the need to maintain a standing panel or pool of legal experts on WTO. Notwithstanding the existing practice, wherein either government officials or career diplomats handle trade disputes of the WTO Members, the importance of involving legal and trade experts in this process is rapidly gaining prominence. Against this backdrop, developing countries to acquire special expertise in dealing with such matters. The role of the WTO Secretariat in assisting this process would be very crucial.

(c) Subsequent to the establishment of panels, written submissions are made by both parties to the disputes, in two stages. At the second stage both parties are required to present their written submissions on the same day. India is of the view that such an arrangement is disadvantageous to the respondent party, and hence calls for adequate time interval between the submissions of both parties. Korea contends that no new evidence must be adduced at the second stage of the written submissions.

(d) While there have been some discussion on civil society participation in the WTO's dispute settlement process (e.g. participation of non-governmental organizations), Japan and Pakistan are of the view that the WTO process on dispute settlement must be strictly confidential. India views the dispute settlement process as legalistic in character, and hence any move to admit non-governmental bodies would lead to more controversies and undermine the legal character of the dispute settlement process.

(e) At a more general level, there is a broad agreement that developing countries must be given longer time-periods during the panel proceedings. As regards multiple complaints, Guatemala, India and Pakistan are of the view that third parties to disputes should be granted equal standing as that of the principal disputants.

(iii) Appellate Stage: - Views to the effect that longer periods for enabling parties to study the implications of panel decisions and decide on whether to proceed on appeal has been raised from all quarters. More specifically EC, Japan and

Pakistan have underscored the need to authorize the Appellate Body to rule on factual aspects decided upon at the panel stage and also to remand cases back to the panels. In the light of certain controversial interpretations adopted by the Appellate Body, India considers it fit that there should exist a negotiating forum/mechanism to resolve the complexities arising out of such interpretative difficulties.

(iv) Implementation stage:- While the normal time limit for developing countries to comply with panel decisions is 15 months, India is of the view that the duration needs to be extended to 30 months. Pakistan, on the other hand, is of the opinion that the determination of this time-period must rest with the panel.

(v) Compensation and Suspension of Concessions:- Retaliation or suspension of concessions could not be a advantageous remedy for developing countries as against developed country parties to the WTO. To address this weakness, India proposes that wherein a dispute involved a developing country and a developed country party, and the developed country party fails to comply with the panel decision, then 'joint action' by all members of the WTO should be considered against the developed country.

He also outlined the difficulties faced by developing countries on account of the high costs involved in the dispute settlement process and also the lack of trained experts in assisting governments. to assist these countries, he said India has proposed a levy on the disputes coming before the DSB, the proceeds of which could be utilized to establish a Trust Fund. The Trust Fund could help subsidize the cost of developing country participants in dispute settlement proceedings. Attention was also drawn to study the special and differential treatment provisions of the DSU and the need to transform them into specific guidelines capable of being implemented.

Dr. B.S. Chmni in his presentation on "What should be India's Approach to the WTO Dispute Settlement System:

Follow the Agreement on Anti-Dumping and the GATT National Security Exception Clause", sought to present the case that a rule-oriented system in the WTO is of uncertain value for the underdeveloped world. The presentation was based on the premise that while a "rule -oriented dispute settlement system" has some intrinsic value, it is mistaken to believe that it automatically translates into justice in the international trading system. In his view, the substantive rules of WTO essentially codified the interests of the dominant sectors in international trade and hence a rule-oriented system only contributes to the rigid enforcement of the embodied inequities. He pointed out that the rule-oriented WTO dispute settlement system has been so constructed as to leave open vast interpretative spaces in which these states can seek safe haven to protect their critical interests.

In support of the above said position, he discussed Article 17.6 of the Agreement on Anti-Dumping which stipulates on how far WTO panels should show deference to determinations arrived at by national agencies and authorities. Art 17.6 (ii) provides that, "...Where the panel finds that a relevant provision of the Agreement admits of more than one permissible interpretation, the panel shall fine the authorities' measure to be in conformity with the Agreement if it relays upon one of those permissible interpretations". Characterizing the use of the term 'permissible' as opposed to 'reasonable' as unusual, he said that this provision imposes serious constraints on the power of a panel to question national determinations.

He argued that, while the other Agreements of the WTO regime exhibited a tendency to confine the scope of national determinations because allowing divergent national interpretations could undermine the WTO dispute settlement system and prove counterproductive, the wider scope for national determinations in the Anti-Dumping Agreement was paradoxical and runs counter to the spirit of a rule-oriented system. Against this backdrop, he suggested that to standardize the scope of national determinations, developing countries could seek to introduce the "permissible

interpretation criteria" to cover other WTO group of Agreements.

Secondly, he drew attention to Art. XXI of the GATT which deals with national security exception.[3] Analyzing the terms of this provision he concluded that Art. XXI employs a very vague concept of 'national security' which has a broad potential for abuse. Citing GATT practice, he contended that States are generally unwilling to have a GATT panel or any other body review their invocation of national security exception clause. Such unilateral and subjective terms of national determinations of the national security exception clause, posed a threat to the delicate system of WTO/GATT rules.

Following the above two presentations the floor was open for discussions. A number of queries were raised by the participants. A brief summary of the discussions that ensued is reported below.

Mr. William Davey, made some observations in his personal capacity on the presentations and specific queries raised by the participants.

---

[3] The relevant parts of Article XXI states:-

Nothing in this agreement shall be considered

(a) .....

(b) to prevent any party from taking any action which it considers necessary for the protection of essential security interests

(i) relating to fissionable materials or the materials from which they are derived;

(ii) relating to traffic in arms, ammunition and implements of war and to such traffic in other good and materials as is carried on directly or indirectly for the purpose of supplying a military establishment;

(iii) taken in time of war or other emergency in international relations.

* On the suggestion for a advisory role for the WTO's DSB he felt that it was unlikely to happen because, under the WTO regime it was the Member States who had the exclusive right to interpret the Agreements and hence the question of an authoritative pronouncement by an advisory DSB does not arise.

* On the proposal to make the consultation process more formal, it was his view that such a course needed consideration as it may restrict the scope for mutual settlement between parties and could also pose more difficulties for developing country parties to the WTO.

* As concerns the proposal for joint retaliation against a developed country party, he doubted if the US and EU would be willing to accept such a proposal. Moreover, he felt that joint retaliation had the potential to generalize trade disputes, thus endangering the settled balance of the WTO system.

* Responding to a query as to what extent Article 5 of DSU on conciliation and mediation has been effective in the resolution of disputes, he said that, there has been no instance, so far, of any party resorting to this process.

* As regards the views expressed on Article 17.6 of the Anti-Dumping Agreement, though he acknowledged that there is a general view that the Agreement makes little economic sense, yet issues concerning dumping constituted a relatively small area of international trade. With respect to the larger scope for deference to national determinations on this matter, he did not find it unusual. Such judicial deference to factual determination of administrative authorities was a well established practice in domestic legal jurisprudence. Commenting on the potential for abuse of Art. XXI on 'national security exceptions', he said that such difficulties are inherent in any system of international adjudication among sovereign States. Yet, the occasions for resorting to Article XXI by States are not frequent, and if such an occasion arises the panels will decide objectively on the issue.

Dr. Chimni, while responding to the above said observations said that, while the wide scope of judicial deference to executive determinations was acceptable in domestic law practice, he wondered if the same could hold true in international law. Extending these principles to international law, he maintained was unusual. Secondly, while agreeing that invocation of national security clause exceptions are rarely done, he said only in such critical situations where States feel that the stakes are high and resort to Art. XXI, the need for the issue to be 'justifiable' acquires more importance. Though the need for 'justifiability' is recognized, its scope is circumscribed by the vague formulation of Art. XXI.

Dr. P.S.Rao, in his comments drew attention to the similarities between the WTO's dispute settlement procedure and other similar dispute resolution mechanisms under the UN Charter and the Statute of the ICJ. More specifically, in the light of Mr. Davey's observations that the WTO members are the exclusive interpreters of the WTO Agreements, he said that the same position prevailed as regards maters brought before the ICJ. Such powers of auto-interpretation have not, in his opinion, been a limiting factor for the ICJ to develop its own jurisprudence on many areas of international law.

C. Session II - Special and Differential Treatment for Developing Countries: Effective Means for Implementation

The session was chaired by Hon'ble Justice A.M. Ahmadi, former Chief Justice of India. Presentations were made by Dr. Phillip Cullet, International Environmental Law Research Centre, Geneva and Dr. V.G. Hegde, Legal Officer, Ministry of External Affairs, Govt. of India. Mr. Soli Sorabjee, the Attorney General of India was also present on the occasion.

Hon'ble Justice A.M. Ahmadi, speaking on economic and infrasturctural disparities among countries, strongly underlined the need for a special and differential treatment.

Mr.Soli Sorabjee, the Attorney General of India, in his brief statement characterized the concept of special and differential treatment as one of necessity and not one of favour.

Dr. Phillip Cullet in his presentation on the concept of differentiation' traced the evolution and the functional utility of this principle. He defined "differentiation" as an exception or departure from the principle of 'reciprocity of obligations' (as exemplified by 'most favoured nation[' treatment) with a view to foster substantive equality among countries at different levels of economic development. the notion of 'substantive equality' should be distinguished from 'formal equality' - as formal equality is one which pervades the international law norm of sovereign equality of States. The rationale for such differentiation, in his view, could be attributed to: - (a) the principle of distributive justice, which is based on the recognition of the varying needs of countries; (b) principle of international solidarity; (c) reasons of historicity, e.g. impact of colonization; and (d) the different levels of economic development of States. This departure from reciprocity manifests in various forms, viz. (i) different levels of commitments/binding obligations for developing countries; (ii) longer implementation periods; (iii) in case, where all parties are bound to the same obligations, special financial mechanism are created to effectuate the 'differential' principle e.g. Global Environmental Facility.

At the practical level, the application of such differential treatment has assumed different dimensions since the 1950's. Describing this development, he recalled Article XXXVI of GATT wherein developed countries agreed not to expect reciprocal commitments from developing countries. the scheme for the Generalized System of Preferences (GSP) in 1970s was yet another step in carrying forward the differentiation principle. the call for a New International Economic Order (NIEO), the adoption by the UN General Assembly of Principles concerning the Permanent Sovereignty over Natural Resources and the Charter of Economic Rights and Duties of States; and the establishment of the Common Fund for Commodities (CFC) were manifestations of the efforts by developing countries to

institutionalize the concept of differentiation. While assessing the impact of the aforesaid instances, Dr. Cullet observed that the tangible benefits that ensued from these efforts were not matched by the strident rhetoric that animated the ongoing debate on this subject. Though preferences were granted under the GSP or Article XXXVI of GATT, such concessions did not necessarily prove beneficial to the developing countries. The shaping of a New International Economic Order, couched in the form of demands from an impoverished South to a reluctant North, was not very successful in developing legal principles or binding norms on differential treatment for developing countries. The late 1980s and 1990s - marked a change in the attitude of States, wherein the importance of interdependence among States came to be increasingly recognized.

Against this backdrop, he offered the following suggestions for enabling effective implementation of the differentiation principle:

(i) As against the vague and non-binding formulations of the NIEO framework, the obligations for differential treatment needs to be crafted in the form of specific and binding legal language.

(ii) The present practice of categorizing States for purpose of differential treatment, as 'developing' and 'least developed' countries, should be replaced by an individualistic country-by-country assessment.

(iii) The broad consensus as regards addressing issues of international environment illustrates that "convergence of State interests" could be a potential factor in including States to address global but common problems in an integrated fashion. If such a 'convergence of interests' could be replicated in the domain of international trade, the implementation of "differential treatment" would be effectively served.

Dr. V.G. Hegde in his presentation examined the comparative formulations of the special and differential

treatment provisions under the GATT and WTO framework. As regards the GATT regime, he drew attention to Part IV and more specifically to Article XVI of the GATT and also the Tokyo Rond Understanding which provides for special and differential treatment for developing countries. In comparison with the WTO framework, the S&D provisions in GATT were worded in more explicit and clearly identifiable language. The shift in the pattern from GATT to WTO was, in his view, attributable to the scope and coverage of these instruments. While GATT exclusively dealt with aspects relating to trade in goods, the WTO Agreements cover a larger area - including trade in services and intellectual property rights. In this context he cited the example of Art. 8(1) of Agreement on TRIPS[4] and Art. 12(4) of the Agreement on Technical barriers to Trade.[5] The WTO Agreements thus stipulates the scope and broad contours for special and differential treatment, but it is for the national governments to give content and choose the modalities for making it operational.

---

[4] Art 8(1) of the TRIPS Agreements reads as follows:

Members may, in formulating or a mending their national laws and regulations, adopt measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socio-economic and technological development, provided that such measures are consistent with the provisions of this Agreement.

[5] Art 12(4) of the TBT Agreement provides:

Members recognize that, although international standards, guides or recommendations may exist, in their particularly technological and socio-economic conditions, developing country Members adopt certain technical regulations, standards or conformity assessment procedures aimed at preserving indigenous technology and production methods and process compatible with their development needs. Members therefore recognize that developing country Members should not be expected to use international standards as a basis for their technical regulations or standards, including test methods, which are not appropriate to their development, financial and trade needs.

As regards the S&D measures in the WTO's dispute settlement provisions, he stated that the obligations were cast more in the form of "best endeavour clauses" rather than specifications of a definite character. Stressing the important role that panels would play in sharing the jurisprudence of the dispute settlement process, he argued for a more fair representation of developing country experts in WTO panels.

Mr. William Davey, offered the following observations on the above two presentations. As regards the suggestion for a individual case-by-case assessment of counties for differential treatment, he felt that such a proposal could upset the inherent advantages of the "most favoured nation" clause (MFN). while the economic rationale of the MFN clause has been to eliminate non-economic considerations in trade matters, individual assessment process could reverse this trend. Moreover, at a political level, States would resent such discrimination and 'differentiation' could become a more controversial issue. Besides, within the WTO framework, the determination of a country's status as a developing country was a matter based on the declaration by the State party itself, and hence there could be no room for individual assessment. In connection with the proposal for a fair representation for developing countries in WTO panels, he informed that almost 85% of the panels constituted so far, even in disputes where both parties were developed countries, had a developing country expert as a panelist.

Dr. Chimni, charged that the movement from GATT to WTO, on the question of special and differential treatment was a retrogressive step. Distinguishing between 'substantive' and 'procedural' S&D Agreement, he argued that introduction of new areas like TRIPS, TRIMS and services were not in the interest of developing countries. Inviting attention to the provisions concerning use of quantitative restrictions, he said that the WTO regime had made it more difficult for developing countries to invoke the 'balance-of-payment' exception in this regard. Moreover, even the minimal S&D benefits available for developing countries under GATT has been whittled down by the graduation principle. the 'graduation principle' provides for

the movement of States in the scale of development from the status of least developed to a developing country. The WTO provisions could thus only benefit the least developed countries. As regards provisions concerning "procedural S&D", he expressed dissatisfaction on the count that though provisions exist for transitional periods for developing countries, the tangible benefit accuring from such arrangements were uncertain. Citing the example of Agreement on Textiles, he said the integration of Multi Fibre Agreement (MFA) has to await a ten year period to yield substantive gains for developing countries. Similarly, notwithstanding the transitional periods under TRIPS Agreement, the developing countries are obliged to grant 'exclusive marketing rights' and such other onerous obligations, thus rendering the S&D principle ineffective. Against this backdrop, he concluded that special and differential treatment would benefit the developing countries only if it addressed substantive norms of the differentiation principle.

Hon'ble Justice A.M. Ahmadi in his concluding observations stated that the imbalance among developing countries could still remain, even after the end of the transitional periods provided for in the WTO Agreements. This gap could be exacerbated due to lack of financial and technological resources for the developing countries, and hence ways need to be devised to address this problem.

D. Session III- Deference to National Laws

The session was chaired by Hon'ble Justice A.M. Ahmadi, former Chief Justice of India.

Mr. Krishnan Venugopal, Advocate, Supreme Court of India, examined the WTO panel decision relating to a dispute between India and the United States concerning Patent protection for Pharmaceutical and Agricultural chemical Products. Though the general proposition involved here is that the panels should show defence to the determinations made by national authorities, the instant case witnessed the WTO panel decline to accept the conclusions of national authorities as

regards whether a particular action was consistent with Indian laws. The facts of this case can be briefly stated as follows. Article 70.8 and 70.9 of the TRIPS Agreement provides for certain actions to be taken by WTO Members during the transitional period. Thus, developing countries have a 10 year transitional period that extends upto the year 2005. During this interregnum, WTO Members are obliged to establish a process for mailbox application, to grant product patents. Under such process, applications from prospective patent holders could be received with a view to examining them by 2005, for grant of product patents. It may be stated here, that most developing countries including India, have hitherto been grant in only process patents. to fulfill this obligation, the Government of India issued an ordinance in 1994. In 1995, a bill was tabled before the Indian Parliament, containing suitable amendments to the Indian Patents Act. Due to lack of consensus among apolitical parties the bill was not passed. Meanwhile, the 1994 Ordinance also lapsed. So, the Government of India by an executive order directed the Controller General of Patents to continue to receive applications for product patents.

The US in its submission to the panel stated that:

(a) India had failed to fulfill its obligations under Articles 70.8 and 70.9 as regards the establishment of a mailbox process. The argument centered around the lack of predictability for prospective patent-holders, as it was possible that Indian courts could have struck down the mailbox process as being on consistent with Article 12 of the Indian Patents Act. Article 12 requires a patent application to be sent to an examiner within a prescribed period for determining the grant of patent rights.

(b) The measures adopted by India, in fulfillment of its obligations on transitional arrangement does not meet the requirements of 'transparency' as set out in Article 63 of the TRIPS Agreement. The WTO panel held that India had violated its obligations under the TRPS Agreement. The appellate Body

while upholding the first contention, rejected the arguments of US on the issue of transparency.

Analyzing the ruling of the Appellate Body, Mr. Krishnan said that the issue of transparency (Art.63) was not raised by US at the consultation stage, but yet formed part of its submissions at a later stage. This Appellate Body was thus correct in dismissing the finding of the panel of this issue. India had submitted before the Appellate Body that the issue underlying obligations under Article 70.8 of TRIPS was whether a WTO Member can impugn the validity of a measure taken by another Member County, on the ground that it is invalid under that country's internal laws. Strangely the ruling of the Appellate Body was silent on this issue. India had thus contended that the WTO panel was not the competent body to interpret national laws or determine their internal validity. Attention was drawn to GATT rulings where US and Canada have been given the benefit of doubt as regards the interpretation of national laws. Yet the Appellate Body upheld the panel's ruling on India's failure to fulfill its obligations under Art. 70.8 and 70.9 of the TRIPS Agreement. Mr. Krishnan while broadly in agreement with the final decision of the Appellate Body, expressed concern over the implications of this decision on the internal validity of an action by the WTO Members. This could in the future lead to increased challenges to actions of national authorities within the WTO. It was his view that the panel or the Appellate Body could have come to the same decision solely on the ground that the executive orders of Indian government to the Patents Office was not published in the Official Gazette, and hence a source of unpredictability.

Dr. P.S.Rao, observed that perhaps a communication gap exists between developed and developing countries as to the interpretation on the scope and modalities for implementing their obligations under the WTO. He highlighted the rationale of formulating transitional arrangements as one of enabling developing countries to progressively reform their domestic economic structures towards eventually fulfilling the new obligations undertaken under the WTO Agreements. These

obligations for the transition period are doubtelessly onerous, and hence the specific modalities of implementation should be left for the concerned country to decide. A rigid and formal interpretation which challenges the actions of national authorities would, in his view, undermine the purpose and utility of the transitional arrangements. Secondly, as regards the instant case under discussion, he felt that the right accrues only after 10 years i.e. completion of the transitional period and hence any claim to injury before that period can only by hypothetical. Moreover, he said the penals were not legal bodies and so could have shown more flexibility, perhaps by making recommendations or laying out options that could be satisfactory to both the parties. Given the current efforts in many developing countries towards consensus-building on WTO issues, he said that the WTO panels need to appreciate the subtleties of such political processes while dealing with trade disputes.

Mr. William Davey, commenting on the Patent case, remarked that the outcome of the panel and Appellate Body reports was perhaps based on the uncertainty of the status of Indian law and the unpredictability it may have for prospective patent holders.

E. Session IV- Legality of Unilateral Sanctions Affecting International Trade

The session was chaired by Mr. S.T. Devare, Secretary, Ministry of External Affairs, Government of India. Presentations on this subject were made by Mr. Harvey Jouane Jean, Director, European Commission; Dr. P.S. Rao, Joint Secretary, Ministry of External Affairs, Government of India; and Prof. (Ms) S.K. Verma, Director, Indian Law Institute.

Mr. S.T. Devare in his introductory remarks pointed out that in the present era of economic interdependence, developing countries aspiring to integrate with the global economy, have to ensure that emerging multilateral trends in world trade and commerce do not contradict their economic developmental initiatives. In this context, he hoped that this

Seminar could facilitate a comprehensive understanding of the nuances involved in multilateral commercial diplomacy. While special and differential treatment provisions were inbuilt into WTO Agreements to ensure parity for the developing countries, he was of the view that implementation of these provisions continues to be deliberately resisted by developed countries. Such negative practices by the developed countries assumes varied forms - refusal to grant market access to goods and services from the South; resort to arbitrary anti-dumping and anti-subsidy oriented measures against exports of developing countries; and protectionism perpetrated in the guise of adherence to various labour, environmental and social standards. Referring to the prohibition under international law on unilateral acts which undermine the political independence and territorial sovereignty of States, he stated that the above cited measures by developed countries were in utter violation of the stipulated provisions and spirit of the WTO Agreements. He identified 'multilateralised unilaterailsim' practised by the developed world against the developing countries as the core problem. All other areas like dispute settlement, special and differential treatment, market access, etc. are only incidental to this unfortunate trend.

Mr. Harvey Jouane Jean, in his presentation termed the WTO's dispute settlement process as the cornerstone of the multilateral trade regime. From the EU's point of view, he said that the DSB had been so far functioning quite well. Yet, in matters relating to interlinkages between trade and environment, more work was required within the WTO framework. The focus of his presentation was, however, on the dispute relating to the United State's Helms-Burton/Kennedy-D'Amato Acts and the Banana's Case. The Helms-Burton Act as enacted by the US Congress envisaged certain measures against companies trading with Cuba. The EU refused to recognize this Act, as it was unilateral and extraterritorial-more so it violated the WTO provisions. Mr. Harvey asserted that such actions were neither justified on grounds of 'national security exceptions' of GATT or GATS. Concerned with the potential implications of the Helms-Burton Act on European companies, the EU invoked the WTO's dispute settlement

process and was also preparing to submit its case to the panel. Meanwhile a political agreement was reached, whereby the proceedings before the WTO were suspended and efforts undertaken to find a negotiated solution to the problem. Mr. Harvey stated that the existence of an effective dispute settlement mechanism proved helpful in demonstrating that unilateral measures as contemplated by the US was not possible. He also informed that the EU had made it clear that if Cuba were to seek a panel on this issue against US and if the US were to invoke Article XXI on 'national security exception' then the EU would not become involved in the debate. He justified the EU's stand on the ground that, it considered the invocation of Article XXI in a bilateral dispute as a matter of sovereign right of a State, and the State could decide on how it would interpret Article XXI. He also drew support for this position from the earlier GATT jurisprudence on 'national security exception' clause.

In the Banana's case, the panel and the Appellate Body of WTO had held that certain provisions pertaining to the EU importation regime on bananas was not consistent with its WTO obligations. Mr. Harvey said that the EU had certain commitments vis-a-vis the ACP country partners. EU grants preferential access to banana's originating from ACP partners. For some ACP countries, exportation of bananas is the only viable source of revenue, and thus involves issues relating to economic development. On the other hand, the Latin American countries were strong competitors operating through multinational corporations situated in US with a capacity to match the entire demand for bananas in EU markets. Mr. Harvey informed that the EU has implemented a new regime for importation of bananas-which accords with the recommendations of the WTO's DSB. The US and five other Latin American countries feel that these implementation measures are inadequate. In the face of the US contemplating unilateral action for effective implementation, Mr. Harvey asserted that the EU would seek to initiate action within the WTO's dispute settlement process in this regard. While expressing concerns over some of EU partners' attempt to

Seminar could facilitate a comprehensive understanding of the nuances involved in multilateral commercial diplomacy. While special and differential treatment provisions were inbuilt into WTO Agreements to ensure parity for the developing countries, he was of the view that implementation of these provisions continues to be deliberately resisted by developed countries. Such negative practices by the developed countries assumes varied forms - refusal to grant market access to goods and services from the South; resort to arbitrary anti-dumping and anti-subsidy oriented measures against exports of developing countries; and protectionism perpetrated in the guise of adherence to various labour, environmental and social standards. Referring to the prohibition under international law on unilateral acts which undermine the political independence and territorial sovereignty of States, he stated that the above cited measures by developed countries were in utter violation of the stipulated provisions and spirit of the WTO Agreements. He identified 'multilateralised unilaterailsim' practised by the developed world against the developing countries as the core problem. All other areas like dispute settlement, special and differential treatment, market access, etc. are only incidental to this unfortunate trend.

Mr. Harvey Jouane Jean, in his presentation termed the WTO's dispute settlement process as the cornerstone of the multilateral trade regime. From the EU's point of view, he said that the DSB had been so far functioning quite well. Yet, in matters relating to interlinkages between trade and environment, more work was required within the WTO framework. The focus of his presentation was, however, on the dispute relating to the United State's Helms-Burton/Kennedy-D'Amato Acts and the Banana's Case. The Helms-Burton Act as enacted by the US Congress envisaged certain measures against companies trading with Cuba. The EU refused to recognize this Act, as it was unilateral and extraterritorial-more so it violated the WTO provisions. Mr. Harvey asserted that such actions were neither justified on grounds of 'national security exceptions' of GATT or GATS. Concerned with the potential implications of the Helms-Burton Act on European companies, the EU invoked the WTO's dispute settlement

process and was also preparing to submit its case to the panel. Meanwhile a political agreement was reached, whereby the proceedings before the WTO were suspended and efforts undertaken to find a negotiated solution to the problem. Mr. Harvey stated that the existence of an effective dispute settlement mechanism proved helpful in demonstrating that unilateral measures as contemplated by the US was not possible. He also informed that the EU had made it clear that if Cuba were to seek a panel on this issue against US and if the US were to invoke Article XXI on 'national security exception' then the EU would not become involved in the debate. He justified the EU's stand on the ground that, it considered the invocation of Article XXI in a bilateral dispute as a matter of sovereign right of a State, and the State could decide on how it would interpret Article XXI. He also drew support for this position from the earlier GATT jurisprudence on 'national security exception' clause.

In the Banana's case, the panel and the Appellate Body of WTO had held that certain provisions pertaining to the EU importation regime on bananas was not consistent with its WTO obligations. Mr. Harvey said that the EU had certain commitments vis-a-vis the ACP country partners. EU grants preferential access to banana's originating from ACP partners. For some ACP countries, exportation of bananas is the only viable source of revenue, and thus involves issues relating to economic development. On the other hand, the Latin American countries were strong competitors operating through multinational corporations situated in US with a capacity to match the entire demand for bananas in EU markets. Mr. Harvey informed that the EU has implemented a new regime for importation of bananas-which accords with the recommendations of the WTO's DSB. The US and five other Latin American countries feel that these implementation measures are inadequate. In the face of the US contemplating unilateral action for effective implementation, Mr. Harvey asserted that the EU would seek to initiate action within the WTO's dispute settlement process in this regard. While expressing concerns over some of EU partners' attempt to