

WORLD TRADE ORGANIZATION

RESTRICTED

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General Council
8 March 1999

MINUTES OF MEETING

Held in the Centre William Rappard
on 8 March 1999

Chairman: Mr. Ali Mchumo (Tanzania)

1. Trade measures taken by the United States on 3 March 1999 against European Communities' Imports (WT/GC/20)

The Chairman said he had convened this special meeting of the General Council at the request of the European Communities in accordance with Rule 2 of the Rules of Procedure of the General Council, which provides that meetings of the General Council may be convened with shorter notice than ten days for matters of significant importance or urgency at the request of a Member concurred in by the majority of the Members. He drew attention to the communication from the European Communities in document WT/GC/20.

The Director-General emphasized the essential importance of the DSU in the life of the organization and for the peaceful development of the multilateral trading system, and said that this was a shared responsibility of all the Members. The banana issue had been, and continued to be, difficult and complex. An outcome was just a few weeks away. The rule-based system was working, and would continue to work, even if there were different interpretations about some important aspects related to the banana issue. The road map for the legal settlement of this question was in place, and he recommended that Members follow it. This was contained in the final statement made by the DSB Chairman on 29 January 1999, which contained three important points: first, the two parties should find a mutually agreed solution to their problems in the bilateral consultations under Article 4 of the DSU. This was not a procedural suggestion, but rather at the heart of the WTO legal system. The solution to a problem was first sought by mutual agreement and not by imposing rulings on either side. He invited both parties to renew their efforts in this direction. Second, because there were different interpretations of the assumptions which had to be taken into account in applying compensatory measures - the question of Articles 21.5 and 22 - the same individuals had been given the task of arbitrating the level of suspension and determining the consistency of the new EC measures with the rules of the WTO. In the next few weeks, both determinations would be ready. The credibility of the WTO system would then prove its strength. Third, the systemic issues concerning the differences between the two parties over the relationship between Articles 21.5 and 22 had to be clarified. Examination of these Articles would begin on 16 March. Members needed to draw a lesson from what was happening at present. There would be other difficult issues in the future - ones which would also have a high profile for public opinion and for the trading system. They would require very careful handling in order to avoid a situation which could endanger the system. All parties to a dispute needed to work positively towards a solution within the WTO rules and procedures. The real issue was not the credibility of the dispute settlement system. That system was, and would continue to be, ready to give its legal response to the disputes brought to it. It was the

users of the system who would put their credibility at stake if they did not act in conformity with the letter and the spirit of the system, which sought above all to produce mutually acceptable settlements.

The representative of the European Communities said that on the Director-General's first point, the two parties were indeed proceeding with bilateral consultations. Regarding the reasons for requesting the present meeting, he said that the Community was faced with the fact that a leading WTO Member had decided to defy the rules and procedures of the organization and had taken action in blatant disregard of its fundamental obligations. On 3 March the US Trade Representative had announced that the US had taken measures affecting imported products from the EC of a value of over US\$500 million in retaliation for alleged non-compliance with certain DSB recommendations and rulings in the matter of the EC banana import regime. While these measures had been presented as provisional pending the final decision of the arbitrators in that case, they were as damaging to EC export trade as if the full 100 per cent duties had been applied immediately. EC exports of these products had been effectively stopped. The wording of a press release by the US Trade Representative indicated that the measures were being taken, and importers were reacting by stopping imports immediately. The measures were unlawful and unacceptable. The United States had not been authorized by the DSB to take any action, and no determination of EC non-compliance had been made under any WTO procedures. Thus, the action had to be considered as having been taken outside the WTO rules and procedures, and was therefore totally unilateral in nature. Had the United States waited until the arbitrators made a final decision – a wait of some three weeks – it could have taken action consistent with that decision, assuming that non-compliance was found and retaliatory action found necessary. In order to gain a few weeks, the US had flouted the DSU and taken action which, if not promptly withdrawn, would put at risk the fundamental multilateral basis of the DSU as agreed in the Uruguay Round. The Community was asking the General Council to address this serious situation, and Members to take a position that would make clear to the United States that its actions were neither authorized nor lawful, were rejected due to their unilateral character and should be withdrawn pending the conclusion of the ongoing arbitration procedure. In short, the US should be asked to respect its obligation under Article 22.6 of the DSU that "concessions or other obligations shall not be suspended during the course of the arbitration process".

He quoted from recent remarks by the US Trade Representative to the effect that the EC had four times lost its case regarding its banana import regime and refused to comply with the WTO rules, and that the US would enforce its rights under the WTO to take appropriate action against the EC or any other country's non-compliance with panel rulings (emphasis added). The US was declaring war on any and all Members whose compliance it decided was inadequate, and on the basis that it would enforce its rights but not respect its obligations. This was not acceptable in a rules-based system. The US presentation of this case had been biased and misleading. For example, it had neglected to say that each of the four panels had examined a different banana import regime, and that each time the EC had taken action to modify the practices which had been condemned. To say, as the US had, that the EC refused to comply with WTO rules was a travesty of the truth and a failure to recognize the changes made. The EC had a much more difficult task to perform than the US, in that it had to respect its contractual obligations vis-à-vis all WTO Members, including the banana exporters of South America, and also to respect its treaty obligations towards the ACP countries. The US had only to pursue the interests of one company. The EC would abide by the outcome of the current dispute settlement procedure as to whether it had complied or not, and would follow whatever recommendations were made. The US reference to "appropriate action" seemed to indicate that the US would pursue unilateral action if that was judged necessary. Whether Members liked it or not, they were at a juncture where a precedent for future action in dispute settlement cases was going to be established. He called on Members to make clear that unilateral trade measures such as those imposed by the US were never justified, and were neither lawful nor acceptable.

The WTO had been designed to be a rules-based system with the certainties and predictability this implied. This meant that Members had accepted the logic of globalization and - in the collective

interest – to merge to some extent their individual sovereignties into a supranational legal trading system. This concept was familiar to the EC member States and to others who had agreed to merge their trading policies within customs unions. Greater efforts had to be made by governments to explain the ways in which the WTO Agreements as a whole, and the DSU in particular, limited Members' individual freedom to act, while offering an alternative but mutually exclusive approach to solving trade disputes through the force of due legal process, and of collective multilateral peer pressure, and the willingness of each Member to respect its obligations. Excessive expectations flew in the face of the system, which was based on the careful, patient implementation of Members' respective obligations.

The representative of the United States thanked the Director-General for his remarks which she understood to be aimed at bringing the two parties together. She agreed that it was the responsibility of the parties to find a mutually agreed solution. That was what the US had tried, and would continue to try, to do. Unfortunately these efforts had not been successful to date. The US agreed that it was necessary to re-examine Articles 21.5 and 22. Months earlier her delegation had called for clarification and improvement of these provisions and would continue to work in the context of the DSU review process. The US looked forward to receiving the arbitrators' final report which the Director-General had said would be issued within the next few weeks. The US action under discussion ensured that the US would be able to implement the arbitrators' decision, and to implement it as though the arbitrators had issued it by the date set forth in the DSU rules. The US President, when asked about this dispute, had said that it was not really about bananas, but about rules, and that one could not maintain an open trading system – which was essential to global prosperity – unless the rules were abided by. The US had done that. Her delegation was struck by the fact that the EC had requested discussion of this matter in the General Council when it had also asked for consultations under Article 4 of the DSU. Discussion of this matter was important to the integrity of the dispute settlement system, but the EC had shown little faith in that system, since it had brought this matter to the General Council before taking it to the dispute settlement system. Her delegation was particularly concerned about the precedent this would set – that every time a Member was concerned about the actions of another Member it would ask for an urgent meeting of the General Council to discuss its complaint, in addition to holding consultations. If the EC disputed the right of the US to postpone liquidation of entries – i.e. not to impose additional duties at the present time – it could simply follow the normal procedures of the DSU. This was the second time in 1999 that the EC had requested a General Council meeting to claim that the US was acting outside the bounds of its WTO obligations. The real reason for the present meeting was the EC's failure to implement a WTO-consistent banana regime within the reasonable period of time, and its lack of respect for the plain meaning and purpose of the dispute settlement system. One month earlier the EC had attempted to block the adoption of a DSB agenda and had called for a point of order to prevent that body from doing its job, and in January it had taken the unusual step of having a panel established against itself. The EC had put itself above the DSU by failing to implement the DSB's recommendations and rulings concerning the banana regime within the specified reasonable period of time, and had recklessly sought to have its dispute settlement problems solved by a vote in the General Council. It had earlier requested the General Council to make an authoritative interpretation of the DSU by vote, undermining the amendment provisions of the WTO Agreement and attempting to rewrite Article 22. That Article was a necessary part of the DSU because Members had to implement the results of dispute settlement proceedings even when it was not convenient for them to do so. The time frames in Article 22 were necessary to establish some endpoint at which the prevailing party would no longer have to continue suffering nullification or impairment without compensation or recourse. Given the EC's failure to implement a WTO-consistent banana regime, the US was completely within its rights to seek recourse to Article 22. Given that the arbitrators had failed to complete their work within the clear Article 22 deadlines, the US was also within its rights to preserve its ability to suspend concessions as of 3 March. She clarified that the action taken by the US on 3 March was not itself a suspension of concessions, as duties had not been increased. The US had merely preserved its rights to increase duties as of 3 March depending on the outcome of the arbitration proceeding. If the EC

was convinced that the arbitrators' decision would be in its favour, it should encourage its exporters to continue shipping to the US. She reaffirmed that the US would abide by the arbitrators' decision.

Regarding the EC's attempt to circulate what it purported to be an official US document, she asked what would motivate a Member of this organization to circulate what was clearly another Member's internal, draft document that was not attributable to any official or agency. This was nothing more than an attempt by the EC to divert attention from the EC's failure to implement a WTO-consistent banana regime. Regarding the reference in the EC's communication (WT/GC/20) to the fact that Members had invested too much in the dispute settlement system to allow it to be destroyed by unilateral action, she asked what the EC had invested. The US had fully implemented three adverse DSB recommendations and was in the process of implementing a fourth. Others, apart from the EC, had done the same. The EC, however, had put itself above the WTO dispute settlement system by refusing to do this and by attempting to abuse the DSU procedures. Regarding questions raised by a number of delegations, she said that it was not true that in the normal US import system, importers had the right to immediate liquidation of entries. Under normal procedures, the US Customs Service did not schedule liquidation of entries until 314 days after entry, and an importer did not have a right to liquidation until 365 days after entry. No WTO Member had ever challenged this practice. The US action to withhold liquidation ensured that no entries of the selected products from the EC would be scheduled for liquidation until 314 days after entry, consistent with normal Customs Service practice and statutory obligations. Regarding bonding requirements, the US Customs Service had bonding requirements for all entries, and the authority to review the sufficiency of bonds for all entries. An entry bond included a provision guaranteeing payment of any increased duties later found to be due. Given that the selected product might be subject to 100 per cent duties as a result of the arbitration proceeding, Customs would review the bonds and require additional or increased bonds for entries of the selected products consistent with its normal practice and authority. Regarding the EC claim that withholding liquidation or requiring additional or increased bonds would stop imports of the selected products, this question would have to be put to the importers. The EC's repeated claims that its banana regime was WTO-consistent indicated that the EC should not be concerned about any contingent liability for withheld duties. The EC had requested consultations concerning the US withholding of liquidation, and the US would endeavour to answer any reasonable requests for factual information concerning this matter. Regarding one delegation's statement that the US had only to wait two weeks in order to follow the DSU rules, she said that the arbitrators had been unable to meet a deadline stipulated in the DSU rules, which had led to the US exercising its rights and withholding liquidation. The US action would give the arbitrators time, and at the same time preserve the US rights in this matter. The US had acted in a very restrained manner. This case had involved more than seven years of negotiation over one import regime. The US had waited patiently, and additional duties would be imposed only if the arbitrators ruled in that direction.

In conclusion, she said Members had repeatedly been convened at the request of the EC to hear its complaints regarding threats to the system posed by the behaviour of the US. In a case which centered on the EC's failure to observe its WTO obligations during the better part of a decade, and where the EC had not even afforded the US the common courtesy of consulting on its planned implementation during the 15-month period, the EC's continued resort to procedural tactics was wearing thin. The EC had used every delaying tactic available and every forum possible in order to avoid implementation and to stall. In doing so, the EC had shown a willingness to take tremendous risks with the rules-based system of the WTO. It was regrettable that the EC had not instead used its resources to develop a WTO-consistent regime that could resolve the banana dispute. It was ironic that after years of defying WTO obligations and blocking trade, the EC suddenly considered this matter urgent.

The representative of St. Lucia said that the Director-General had pointed out that the banana dispute was just a few weeks from an outcome, that the systemic issues regarding the relationship between Articles 21.5 and 22 would be examined, and that the two parties were proceeding with

bilateral consultations. It was clear that a Member could suspend concessions only with the authorization of the DSB. She recalled the statement of the DSB Chairman on 29 January in which he had said that a request for arbitration under Article 22.6 would mean that the DSB would not authorize suspension of concessions at that meeting, and that after the arbitrators' award was circulated, a new request for the suspension of concessions could be made to the DSB. The arbitrators' award had not been circulated. The DSB had clearly not authorized the suspension of concessions by the US. The US action to withhold customs liquidation combined with the announcement of the proposed retroactive imposition of 100 per cent duties was a de facto suspension of concessions in violation of the WTO Agreement. It introduced a level of uncertainty in US/EC trade which operated as a disincentive to the importation of EC products. The viability of her country's economy depended on the outcome of the bananas dispute. However, it was important that all WTO Members condemn the US action as an unacceptable precedent in the conduct of economic affairs, and that a clear message be sent that unilateral measures were never warranted or justified, and were unlawful. It had been asked whether every time a Member had a dispute there was to be an urgent meeting of the General Council, especially when consultations were under way. The answer was that the weight of opinion in this forum was important in shaping a compromise, and that the General Council had to be a forum where fundamental systemic issues could be raised and the membership allowed to express its views.

The representative of Canada said it was important for Members to have the right to have the General Council convened when urgent or important matters affecting their interests arose, and suggested that a clearer procedure was needed in this regard. The Director-General's statement was both wise and positive. It was important to look at this matter in as positive a light as possible. Canada supported the Director-General's recommendation, which was not aimed at any one party but at all the parties in this dispute, and which went beyond the instant dispute to the way Members needed to operate in the dispute settlement system and in the WTO. It was also important that the parties try to reach a solution to this matter that would allow Members to get on with the other important challenges and work that lay before the organization, such as preparations for the next Ministerial Conference and consideration of important requests for accession. Canada's views on this matter had been set out at the 15 February meeting of the General Council, including the point that unilateral action should not be taken under Article 22 before there had been a multilateral finding under Article 21. He reiterated the need to proceed as expeditiously as possible to clarify these provisions so that it would be clear how to deal with this kind of dispute should it arise again. Canada was prepared to work with others to try to find a solution to this issue in its generic sense before the completion of the review of the DSU at the end of July. Regarding the withholding of liquidation and whether or not this was a measure taken by the US, he said that it seemed to have had an effect, and that various criteria pointed to its being a measure. However, the General Council was not the forum for a discussion of the finer legal points involved in this matter.

The representative of Dominica said that part of the reason this was a complex issue was that the EC's banana regime was not an arrangement which had been built wholly and exclusively within GATT/WTO rules. There was a settlement reflected in the Lomé Convention which had been incorporated into WTO law through a waiver which had been adopted by consensus. That waiver provided that Dominica together with other ACP producers were entitled within the WTO system to have access and advantages to the level of their best-ever pre-1991 sales. Translating that into a mechanism which was easily applicable in the WTO context was not simple. Central to building the high degree of confidence required to resolve these issues in a sustainable way over time was respect for the rule of law. At present, the rule of law was reflected in the DSU, in particular in Articles 21 and 22. Dominica supported the EC's raising this matter in the General Council. Any challenge to the credibility of the DSU was a challenge to the WTO system itself, and his delegation associated itself with the statement by St. Lucia. The central element of the present discussion was what was meant by Articles 21 and 22. The last sentence of Article 22.6 provided that "concessions or other obligations shall not be suspended during the course of the arbitration". The measures taken by the US were

clearly inconsistent with Article 22.6. What was at issue was the maintenance of the rule of law in order to ensure that those countries not able to take the type of measures taken by the US felt comfortable in a system in which their long-term interests could be maintained. It was indispensable that the rule of law continued to apply. The measures taken by the US would have a direct effect not only on the EC but on the long-term sustainability of the Lomé regime for bananas, with consequential implications for investment in that industry in Dominica.

The representative of Japan said that in 1995 the US had taken a similar measure in announcing a list of products, namely luxury cars, that would be subject to 100 per cent duties, and in withholding liquidation of entries of the listed products. This had had the immediate effect of curbing imports of the listed products into the US. Japan had requested consultations under Article XXII:1 of the GATT 1994 stating that the US measures were in violation of, *inter alia*, Articles I and II of the GATT 1994 and Article 23 of the DSU. Since then, the US had not resorted to such measures and Japan had been encouraged by the US respect for the WTO dispute settlement system. Thus, his Government regretted that the US had decided to begin withholding liquidation, effective 3 March, on selected products from the EC, despite the fact that the WTO had not authorized the US to suspend concessions. Japan hoped that the two parties would find an amicable solution to this dispute, in accordance with WTO rules.

The representative of Hungary, speaking also on behalf of Bulgaria, the Czech Republic, Poland, Romania, the Slovak Republic and Slovenia, said that the recent news that the US had taken "customs actions" against EC exports for alleged non-compliance with rulings and recommendations of the DSB in the banana dispute was of serious concern. These countries, like others, had joined the consensus on the DSB Chairman's statement of 29 January outlining a compromise solution, with the understanding that the dispute at issue would be resolved within the multilateral framework of the WTO. In view of this unfortunate situation, they appealed to the parties involved to be aware of their special responsibility for the fate of the multilateral trading system, and to make every effort to resolve their dispute within the framework of that system.

The representative of Panama fully supported the Director-General's statement. He asked for clarification as to whether the EC was asking the General Council to take a position that the US action was unacceptable. He recalled that his delegation had stated in the informal meeting preceding the present meeting that it would oppose the holding of this meeting if any formal action was to be taken at it. The General Council was the wrong forum for airing the issue raised by the EC. It would be decided in the course of consultations, or in the context of a panel which might subsequently be established, whether the action at issue was a legal measure. The convening of special meetings in addition to regular meetings added to the heavy burden on small delegations like his. Consultations on this matter had to be multilateral and include banana-exporting countries like Panama, without whose agreement one would be prolonging the process; thus far the EC had given only lip service to this. His delegation had not seen any urgency in addressing this matter until the time when the EC was directly affected. Regarding the communication in WT/GC/20, he said that although a refund of any bonds posted was uncertain, this refund would depend entirely on any future action taken by the EC.

The representative of Korea said that his delegation had repeatedly urged both parties to this dispute to settle it promptly and in a manner that conformed to WTO rules and disciplines. However, the dispute remained unresolved and the situation had not improved despite the time and effort invested in this matter by the entire WTO membership. Korea regretted that a measure affecting a Member's interests had been taken without the authorization of the DSB and before a final decision had been taken by the arbitrators concerning the level of suspension of concessions. Korea's interest lay solely in safeguarding the multilateral trading system whose foundations currently faced an unprecedented test. This dispute was straining the dispute settlement system and putting the credibility of the WTO system as a whole at risk. Korea again urged both parties to look beyond their

narrow national interests and to renew efforts to find practical solutions. Given the turmoil in the world economy and the upcoming new round of negotiations, the EC and the US should demonstrate their leadership as befitted major economic powers.

The representative of Guatemala regretted that the item before the General Council was not aimed at arriving at the settlement the complainants had been expecting for so many years. Although the reasonable period of time had expired on 1 January 1999, every day there were further obstacles to the EC's implementing the recommendations and rulings of the panel and the Appellate Body; the WTO system was undergoing a crisis. This matter had to be tackled in the context of all present and future disputes the WTO was called upon to settle. The question that concerned all was Members' ability to comply with negotiated rules and procedures so as to achieve a trading system which would preserve the rights and obligations of all its Members under the covered agreements, and their ability to use a secure and predictable dispute settlement system. In recent months the effectiveness of the system appeared to exist only in theory, and there were still opportunities to postpone the implementation of decisions. One had to ask whether the present discussion served some constructive purpose or would simply make for further delays. Members had to proceed in the interest of the system and call upon the EC to bring its banana import regime into compliance, as this was the only way to demonstrate that Members were capable of resolving this and future disputes. The General Council was not competent to deal with this matter. There were specific procedures under the DSU to handle such a request.

The representative of India said that this meeting had been convened to discuss a subject of great systemic importance, namely, the trade measures taken by the US on 3 March against EC exports. The Director-General's statement was a clear exhortation to both parties to act in conformity with the letter and spirit of the system. India recognized that the banana dispute was a complex one involving the vital interests of many countries. The interests of many banana-producing and exporting countries were directly affected by it. This dispute was no less important for the rest of the membership since it had grave systemic implications. It had to be admitted that what happened in this case would establish precedents that could not be ignored in future. When this matter had been before the DSB, the issue had been whether a prevailing party could unilaterally determine compliance or non-compliance with the recommendations of the DSB, and on the basis of that unilateral determination proceed to seek DSB authorization to suspend concessions. At that time India had said that when there was disagreement as to the existence or consistency with a covered agreement of measures taken to comply with recommendations and rulings, Article 21.5 procedures should be gone through before resorting to suspension of concessions under Article 22.6. Almost all Members in the DSB had shared this view. A way had been found in the DSB to preserve the primacy of the multilateral trading system while at the same time ensuring that the rights of the parties under the DSU were not compromised in any way. A solution had been found in which the EC had been persuaded to make a request for arbitration under Article 22.6 before the original panel, engaged in two Article 21.5 proceedings, had given its verdict, and the US had been persuaded to agree that the same individuals who constituted the original panel could be given the task of arbitrating the level of suspension. The problem of how the panel and the arbitrators would coordinate their work was left to them. Regarding the action taken by the US on 3 March, it was clear that this was a measure and that it had an adverse effect on trade. He recalled the DSB Chairman's statement on 29 January to the effect that a request for arbitration under Article 22.6 would mean that the DSB would not authorise suspension of concessions at that meeting. The arbitrators had requested the parties to supply them with additional information and had indicated that they expected to be in a position to issue a final decision in this matter after this information had been analysed. Thus, it was clear that the arbitrators had not made their final decision. According to Article 22.6, concessions or other obligations shall not be suspended during the course of arbitration. However, this is what the US had done on 3 March. It seemed that the US was faulting the arbitrators for not giving their final decision by 2 March; however, the arbitrators had clearly found it impossible to issue a final decision without the additional information they had sought. Not all panel and Appellate Body reports were issued within

the indicative deadline. Furthermore, in another forum the US had stated that an unrealistic deadline for the harmonisation work programme might not be of benefit to the credibility of the Committee on Rules of Origin and the WTO. His delegation could not understand why, in a dispute which had gone on for some time, the US could not have waited a few more weeks. It appeared that the US had put the requirements of its own domestic legislation ahead of its WTO obligations. A strong dispute settlement system was intended to encourage Members to refrain from unilateral actions, but this had not been the case. India urged the US to look into this dichotomy between its domestic legislation and WTO obligations and to devise a system which would guarantee that the US would abide by its WTO obligations. A major trading power in this organization appeared to be saying that it had a right to ignore its international obligations in order to maintain the supremacy of its domestic law. The US had said that as the EC was certain of the WTO consistency of its banana regime, it had nothing to worry about regarding the US measure. However, other Members had an interest in this matter. He asked what harm the US would suffer if it waited just a few weeks more for the determinations under Articles 21.5 and 22. He recalled that under the old GATT system the US, too, used to block panel reports adverse to its interests. The General Council was the highest forum of the WTO and could assume the competence of any WTO body, and discussion of this matter in it was not useless. The debate in the DSB had enabled the membership to give a clear indication of its position. That was how the Chairman's concluding statement on 29 January had been possible. Similarly, the present discussion would sensitise both parties to the concerns of the rest of the membership. The measure taken by the US on 3 March struck at the root of multilateralism and was therefore a matter of concern. The WTO had no future if powerful trading partners resorted to unilateral trade measures. This was why in the preparatory process for the next Ministerial Conference India had circulated a paper on unilateral trade measures (WT/GC/W/123) and had strongly urged that "full and faithful implementation of WTO Agreements would require that not only must WTO Members undertake never to resort to unilateral trade measures, but that they must also take immediate steps to modify national legislations that implicitly or explicitly authorize such actions". The WTO was too important to be left to the US and EC alone. The bananas dispute had made it clear that it was the responsibility of the entire WTO membership to ensure that the rules prevailed.

The representative of Honduras said that when his Government had had recourse to the WTO to halt the devastating effects on its banana industry of the EC's banana import regime, it had been aware that the procedures would be long and complex. However, it had trusted that the DSU contained clear and precise rules, not only on procedures to restore a Member's rights, but also to ensure that once the work of the panel and Appellate Body was concluded, the adoption of the reports and their effective implementation could not be subject to delaying tactics. Unfortunately, there was a gap between theory and practice, and Honduras' expectations of a definitive and expeditious settlement had been disappointed. It had seen that DSU procedures could be compounded by a series of delaying tactics and related questions which merely postponed the settlement. These tactics included unnecessary discussions in the DSB and also in the General Council. After all of this, the only thing that was clear was that the procedures and time-limits for implementing decisions were uncertain. The reasonable period of time set for the EC to bring its banana regime into compliance had long been exceeded, and the period granted in the DSU for the arbitrators to rule on the level of suspension of concessions proposed by one of the complainants had also expired. The virtual paralysis of the system had been attributed to so-called inconsistencies in the DSU. Those who adopted this stance gave simplistic responses that harmed the credibility of the system and that showed that a secure and predictable system had not been set up. Any initiative to introduce further elements of polarization would be viewed as a means to postpone the implementation of decisions. The answer to the crisis the system was facing lay with the EC. Honduras hoped that the latter would bring its banana regime into WTO compliance.

The representative of Indonesia said that her delegation supported the three points stressed by the Director-General in his statement and supported the statement by Canada. Like others, Indonesia was concerned over the systemic implications caused by the dispute at issue. It deeply regretted that

while the parties concerned were to have pursued a mutually agreed solution through agreed procedures, additional problems had arisen which had further complicated the issue. She recalled that in accordance with Article 22.6 of the DSU, "concessions on other obligations shall not be suspended during the course of the arbitration". Any action suspending concessions or obligations without authorization by the DSB violated this provision. Her delegation urged all parties concerned to refrain from taking unnecessary action which would only undermine the credibility of the dispute settlement system as well as their own, and to continue pursuing an amicable solution under the DSU.

The representative of Barbados expressed his Government's grave concern over the action taken by the US on 3 March. In a statement issued on 5 March, the Heads of Government of the Caribbean Community had deplored the US unilateral action, and had noted, *inter alia*, that the US action was unauthorised, illegal and without basis in WTO rules. It was a well-known principle of international law that states could neither unilaterally determine infractions of an agreement nor unilaterally take remedial or consequential action. This matter transcended the bananas issue. The US action undermined the WTO and weakened the very foundations of the multilateral trading system. As a small economy and a developing country, Barbados struggled to participate in a full and effective way in the multilateral trading system. If the membership of the WTO allowed the continuation of a situation where anarchy might overwhelm the rules of the system, not only would the participation of countries like Barbados in that system be made more difficult, but their very survival would be threatened.

The representative of Switzerland said that throughout the treatment of this matter his delegation had been guided by a concern to preserve the multilateral character of the WTO dispute settlement mechanism. For this reason Switzerland had endorsed the solution proposed on 29 January by the DSB Chairman. The great merit of that proposal was that it preserved the rights of both parties to the dispute. In this context, the arbitration panel established under Article 22.6 had stated on 2 March that it was not yet in a position to rule on the conformity of the EC measures and, consequently, on the level of the suspension of concessions. However, the US had imposed customs duties with effect retroactive to 3 March, even before the arbitrators had given their final decision. In practice, and despite its provisional character, this measure had virtually the same restrictive effect on trade as did a definitive measure. The inevitable conclusion was that the US had imposed a trade sanction that was contrary to Articles 22 and 23 of the DSU. Switzerland urged the US to comply with its WTO obligations. He emphasized the responsibility incumbent on both parties to find a solution to this dispute, with scrupulous respect for the multilateral character of the dispute settlement system; any other outcome would be prejudicial to the credibility of the WTO.

The representative of Norway said that it was appropriate in the light of the escalation of this dispute that it be considered in the General Council. Norway was concerned at this escalation. His delegation emphasized that, as the Director-General had said, the roadmap for the legal settlement of this matter was in place and the parties should follow it. The forthcoming consultations would be at the heart of this matter. This situation arose at a time when the world was looking to the EC and the US and also to the WTO for a solution. Article 5 of the DSU dealt with good offices, conciliation and mediation. While the Director-General had already lent considerable assistance in this matter, the two parties should consider asking for a more formal procedure under Article 5 in an effort to make the consultations more fruitful.

The representative of Colombia said that in view of the nature of the US decision and the implications for the stability and functioning of the multilateral trading system, as well as the fact that this decision deepened the conflict between two of the organization's major players, his delegation had thought it appropriate for the WTO's highest body to hear those delegations' views in this new chapter of the banana dispute. There had been a crisis as a result of the divergences between the EC and the US regarding the latter's intention to retaliate against imports from the EC. After much discussion and many efforts at conciliation by the Chairman of the DSB and by the Director-General, a compromise

had been reached to convene an arbitration body to study the merits of this case and the amount of retaliation announced by the US. At the same time the existing panel would examine the new EC import regime. Thus, a truce had been agreed which had provided an opportunity for the mechanisms of the multilateral system to function. Unfortunately, that truce had been broken off while the panel and the arbitration body were still deliberating, and the matter had regressed to the critical juncture of a few weeks earlier. Colombia's intent was to defend multilateralism and implementation of the rule of law by which all Members were governed. His delegation reiterated the importance, effectiveness and credibility of the WTO and particularly the DSU, which was its cornerstone. Colombia urged all the parties concerned to seek formulas for compromise and settlement and to avoid confrontation and polarization at a time when Members were preparing for the start of a new round of negotiations.

The representative of the Philippines said that in his delegation's view there was no place for unilateral action in the WTO. Consultations had been requested in accordance with the DSU to resolve the disagreements in this dispute. Thus, the dispute settlement system was functioning. The DSU, which was at the core of the dispute settlement system, sought to resolve disputes dispassionately and on the legal merits rather than through contentious debates of an essentially political nature. The Philippines was concerned with the process currently going on in the General Council and its implications. If a Member was of the view that another Member had violated the WTO Agreement, it should be encouraged to resort to the DSU. The General Council should not be used as a forum for obtaining redress or even for venting grievances which could only be resolved through resort to the DSU. To do otherwise would be to undermine the dispute settlement system. Pending a legal determination on whether or not a violation had been committed, it was up to the judgment, conscience and good faith of the Member concerned to desist from or suspend any action which some might perceive as unilateral; in the same way, it was up to the judgment, conscience and good faith of the other Member concerned to implement correctly the relevant rulings and recommendations.

The representative of Thailand said that her delegation had been following with concern the latest developments in this dispute. The systemic implications of this case were in evidence now more than ever. The case no longer concerned a small number of Members and one commodity, but affected the interests of every Member of the WTO and was the shared responsibility of all. Thailand appreciated the efforts made by the two parties in January to pursue the multilateral path by referring the case to arbitration under Article 22.6. These mutual gestures of good will and cooperation had convinced her delegation of the strength and the ability of the WTO system to cope even with a situation of the most extreme urgency. It was only fair to the multilateral trading system to let Article 22 procedures follow their course. Thailand supported the Director-General's statement and appealed to both parties to consult in good faith and to come to a constructive conclusion as soon as possible. Any delay would be detrimental to the multilateral trading system.

The representative of Singapore said that his delegation shared the sentiments in the Director-General's statement and supported his recommendations. Singapore appealed to the parties concerned to renew their efforts to find a mutually acceptable solution, in accordance with WTO rules. The procedures to resolve this case were already in place. It had been agreed at the DSB meeting of 29 January to allow the arbitrators to determine the WTO consistency or otherwise of the EC banana regime, including the level of compensatory measures. This creative solution allowing for a single process under both Articles 21.5 and 22.6 was based on the premise that any retaliation or claims for compensation would be in accordance with the rules. Singapore was concerned about the US intention to backdate its countermeasures should the arbitrators rule in its favour. This was unprecedented in the WTO and had serious systemic implications. His delegation urged both parties to the dispute to comply with the arbitrators' findings in an expeditious manner and in the spirit underpinning the operation of the DSU. Regarding the relationship between Articles 21 and 22, Singapore shared many of the views expressed by Canada. Many of the current problems had arisen

because of certain ambiguities in these two Articles, and Members should work to clarify the relationship between them in an expeditious manner.

The representative of Malaysia said that his delegation was against any unilateral action. The latter had no place in the WTO. Malaysia hoped that this dispute could be resolved by the parties to it and not destroy in its wake the multilateral trading system. While it was undeniable that any Member could request the General Council to discuss any issue which it considered urgent, discussing the present subject repeatedly in the General Council only undermined the DSU and the DSB, and politicized what was in effect a legal issue. Malaysia joined other delegations calling for this issue to be settled within the DSB.

The representative of Trinidad and Tobago said that the DSU was a critical element in the continued viability and credibility of the multilateral trading system. It was the users of the system, and particularly the major players, who would put their credibility and the system itself at risk if they did not act in conformity with the letter and spirit of the rules. Her delegation had supported the convening of the present meeting. In light of the most recent developments in the banana dispute – unilateral action that could set a negative precedent for future dispute settlement cases – it could not be business as usual in the WTO. It was important that Members have the opportunity to exchange views on the course of action taken by the US, its unilateral nature and its implications for the dispute settlement system and the multilateral trading system, particularly in light of the many delegations who had spoken out against unilateralism at the January DSB meeting. The General Council was the ideal forum for such an exchange of views. This issue had gone well beyond bananas and raised critical systemic questions which had to be addressed. For a small developing country and one which would never be able to impose its will on any of the larger or more powerful Members, the rule of law constituted a key guarantee of fair play and equitable treatment, and justified belief in and participation in the system, with the attendant responsibilities, obligations, sacrifices and benefits. Trinidad and Tobago regretted that the system had not been given the necessary time to function before action had been taken outside of the rules and framework of the WTO. She referred to the statement by the Heads of Government of the Caribbean Community at their recent meeting in Surinam which deplored the precipitate, unilateral, unauthorised and illegal action of the US which was in flagrant violation of WTO rules and procedures at a time when an arbitration panel had been established and when two other panels were considering the WTO-conformity of the new EC banana regime.

The representative of Australia recalled that the EC and the US had been among the leading negotiators of the DSU, which was supposed to contribute to WTO objectives of predictability and security of the multilateral trading system. It was apparent that the DSU rules and procedures on implementation were not satisfactory to either side in the bananas dispute and that most WTO Members wanted those rules and procedures revisited in the DSU review. The positions of the parties in this case had the potential to adversely affect the rights of other WTO Members, including their legitimate expectations that the application of DSU rules and procedures would be conducted in an environment of predictability and security. Australia appreciated the frustration at delays, procedural complexity and uncertainty created by the current imperfect state of the rules on implementation. However, in the context of the present discussion it would have been better for the system had action been deferred pending the outcome of the current panel processes. Australia encouraged both parties to take account of the potential damage to the WTO system if this issue escalated further.

Th representative of Ecuador said that his delegation considered that this matter was not an urgent one and that it should not have been submitted for consideration by the General Council. What was urgent was for the EC to settle the banana dispute, which had been postponed for more than six years by the EC's use of delaying tactics. Bringing this matter to the General Council was an attempt to distract the attention of the panel examining the complaint by Ecuador, and his delegation feared that this attempt might affect the work of that panel. Ecuador rejected unilateralism since it was

harmful to the WTO system and affected Members' rights, especially those of the developing countries. As the world's largest exporter of bananas, Ecuador could not agree to the imposition of settlements agreed bilaterally by the EC and the US, in disregard of Ecuador's interests and rights.

The representative of Egypt said that his delegation shared the views expressed by India, Canada, Japan and Korea. Egypt was fearful of the systemic implications of this dispute, and had expressed its concern in the DSB about the unilateral determination of compliance. It was also concerned that recent measures had been taken without the approval of the DSB. Egypt's major concern was that both the EC and the US had taken positions based on narrow national interests, and his delegation had urged them on numerous occasions to demonstrate leadership as the parties that most benefited from the multilateral trading system. His delegation was confident that they would uphold the rule of law and preserve the multilateral trading system. The dispute settlement process had a number of deficiencies and was in need of the review currently taking place. Egypt was also concerned that the developing countries did not have the capacity to take measures that were in support of the system and that would help them when they felt their interests were being compromised. It was hoped that this issue would be addressed in the review of the DSU.

The representative of New Zealand said that the key to resolving difficult disputes was for interested parties, and especially major players, to adopt a solution-oriented approach, which involved adhering to the letter and spirit of the dispute settlement system. It meant not exacerbating difficulties or bringing about a deterioration in the climate for arriving at mutually acceptable solutions. New Zealand fully endorsed the positive and solution-oriented statement by the Director-General, in particular the latter's reference to the vital mechanism for bilateral consultations under Article 4 of the DSU.

The representative of Brazil said that the importance of the WTO to international trade rested on two pillars of equal strength: security and predictability. Multilaterally agreed trade rules were supposed to be predictable so as to assure traders that the rules that applied were known and that there would not be unexpected changes that would affect their interests. These trade rules were also supposed to provide security, and this by two means: their very predictability, and the fact that their functioning and application was monitored by all Members of the WTO and by a multilateral dispute settlement system. The need for security and predictability in international trade relations explained the success of the GATT and of the WTO. The current situation proved that the predictability and security provided by the WTO were also very precarious, because they existed only while Members remained committed to respecting the rules and to working together to surmount obstacles. The present situation could have been avoided. While there might be different interpretations of existing rules, the multilateral character of the organization should not be put in jeopardy. The concept of unilateralism was extraneous to the functioning of the WTO and undermined security and predictability. Compliance was fundamental to maintaining the credibility of the system. If the WTO was not a credible institution, it could not provide security and predictability. All Members were responsible for maintaining that credibility through compliance. The timing of this crisis was an additional reason for concern. If the world financial crisis was compounded by a trade crisis, the results could be very serious for all Members. Another concept of fundamental importance for the appropriate functioning of the WTO was the principle of decision-making by consensus, which had been Members' means of negotiating and enforcing multilaterally agreed rules. Brazil was ready to participate in any effort to solve the present problem by consensus. While it considered that the DSU was functioning well, Brazil would engage in discussions relating to its modification, if this were to provide increased security and predictability.

The representative of Senegal said that beyond the actual measures taken by the US was the way in which they had been taken and the risks involved for the multilateral trading system. The WTO dispute settlement system was one of the most articulated and satisfactory results of the Uruguay Round. Members were duty-bound to preserve this accomplishment in ensuring that their

actions and attitudes were in conformity with the letter and spirit of the dispute settlement system. The primary objective of that system was not to sanction any Member for the infraction of a rule but rather to restore a balance which had been upset. There were clear indications in the case at hand that this objective could be reached without resort to the measures under discussion. Members had to exercise restraint whenever there was a chance, even slim, of reaching a multilateral solution to a dispute. What was at issue was Members' attitude rather than any shortcomings in the multilateral system. In the present situation, delegations such as Senegal had rights that could be seriously undermined in this dispute.

The representative of Argentina said that the EC and the US, given their role in trade, had an additional responsibility in settling an issue of this kind. The level to which the present dispute had escalated jeopardized the normal functioning of the multilateral trading system. Argentina urged the parties to the dispute to bear in mind the devastating effect on the multilateral trading system of the accumulation of reciprocal actions by the two main partners in that system. Argentina's views on the dispute which had given rise to the present situation had been expressed in the DSB and at the General Council meeting on 15 February. The DSB should authorize the suspension of concessions or other obligations pursuant to Article 22.6 and 22.7 of the DSU, unless it was decided by consensus to reject the request for such authorization. Concessions or other obligations could not be suspended unilaterally. The obvious context for discussing an issue of this kind was the DSB under the procedures established by the DSU. It was not appropriate to involve the General Council in this dispute, and still less to do so in such a way that Members, especially developing countries, did not have a suitable opportunity to analyse, consult and evaluate alternatives to issues that were of major importance to the future viability of the dispute settlement system.

The representative of Côte d'Ivoire said that her delegation had repeatedly expressed its concern regarding the way the US was handling the trade dispute on bananas. The facts had confirmed that those fears were well-founded. In view of the consultations and the arbitration under way, and in view of the spirit in the General Council favouring conciliation, Côte d'Ivoire had expected that any unilateral measures would be suspended, and was profoundly frustrated that this had not been the case. Despite what was happening, her delegation continued to believe in the Members consulting among themselves, as this created credibility for the system. The Director-General's statement should be given full attention.

The representative of Venezuela expressed his delegation's concern at the level of abuse of the limits of the dispute settlement system that seemed to have been caused as result of the lengthy debate on the banana dispute. The dispute settlement mechanism had shown too much leeway regarding interpretation, and there was thus an urgent need to fill in the gaps. His delegation, like many others, was mindful of the need to clear up the DSU's shortcomings. It was contributing to the review process so that progress could be made and future interpretations avoided that would impair the objective of the DSU, which was to permit predictability and implementation of the WTO agreements. For some time, political and economic interests had taken precedence over the interests of the system, resulting in the loss of faith by parties to disputes. This undoubtedly conflicted with the spirit and objectives of the process. No Member, even though affected by gaps in interpretations allowed under the DSU, should proceed to take steps outside the multilateral context and thus open the door to similar actions which jeopardised the credibility of the DSB and the WTO. Otherwise, the detractors of the system would find justification for their suspicions of its lack of virtues.

The representative of Uruguay reaffirmed Uruguay's support for and commitment to the dispute settlement system. This system was the only means small economies had to defend their interests. It was not acceptable for one Member to take unilateral measures that were counter to the rules, nor was it acceptable for a Member to refuse to comply adequately with panel or Appellate Body recommendations and rulings using subterfuges to prolong the situation. Uruguay fully supported the statement by the Director-General and the points made by Canada and hoped that both

parties to this dispute would heed the message that had arisen from the present discussion. He stressed the point in the Director-General's statement that it was the users of the system who would put their credibility at stake if they did not act in conformity with the letter and the spirit of the system, which sought above all to produce mutually acceptable settlements.

The representative of Jamaica associated her delegation with the statements by Dominica, St. Lucia, Trinidad and Tobago, Japan, India and the Director-General. The US action of 3 March merited special attention from the General Council. Jamaica had always urged both the US and the EC to work towards finding a mutually satisfactory solution to the dispute on the EC's banana regime, within the framework of the rules and procedures of the WTO. On 2 March the arbitrators had requested additional information from both parties, and the arbitration process was continuing. The DSB meeting of 3 March had been cancelled at the US request, given the arbitrators' request for more information from both parties. The cancellation of that meeting had not been to allow the US to adopt unilateral measures pending a final decision by the arbitrators. The US action undermined the DSB and was a violation of Article 22 of the DSU. It had serious implications not only for EC trade, but for the trade of small WTO Members - in particular the Caribbean countries - and the WTO as a multilateral organization. He referred to the recent statement by the Heads of Government of the Caribbean Community in which it was stated that "This unauthorised and illegal action undermines the World Trade Organization and threatens the economic survival and social and political stability of several Caribbean countries".

The representative of Hong Kong, China said that his delegation held a principled position against unilateralism. Suspension of concessions or imposition of other measures with trade effects should await the final decision of the arbitrators which would be available shortly. In addition, there was an emerging consensus that the ambiguities of the relevant DSU provisions should be dealt with in the context of the DSU review as a matter of priority. His delegation considered all these steps conducive to the resolution of the dispute and to maintaining the health and credibility of the multilateral trading system. It urged the parties concerned to follow these steps in handling this matter, and endorsed the Director-General's statement.

The representative of Turkey expressed his delegation's frustration that so much time and energy had been devoted to a problem which could have been solved earlier had the directly interested parties adopted a less confrontational approach. In any event, this dispute would be solved in the next few weeks, when the dispute settlement system gave its legal response to it. His delegation shared the views and concerns expressed by the Director-General, who had reminded Members of their responsibilities. This matter was currently under examination by the competent organs of the WTO, and his delegation regretted the tenor of the present meeting. The WTO was an institution where good will should prevail and good faith should be the basis of all endeavours. In the final analysis, highly sensitive security and sovereignty issues were not at stake. In a cooperative environment geared to creating a global economy to the benefit of all, Members should be able to reconcile their commercial interests within the framework of a rule-based system. Every Member of the WTO should do everything in its power to exhaust all the available legal procedures to solve a dispute before resorting to unilateral initiatives. Retaliatory measures should be a last resort. While the rules provided for this possibility, it was similar to the provision for voting. Turkey was concerned about the measure taken by the US despite the fact that the US had clearly stated that the decision was of a provisional nature, and that the entry into force of the measure would be contingent on the decision by the arbitrators. There was consensus in the General Council that Articles 21.5 and 22 of the DSU did not shed sufficient light to settle this dispute. These Articles contained certain ambiguities which were subject to different interpretations, and it might be necessary to amend them. The DSB was holding on 16 March an informal meeting on the DSU review to specifically deal with certain ambiguities contained in these Articles. Turkey would have preferred to see the US wait until the original panel had reached a decision and the arbitration process had given a verdict on the case. The loss of time would be compensated by the gains in promoting the efficiency of the dispute settlement

system and in consolidating the WTO as an original and innovative international institution. The legal arguments of the parties were dwarfed by the prospect of such an outcome.

The representative of Cyprus said that the dispute settlement system concerned each and every member of the WTO. She expressed her Government's strong and firm support for the procedures negotiated and agreed upon, which clearly provided for a multilateral, rules-based approach within the DSB. Her delegation reiterated that any unilateral action should be avoided, if the organization was to continue to be considered a reliable and credible one, respectful of its own decisions and protecting the interests of all its Members.

The representative of the United States expressed concern that some of the views heard at the present meeting had failed to take into account the facts, or were based on untrue assumptions. The EC and others had used the word "urgent". If anything was urgent it was the needs of WTO Members like the US, who had waited seven years for the EC to bring its banana regime into compliance with the EC's international obligations. The EC had said that it had changed that regime several times during those seven years, but the fact was that after each change, that regime had again been found not in compliance with the EC's obligations. No GATT or WTO dispute settlement body had ever found any EC banana regime to be in compliance. Second, under Article 22 of the DSU the US had a right to an arbitrator's decision by 2 March 1999. Many delegations had quoted the last sentence of Article 22.6, but had failed to mention the mandatory language from the previous sentence in that Article, which said that the arbitration "shall be completed within 60 days after the date of expiry of the reasonable period of time". This paragraph had to be read as a whole. One sentence could not be taken out of context and applied to a particular need. Given the EC's efforts to avoid arbitration and its conduct during the arbitration, it was not surprising that the arbitrators had found it difficult to complete their task on time. However, the DSU did not provide for extending that deadline. The US would follow the arbitrators' decision and would abide by the rules, but in the interim it would preserve its rights. Third, contrary to what Dominica had said, the US had not suspended concessions during the course of the arbitration in violation of the last sentence of Article 22.6. It had merely postponed liquidation of entries – i.e. it had decided not to impose additional duties at the present time. This was the fact, notwithstanding claims of "de facto" suspension of concessions. Furthermore, the US had stated that whatever action it might eventually take would be consistent with the arbitrators' decision. She asked how this was acting outside the WTO. Finally, the EC had already requested dispute settlement consultations on this matter, and any other Member with a substantial trade interest could ask to join those consultations. What, then, had been the purpose of the EC summoning all the WTO Members to a General Council meeting to hear the EC's mischaracterization of the facts? What was the urgency in so doing? What distinguished the EC's complaint from other complaints processed in the normal manner under the dispute settlement system, some of which involved cases in which Members had actually taken measures to stop millions or billions of dollars worth of trade? While the present discussion had been good, it had not been a productive use of Members' time.

Many Members had encouraged the US and the EC to continue negotiations. The US had engaged in negotiations with the EC recently and had asked the EC to take consultations – not only with the US but also with the other G-5 complaining parties and Panama – seriously. The US had given the EC proposals that could result in a WTO-consistent banana regime for ACP countries. She clarified that the US was not against any kind of preference program or the need for preferences for many of these countries. The US itself had preference programs for the Caribbean countries. But the EC had to negotiate a preference program that was WTO-consistent. The US had never said that preferences could not be given, but rather that they had to be WTO-consistent. Her delegation welcomed comments by delegations that the WTO had much work to do in many areas. The US looked forward to hosting the next Ministerial Conference in Seattle and to working with other Members to accomplish the tasks set to achieve global prosperity, i.e. growth in markets. Global prosperity required an organization like the WTO and the rules it provided, but those rules could not

be abided by selectively. She regretted what the US had had to do to preserve its rights. There had to be a resolution of this dispute that would maintain the integrity of the multilateral trading system. The US had invested in that system – it had complied with three adverse decisions in the course of dispute settlement, including changing its domestic regulations. The EC had yet to show any respect for the system. It had used the system in employing delaying tactics and had itself acted unilaterally in not sitting down with the US to work out a WTO-consistent banana import regime.

The representative of the European Communities said that he saw a difference between what the US said and what it did. What the US had done was to take action that had not been authorized by the DSB and was outside the rules. It was a matter of dispute whether the US had been within its rights in invoking Article 22 and in applying the measures. At least one delegation had said that the 60 days provided for was not a mandatory deadline. Article 17.5 relating to the Appellate Body said that "in no case shall the proceedings exceed 90 days". However, he believed that in some cases it had considered, its report had been adopted beyond 90 days and no one had said that the reports were not valid or that the Appellate Body had exceeded its authority. He was confident that the arbitrators would uphold the point of view that these time periods were indicative, in which case the US entitlement to act on 3 March disappeared.

He made the following two points which he said were factual. First, regarding the question of whether the US had or had not suspended a concession, while the US had not increased any duties, it had clearly suspended a concession or an obligation under the WTO. The suspending of the concession arose because the withholding of liquidation denied an importer access, at the bound duty rate and under the normal conditions he had a right to expect, to the US market. The withholding of liquidation was discriminatory; thus the US was no longer treating all imports in an m.f.n. manner. Article 22.6 clearly stated that a Member should not do this while an arbitration process was under way. Second, much had been made of the fact that the EC had requested consultations. It was clear, however, that that process would take time, and by the time those consultations got under way, the results of the arbitration process would be available and the whole picture would be different. It had been said that discussion of this matter was not urgent; if a case where a leading Member deliberately went outside the rules and took unilateral action with all the precedents that implied did not warrant urgent discussion, what did? This was a very important issue for the organization and for the future, and it was important to hear Members' views on it. Regarding the US claim that it had implemented a number of cases in dispute settlement, those cases had been considered much earlier in the life of the DSU, and no change of legislation had been necessary for the US to implement the recommendations. The EC had lost its first case on bananas in the fall of 1997 and despite major political sensitivities and contractual problems had made a change in its regime within the required 15 months. However, the impression had been given by the US in the press and in the Congress that nothing whatsoever had been done. This had been a useful discussion, and there had been considerable support for the EC's views.

All delegations who spoke thanked the Director-General for his statement.

The Chairman said that this had been a good discussion of this complex and serious matter, and again expressed appreciation for the Director-General's statement.

The General Council took note of the statements.
