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on 23 October 2000

Chairman: Mr. S. Harbinson (Hong Kong, China)

Prior to the adoption of the agenda, the item concerning the Panel Report on "Thailand - Anti-Dumping Duties on Angles, Shapes and Sections of Iron or Non-Alloy Steel and H-Beams from Poland" was withdrawn from the agenda, following Thailand's decision to appeal the Panel Report. Also the item concerning the Panel Report on "European Communities - Measures Affecting Asbestos and Asbestos-Containing Products" was withdrawn from the agenda, following Canada's decision to appeal the Panel Report.

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1. Surveillance of implementation of recommendations adopted by the DSB

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

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

(c) Canada - Measures affecting the importation of milk and the exportation of dairy products: Status report by Canada

(d) India - Quantitative restrictions on imports of agricultural, textile and industrial products: Status report by India

(e) Turkey - Restrictions on imports of textile and clothing products: Status report by Turkey

1. The Chairman recalled that Article 21.6 of the DSU required that "unless the DSB decides otherwise, the issue of implementation of the recommendations or rulings shall be placed on the agenda of the DSB meeting after six months following the date of establishment of the reasonable period of time pursuant to paragraph 3 and shall remain on the DSB's agenda until the issue is resolved". He proposed that the five sub-items to which he had just referred be considered separately.

(a) European Communities - Regime for the importation, sale and distribution of bananas: Status report by the European Communities (WT/DS27/51/Add.12)

2. The Chairman drew attention to document WT/DS27/51/Add.12 which contained the status report by the European Communities on its progress in the implementation of the DSB's recommendations concerning its banana import regime.

3. The representative of the European Communities provided information concerning the way ahead envisaged by the EC in this case. He said that for a transitional period of time banana imports should be regulated by tariff-rate quotas (TRQs) and managed on the basis of a "first come, first served" (FCFS) system. The FCFS system intended to ensure, on the one hand, an equal and

non-discriminatory access to the EC's market and, on the other hand, to guarantee a regular supply of bananas to the EC. The EC considered the FCFS system to be straightforward and transparent. The system included: (i) three quotas (A, B and C), which would be managed on a fortnightly or weekly basis so as to ensure a regular import flow to the EC's market and would be open for bananas of all origins; (ii) a requirement to commit bananas to the vessel before submitting the declaration of intent to import and to lodge a sufficiently high security, which was aimed at deterring speculation; and (iii) a pre-allocation procedure based on operators declaring their intention to import a specified quantity. The pre-allocation would be decided upon when vessels were at sailing distance from Europe. The management of all three TRQs would be identical with a tariff preference for ACP bananas. However, it was understood that operators had to apply for the TRQs A, B or C. The tariff level proposed by the EC would not be prohibitive for bananas of non-ACP origin. In case the assessment proved to be incorrect, the in-quota tariff for non-ACP bananas in the third tariff quota would be reduced during the year, as necessary.

4. It was recognized that a FCFS system for the management of TRQs was WTO-compatible as well as straightforward and transparent for all operators. He underlined that the compliance panel, established at the request of Ecuador pursuant to Article 21.5 of the DSU, had found that a FCFS system was a WTO-compatible solution for the management of tariff-rate quotas. Before the end of the transitional period, the EC would initiate GATT Article XXVIII negotiations with a view to establishing a flat tariff system. The EC's intention was, on the basis of the most up-to-date information, to establish a tariff level which would provide a level of protection as close as possible to that provided under the system of tariff quotas. Thus, the balance of the market would be maintained and suppliers would not suffer any loss of trading prospects. The EC would now finalize its internal decision-making process with a view to implementing the new regime rapidly. The EC's proposal was the result of very lengthy and in-depth consultations with all the parties involved in the dispute. The EC had examined different options and, on the basis of comments received from the parties concerned, it considered that this was the only option available which would enable it to take into account different interests. The EC would continue to consult, however, the option under consideration was the only option available.

5. The representative of Honduras expressed his country's disappointment that, as indicated in the status report, the EC's intention was to put into effect a FCFS system. As recognized by three EC Commissioners in a press release dated 22 September 2000, the proposed system was part of a "simultaneous examination" mechanism and, contrary to what was indicated in the status report, the system was not transparent. As Honduras had pointed out on many occasions, a FCFS system that altered the conditions of competition and discriminated against bananas from Latin American countries violated the provisions of GATT 1994 and GATS, as had also been demonstrated in the Banana III case. Honduras was concerned about the statement in the status report that if a tariff level proved prohibitive, the EC would reduce, as necessary, the in-quota tariff for bananas of a non-ACP origin in the third-tariff quota. The EC should not impose such a prohibitive tariff. The EC had stated that a change in the preference could be proposed only if it considered that the tariff level was prohibitive and, only then, would it be possible to know whether those who objected to the proposal were right or not. He noted that the matter was closely related to a waiver for the new EC/ACP Association Agreement. Honduras could agree to a new waiver only if it considered that the level of preferences under the new system was acceptable.

6. He noted that the status report did not provide any indications on progress. It had been submitted shortly after a meeting in Panama of Ministers responsible for Foreign Trade from Honduras, Colombia, Costa Rica, Guatemala, Nicaragua, Panama and Venezuela. The countries in question had issued a statement[1] in which they had rejected the course of action taken by the EC. They had underlined, once again, the importance of the production and successful marketing of

[1] Subsequently circulated in document WT/DSB/20.

bananas for their economies, and had renewed their willingness to participate constructively, and in a flexible manner in a transparent dialogue and negotiation. He reiterated that, as indicated in the statement, a FCFS system was not compatible with WTO rules and, if approved, it would only prolong the dispute or could lead to another dispute. The EC's proposal was not the only alternative. Honduras believed that the Caribbean proposal could serve as a starting-point to enable the parties to find a solution. Honduras was willing to participate in negotiations if the intention was to seek a solution that would take into account the interests of all parties, with the possibility for all the parties to be heard. At the same time, the EC should not insist on maintaining a proposal that had been rejected on many occasions. There was a need for flexibility in order to resolve this matter as soon as possible.

7. The representative of Panama said that his country supported the statement made by Honduras. Panama was disappointed with the EC's status report and its statement that the proposal was the result of consultations with all the parties concerned. In Panama's view the proposal had been made despite communications sent to the EC by the countries affected by the banana regime in which they had indicated that the current proposal as well as previous proposals were WTO-inconsistent. As stated by Honduras, a meeting of Ministers for Foreign Trade from Colombia, Costa Rica, Guatemala, Honduras, Nicaragua, Panama and Venezuela had been held in Panama. Those countries together represented more than 70 per cent of banana imports into the EC. In their statement, the above-mentioned countries had rejected the FCFS system proposed by the EC and had put forward as a good basis for negotiations a proposal by Caribbean producers, which had previously been rejected by the EC. The Caribbean proposal had been accepted by some ACP countries that benefited from preferences provided by the EC. There had also been some indications to the effect that the system proposed by the EC would not provide adequate protection for those countries. In addition to the problem of inconsistency of the FCFS system, the EC had stated that the tariff level proposed by it would not be prohibitive for the products of non-ACP origin. This would be the case if it was considered that EC products were not ACP products and would continue to enter into its territory. Panama considered that for all Latin American banana-producing countries, the level suggested by the EC would be prohibitive. Panama urged the EC to take into account the views expressed by delegations in order to bring this dispute to an early conclusion.

8. The representative of Ecuador said that the information provided by the EC with regard to its new proposal was general. He noted that neither the information submitted at the present meeting, nor that provided in the past contained the necessary elements for a definitive assessment of the proposal. He hoped that the information needed for a comprehensive analysis would be provided by the EC as soon as possible in order to determine whether the proposal was WTO-consistent and thus acceptable to Ecuador. He reiterated that his country's preference was for a banana import regime that eliminated tariff quotas and was based on a single tariff. Such a tariff-only system involved fewer distortions and injustices and allowed access for better-quality bananas on a more competitive basis to the benefit of producers and consumers. Since it was not possible to immediately apply the tariff-only system, Ecuador was ready to support a system of tariff-rate quotas distributed by means of licences granted on a FCFS basis, provided that such a system was WTO-consistent.

9. At the 26 September 2000 DSB meeting, Ecuador had indicated that it was ready to accept a transitional scheme based on tariff-rate quotas; i.e. a scheme which would last sufficiently long for the necessary negotiations to be held under Article XXVIII of GATT 1994. This transitional scheme, as suggested by the EC, could involve tariff-rate quotas that were non-discriminatory in respect of origin and were distributed by means of licences allocated on a FCFS basis. Due to a lack of information on various points, it was not possible to understand the EC's intentions, in particular with regard to the management of tariff-rate quotas and the distribution of licences. Ecuador, therefore, wished to seek some clarification. First, with regard to the system of distribution of import licences, he said that various aspects of the proposal raised concerns and suggested that the new proposal created problems that could be magnified if the regulations for the distribution of licences sought to

perpetuate the discriminatory situation that had existed thus far. Ecuador therefore requested that the EC provide an explicit account of how it would ensure that the new system did not reproduce the existing discrimination.

10. Second, the legality of an import licence distribution system, whether it be based on a FCFS method of allocating licences or on a method which reflected historical market share, largely depended on the manner in which the operators entitled to participate in the system were to be selected. The EC had stated that it would not discriminate between new and traditional operators, but it had not indicated how those operators would be selected or pre-selected. It was therefore essential that the EC make a clear statement on this subject.

11. Another important issue was how the EC planned to eliminate the discriminatory effects resulting from the application of a licence distribution system for different tariff-rate quotas with different conditions of competition. Ecuador wished to know how the EC planned to alleviate the discrimination that could arise when operators given access to different quotas were made subject in a discriminatory manner to different reduction coefficients. From the information available on the functioning of the new banana import regime, it was Ecuador's understanding that a system of guarantees would be highly burdensome for operators. The disparities that would be caused by applying the licence distribution system to different quotas would increase the risks inherent in the introduction of the system of guarantees, especially for importers of Latin American bananas. Ecuador, therefore, wished to know how the EC would prevent the discrimination that arose when the same product was subjected to different levels of risk, depending on the origin.

12. Ecuador had several concerns with regard to the distribution of quotas. It was difficult to understand why the EC continued to disregard its obligations to bind the so-called "autonomous" quota of 353,000 tonnes. This quota related to the accessions of Sweden, Austria and Finland to the EC. The EC's bound tariff schedule indicated clearly that the "basic global quota" was to be increased by the sum of all the additional quantities resulting from the accession of new members to the EC. By disregarding this situation, which merely reflected the real state of affairs, the EC not only evaded its obligations but showed that it was not really interested in a comprehensive settlement of the dispute. The tariff quota system required a waiver from Article I of GATT 1994. The waiver in question not only established an excessively high and unjustified level for a tariff preference, but its application would go beyond the scope of Article I, resulting in new violations of Article XIII. The EC should provide an explanation as to what it meant by a statement as vague as the one contained in the penultimate sentence of the status report that it "will reduce the in-quota tariff for non-ACP bananas in the third tariff quota during the year, as necessary". It was not acceptable that the tariff level was not yet known and the statement contradicted the position that the tariff preference for the ACP countries would be 300 euros/tonne, or that the tariff could be higher than 300 euros/tonne. In order to evaluate the WTO-consistency of the proposal the EC should provide information with regard to all the elements of the proposal and thus far the EC had not done so. His country supported the genuine efforts to end this dispute. Ecuador would under no circumstances accept moves from any quarter which reflected the interests of those seeking to maintain the status quo. If the EC and its member States were interested in putting an end to this dispute and did not wish to cause any further damage, they had to take steps to find a solution. If the EC proposal could not be applied in a WTO-consistent manner, expeditious action should be taken to adopt a tariff-only system.

13. The representative of Jamaica said that her delegation noted the status report by the EC, which envisaged as a way forward a transitional tariff-rate quota to be managed on the basis of a FCFS system and thereafter the establishment of a flat tariff system. On other occasions, Jamaica had stated that it considered that a revised banana regime based on a tariff-rate quota system with licence allocations on the basis of historical trade was more favourable not only to Jamaica, but also to other Caribbean banana producers. Jamaica wished to restate its commitment and would work with all

parties concerned in this long-standing dispute to find a fair resolution which safeguarded the legitimate interests of all parties, including the most vulnerable.

14. The representative of Costa Rica said that his delegation noted with disappointment the statement by the EC Council of Ministers of 9 October 2000 indicating that a FCFS system represented a good basis for resolving this dispute. On the contrary, Costa Rica did not consider that the FCFS system was a basis for resolving the dispute. Moreover, the EC Council of Ministers had abided by the proposal of 10 November 1999, which had repeatedly been criticized by a large number of banana-exporting countries because it fixed an insufficient quota for Latin American countries and an excessive quota for ACP countries. The preferential tariff rates proposed were also excessive and in fact constituted a real obstacle for Latin American countries. He pointed out that the statement of 9 October 2000 referred to possible negotiations under Article XXVIII of the GATT, stating that the interests of European importers and producers and those in the ACP countries would be taken into account. This blatant disregard for the interests of Latin American countries, which were also trading partners in the WTO, had unnecessarily deferred the settlement of this dispute. Costa Rica wished to re-state its willingness to sit down at the negotiating table in order to find a solution that would take into account the interests of all parties.

15. The representative of the United States said that her country had reviewed carefully the EC's proposal, and had discussed it with EC officials. Many details of the EC's proposals had to be resolved. The United States recognized that the EC had devoted considerable time and effort to developing this proposal. As her country had informed the EC, the United States could not endorse this proposal as being consistent with the WTO provisions. The EC's proposal would not resolve the dispute and would preserve the discrimination between the companies that supplied the EC with Latin American bananas and primarily European companies that supplied the EC with ACP bananas. In addition, the lack of detail concerning the proposal caused further concern, since this proposal would form the basis for the EC Agriculture Council review and for further detailed regulations. The United States welcomed the opportunity to continue consultations with the EC with a view to reaching an expeditious solution to this long-standing dispute.

16. The representative of Guatemala reiterated her country's position concerning the course of action taken by the EC as a means of continuing to delay the application of the DSB's rulings and recommendations. The EC's status report clearly indicated that the work was focusing on the implementation of a system to which Guatemala had objected at every level and by every means available to it. Since the proposal of 10 December 1999 had been made, Guatemala had persistently maintained, in statements before the DSB, in its contacts with the EC and in communications sent to the member States that the EC's approach was wrong. She regretted that Guatemala's objections had been disregarded by the EC. The proposals of 6 September and 4 October 2000 continued to be inconsistent with the WTO rules. The Ministers responsible for Foreign Trade from Colombia, Costa Rica, Guatemala, Honduras, Nicaragua, Panama and Venezuela had resumed their lobbying efforts, sent letters to their counterparts in the EC member States, held meetings in some of the member States and with the Commission in Brussels and, above all, they had issued a statement in Panama on 17 October 2000.

17. At the meeting of the Council of Ministers of the EC on 9 October 2000, certain EC member States had expressed objections and reservations with respect to the proposal submitted for approval, a proposal to which a number of Members had objected. This raised the question of why other alternatives had not been explored and why Guatemala's suggestion to consider the Caribbean proposal as a basis for designing a new regime had been disregarded. With regard to the content of the report, she reiterated that the proposal contained violations that had already been condemned by the WTO. For example, the scheme of subdividing imports and applying different tariff levels according to origin violated Article XIII of GATT 1994 and the tariff preference foreseen violated Article I of GATT 1994. At the same time, the report provided that the tariff preference might be

reduced if it was prohibitive, and although it did not clearly state so, it seemed to imply that the reduction would take place at the end of the year. For its part, she pointed out that no waiting period was needed since the envisaged level was, in fact, prohibitive; nor was there any justification in granting the same level of preference to all preferential suppliers, since some of them were already competitive.

18. As Guatemala had pointed out during the discussions on exemption for the association agreement, the elements contained in the proposal suggested that even when the EC had overcome the shortcomings of its request, it would still not be possible to approve the exemption. Similarly, although the report indicated that the FCFS method was consistent with the WTO rules, the arrangement proposed by the EC contained elements which violated Articles II and XVII of GATS as well as Article I of GATT 1994. The report stated that the management of the three quotas would be identical, but if this was the case, the third quota would not have to be subject to a formally separate method. Moreover, while the other regulations that would be issued in application of the new regime were not yet known, they would provide the means by which the discriminatory framework could be completed. Guatemala wished to reiterate the position expressed at the highest level, in particular in the Ministerial statement, that the proposed method for the management of quotas was inconsistent with the WTO rules. In three disputes on the same subject, Guatemala had maintained that those who resorted to the dispute settlement system should legitimately expect that their rights would be restored. Thus, if the proposal put forward were to be approved, Guatemala would not consider that this dispute was terminated.

19. The representative of Mexico said that his country was examining the effects of the proposed system in the light of its WTO rights and wished to reserve its right to make a statement in a future DSB meeting on this matter. On the basis of what had been stated at the present meeting it appeared that there were still differences as to whether the proposed regime would be the best solution and, above all, whether that regime was fully consistent with the EC's WTO obligations. Once again, this situation confirmed that the simplest way of resolving this matter in a manner compatible with the WTO would be to establish, at the earliest possible date, a tariff-only system with a level that allowed access to the EC's market for bananas.

20. The representative of Dominica said that the banana dispute had gone on long enough and it was time that the parties involved mastered the political will to bring it to an end. An end which had to be a result of a compromise but a compromise that was just in providing access to all suppliers to the European market on a regular and viable basis and was fair to EC consumers. No party could obtain all it thought it was legally or morally entitled to without doing great damage, in some cases irreparable damage, to another party. The Windward Islands and the ACP countries had historical access to the EC's market to the extent that the structure of their economies in some cases and also the entire economic lifestyle of their counties was based on the production of bananas and sale to the European countries. Such sales were possible only due to preferential access conditions in Europe. Any new banana regime had to, as a minimum, preserve this access. This was possible without doing harm to other parties. However, any attempt to remove such access should be seen for what it was, namely, an attempt to remove ACP suppliers from the EC's market. He did not believe that such an outcome could be considered desirable.

21. The ACP countries promoted a compromise proposal in which a former Prime Minister of Dominica had played a leading role. Dominica was convinced that this proposal contained elements for a successful resolution of the problem. Certain details of the proposal contained elements that were not acceptable to all the parties but the general approach seemed to be acceptable to most of them. A sensible way forward would seem to be to try to build upon the areas of agreement. There was a need to look at the EC's proposal in this context and to work with those aspects of the proposal that conformed to the elements of the Caribbean proposal on which there appeared to be broad

agreement. If it was possible to proceed in this way, then an agreement on this very difficult problem could be well within reach.

22. The representative of Colombia said that his delegation noted the EC's status report. Colombia regretted that the method proposed by the EC was the one that had been systematically rejected by the majority of Latin American countries, including by some ACP countries. His country had always sought to ensure that the EC should set up a system of quotas based on a historical method of allocating licences. This was the most appropriate approach which would take into account Colombia's trade interests. He reiterated that the FCFS system would have devastating effects on the prices of bananas in the international market, including the EC's market and would create problems with regard to highly differential distribution and a commercial risk for importing and exporting countries. The distribution would be assumed by the exporters rather than importers. Like other delegations, Colombia believed that the EC should provide more details on its proposal.

23. The representative of Saint Lucia said that his delegation noted the EC's status report. Saint Lucia supported the statement made by Dominica and considered that the views expressed at the present meeting should be taken into account. The sensible way forward was to build on the areas of agreement rather than to start from scratch. If there was one thing that came up in this long-standing dispute on bananas which had caused a lot of damage to many countries, including to Saint Lucia, it was that there was a very narrow area in which there was still no agreement. In fact, all that was needed to end this dispute was political will.

24. At the present meeting, he did not wish to address the substance of the EC's status report because the CARICOM had already conveyed its position in an appropriate forum and by letter from the President of the Caribbean Community to the EC, after the matter had been carefully examined. He only wished to deal with one aspect of the proposal, namely, the ACP preferences. That aspect concerned a technical matter to the effect that the tariff proposed on quota C would be prohibitive. The research undertaken in the context of the Caribbean position on the EC's proposal had found that, several years back, the differential cost of bananas in certain Russian and Eastern European ports and EC ports exceeded the proposed tariff for several weeks of the year. Therefore, on the basis of history it was clear that the proposed tariff would not constitute a deterrent to access for Latin American bananas. This was a significant point. The argument was made that the EC proposal would provide a quota for the ACP in violation of Article XIII, but in fact that did not provide any real safeguards for the ACP countries. Saint Lucia's concern about the proposal was, however, more related to the FCFS system which was also the concern of other countries.

25. In the past, the Caribbean countries had taken an active role in seeking to find a compromise. This had been done in order to be helpful and most of the aspects of the Caribbean proposal were acceptable. However, it should be recognized that certain parties objected to that proposal. Therefore, the Caribbean proposal should not be an impediment to progress because that would be counterproductive. He urged that there be a political will to achieve a necessary compromise based on those areas in which there was an agreement. He recalled that the Panel and the Appellate Body called into question two aspects: the reservation of quota shares for countries and groups of countries and the licensing system. There was no problem with the issue of adequate preferences for the ACP countries. Their rights as traders and exporters were just as legitimate as the rights of any other Member of the international trading system.

26. The representative of Mauritius said that, along with other parties, her country thanked the EC for its attempts to find a way out of this difficult issue. In particular, her country appreciated the statement made by Saint Lucia because it contained certain elements which showed that a solution was not so far away. For its part, Mauritius believed that a good solution would be one where the outcome of the application of such a solution was fair to all producers and, in particular, took into account the needs of small and vulnerable producers who were almost totally dependent on this one

product. Mauritius was disappointed with the continued negative linkage between this issue and the ACP/EC waiver and regretted that consideration of the waiver remained hostage to this issue.

27. The representative of Suriname said that since his delegation's permanent representation was not located in Geneva, his country had not had the opportunity to speak on this subject. However, this did not imply that Suriname had no interest in this matter. The banana export industry was one of the pillars of his country's fragile economy and it had only been able to continue its trade to its market, the EC, due to favourable market access arrangements. Suriname appreciated that following the outcome of the Panel and the Appellate Body, the EC banana import regime had to be modified in order to bring it into conformity with the DSB's recommendations. However, his country was concerned that in the process it was not deprived of its access on a viable basis to the EC market, which was of vital importance to its economic well-being. He noted that the tariff-rate quotas and the system for the allocation of licences were not acceptable to certain countries. Suriname expected that these shortcomings would be addressed while preserving the legitimate trading rights of suppliers, in particular those such as Suriname which was at risk of marginalization. In other words, the reform should be limited to remedying and identifying the flaw while preserving underlying commendable objectives of the market reallocation. If an early and favourable resolution on this matter was possible which would ensure orderly and predictable marketing and fair and secure access for all suppliers on a viable and remunerative basis, then it would have to be a cooperative approach by all parties. The only lasting solution to this long-standing dispute was one which provided adequate safeguards for all the parties.

28. The representative of the European Communities said that his delegation noted the statements made at the present meeting. At this stage, it was important to carefully consider the matter. Some delegations were concerned about the details of the proposal currently under consideration. Many appeared to be uncomfortable with the FCFS system. While acknowledging that much depended on the actual implementation of such a system, the modalities regarding its operation were very important and that in the coming period it was important to continue to discuss this matter. The EC had tried in the past few months every possible venue and option based on historical references, but this was not possible due to conflicting views amongst Latin American suppliers. The FCFS system which was now under consideration reflected suggestions that had been previously made in consultations held by the EC with both the United States and other trading partners. He noted that any final solution of its technical details, as stated by Ecuador could not be the status quo. As stated by other delegations, it became urgent to find a solution as soon as possible preferably before the end of the year. It was important that such as solution was fair, non-discriminatory and WTO-compatible.

29. As far as the FCFS system was concerned, the EC had some experience in managing quotas along this system and where such a system was operated it was operated in a fair and reasonable way. Many delegations had some concerns about quota C. He reiterated that quota C was not reserved for bananas of ACP origin which had a fair preference. If the tariff applicable to the third quota would turn out to be prohibitive for bananas of non-ACP origin, it would be reduced as rapidly as possible. At the beginning of October, the EC Commissioner had held a meeting with Latin American suppliers during which he had emphasized this point and he had made it clear that the third quota would be operated in such a way so as to ensure access to that quota to bananas of all origin without putting in question the historic and reasonable need for ACP suppliers. This was a very useful and constructive discussion. He would convey all the statements and suggestions to his authorities in Brussels. The EC would be at the disposal of its trading partners who might have further questions.

30. The representative of the United States said that her delegation appreciated the statement made by the EC. Nevertheless, her country wished to have more details regarding the proposal. The EC's most recent proposal for distributing banana import licences continued to favour EC growers in the EC's territories and in the former EC's colonies and would discriminate against other suppliers. The proposal was not WTO-consistent and did not meet the WTO commitments. Latin American

countries had examined this proposal in detail and believed that it would not provide a speedy solution to the dispute. The level of the proposed tariff applied to Latin American countries under one tariff-rate quota was prohibitive while the concept of allocating import licences on a FCFS basis was not a problem. The problem was with the way the EC had proposed that the system would be applied.

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

(b) Japan - Measures affecting agricultural products: Status report by Japan (WT/DS76/11/Add.8)

32. The Chairman drew attention to document WT/DS76/11/Add.8 which contained the status report by Japan on its progress in the implementation of the DSB's recommendations with regard to its measures affecting agricultural products.

33. The representative of Japan said that, as indicated in the status report, his country had been holding consultations with the United States in a constructive and friendly manner. The parties to the dispute had made a lot of progress, but there still remained some technical issues to be resolved. Japan expected that the parties would reach a mutually satisfactory solution in the near future. It would notify the DSB of the agreed solution as soon as such a solution was concluded with the United States.

34. The representative of the United States said that her country hoped to complete work with Japan on the few remaining issues that required to be resolved, in the very near future.

35. The representative of the European Communities said that though the United States had been content with the progress made by Japan, the EC would not concur. He was of the view that the comments he had made at the previous DSB meeting, regarding countries other than the United States, had not been taken into account. Nineteen months had gone by since the DSB had requested Japan to put an end to the varietal testing, a measure incompatible with the SPS Agreement. He reiterated the main point he had made at the previous meeting, namely, that there should be an *erga omnes* end to the testing. He noted that it was a fundamental principle of the DSU provision that all solutions should be compatible with the WTO Agreements. The EC expected that Japan would soon take a position on this, and find a solution that would apply equally to all.

36. The representative of Australia said that her country had previously registered its ongoing interest in implementation in this case and, at the present meeting, it wished to reiterate its interest. Australia looked forward to resolution of the matter.

37. The representative of Japan said that his delegation had taken note of the comments made by the EC and Australia. Japan was serious and had been trying to pursue the consultations with the United States in good faith, and hoped to reach a mutually satisfactory solution in the near future. He would convey the comments made at the present meeting to his authorities.

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

(c) Canada - Measures affecting the importation of milk and the exportation of dairy products: Status report by Canada (WT/DS103/12/Add.3 – WT/DS113/12/Add.3)

39. The Chairman drew attention to document WT/DS103/12/Add.3 – WT/DS113/12/Add.3 which contained the status report by Canada on its progress in the implementation of the DSB's recommendations with regard to its measures affecting the importation of milk and the exportation of dairy products.

40. The representative of Canada said that his country was presenting its fourth status report on its implementation of the DSB's rulings and recommendations in this matter. On 2 October 2000, consultations had been held by video conference between Canada, the United States and New Zealand. Canada had provided statistical and other information required under the terms of the December 1999 agreement with the complaining parties regarding the reasonable period of time for implementation. Canada had also answered questions from the United States and New Zealand regarding its new provincial export mechanisms. The United States and New Zealand had made numerous requests for information, and Canada was now endeavouring to compile and provide the information requested. Canada also looked forward to providing the United States and New Zealand with further information on the progress in implementation at the next round of consultations, which had been tentatively scheduled for 15 December 2000. In addition, his country would continue to provide status reports to the DSB, pursuant to Article 21.6 of the DSU. He reaffirmed Canada's commitment to implement fully the DSB's recommendations and rulings by the deadline of 31 December 2000.

41. The representative of New Zealand thanked Canada for its fourth status report, and said that his country welcomed Canada's satisfactory compliance with the DSB's rulings to date, insofar as they pertained to the levels of subsidized exports under Canada's "Special Milk Classes" programmes. However, in order to bring itself into full compliance with the rulings, Canada had to ensure that all exports of dairy products, including any new measures for the export of these products, would be fully consistent with its WTO obligations under the Agreement on Agriculture. It was this latter aspect of Canada's compliance that seriously concerned New Zealand. During the 2 October 2000 consultations, Canada had confirmed that it had implemented new provincial-level export measures or "mechanisms", and that dairy exports had now been taking place through them. Canada had also indicated that it did not consider that dairy exports through these mechanisms provided export subsidies. As a consequence, Canada would not be counting these exports against its export subsidy reduction commitments. New Zealand considered that Canada's new provincial-level dairy export mechanisms continued to provide export subsidies to Canadian exporters. Accordingly, failure to count such exports against Canada's export subsidy reduction commitments was contrary to its obligations under the Agreement on Agriculture and constituted a failure on the part of Canada to fully implement the DSB's recommendations and rulings in this regard. He noted that these matters would be further discussed with Canada during the consultations scheduled for 15 December 2000. In the meantime, New Zealand reserved its WTO rights on this matter.

42. The representative of the United States thanked Canada for its status report as well as for the information provided during consultations earlier in the month. The United States looked forward to the 15 December 2000 meeting to continue their consultations. In the earlier consultations, Canada had stated that the process for changing provincial milk marketing orders, provincial regulations, and federal legislation was now underway. The process, according to Canada, should be completed by the end of the year 2000: i.e. by the end of the reasonable period of time for compliance with the DSB's recommendations. He regretted that the new provincial programmes that had taken effect on 1 August 2000, and which were now being reduced to legal text, seemed in essence to be the same old export subsidies. Low priced milk was still available in Canada only for export contracts. Moreover, the provincial programmes continued to require that any milk committed to processors at such reduced prices be exported. Canada had also recently advised that it no longer collected information on either the price or volume of export contracts, so that ostensibly, there would be no record maintained of the volume or value of milk exported through the new provincial mechanisms. The fact that Canada posited that this situation was the product of its deregulation of dairy exports, turning a blind eye to the problem, was not likely to contribute to the resolution of this dispute. It was now evident that Canada had decided to pursue a course that was inconsistent with compliance with its export subsidy reduction commitments, and would also permit the attendant trade distortions to continue unabated. As a result, as Canada moved to finalize the incorporation of the new provincial

export contracts into regulations and legislation, the United States concurrently would be making its preparations for the next round in this dispute.

43. The representative of Canada said that his country had hoped that after the consultations, New Zealand and the United States would recognize that the new mechanisms represented a dramatic change in the manner in which export trade in dairy products was conducted in Canada. These new mechanisms did reflect basic deregulation of the dairy sector, and were based on the primacy of contract between producers and exporters. He reiterated again Canada's commitment to fully implement the recommendations and rulings of the DSB by the deadline.

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

(d) India - Quantitative restrictions on imports of agricultural, textile and industrial products: Status report by India (WT/DS90/16/Add.2)

45. The Chairman drew attention to document WT/DS90/16/Add.2 which contained the status report by India on its progress in the implementation of the DSB's recommendations with regard to its quantitative restrictions on imports of agricultural, textile and industrial products.

46. The representative of India said that his country's status report was clear and positive. India was committed to removing restrictions maintained for balance of payment reasons in two tranches in a balanced fashion. It had removed 50 per cent of the residual quota restrictions (QRs) on 1 April 2000 and the reasonable period of time for the remaining QRs would expire by April 2001. Thus, India was on course in implementing its commitments.

47. The representative of the United States thanked India for its status report and looked forward to further reports on this matter in due course.

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

(e) Turkey - Restrictions on imports of textile and clothing products: Status report by Turkey (WT/DS34/12/Add.2)

49. The Chairman drew attention to document WT/DS34/12/Add.2 which contained the status report by Turkey on its progress in the implementation of the DSB's recommendations with regard to its restrictions on imports of textile and clothing products.

50. The representative of Turkey said that, as had been stated at the previous DSB meeting, his country aimed at finding the most appropriate solution in this case. Such an effort required, *inter alia*, internal consultations with the different parties concerned. Since the previous DSB meeting, Turkey had held such consultations and would continue to do so in the next month while also working in other areas.

51. The representative of India said that his country noted that the Turkish authorities had continued to work on this implementation issue. It had been indicated in the status report that Turkish authorities had put the emphasis on internal consultations with regard to various aspects of this subject. India, therefore, asked Turkey to provide more details regarding those consultations. India reiterated its expectation that in this specific matter of implementation of the DSB's recommendations and rulings, Turkey would fully comply with its WTO obligations within the time-period of their mutual agreement of January 2000. India was ready to respond positively to any initiative that Turkey

might take to hold consultations on the manner in which it proposed to comply with the DSB's rulings and recommendations.

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

2. Implementation of the recommendations of the DSB

(a) United States – Anti-Dumping Act of 1916

(b) Canada – Term of patent protection

53. The Chairman recalled that in accordance with the DSU provisions, the DSB was required to keep under surveillance the implementation of recommendations and rulings of the DSB in order to ensure effective resolution of disputes to the benefit of all Members. In this respect, Article 21.3 of the DSU provided that the Member concerned shall inform the DSB, within 30 days after the date of adoption of the panel or Appellate Body report, of its intentions in respect of implementation of the DSB's recommendations and rulings.

(a) United States – Anti-Dumping Act of 1916

54. The Chairman recalled that at its meeting on 26 September 2000, the DSB had adopted the Appellate Body Report on "United States – Anti-Dumping Act of 1916" and the Panel Reports on the same matter, as upheld by the Appellate Body Report. He invited the United States to inform the DSB of its intentions in respect of implementation of the DSB's recommendations.

55. The representative of the United States said that her country intended to implement the DSB's recommendations and rulings in a manner which respected its WTO obligations, and had begun to evaluate different options for doing so. The United States would need a reasonable period of time in which to implement, and was ready to consult with the EC and Japan on this matter.

56. The representative of Japan said that the findings of the Panel Report, as upheld by the Appellate Body Report, showed that the US Anti-Dumping Act 1916 was inconsistent with the relevant WTO provisions and, therefore, his country was of the view that the United States should repeal the Act promptly in order to comply in good faith with the DSB's recommendations and rulings. Japan urged the United States to provide a more specific and detailed plan, as soon as it was ready, on how and when it intended to implement the DSB's recommendations and rulings.

57. The representative of the European Communities said that the EC urged the United States to comply as soon as possible with the DSB's recommendations and rulings, and expected that in the implementation, the United States would also address the ongoing judicial cases brought before its courts against EC companies on the basis of the Act which had now been found incompatible with the WTO rules.

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

(b) Canada – Term of patent protection

59. The Chairman recalled that at its meeting on 12 October 2000, the DSB had adopted the Appellate Body Report on "Canada – Term of Patent Protection" and the Panel Report on the same matter, as upheld by the Appellate Body Report. He invited Canada to inform the DSB of its intention in respect of implementation of the DSB's recommendations.

60. The representative of Canada said that his country would comply fully with the DSB's recommendations and rulings in this dispute. However, in order to do so, legislative changes would be required and, therefore, his country needed a "reasonable period of time" for implementation. Canada looked forward to discussing this matter with the United States.

61. The representative of the United States welcomed Canada's information regarding its intention to comply with the DSB's rulings and recommendations. She noted that the Appellate Body had specifically recommended that Canada bring Section 45 of its Patent Act into conformity with its TRIPS obligations. The United States was concerned, however, by recent press reports in Canada quoting an official from the Canadian Industry Ministry that Canada was considering "several possible responses to the [WTO] decision, including non-compliance". The United States hoped that non-compliance would not be an option for Canada. Her country looked forward to discussing with Canada a reasonable period of time for implementation. She hoped that a meeting between the two delegations could be arranged shortly.

62. The DSB took note of the statements, and of the information provided by Canada regarding its intentions in respect of implementation of the DSB's recommendations.

3. United States – Definitive safeguard measures on imports of circular welded carbon quality line pipe from Korea

(a) Request for the establishment of a panel by Korea (WT/DS202/4)

63. The Chairman recalled that the DSB had considered this matter at its meeting on 26 September 2000, and agreed to revert to it. He drew attention to the communication from Korea contained in document WT/DS202/4.

64. The representative of Korea said that his country was submitting its second request for the establishment of a panel in this case. Korea's request had already been considered by the DSB at its meeting on 26 September 2000, but at that time the United States had objected to the establishment of a panel. Korea continued to believe that the US safeguard measure, which had become effective since March 2000, was in violation of the WTO obligations in many respects. As Korea had already stated, the United States safeguard measure did not meet the conditions provided for in Article 2 of the Safeguards Agreement and Article XIX of GATT 1994, and was not properly applied in accordance with other provisions of these Agreements. Since the request was on the agenda for the second time, it was Korea's understanding that the panel would be established at the present meeting.

65. The representative of the United States regretted that Korea had chosen to request the establishment of a panel. Her country had hoped that the consultations would have addressed Korea's concerns, and believed that the safeguard measure in question complied fully with the requirements of the Safeguards Agreement and GATT 1994. The United States believed that a panel would reach the same conclusion.

66. The representative of the European Communities was concerned about the growing recourse by the United States to protectionist trade policy measures in the steel sector. In particular, with respect to safeguard measures, the United States had adopted measures which appeared to violate its obligations under the Safeguards Agreement and GATT 1994. He regretted that this was not the first time. The European Communities would, therefore, in the next few days submit a request for consultations relating in particular to the US safeguard measure on welded line pipe and on steel wire rod.

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

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

4. India – Measures affecting export of certain commodities

(a) Request for the establishment of a panel by the European Communities (WT/DS120/2)

69. The Chairman drew attention to the communication from the European Communities contained in document WT/DS120/2.

70. The representative of the European Communities said that the EC believed that the non-automatic licensing scheme for the exportation of raw hides and skins from India constituted a quantitative restriction prohibited under Article XI:1 of GATT 1994. Moreover such a regime was administered in such a way that, in practice, it never resulted in the granting of export licences. Since the WTO consultations in 1998, the situation had remained virtually unchanged as only one product had been removed from the list on 13 January 2000. However, all the other categories of leather, including raw hides and skins, had continued to be subject to the export restriction. The EC and India had held consultations in Geneva on 16 January 1998. Since then, the issue had been constantly discussed at the bilateral level. Those discussions had not allowed the achievement of any breakthrough. Under these circumstances, the European Communities had no alternative but to launch the panel procedure.

71. The representative of India noted that his country did not consider that the measure referred to by the EC in its panel request violated India's obligations under Articles XI:1 of GATT 1994. Nevertheless, India had been, and continued to be, sensitive to the EC's interests in this regard. On 13 January 2000, as noted by the EC in its panel request, India had removed one product from the list of items the exportation of which required non-automatic licences. On 20 October 2000, India had issued appropriate notifications for removing the non-automatic licencing requirement with regard to export of other raw hides and skins and permitting export of these items on payment of export duty. India realized that the EC had not as yet been informed about the change in policy that had taken place on 20 October 2000. He believed that given a few days time to study the notification issued by India on 20 October 2000, the EC would be in a position to withdraw its panel request. In the light of that situation, India was sure that the EC as well as other Members would understand its inability to accept the panel request at the present meeting.

72. The representative of the European Communities thanked the representative of India for the information provided at the present meeting which he would convey to his authorities.

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

5. India – Measures affecting the automotive sector

(a) Request for the establishment of a panel by the European Communities

74. The Chairman drew attention to the communication from the European Communities contained in document WT/DS146/4.

75. The representative of the European Communities said that the EC believed that India's measures in the automotive sector were in breach of Articles III and XI of GATT 1994 and Article 2.1 of the Agreement on Trade-Related Investment Measures (TRIMs). Consultations which had been held on 2 December 1998 on this matter had proved unfruitful. Since 1998, the issue had been constantly discussed at the bilateral level. The EC had made substantive efforts to solve the problem, unfortunately with no positive outcome. Taking into account the economic impact of the measures as

well as their impact on the interests of European operators, the EC had no choice but to request the establishment of a panel.

76. The representative of India noted with regret that the EC had requested the establishment of a panel on this matter. It was unfortunate that in spite of having explained, in the context of a similar request for the establishment of a panel by the United States, the salient features of its automotive policy and the systemic concerns that India had on the establishment of such a panel, the EC had decided to make such a request. India was disappointed with the EC's approach. He said that India's measures were in no way inconsistent with its obligations under Article III:4 and XI:1 of the GATT 1994 and Article 2.1 of the Agreement on TRIMs. As had been clarified in the context of the US request, the measures referred to by the EC were not trade-related investment measures. However, even if accepted, for arguments sake, that the measures in question were TRIMs, then India's and other developing Members' obligations had to be evaluated in the light of Article 4 of the TRIMs Agreement. On a number of occasions, India had pointed out that the WTO should not create an impression, even inadvertently, that its disciplines impeded developmental interests of developing countries. His country had also indicated that many developing countries' efforts to achieve even a minimum degree of industrialization were being challenged on the basis of the provisions of the TRIMs Agreement.

77. This was a broader issue which would need to be dealt with separately, in the context of the ongoing review of the TRIMs Agreement. He recalled that on 17 December 1999, the General Council Chairman had made a statement urging Members to exercise due restraint on TRIMs matters. Following that statement, the General Council at its meeting on 8 May 2000, had taken a decision on TRIMs transitional period issues. That decision envisaged, *inter alia*, that the Chairman of the Council for Trade in Goods should undertake consultations, as matter of priority, on the means to address the cases of TRIMs not notified or TRIMs in respect of which extension had not been requested. It was unfortunate that the EC disregarded the Chairman's statement of 17 December 1999 on due restraint, as well as the 8 May 2000 decision of the General Council on the subject of TRIMs transitional period issues.

78. India urged the EC to reflect carefully on the impression that its actions would be likely to create among developing countries about the relevance of the General Council decision which was meant to be a confidence-building measure. Recently, in the context of the consultations held by the Chairman of the General Council on various implementation issues, including those related to TRIMs, it had been decided to temporarily defer this matter since the Chairman of the Council for Trade in Goods was already holding consultations in this regard. It was therefore unfortunate that even while Members were considering the resolution of developing country concerns on TRIMs, the EC was requesting a panel on the same issue. India, therefore, was not in a position to accept the EC's request for establishment of a panel at the present meeting.

79. The representative of Pakistan said that his country was concerned about the request for the establishment of a panel on a matter which was pending resolution under the aegis of the Council for Trade in Goods and the General Council. He recalled the 17 December 1999 statement by the Chairman of the General Council which stressed the need for "due restraint", and the 8 May 2000 decision of the General Council on TRIMs on transitional period issues.

80. The representative of the Philippines said that his country supported the statement made by India and, in particular, the systemic concerns with regard to this matter.

81. The representative of the European Communities said that his delegation had taken due note of the statements made by India, Pakistan and the Philippines.

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

6. Philippines – Measures affecting trade and investment in the motor vehicle sector

(a) Request for the establishment of a panel by the United States (WT/DS195/3)

83. The Chairman drew attention to the communication from the United States contained in document WT/DS195/3.

84. The representative of the United States said that her country was requesting the establishment of a panel to examine the Philippines' trade-related investment measures (TRIMs) for firms that manufactured motor vehicles. The Philippines' TRIMs regime required manufacturing firms in the motor vehicle sector to use parts and components produced in the Philippines and to earn a percentage of the foreign exchange needed for importation by exporting finished goods. Manufacturers had to comply with these measures to import goods at preferential tariff rates. Furthermore, it appeared to the United States that import licences for parts, components and finished vehicles were conditioned on compliance with these requirements. These measures denied the Philippines' trading partners the opportunity to supply the Philippine markets. In addition, they unfairly burdened manufacturers operating within the Philippines. If anything, they retarded rather than promoted the development of the Philippines' motor vehicle industry.

85. The United States considered that these restrictions were inconsistent with the Philippines' obligations under Articles III:4, III:5 and XI:1 of GATT 1994 and Articles 2.1, 2.2, 5.2 and 5.5 of the TRIMs Agreement. These measures should have been removed on 1 January 2000. The Philippines had requested an extension of the phase-out period in accordance with Article 5.3 of the TRIMs Agreement. As soon as this had been done, the parties had begun consultations, and had met several times to exchange views on how to address the interests of both the Philippines and the United States. The discussion with the Philippines had been useful and the United States would continue to work with them. The Philippines had been very forthcoming in answering the questions the United States had asked about the TRIMs regime. However, the parties had now been consulting for more than a year, but unfortunately it had not yet been possible to reach a satisfactory solution. In light of the passage of time, and the distance between the two countries' positions, the United States had concluded that its interests were best served by moving forward with its panel request, and had therefore taken the logical step of bringing this matter to the DSB. The United States remained open to further discussions with the Philippines and hoped that this matter would be resolved on a mutually agreeable basis. Since the matter remained unresolved at this time, the United States was requesting the establishment of a panel.

86. The representative of the Philippines said that notwithstanding the US request for the establishment of a panel, his country remained hopeful that due restraint, prudence and understanding would prevail, and that the parties would have sufficient political will to resolve the dispute. He underlined that the spirit of the DSU was not confrontational and encouraged parties to resolve issues in the most amicable manner. Therefore, the Philippines could not accept the establishment of a panel at this stage. Furthermore, his country believed that the US request could not be given due course. In this context, he wished to enumerate several points. First, his country had a pending request for the extension of the transition period for the elimination of its TRIMs applied in the automotive sector. In filing this request in October 1999, the Philippines had exercised its right provided for under Article 5.3 of the TRIMs Agreement, which had been expressly confirmed by the General Council in its 8 May 2000 decision. Second, both Article 5.3 of the TRIMs Agreement and the General Council decision required that in considering such requests, the Council for Trade in Goods (CTG) should take into account developmental financial and trade needs of the Philippines. The process under both the TRIMs Agreement and the General Council decision was multilateral. Third, in its request and in its replies to questions raised by other Members as well as in its various statements made in the meetings of the CTG, the Philippines had presented real and objective evidence demonstrating its particular difficulties and developmental, financial and trade needs. Fourth, thus far, in the course of meetings

held by the CTG, no other Member had come forward to rebut the evidence presented by the Philippines, or to openly discuss the merits of the Philippine request. An open discussion would be indispensable to preserve the multilateral character of the process. Fifth, the Philippines had held bilateral consultations with some Members, including with the United States. It had participated willingly and in good faith in those consultations, hoping that that would facilitate the discussions in the CTG. Regardless of the results of those consultations, he stressed that such consultations were not a substitute for the CTG multilateral process. Sixth, the Philippines, believed that, like any other Member, it was, at the very least, entitled to procedural due process and it had yet to be afforded such due process. Seventh, the Philippines wished to further invoke the Rules of Procedure of the CTG, which provided that if a decision could not be arrived at by consensus in the CTG, the matter should be referred to the General Council for decision. This formed an indispensable element of the procedural due process to which the Philippines would be entitled, without which any proceeding such as the one under consideration was premature. In this regard, the Philippines drew attention to the systemic implications of the US request. The DSB and the General Council were considered to be the same Body. Under Article IV:3 of the WTO Agreement, the General Council discharged the responsibilities of the DSB. The General Council had requested the CTG to give "positive consideration" to the requests filed by the Philippines and other Members. Unless there was a consensus to the contrary, this decision remained valid. In the view of the Philippines, the General Council discharging the responsibilities of the DSB should not contradict itself by deciding to establish a panel.

87. The representative of Japan said that Article 3.7 of the DSU stipulated that "The aim of the dispute settlement mechanism is to secure a positive solution to a dispute. A solution mutually acceptable to the parties to a dispute and consistent with the covered agreements is clearly to be preferred". Article 4.5 of the DSU provided that "In the course of consultations in accordance with the provisions of a covered agreement, before resorting to further action under this Understanding, Members should attempt to obtain satisfactory adjustment of the matter." Japan did not question that the United States had the right to request a panel on this matter. However, in view of the above, and in view of the fact that consultations were ongoing in the CTG in order to find a general framework to deal with the issue of transitional periods for developing countries' TRIMs, Japan hoped that, as stated by the United States, the parties to the dispute would continue to hold constructive consultations in an effort to finding a mutually acceptable solution.

88. The representative of the United States said that her country did not agree with the statement that the Philippines would be entitled to maintain its TRIMs, because it had requested an extension pursuant to Article 5.3 of the TRIMs Agreement. On the contrary, the fact that the Philippines' request for extension was pending, and that there was the 8 May 2000 decision, did not prejudice the US rights under the TRIMs Agreement or GATT 1994 nor other Members' rights with regard to their measures. At present, the Philippines' TRIMs did not have any justification under the WTO Agreement.

89. In response to Japan's intervention, she said that the parties to the dispute had been consulting for a year, and had worked in the CTG as well as multilaterally and bilaterally in order to find a solution. The United States believed that it had respected the DSU provisions in this regard. The parties to the dispute had tried for more than a year to reach a solution bilaterally and in the CTG. The United States did not agree with the statement that when there was no consensus in the CTG, the matter should be referred to the General Council. The United States continued to try to resolve several requests with other countries, and would try to move forward on a multilateral solution.

90. The representative of Malaysia said that his country supported the statement made by the Philippines. Malaysia was concerned that the United States had considered it appropriate to request the establishment of a panel on this matter. Several countries currently sought extension of transitional period issues in accordance with the decision of the General Council. The matter should

be discussed, reviewed and agreed upon, pursuant to the 8 May 2000 decision of the General Council. Pending the resolution of the matter, the United States should allow the multilateral process to continue and should exercise due restraint. This would enhance the confidence of Members, in particular developing-country Members, in the multilateral trading system.

91. The representative of Argentina wished to associate his delegation with the concerns expressed by other delegations about systemic implications of initiating a dispute settlement procedure while the process for extension of transitional periods under the TRIMS Agreement pursuant to Article 5.3 was still pending in the CTG. The General Council had recommended that due restraint should be exercised regarding the use of the dispute settlement mechanism, and requests for the extension of the transition period were under consideration in the CTG. Mexico considered that under the circumstances the US request for the establishment of a panel was premature.

92. The representative of Pakistan said that in the backdrop of the Chairman's statement of 17 December 1999 and the 8 May 2000 decision of the General Council, requests for a panel on the TRIMs issues were of concern to those countries who believed in the multilateral system and the process under way in the WTO. His country hoped that both parties would continue negotiations to find a mutually agreeable solution, thereby contributing to the credibility of the system.

93. The representative of Mexico said that it had become clear that there was a need to arrive at an agreement concerning applications for TRIMs extensions. While Mexico did not question the right of the United States to request a panel, it believed that Members had undertaken to act with due restraint. It did not share the interpretation that the Philippines did not comply with its WTO obligations, as it had submitted its application for extension in due time and the matter was still pending in the CTG, which had yet to answer "yes" or "no". Mexico believed that it was not for a panel to rule on a matter that fell within the competence of the CTG. He reiterated that it was necessary to speed up the multilateral process on which Members had embarked in order to satisfactorily resolve TRIMs matters.

94. The representative of Indonesia said that his country supported the statement by the Philippines that the procedure on a matter that could not be resolved by consensus in the CTG should be referred to the General Council. That procedure should be followed at this stage, before the matter could be considered by the DSB. His country also hoped that both parties would continue consultations in an effort to find a mutually satisfactory solution.

95. The representative of Mauritius said that her country endorsed the statement by Pakistan. Mauritius did not dispute the legality of the United States' request for the establishment of a panel. However, it did regret that at a time when they were engaged in confidence-building exercise, they were unable to find a more satisfactory solution to such a situation. Mauritius urged both parties to find a solution rather than to request a panel to examine the matter.

96. The representative of the United States said that her country had exercised restraint for a year. The United States would continue working with its trading partners on TRIMs issues in order to resolve several requests with other countries.

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

7. United States – Import prohibition of certain shrimp and shrimp products

(a) Recourse to Article 21.5 of the DSU by Malaysia (WT/DS58/17)

98. The Chairman drew attention to the communication from Malaysia contained in document WT/DS58/17.

99. The representative of Malaysia said that on 6 November 1998, the DSB had adopted the Appellate Body Report and the Panel Report on this matter, as modified by the Appellate Body. The Appellate Body had found that while qualifying for provisional justification under Article XX:(g), the import prohibition imposed under Section 609 of Public Law 101-162 had failed to meet the requirements of the chapeau of Article XX, and therefore was not justified under Article XX of GATT 1994. The Appellate Body Report had also recommended that the "DSB request the United States to bring its measure found in the Panel Report to be inconsistent with Article XI of GATT 1994, and found in this Report to be not justified under Article XX of GATT 1994, into conformity with the obligations of the United States under the Agreement." On 21 January 1999, the United States and Malaysia had agreed to a 13-month reasonable period of time for the United States to comply with the DSB's recommendations and rulings. This had expired on 6 December 1999. However, to-date, the United States had not lifted the relevant import prohibition imposed under Section 609 of Public Law 101-162 and had failed to take the necessary measures to allow the importation of certain shrimp and shrimp products in an unrestricted manner.

100. There was disagreement between Malaysia and the United States as to the existence or consistency with GATT 1994 of measures taken by the United States to comply with the DSB's recommendations and rulings. Malaysia had considered that in order to give effect to the DSB's recommendations and rulings, the import prohibition should be lifted immediately to allow the importation of certain shrimp and shrimp products in an unrestricted manner. Malaysia thereby requested that this matter be referred to the original Panel pursuant to Article 21.5 of the DSU. Malaysia also requested the Panel to find that by not lifting the import prohibition and by not taking the necessary measures to allow the importation of certain shrimp and shrimp products in an unrestrictive manner, the United States had failed to comply with the 6 November 1998 recommendations and rulings of the Dispute Settlement Body. It further requested that the Panel suggest that the United States should lift the import prohibition immediately and allow the importation of certain shrimp and shrimp products in an unrestrictive manner in order to comply with the DSB's recommendations and rulings.

101. The representative of the United States said that on 25 November 1998, her country had informed the DSB of its intention to implement the DSB's recommendations and rulings on this matter in a manner which would be consistent with its firm commitment to the protection of endangered sea turtles. The United States and the other parties to the dispute had reached agreement on 13 months as a reasonable period of time for implementation. That period of time had ended on 6 December 1999. Throughout the reasonable period, and again in January 2000, the United States had reported to the DSB on the steps it had taken to implement the DSB's recommendations and rulings.

102. The United States was disappointed by the decision of Malaysia to invoke the provisions of Article 21.5 with respect to the US implementation. In the spirit of the DSU, her country had sought to resolve any outstanding issues regarding implementation through good faith consultations. It had consulted with Malaysia throughout the implementation period. Recently, the United States had offered to send a high level delegation to Kuala Lumpur to discuss Malaysia's concerns. Malaysia had, however, declined the offer to engage in such consultations. The United States was puzzled by Malaysia's contention that the DSB's recommendations and rulings required the United States to withdraw the US measure in its entirety. She recalled that the Appellate Body Report had found no inconsistency between the US legislation at issue and its WTO obligations. Rather, the Report had found fault with certain aspects of the way the law was administered. As had been reported to the DSB during the implementation period, the United States had taken great care to address the DSB's findings with respect to the implementation of the US measure. Nothing in the DSB's recommendations called on the United States to withdraw its measure in its entirety, and the United States implementation steps amounted to full compliance with these recommendations. The

implementation steps had both responded to the issues raised by the Appellate Body Report, and – with the cooperation of the countries in the Indian Ocean region – had advanced efforts to conserve endangered sea turtles.

103. Having previously described the US implementation steps to the DSB, she wished to summarize those steps and to point out some recent developments since the US implementation report to the DSB in January 2000. She recalled that pursuant to the findings in the Appellate Body Report, the US Department of State had issued revised guidelines implementing its Shrimp/Turtle law. Under the revised guidelines, the United States had certified Pakistan – one of the original four complainants – as having a comparable sea turtle conservation programme. Malaysia, however, had not sought to make use of the revised guidelines. Negotiating an agreement with the governments of the Indian Ocean region on the protection of sea turtles in that region had been another key element of the US implementation efforts. Recently, the United States had provided financial assistance to facilitate the hosting of the first negotiating round by Malaysia. The United States looked forward to continuing to work with Malaysia and the other concerned governments to finalize this agreement.

104. She recalled that the US implementation efforts had included offers of technical training in the design, construction, installation and operation of TEDs to any government that had requested it. The United States had conducted a TEDs workshop in Karachi (Pakistan) in January 2000, focusing on evaluation and training issues. The United States believed that this workshop had assisted the Government of Pakistan in its adoption of a successful TEDs programme. To-date, Malaysia had not requested any such assistance. The United States was confident that the panel established under Article 21.5 and – if this matter was appealed – the Appellate Body would find that the United States had complied with the DSB's recommendations and rulings. The United States, however, regretted that Malaysia had declined its offer to consult on this matter in Kuala Lumpur and had instead decided to pursue proceedings under Article 21.5 of the DSU. Rather than expending efforts in such counterproductive litigation, the United States believed that the parties should continue to engage in cooperative efforts towards their mutually shared goal of sea turtle conservation.

105. The representative of Thailand said that his country had followed closely the implementation by the US of the DSB's recommendations and rulings in the Shrimp case. This implementation raised a number of systemic issues on which an interpretation of the DSB's recommendations and rulings might be useful. Thailand therefore welcomed the opportunity for such an interpretation through Article 21.5 procedure and would continue to follow closely developments in this regard.

106. The representative of India said that his country was a co-complainant in this dispute. In India's view, by having failed to allow the importation of shrimp and shrimp products without any restriction, the United States had failed to comply with the DSB's recommendations and rulings. India wished to reserve its right to participate as a third party in the Article 21.5 panel's proceedings.

107. The representative of Malaysia said that he wished to clarify that his country had not declined to hold consultations with the United States. In fact, Malaysia had held informal consultations by video-conference with the United States in the past week. However, the United States had requested consultations to discuss a wide range of issues, including the issue of turtle conservation. Malaysia did not think that the issue at hand was about turtle conservation, but whether or not the United States had complied with the recommendations of the Panel and Appellate Body. The compliance had not yet taken place and the improvements and fine-tuning of the guidelines were irrelevant as long as the import ban, which adversely affected Malaysia was still in place.

108. The representative of the United States wished to clarify that she did not imply that Malaysia had refused to meet with the United States, but that Malaysia had refused the US offer to send a very high-level delegation to Kuala Lumpur to resolve these issues.

109. The representative of Australia said that her country continued to have a strong interest in the US implementation of the DSB's recommendations and rulings in this case. Australia's interest reflected its substantive market access concerns, and the important issues of principle involved. Her country was still examining the request for establishment of a panel and wished to reserve its right in the matter.

110. The DSB took note of the statements and agreed, pursuant to Article 21.5 of the DSU, to refer to the original Panel the matter raised by Malaysia in document WT/DS58/17. The Panel would have standard terms of reference.

111. The representatives of Canada, Ecuador, India, Japan, Mexico, and Thailand and Hong Kong, China reserved their third-party rights to participate in the Panel's proceedings.

8. Mexico – Anti-dumping investigation of high-fructose corn syrup (HFCS) from the United States

(a) Recourse to Article 21.5 of the DSU by the United States (WT/DS132/6)

112. The Chairman drew attention to the communication from the United States contained in document WT/DS132/6.

113. The representative of the United States said that a reasonable period of time for compliance in the dispute on Mexico's anti-dumping investigation of high-fructose corn syrup **(**HFCS) had expired on 22 September 2000. Prior to that dated on 20 September 2000, Mexico had published a revised anti-dumping resolution imposing anti-dumping duties on HFCS. Unfortunately, this resolution appeared to be inconsistent with several provisions of the Anti-Dumping Agreement, and her country believed that it did not comply with the DSB's recommendations and rulings. The United States therefore sought recourse to Article 21.5 of the DSU, as set forth in document WT/DS132/6. The United States and Mexico had been discussing mutually agreeable procedures under Articles 21 and 22 of the DSU in this matter. Her country hoped to conclude those discussions in the near future, and would notify Members of their agreement.

114. The representative of Mexico recalled that at the 26 September DSB meeting, his country had informed the DSB that on 20 September 2000, prior to the expiry of the reasonable period of time, it had published in the Official Journal of the Federation the revised resolution based on the DSB's recommendations and rulings. However, it noted that the United States believed that the measures taken by Mexico to comply with the DSB's recommendations were not consistent with the Anti-Dumping Agreement and was requesting a panel pursuant to Article 21.5 of DSU. Since Mexico was convinced that it had complied with all the DSB's recommendations and rulings, the US request seemed unnecessary. However, it decided to exercise its right not to oppose the US request at the present meeting. Mexico confirmed that the parties to the dispute were working together with a view to agreeing on the best way to proceed on the matter. They hoped to be able to reach an arrangement which would take into account the interests of both parties, as well as the obligations and rights under the DSU. Once such an understanding was reached, it would be notified to the DSB.

115. The DSB took note of the statements and agreed, pursuant to Article 21.5 of the DSU, to refer to the original panel the matter raised by the United States in document WT/DS132/6. The Panel would have standard terms of reference.

116. The representatives of the EC and Mauritius reserved their third-party rights to participate in the Panel's proceedings.

9. Proposed nomination for the indicative list of governmental and non-governmental panelists

117. The Chairman drew attention to document WT/DSB/W/145 which contained an additional name proposed for inclusion on the indicative list in accordance with Article 8.4 of the DSU. He proposed that the DSB approve the name contained in document WT/DSB/W/145.

118. The DSB so agreed.

10. Canada - Patent protection of pharmaceutical products

(a) Statement by Canada

119. The representative of Canada speaking under "Other Business", recalled that the Panel Report on this matter had been adopted by the DSB on 7 April 2000. On 18 August 2000, an arbitrator had determined that the reasonable period of time for Canada to implement the DSB's rulings was six months from the date of adoption of the report: i.e. by 7 October 2000. Canada had met this deadline, and had fully implemented the DSB's rulings. The Governor General in Council, the executive arm of the Government of Canada, had repealed the Manufacturing and Storage of Patented Medicines Regulations, effective 7 October 2000. He recalled that these regulations had given legal force and effect to the so-called "stockpiling exception" of the Canadian Patent Act, which the Panel had found to be inconsistent with Canada's obligations under the TRIPS Agreement. The repeal of these regulations had deprived the stockpiling exception of any legal force or effect. Canada had therefore complied fully with the DSB's rulings. His delegation was willing to provide copies of Canada's implementing measure to any Member. Such information was also available on the web site of Canada's Government.

120. The DSB took note of the statement.