unanimous message from the global trade community by calling upon the disputing parties to prudently act together in resolving their differences.

The representative of Japan noted that the United States had already indicated under item 2 of the Agenda that a discussion on this matter should not be taken up by the General Council. However, the reason why Japan had sought to take up this issue therein was that the General Council was the highest body of the WTO except for the Ministerial Conference. It was therefore proper to register this matter which had potentially serious consequences for the multilateral trading system. Japan could agree not to take up this matter in the General Council provided that the General Council would take note of the statements made in both the Council for Trade in Goods and the Dispute Settlement Body. The resolution of this matter would have significant implications for the future of the WTO and he urged all Members to follow this matter closely. In this respect he had heard encouraging signs in the past few days. He expressed his appreciation to Members for their support. With regard to the openness or the accessibility of Japan's market, there had been a persistent tendency or rather a perception in the past, that since a product did not sell well in Japan, the market was closed. He urged all Members to look closely at facts and figures and to base their judgement solely on them. The whole

question of the openness of Japan's market was based on, at best, a certain experience of the 1960's and eventually the 1970's. At that time, of course, one could not say that Japan's market was open; rather it was closed. However, Japan had always suffered a trade imbalance. Japan's auto industry had become very competitive after it had been completely exposed to competition from abroad. Without such exposure the Japanese industry would not have been so competitive. He was confident that Members would find it possible to assert correctly the nature of Japan's market.

The Chairman confirmed that the General Council was meeting as the Dispute Settlement Body according to Article IV:3 of the WTO Agreements which stated that "the General Council shall convene as appropriate to discharge the responsibilities of the Dispute Settlement Body provided for in the Dispute Settlement Understanding. The Dispute Settlement Body may have its own Chairman and shall establish such rules of procedure as it deems necessary for the fulfilment of those responsibilities." So in strictly constitutional terms, this body was the General Council in one of its other manifestations.

Mr. Kesavapany, speaking as the Chairman of the General Council, said that it was true that the Dispute Settlement Body was another manifestation of the General Council. Therefore, his personal view was that one did not need to bring up this matter in the General Council. He would therefore follow Japan's suggestion that the General Council take note of the statements made in the Dispute Settlement Body as well as in the Council for Trade in Goods.

The representative of Argentina said that his delegation's intention was to agree with the Chairman of the General Council. However, the head of his delegation would only make the statement concerning this matter at the meeting of the General Council scheduled for that afternoon.[9]

The Dispute Settlement Body took note of the statements.

4. Indicative list of governmental and non-governmental panelists
- Administration of the indicative list (WT/DSB/W/6)

The Chairman recalled that pursuant to Article 8.4 of the DSU the Secretariat shall maintain an indicative list of governmental and non-governmental individuals. He reiterated that Members should submit nominations to the indicative list by mid-June 1995 so that the indicative list would be formally constituted by that time. The list could be modified at any time by proposing new names which would then be approved by DSB. With regard to the GATT roster of governmental and non-governmental panelists established on 30 November 1984, he invited Members to review the names contained therein before 31 July 1995. The updated roster would be included in the indicative list which would have already been constituted by mid-June 1995.

He informed the DSB that, at its meeting on 24 May, the TRIPS Council had considered the question as to whether there was any need for action on its part to help in ensuring that the central indicative list of panelists included persons with suitable knowledge of intellectual property matters. It had not been thought necessary or desirable for a separate list to be established in the TRIPS area, similar to that foreseen in the area of trade in services. However, the TRIPS Council had agreed to draw to the attention of Members the desirability of ensuring that the nominations they made of potential panelists to be placed on the central indicative list include persons with experience of intellectual property matters viewed from a trade or commercial perspective. He suggested that the indicative list which would be constituted in mid-June 1995 should contain, when appropriate, panelists with experience of intellectual property matters viewed from a trade or commercial perspective.

[9]See also the statements made at the General Council Meeting on 31 May (WT/GC/M/3).

He further recalled that on 14 March, the United States had submitted a non-paper concerning the indicative list which had been discussed by the DSB in informal consultations on 15 and 24 March, as well as at the DSB meeting on 29 March. He then drew attention to document WT/DSB/W/6 which contained some proposals for the administration of the indicative list based on the discussions and comments from delegations and proposed that the DSB approve the document contained therein.

The Dispute Settlement Body took note of the information provided by the Chairman and approved the proposals for the administration of the indicative list of panelists.

5. Standing Appellate Body
- Statement by the Chairman

The Chairman recalled that at the DSB meeting on 25 April 1995 he had invited individual delegations to make their views known to the "Committee of Six" concerning two questions: (i) which of the suggested names on the list of suggested appointees to the Appellate Body - apart of course from individual delegations' own suggestions - would they consider the most appropriate appointees to the Appellate Body; and (ii) why, against the guidelines set out in Article 17 of the DSU and PC/IPL/13, delegations considered these persons the most appropriate appointees to the Appellate Body. He was pleased to report that between 3-12 May 1995, fifty-four separate delegations had provided their views to the "Committee of Six" on these key-questions comprising both developed and developing countries with a broad regional spread. The individual delegations which had come to discuss these issues with members of the "Committee of Six" had obviously thought carefully about the application of the selection guidelines to the list of thirty-two persons suggested as appointees to the Appellate Body. The spirit in which individual delegations had approached these consultations had demonstrated that the intrinsic quality and integrity of individual appointees to the Appellate Body remained uppermost in the priorities of delegations. As a result of this initial process, the "Committee of Six" now had a very good idea of the expectations of the collectivity of the WTO about the composition of the Appellate Body. In particular, consultations had indicated widespread views that all individual appointees, whether persons having principally legal or trade policy expertise (including GATT/WTO experience), had to have some demonstrated expertise in all three aspects of the agreed guidelines, namely law, international trade and the subject matters of the WTO Agreement. For appointees who were primarily legal practitioners, a combination of academic, public law and arbitration experience had been judged by most delegations to be the most useful. In this regard, many had also referred to the need for appointees to be able to write their own legal opinions. Many delegations believed that the strength of Appellate Body would lie in its diversity of representation reflecting: (i) regional, developed and developing country balance; (ii) adequate representation from regions and countries who were active participants in the trading system including smaller as well as larger countries; (iii) different legal systems, on grounds that the credibility and authority of the Appellate Body had be acceptable to all. Following this initial consultation phase, the "Committee of Six" was now meeting and talking with all of the suggested appointees to the Appellate Body. This process had begun on 16 May and it would end on 9 June. In this context, the "Committee of Six" was exploring key issues such as both professional qualifications and availability, through a serious of questions based on the guidelines in the DSU and PC/IPL/13, as well as on the expectations expressed by individual delegations in the initial consultation process between 3-12 May 1995. Following this second phase, the "Committee of Six" would aim at completing its mandate and following further consultations, it would bring a proposal on appointments to the DSB during the course of the month of June.

The Dispute Settlement Body took note of the statement.

The representative of the European Communities thanked the Chairman for the progress report concerning the selection of candidates for the Appellate Body and the "Committee of Six" for the way

they had approached this task. Efforts had been made to take into consideration the principles and priorities which the Community had wished to be included and reflected in the Appellate Body, i.e., the highest possible qualifications, reasonable balance etc. This had not been an easy process and therefore the Community appreciated the manner in which the "Committee of Six" was handling it. The new phase which the "Committee of Six" had started, i.e., meeting the candidates, was a very reasonable one and the fact that these consultations would end on 9 June was also positive, because it had not necessarily been so easy to get thirty-two candidates to come to Geneva in such a short period of time. Given the importance the Community attached to the establishment of an Appellate Body, he wished to make sure that the deadline indicated by the Chairman was preserved and that every effort would be made to ensure that, at the very latest, this matter would be solved in the course of the month of June and that one would not go beyond the established time-table.

The Chairman thanked the Community for its statement and said that he also hoped that the process of selection of candidates for the Appellate Body would be completed in the course of the month of June.

The Dispute Settlement Body took note of the statements.

6. EEC - French regulations concerning the trade description of scallops (WT/DS7/1)

The representative of Canada, speaking under "Other Business", drew attention to its request, dated 19 May 1995, for consultations with the European Communities concerning the French Order of 22 March 1993 and subsequent amendments laying down the official names and trade description of pectinidae (scallops). This request had been notified to the Dispute Settlement Body, the Council for Trade in Goods, and the Committee on Technical Barriers to Trade on the same day. The request for consultations contained in WT/DS7/1 had been circulated on 24 May 1995. He also informed the DSB that on 23 May 1995 the Community had indicated that it could agree to hold such consultations.[10]

The representative of Peru said that his country had also indicated its interest in this matter to Canada and had subsequently made its interest known to the European Communities. Peru wished to participate in the consultations requested by Canada. A formal request would be submitted shortly to the Secretariat.[11]

The representative of Chile said that his country had an interest in ensuring access to the French market for Chilean scallops and would, therefore, also like to participate in the consultations requested by Canada.

The Dispute Settlement Body took note of the statements.

7. Communications under the DSU
- Announcement by the Chairman

The Chairman, speaking "under Other Business", said that in a number of cases communications by delegations under the DSU or any other covered agreements had been sent directly to the Chairman of the DSU. He proposed that for reasons of efficiency such communications should always be sent

[10]WT/DS7/2.

[11]The request by Peru to participate in the consultations requested by Canada has subsequently been issued in document WT/DS7/5.

to the WTO Secretariat with a copy to the DSB Chairman. He also invited Members to contact the Council Division in the WTO Secretariat, to inform it that a communication was being sent. This would enable an expeditious processing and circulation of communications.

The representative of Canada said that since timing was a sensitive factor for many communications, he understood the Chairman's proposal to be that, if Members had a communication to make to the DSB Chairman, they should address it to the WTO to avoid any confusion as to when a communication was sent. A copy would be sent to the DSB Chairman for his information.

The Chairman confirmed that the purpose of this proposal was to avoid any unnecessary delays or mix-up as to when a communication was sent. Canada's clarification was a sensible one, that where there was a requirement under the DSU that a communication be addressed to the DSB Chairman, it should be so addressed but sent to the WTO Secretariat with a copy to the DSB Chairman.

The Dispute Settlement Body took note of the statements and agreed to the proposal read out by the Chairman.

8. Time-periods under the DSU and other covered agreements
- Announcement by the Chairman

The Chairman recalled that at informal consultations held on 24 March he had announced his intention to conduct consultations on the issue of termination of time-periods under the DSU and the other covered agreements when such time-periods fell on a non-working day, i.e., on a week-end or holiday. For instance under Article 16 of the DSU, a Member may "within 60 days after the date of circulation of a panel report" notify the DSB of its decision to appeal. If the 60th day of this time-period fell on a non-working day it was not clear whether the time-period should be reduced to the previous working day or extended to the next working day. This was one of those issues that Members had already dealt with in informal consultations. In this connection, he recalled that Members had already discussed cases wherein a precise understanding for particular obligations specified in the DSU should be the date of receipt and other cases wherein there was some uncertainty as to what date should be considered as the date of issuance. This was another of those issues that Members needed to resolve because of the very precise timing within which they were working in the DSU. Therefore, Members would soon be informed of the convening of consultations on this matter

The Dispute Settlement Body took note of this information.