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WORLD TRADE ORGANIZATION

DISPUTE SETTLEMENT BODY
1 and 29 November 1995

MINUTES OF MEETING

Held in the Centre William Rappard
on 1 and 29 November 1995

Chairman: Mr. Donald Kenyon (Australia)

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1. Composition of the Appellate Body

The Chairman made the following statement:

"Following completion of further consultations subsequent to the adjourned DSB meeting of 1 November, he wished to put before the Members at the present meeting a recommendation on behalf of the six member "Selection Committee" (the Committee), for the appointment of seven persons to the Appellate Body provided for in the DSU. Members would recall that the elements of this recommendation had been outlined to them at an informal meeting held on 25 October. As Members were aware, the Committee comprising the Director-General, the Chairman of the DSB and the Chairmen of the Goods, Services, TRIPS and General Councils had been given a mandate in the Appellate Body guidelines paper (WT/DSB/1) to bring a recommendation on Appellate Body membership to the DSB. As Members were also aware the Committee had been engaged in arriving at an acceptable outcome for this important task since the beginning of this year. They had thirty-two different candidates from twenty-three different countries but with only seven places to fill. The task faced by the Committee had been made especially difficult by the excellence of all of the thirty-two candidates who had been proposed for appointment to the Appellate Body. Throughout the months that the Committee had been carefully applying itself to the task of choosing seven competent and appropriate appointees from this list to recommend to the DSB for appointment to the Appellate

Body, they had constantly in their minds the guidelines in the DSU and WT/DSB/1 governing the selection and appointment of Appellate Body members, and the need to ensure that the outcome was consistent with those guidelines. During this process, the Committee had consulted both individually with delegations and multilaterally . The Committee had also met in Geneva and had detailed discussions with each of the thirty-two candidates for appointment to the Appellate Body.

"Based on the above processes the Committee had reached a conclusion on the seven persons which he now recommended to the DSB for appointment to the Appellate Body in accordance with the relevant provisions of the DSU. These persons in alphabetical order were: Mr. James Bacchus (United States), Mr. Christopher Beeby (New Zealand), Mr. Claus-Dieter Ehlermann (Germany), Mr. Said El-Naggar (Egypt), Mr. Justice Florentino P. Feliciano (Philippines), Mr. Julio Lacarte Muro (Uruguay), and Mr. Mitsuo Matsushita (Japan). As indicated above, this recommendation was being put to the DSB at the present meeting, on behalf of the Committee as a whole, for approval. All of these people were highly-qualified for appointment to the Appellate Body and just as the Committee had, delegations had also the opportunity to study their detailed curricula vitae which had been available from the Secretariat for some months. He also wished to inform Members that all these seven persons had confirmed to him in writing their readiness to accept the draft code of conduct currently in the final stages of preparation. In addition to asking the DSB to accept at the present meeting that the seven recommended persons be appointed to the Appellate Body, he was also asking the DSB to accept that they be formally appointed from mid-December 1995. In submitting this recommendation to the DSB, he reiterated precisely what the collective task was at the present meeting. The DSB was in effect making the initial seven appointments to the Appellate Body. This was the only occasion on which the DSB would appoint all the seven people on a single occasion. According to the "staggered term" arrangements written into the DSU, the seven persons appointed to the Appellate Body would not be replaced simultaneously. This should enable flexibility to be maintained in the composition of the Appellate Body consistent with the guidelines that Members already had. He thought it was important as they were taking their decision at the present meeting, that Members understood and kept those facts very clearly in mind.

"He was sure that Members would also readily agree that in future appointments to the Appellate Body the DSB would have to be guided by the need to have persons of the highest calibre with demonstrated expertise in the law, international trade, and the subject matter of the covered agreements, the need also for an Appellate Body which would be broadly representative of the WTO membership, would reflect different legal systems and take other factors such as different geographical areas and levels of development into account. These principles would ensure that appointments to the Appellate Body would remain an open competition aimed at ensuring that highly competent people were always secured for this important task. The decision to be taken at the present meeting on the Committee's proposal did not mean that the composition of the Appellate Body would remain the same over time and no rights might be derived from the initial composition. The particular regional or national distribution of initial appointments to the Appellate Body therefore, in no way compromised the scope for different regional or national compositions on future occasions.

"One other point that he wished to raise was the need for Appellate Body members, once appointed, to work closely together to ensure that there was policy consistency, that the Appellate Body operated in a coherent way as envisaged by the DSU and that obligations under the DSU and the covered agreements were not increased or rights diminished through the appeals process. He indicated his intention to request the Appellate Body in drawing up its internal working procedures to work out appropriate arrangements, consistent with the provisions of

the DSU, to cover these issues. On the basis of the processes which had enabled the Committee to reach its conclusion on initial appointments to the Appellate Body and the understandings outlined above, which he proposed be included in the record of this meeting, he was submitting for approval to the DSB the above-mentioned seven persons as initial appointees to the WTO Appellate Body and for agreement to their formal appointment from mid-December 1995."

The representative of Argentina said that his delegation supported the recommendation on the composition of the Appellate Body submitted by the Chairman, on behalf of the Committee, at the present meeting. Argentina believed that this recommendation not only fully complied with the criteria established for the selection process such as the professional qualifications but also respected other factors such as different geographical areas, levels of development and legal systems. He stressed the transparency with which the process of selection had been dealt and thanked the Chairman for the enormous effort in carrying out this process. These appointments completed the process of establishing the institutional structure pursuant to the WTO Agreement under the DSU. Undoubtedly, the authority of members and the Appellate Body would constitute a central element in the functioning of the multilateral trading system. It was indispensable that the Appellate Body members continued to be selected only on the basis of the professional qualifications and the criteria established by Members and the DSU. He supported the proposal that members of the Appellate Body be formally appointed as of mid-December 1995.

The representative of the European Communities said that on several occasions in the past weeks he had the opportunity to inform the Chairman that the Communities were not satisfied with the proposal concerning the composition of the Appellate Body. The Committee's task had been extremely difficult since the parameters at its disposal were impossible to reconcile. The Communities attached importance to the functioning and credibility of the WTO, and to the establishment of the new dispute settlement mechanism with the Appellate Body as a key-stone. They wished for unilateralism to be ended and to ensure that any difficulties would be raised and dealt with in the WTO. It was in the light of this key objective that they would not oppose the composition of the Appellate Body proposed by the Chairman at the present meeting. They had no reservations with regard to any of the individuals proposed. They neither questioned their competence nor their integrity and objectivity. However, the membership of the Appellate Body proposed by the Chairman at the present meeting could be improved in such a way as to reflect a greater balance sought by the Communities. The Communities would be submitting, at the latest, to the Ministerial Conference to be held in Singapore in December 1996, a proposal with the view to ensure that the composition of the Appellate Body was more balanced and took into account the role of the Communities in the multilateral trading system. They would be closely following the work of the Appellate Body and the drafting of its working procedures. The Communities shared the Chairman's view regarding the need to ensure consistency of the work of the Appellate Body. At its meeting on 20-21 November the Council of the European Union had issued a statement concerning the Appellate Body and this text was now available in all WTO official languages.

The representative of India expressed his country's gratitude to the Committee for bringing the process of selection of the Appellate Body members to its conclusion. While there might be some differences as to the evaluation of the Committee's conclusions its task had been more difficult and complex than originally envisaged. He noted that the Chairman referred to the selection process in general and the guidelines in the DSU and WT/DSB/1 in particular, and that the Committee had consulted with delegations regarding their preferences and expectations, and met with all the thirty-two individual candidates. His delegation like others had been following the selection process very closely and carefully. He recalled that the Chairman had always stressed that the Committee would be exercising its mandate strictly in accordance with the agreed guidelines. At the DSB meeting on 29 March the Chairman had indicated that in the discussions with various delegations he would focus on two specific questions: (i) which of the suggested names on the list, apart, of course from individual delegations' own suggestions, they considered the most appropriate appointees to the Appellate Body; and (ii) why,

in light of the guidelines set out in Article 17 of the DSU and WT/DSB/1, individual delegations considered these persons the most appropriate appointees to the Appellate Body.

India's consistent approach had been that the DSB had entrusted the selection process to the Committee which would and should act independently, taking into consideration only four elements: the guidelines in Article 17 of the DSU and WT/DSB/1, the preferences expressed by individual delegations to the Committee, and the Committee's assessment of various candidates based on their personal interaction with them. Towards the final stages of the selection process, the Committee's determination to take into consideration only the four elements mentioned above appeared to have weakened. The Committee appeared to have been influenced by considerations not related to these four elements. It appeared that while most delegations had been asked which candidates they considered the most appropriate appointees to the Appellate Body and why, some delegations seemed to have the privilege of answering a question as to which candidates they objected to. However, they seemed to have no obligation to answer why. India regretted that this "extraordinary privilege" enjoyed by a few delegations seemed to influence the final outcome decisively. It would have preferred objections, if any, to be raised in the multilateral forum. This had enhanced the transparency and credibility of the selection process. An inevitable and unfortunate consequence of weakening the Committee's determination towards the final stages of this process seemed to be that in the final list of candidates, expertise in the area of covered agreements was under represented. India regretted that the Committee comprised of six individuals known for their integrity, ability and long and rich experience in the multilateral decision-making had allowed its determination concerning the selection process to be weakened. He recalled that at different stages of the selection process, he had faced some difficult problems and that he had always gone along with what he had perceived to be in the best interest of the integrity and credibility of the selection process.

At the present meeting, he raised some concerns and disappointment about the selection process so that in future, learning from this experience, one might devise a better selection process. Notwithstanding its reservation and disappointment about the selection process, India did not wish to raise any objection to the composition of the Appellate Body proposed by the Chairman at the present meeting. He hoped that the Chairman and the DSB would appreciate and understand India's difficulty in formally joining the consensus. He stressed that his comments concerned only the selection process, and that India was glad to have seven persons on the Appellate Body who were responsible for making it a true symbol of multilateralism, credibility and objectivity. He also noted the Chairman's reference to the fact that the work on the rules of conduct still remained to be completed. India's concerns on this matter were well known and would not be reiterated at the present meeting. Finally, he added that it would have been better if the persons selected for the Appellate Body had only been contacted after their approval by the DSB. The working procedures of the Appellate Body should not directly or indirectly modify the provisions of the DSU. He recalled that Article 17.9 of the DSU stated that "the working procedures shall be drawn up by the Appellate Body in consultation with the Chairman of the DSB and the Director-General, and communicated to the Members for their information." India would be closely following the process of drawing-up these working procedures and hoped that the Chairman and the Director-General would ensure that they were not contrary to the letter and spirit of the WTO Agreement.

The representative of Malaysia, speaking on behalf of ASEAN countries, said that ASEAN countries supported the recommendation on the composition of the Appellate Body submitted by the Chairman at the present meeting. The seven appointees were suitable and competent to fulfil their task. However, at this stage it was too early to consider the possibility of reviewing the membership of the Appellate Body. They noted the understanding concerning the appointments of seven members which in their view would provide an important guideline in the future.

The representative of Brazil said that on previous occasions, his country had expressed systemic concerns regarding the composition of the Appellate Body. At the present meeting, although Brazil had even broader systemic concerns, it was ready to join the consensus regarding the seven persons recommended for appointment to the Appellate Body in order to ensure the full operation of a rule-oriented multilateral trading system. In that spirit, Brazil recognized the individual qualifications of the persons selected who would have the independence and lack of affiliation required in the DSU which envisaged an unpoliticized Appellate Body. Brazil believed that a decision to be taken at the present meeting should lead to that aim.

The representative of Mexico thanked the Committee for the proposal on the composition of the Appellate Body. The selection process was not an easy task since only seven individuals were to be selected out of many highly-qualified candidates. Mexico was glad that as indicated by the Chairman the present composition of the Appellate Body would not constitute a precedent. This was a positive approach since it was only at this stage that all seven members of the Appellate Body had to be selected. Mexico noted with concern that some developments took place between the informal meeting of the DSB on 25 October and the present meeting. The Appellate Body membership should not be subject to country-quotas or regional distribution. This would undermine the credibility of the WTO. Rules and guidelines for the selection process had already existed providing in particular that the Appellate Body membership should be broadly representative of the WTO membership. Factors such as different geographical areas, levels of development, and legal systems should also be taken into account. Mexico supported the composition of the Appellate Body and endorsed different elements enumerated by the Chairman.

The representative of Egypt, speaking on behalf of the African Group, expressed gratitude to the Committee for its recommendation on the composition of the Appellate Body. Although the Committee's task had not been easy the seven candidates recommended for appointment proved the fairness, objectivity and seriousness of the selection process consistent with the existing guidelines. This should not be interpreted as being against other candidates who also had good qualifications and credentials. He thanked all countries for their understanding and cooperation which successfully led to the recommendation for the establishment of the Appellate Body, as an important step to ensure the reliability, credibility and integrity of the dispute settlement system. The composition of the Appellate Body would not mean that any country represented therein would have an automatic right. All regions should be represented in the Appellate Body, and in particular Africa. Egypt had always stressed the need for the balanced regional representation of the Appellate Body, and in particular a participation of an African candidate of the highest calibre. Africa should not be marginalized and should play a significant role in the world trading system. Africa with its rich human and natural resources had the potential to become an active partner in the international trading system. African countries should be treated equally with other trading partners in the WTO, which had a guarantor of credibility namely, the dispute settlement mechanism including the Appellate Body.

The representative of Switzerland said that his country was aware of the Committee's effort to make the recommendation on the composition of the Appellate Body to the DSB. His delegation would abstain from commenting in detail on this composition. However, he noted that the composition proposed at the present meeting did not correspond with some basic criteria stipulated in the DSU. A definition of the European entity was too restrictive: i.e., it represented an erroneous approach of economic and political realities and therefore was not correctly reflecting a "representative balance". Certain malfunctioning in the process of consultations and selection took place which his country wished to be avoided in the future. However, Switzerland would not "formally oppose" the recommendation submitted by the Chairman at the present meeting. He drew attention to the notion of the "coherent approach" referred to by the Chairman which should not imply directly or indirectly any questioning of the decision-making process of the Appellate Body. The Appellate Body was one of the central institutions of the WTO and his country would be following its work very closely. The next stage

which was the drawing-up of the working procedures was very important for the functioning of the Appellate Body and Members relied on the wisdom of those involved in this process and in the application of working procedures. Switzerland expected the Appellate Body to carry out its functions in the independent manner and in a truly multilateral spirit. It must begin its work and operate smoothly. The future of the system depended on it and this was the goal of all Members.

The representative of Morocco said that the Committee had a difficult task since there were many sensitive issues to be taken into account but it had found a good compromise. Morocco supported the composition of the Appellate Body proposed by the Chairman and expressed gratitude to the Committee for its determination to bring about this result which like any human endeavour could not be perfect. This type of process implied choices and any choice meant that there were some aspects which could not be met. All candidates were highly-qualified and competent and their composition reflected different interests of the WTO Members.

The representative of Jamaica congratulated the Committee for having been in a position to submit to the DSB a slate of persons for appointment to the Appellate Body. The Committee's task was not easy and Jamaica commended it for its perseverance and its hard work. With the announcement of the list of candidates an important piece in the legal framework of the WTO had been put in place thus ensuring and guaranteeing its smooth operation. His delegation was aware of the difficulties faced by the Committee in having to select seven persons " of recognized authority, with demonstrated expertise in law, international trade and the subject matter of the covered agreements generally" from the list of thirty-two persons. The Committee would have had equal difficulties if the numbers of members had been larger. He recalled that in the informal consultations his delegation had indicated the names supported by his country. Some of these names were not on the list. Nevertheless Jamaica accepted the recommendation submitted by the Chairman at the present meeting and hoped that it also be accepted by other Members.

The representative of Peru congratulated the Committee for submitting the recommendation on the composition of the Appellate Body at the present meeting. The criteria for the selection process had been respected scrupulously. The list of selected candidates reflected the results of the consultations and the agreed criteria and constituted a balanced representation of the WTO membership. Peru was glad that this phase had come to an end which would complete the process of establishing a dispute settlement system which would make the WTO credible on the international scene.

The representative of Norway said that the dispute settlement system was a corner-stone and had the Appellate Body at its summit. Much time had been devoted to recommending its composition. Norway welcomed the proposal by the Chairman since time was running short. His delegation recognized that not everybody could be equally satisfied with this recommendation. The crucial point was not whether everyone agreed equally with every aspect of the package but that the present choice of candidates, from a given number of countries must not be considered as a blueprint for the future. Norway accepted the present distribution of candidates on the understanding that this would not be permanent to avoid automatic disqualification of a certain number of other candidates, and countries, in the future. On this understanding Norway supported the recommendation of the Committee and expressed appreciation for its indefatigable efforts at coming to an acceptable conclusion.

The representative of the United States said that his delegation was glad that Members were about to reach an agreement in this difficult area. The appointment of the Appellate Body members was central to the effective implementation of the DSU and there were perhaps no results in the Uruguay Round which would be more important than the DSU. The United States believed that the seven individuals to be appointed were extremely qualified for the job. All appointees of the Appellate Body agreed to abide by the proposed rules of conduct. His delegation looked forward to working with them in building a credible WTO.

The representative of Australia said that his country wished to congratulate the Committee on completing its work and joined a consensus in accepting the recommendation on the composition of the Appellate Body. All delegations recognized that the task of the Committee in selecting seven members out of a number of highly-qualified candidates had been difficult. Australia considered that candidates recommended were all of a very high calibre. The Appellate Body would be well qualified and broadly representative of the membership of the WTO. The balanced and broad membership of the Appellate Body would help establish the credibility of the dispute settlement mechanism. Australia did not believe that a narrow membership would have done so much to establish this credibility. At the same time Australia was of course strongly disappointed that its candidate -- Mr. M.J. Duffy -- was not on the list. His outstanding experience as a Minister for Trade and Negotiations and in particular as an effective and active chairman of the Cairns Group during the Uruguay Round negotiations would have made a valuable contribution to the Appellate Body. Australia understood the obligation of the Committee to provide the slate of candidates which could be accepted by consensus and at the same time was adhering scrupulously to the agreed guidelines for the selection of candidates. Some seemed to think that the Committee had been too independent and some seemed to think that it had not been independent enough. His delegation would rather characterize the Committee as having chosen a sensible course through the obstacles confronting it and as having applied scrupulously the agreed guidelines.

The representative of Hong Kong said that his delegation had recognized that the selection of the Appellate Body members had been an extremely difficult task, given the limited number of seats, the excellence of the candidates, and the complexity of the guidelines. Hong Kong was naturally disappointed that its candidate had not been selected. However, it accepted that the matter was much wider and much more important than the individual interest of Hong Kong. At issue was the credibility of the WTO, and the integrity of the DSU. Hong Kong believed that, in reaching its decision and making its recommendations, the Committee had operated in full compliance with the agreed guidelines. Despite its disappointment Hong Kong recognized the merits of all seven recommended candidates. It had taken a little more time than expected for a consensus to develop. Nevertheless Hong Kong believed events would prove that any additional time spent was worthwhile. Hong Kong certainly accepted the continued relevance of "balanced representation". At the same time, caution must also be exercised against the future selections for the Appellate Body being seen too much in terms of a straight forward regional allocation.

The representative of Canada said that on several occasions her country had stressed the importance of the Appellate Body and its critical role in the WTO. Canada supported the recommendation submitted by the Chairman at the present meeting. Although it was disappointed that neither of its Canadian candidates was among the individuals recommended, it was pleased that its non-Canadian candidate was among those recommended to serve on the Appellate Body. It was certain that the seven selected individuals would perform their duties competently and with the utmost intellectual rigor. She believed the Appellate Body should be made operational as quickly as possible and its members be officially appointed as of the mid-December 1995. Future appointments should be guided by the principles contained in the DSU and the guidelines established by Members and no fixed national or regional composition should be established or implied from the present composition. The suggestion made by the Communities required some reflection. While ministers agreed at Marrakesh to complete a full review of dispute settlement rules and procedures within a four year period after the entry into force of the WTO, Members had to carefully reflect on the consequences of making amendments to the WTO in a "piecemeal fashion", especially on issues as important as the Appellate Body. She indicated that her country recognized the tremendous effort of the Committee to achieve its recommended list of individuals and thanked the Committee for all time and efforts.

The representative of Chile said that his delegation recognized that the task of the Committee was difficult since different criteria had to be taken into account. Chile believed that the candidates

selected reflected the results of the consultations and the agreed guidelines in particular "balanced representation". The selection process, despite certain difficulties had been transparent and objective.

The representative of Korea thanked the Committee for the efforts to accomplish the difficult task to select members of the Appellate Body. Korea was encouraged that a collective commitment of the WTO had finally overcome all other concerns. His delegation welcomed the proposal by the Chairman as another significant step in strengthening the structure of the WTO.

The representative of Costa Rica welcomed with satisfaction the proposal submitted by the Chairman at the present meeting. The list of members "comprised persons of recognised authority, with demonstrated expertise in law, international trade and the subject matter of the covered agreements generally."[1] The task had been difficult and was brought to a satisfactory conclusion. The composition proposed by the Chairman at the present meeting did not commit Members to national and geographical parameters in the future. His delegation supported the idea that the Appellate Body should start in mid-December.

The representative of Colombia said that his delegation supported the selection of candidates proposed for the Appellate Body. The present membership should not constitute a precedent in the future, however, there were some elements which one should take into account such as quality of the persons selected and certain minimum regional representativity.

The Dispute Settlement Body took note of the statements and approved the recommendation on the composition of the Appellate Body proposed by Chairman on behalf of the "Selection Committee".

The Chairman thanked all members of the "Selection Committee" and said that this had been a genuine collective effort and no one member had put more into effort or had been more influential in the process. Without an input of time and genuine commitment to getting the job done in a professional way, it would not have been possible to reach an acceptable conclusion. He also thanked the WTO Members. This had been an important but difficult task for all. Many had been called upon to make difficult decisions and judgements. Without a willingness to shoulder those responsibilities, an outcome also would not have been possible. He paid tribute to the spirit in which this decision was taken at the present meeting. Much had been said about the professional competence of appointees. It had been important to demonstrate that appointees had the confidence of the WTO and they were sure that they would do a competent and effective job for the WTO. Finally, he informed the DSB that the Appellate Body members would be in Geneva for the week commencing 11 December to begin work on internal procedures. He hoped that all Members would have the opportunity to meet with them then.

The Dispute Settlement Body took note of the statement.

2. European Communities - Duties on Imports of Grains
   - Request by the United States for the Establishment of a Panel (WT/DS13/2)

The Chairman proposed that, since the parties to the dispute were still consulting, this item be considered at the next meeting of the DSB.

The Dispute Settlement Body took note of the information.

[1] Article 17.3 of the DSU

3. Additional proposed nominations for the indicative list of governmental and non-governmental panelists (WT/DSB/W/13)

The Chairman recalled that at its meeting on 27 September 1995 the Dispute Settlement Body had approved the names proposed for inclusion on the indicative list of Governmental and Non-Governmental Panelists contained in document WT/DSB/W/8. This indicative list was subsequently circulated as an unrestricted document (WT/DSB/2). He then drew attention to document WT/DSB/W/13 which contained additional names for inclusion on the indicative list. These names were submitted for approval by the DSB in accordance with Article 8:4 of the DSU which stated that "Members may periodically suggest names of governmental and non-governmental individuals for inclusion on the indicative list, providing relevant information on their knowledge of international trade and of the sectors or subject matters of the covered agreements, and those names shall be added upon approval by the DSB" He proposed that the DSB approve the names contained in WT/DSB/W/13, and that upon its approval these additional names be circulated as an unrestricted document.[2]

The Dispute Settlement Body so agreed.

4. Korea - Measures Concerning the Shelf-Life of Products (WT/DS5/5 and Add.1)

The representative of the United States said that his delegation wished to express its serious concern that Korea was not implementing the agreement on shelf-life of products reached on 20 July 1995 with the United States which had been circulated in WT/DS5/5. This concern was based on deficiencies in the communication from Korea contained in WT/DS5/5/Add.1 and circulated on 24 November as well as in the failure of Korea to take actions by 1 October as specified in that agreement. In accordance with this agreement Korea were to notify as from 1 October 1995 all corresponding Harmonized System (HS) numbers for each item subject to a shelf-life requirement, or for which a shelf-life requirement was removed or proposed to be removed. Korea had failed to do this. Instead, in its 12 October notification (WT/DS5/5/Add.1) Korea stated that the HS numbers in the notification were only for reference, and that the measures described in the notification did not necessarily apply to all products included in the HS headings. This was not the United States' understanding. The United States and Korea had negotiated HS numbers to avoid any misunderstanding as to the coverage of the agreement. The coverage of the measures to be taken by Korea should be no less than the coverage of the HS numbers specified in the settlement. The agreement obligated Korea to allow manufacturers to determine shelf-life requirements for all shelf-stable products. Korea had failed to do so in its notification. Finally, Korea had indicated in its notification that the products had to comply with its Food Code even if they were specifically listed in the settlement, thus giving the Korean Food Code precedence over the agreement. This could nullify the entire agreement. The inadequate notification, coupled with Korea's unilateral interpretation of the meaning of the agreement were extremely troubling. The United States had conflicting reports from Korea as to the meaning of the notification and whether it was intended to be inconsistent with the agreement. The United States urged Korea to promptly clarify and correct its October notification, prior to the next DSB meeting and to promptly take and notify the rest of the actions required to be taken by 1 October 1995.

The representative of Korea noted that his country's position on the matter raised by the United States had been explained in detail at the meeting of the Committee on Sanitary and Phytosanitary Measures on 15-16 November 1995.[3] The comments made by the US at the present meeting were the same as those made at that meeting. He therefore did not wish to reiterate his delegation's statement

[2]WT/DSB/2/Add.1.

[3]G/SPS/R/3

at that meeting which would be circulated as part of the Committee's record. He underlined that Korea's October notification of HS classification was only the first of the series of notifications planned for the implementation of the agreement between the United States and Korea. Another notification would be forthcoming shortly. Therefore, it would be only premature at this stage to discuss omissions or technical errors of the first notification. Upon completion of all notifications his delegation would be happy to respond to any specific question.

The representative of Australia said that at the meeting of the Committee on Sanitary and Phytosanitary Measures Australia had also expressed some concerns about the transparency of implementation of the agreement on the shelf-life of products between the United States and Korea. He wished to reiterate these concerns. Australia looked forward to receiving Korea's next notification.

The representative of Canada said that her country also had serious concerns about Korea's shelf-life requirement and had participated in the consultations with the United States and Korea in June 1995. Canada was concerned that the agreement did not cover bottled water. Aside from bottled water, Canada had supported the agreement with respect to Korea's commitment to implement manufacturer-determined shelf-life of products. Canada shared concerns expressed by the United States that Korea was not implementing the agreement on shelf-life of products.

The Dispute Settlement Body took note of the statements.